



PORTUGAL - PATENT LITIGATION ON PHARMACEUTICAL PRODUCTS

December 2013

New Arbitration Regulations, new Schedule of Fees and Administrative Charges and new Code of Ethics for Arbitrators

The Law No. 62/2011 of December 12 established that disputes arising from industrial property rights related to reference medicines and generic medicines are subject to necessary arbitration, institutionalized or not.

Most of these *ad hoc* arbitrations adopted, at least partially, the regulation of the Commercial Arbitration Centre (CAC) of the Portuguese Chamber of Commerce.

The Board of Directors of the CAC of the Portuguese Chamber of Commerce and Industry has just approved a New Arbitration Regulation, a new Schedule of Fees and Administrative Charges and a Code of Ethics for Arbitrators.

The Code of Ethics for Arbitrators establishes the following:

General Principles: Anyone who accepts being an arbitrator in arbitration proceedings subject to the Arbitration Regulations of the Portuguese Chamber of Commerce and Industry (CAC) undertakes to perform his duties pursuant to the Regulations and to this Code of Ethics. Arbitrators shall be and remain independent and impartial, respecting and ensuring respect for the reputation and efficiency of arbitration as a fair means to settle disputes. This Code of Ethics shall be interpreted and integrated, taking into account the Guidelines of the International Bar Association on Conflict of Interest in International Arbitration.

Acceptance of the Arbitrator's Duties: Anyone who is invited to be an arbitrator («invited arbitrator») can only accept such task only if he believes himself to be able to remain independent and impartial, have the knowledge to assess the subject-matter of the dispute and also the expectedly necessary time for that purpose.

Impartiality and Independence: Arbitrators shall decide the matters submitted to their consideration with absolute impartiality and independence. Arbitrators appointed by the parties are not their representatives or agents, being at all circumstances subject to the ethical obligations foreseen in this Code. Arbitrators shall not allow that any prejudice, personal interest, external pressure or fear of criticism affects their decision.

Duty of Disclosure: Arbitrators have the duty to disclose all facts and circumstances that may, from the perspective of the parties, give rise to justifiable doubts as to their impartiality and independence and this obligation until the extinction of their jurisdictional power. Before accepting the task, the invited arbitrator shall inform the party of the following:

- a) Any professional or personal relationship with the parties or with their legal representatives and agents that the invited arbitrator considers relevant;
- b) Any economic or financial interest, direct or indirect, on the subject-matter of the dispute;
- c) Any prior knowledge they may have had about the subject-matter of the dispute.

By accepting this task, the invited arbitrator shall sign the declaration of acceptance, willingness, independence and impartiality foreseen in the Regulations. This declaration shall be updated whenever, during arbitration, there is any new circumstance that may, from the perspective of the parties, give rise to justifiable doubts as to their independence or impartiality. If any doubt is cast on the relevance of any fact, circumstance or relationship the duty of disclosure shall always prevail. Unless considered otherwise, the disclosure of the facts and circumstances foreseen in this article cannot be understood as a declaration that the arbitrator does not consider themselves impartial and independent and that, as a consequence, is not capable of performing his/her duties as arbitrator.

Prohibition to communicate with the Parties: Before accepting the task, the invited arbitrator can only ask the inviting party for a brief description of the dispute, the identification of the parties, co-

arbitrators and representatives, if any, and the contents of the arbitration convention. Notwithstanding the provisions of the next paragraph, the appointed arbitrator cannot communicate with the parties or with their representative in private regarding the subject-matter of the dispute prior to the constitution of the arbitral tribunal. In case of an arbitral tribunal where the arbitrators appointed by the parties have to choose the presiding arbitrator, each of them may consult with the appointing party on the choice of the Chairman. During arbitration proceedings, the arbitrator shall refrain from communicating with any of the parties or with their representatives on the subject-matter of the dispute and on any event occurring in the arbitration proceedings.

Duty of Diligence: Arbitrators shall conduct the arbitration proceedings as promptly, effectively and economically as possible in a way that it is compatible with the respect for the procedural guarantees of the parties. Arbitrators shall devote such time and attention to the arbitration proceedings as circumstances may reasonably require for the adequate understanding and decision of the subject-matter of the dispute.

Fees and Expenses: The arbitrators' fees and the reimbursement for their expenses during the performance of their duty shall be determined exclusively as foreseen in the Regulations. The arbitrator appointed by a party cannot adjust with the latter the amount of his fees and expenses, or of any other retribution related to the exercise of his duties. Arbitrators cannot propose, negotiate or settle agreements with the parties or with their representatives regarding any change to the fees foreseen in the Regulations. If they so desire, they must request such changes to the Chairman of the Centre, pursuant to the Regulations, without prejudice to being able to inform the representatives beforehand of such intention.

Confidentiality: Without prejudice to the provisions of the Law and Regulations, arbitrators shall respect the confidentiality of the proceedings and of the arbitral award and they cannot use information obtained throughout the arbitration proceedings with the purpose of achieving a gain, for themselves or for others, or of damaging the interests of another.

Prohibition to Solicit Appointment: No one shall actively solicit appointment for any arbitration proceedings, but anyone may publicly disclose their experience in terms of arbitration, subject to the duties of confidentiality.

This set of rules shall enter into force on **March 1, 2014**.

We will revert to you soon with additional information concerning the New Arbitration Regulation, a new Schedule of Fees and Administrative Charges.

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