

This version of the problem includes with track changes, the clarifications issued 24 January 2019, and February 28, 2019.

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February 15, 2018

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By Courier

The President of the Center for Arbitration and Mediation of the Chamber of Commerce
Brazil-Canada (CAM-CCBC)
Rua do Rócio, 220
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Brazil

Notice for Arbitration

CLSA, Inc.
c/o Wu Chong
Shan Street, Apt. 12
Guangzhou
People's Republic of China

- CLAIMANT -

Represented in this arbitration by Peter Brandais

Mr. Marcelo Lee
43 Arco do Teles
Rio de Janeiro
Brazil

- RESPONDENT -

Notice of Arbitration

1. This is a Notice of Arbitration to Mr. Marcelo Lee under clause 9 of the Corporate Agreement of January 20, 2010 between Guangzhou Investments Co. and Mr. Marcelo Lee, a civil engineer, and Partner at CLSA, Inc., until his departure on June 30, 2017.

Statement of Facts

2. This dispute stems from the application of the mentioned agreement dated January 20, 2010 (“the CLSA Corporate Agreement”) between Marcelo Lee, a Brazilian civil engineer, and Guangzhou Investments Co., a corporation owned and controlled by Wu Chong, a business man from Guangzhou, China.
3. CLSA is an engineering consulting firm, incorporated in Delaware, U.S.A., with practice in Brazil, Colombia, Panama, the Philippines, and South Korea. The purpose of the CLSA Agreement was to establish a company, under which Marcelo Lee became a director of CLSA and the shares in CLSA were to be divided as to 33% to Marcelo Lee and as to 67% to Guangzhou Investments Co.
4. On December 20, 2016 Marcelo Lee entered into an agreement with So Fong, Cheoy Chen, Pedro García, and Joaquín Ugarte, which bears the heading “Co-operation Agreement” (“the Co-operation Agreement”). So Fong and Cheoy Chen were Chinese engineers who had joined CLSA in 2014 as employees and were subject to restrictive covenants. The restrictive covenants were contained in clause 13 of their respective Employment Contracts (CLSA Employment Contracts) and had the following wording:

“During his employment, and during three months after his voluntary or involuntary dismissal, the employee may not compete or undertake any other action that interferes or undermines the Company’s ability to do its intended business. In particular, the employee is prohibited from:

- competing with the company, by seeking to work for a competitor in North or South America;
- soliciting goods and services that the company provides;
- dealing with any former or current customers for personal benefit;
- poaching: the employee will not for a period of three months from the termination of this Contract entice away or endeavor to entice away from the other party any employee of such other party.
- using any confidential information belonging to the employer, including client information.”

Pedro García was a Colombian attorney and Joaquín Ugarte was a Chilean engineer. The Co-operation Agreement was signed in Hong Kong, and recited that Pedro García and Joaquín Ugarte proposed to establish and operate a consultancy business and that, as and

when they were legally free to do so, So Fong, Cheoy Chen, and Marcelo Lee would be able to join the consultancy on the basis set out in the Co-operation Agreement. The Co-operation Agreement provided for the establishment of the consultancy to be owned and operated by Sustainable Development Consultants, S.A. (“SDC”) and an associated service company, Sustainable Services, Inc. (“SSI”), (together “Sustainable Consultants”). The Co-operation Agreement provided for the issue of five equal sets of shares (5 x 20%) in each of the two entities, one to be held by or on behalf of each of Pedro García and Joaquín Ugarte, and one to be held by or on behalf of each of Cheoy Chen, So Fong and Marcelo Lee should they elect to participate.

5. On December 31, 2016 So Fong left CLSA to work at Sustainable Consultants and Cheoy Chen joined him on March 1, 2017.
6. Marcelo Lee quit his position as CLSA’s director on June 30, 2017 and went to work for Sustainable Consultants. The incorporation into Sustainable Consultants took place on August 8, 2017, after the other shareholders had voted favorably on July 24.
7. Wu Chong, in his capacity as sole proprietor of CLSA, considers necessary to disclose that he obtained a loan for \$500,000 from the National Royal Bank for the procedural costs of this arbitration.

Nomination of Arbitrator

8. In accordance with the arbitration clause in the contract and Article 4.4 of the CAM-CCBC Rules we appoint Ms. Rachel Forster, 41 Rue Parnasse, Paris, France, for confirmation by the Secretariat. Ms. Rachel Forster is on the list of arbitrators of CAM-CCBC.

Legal Evaluation

Jurisdiction

9. The Arbitral Tribunal has jurisdiction over the dispute by virtue of the arbitration agreement contained in Clause 9 of the contract between Claimant and Respondent [Claimant’s Exhibit C 1]. The clause provides as follows:

“In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If they do not reach settlement within a period of 60 days, then, upon notice by any party to the other(s), any unresolved controversy or claim shall be settled by arbitration in English in Panama or such other location as the parties may agree under the rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC).”

10. This arbitration clause confers jurisdiction to an arbitral tribunal constituted pursuant to the rules of the CAM-CCBC. For this reason, we request from the CAM-CCBC that it confirms the appointment of the arbitral tribunal’s members and administers this proceeding.

Merits

11. The Claimant is entitled to the full compensation of all damages caused by Marcelo Lee in violation of his fiduciary duties. According to Clause 4 of the CLSA Corporate Agreement, Marcelo Lee owed a fiduciary duty to the Company under which he agreed to make full disclosure to CLSA of all business opportunities pertaining to the Company's business and was forbidden to act for his own benefit concerning the subject matter of his fiduciary relationship. During the validity of the CLSA Agreement, Marcelo Lee was contractually obliged to devote full energies, abilities, attention and business time to the performance of his job responsibilities and was forbidden to engage in any activity which conflicts or interferes with, or in any way compromises, his performance of such responsibilities. It has come to CLSA's attention that Marcelo Lee violated these fiduciary duties by the following acts and omissions:
12. *Entering into a "Co-operation Agreement" with Sustainable Consultants:* The Co-operation Agreement had a clause that explicitly respected Marcelo Lee, So Fong and Cheoy Chen's obligations under the CLSA Corporate Agreement and the CLSA Employment Contracts, respectively. However, despite this formal agreement, the reality was that, after signing the Co-operation Agreement, all of them immediately started working for Sustainable Consultants. Several emails demonstrate Marcelo Lee's commitment towards strengthening the market position of Sustainable Consultants (Exhibit C2 Email trails between respondent and CLSA's clients/ staff of Sustainable Consultants). In fact, the Co-operation Agreement that constituted Sustainable Consultants was deliberately drafted in a way to suggest that So Fong, Cheoy Chen and Marcelo Lee were not bound to join the new venture but this was an attempt to disguise what was really an immediate partnership involving each of Cheoy Chen, So Fong, Pedro García, Joaquín Ugarte, and Marcelo Lee.
13. *Diversion of CLSA's work:* While still a director of CLSA, Marcelo Lee diverted work, commercial opportunities, clients and potential clients to Sustainable Consultants. CLSA has suffered loss of business opportunities in the projects that are known by the following shorthand names: Puente Jara (lost fees), Bypass Road at El Choto (engineering fees), Galapagar Copper Mine (lost fees), Puente Largo, Project X, Estadio Atlético and Swimming Pool, Chismosa Lithium Mine Access Road, Project RSA, Torre Ramírez-Endor, and Bucaramanga. In all these projects, after commencement of the work by CLSA, about six to ten months into the work, the company Sustainable Consultants turned out to be also doing some parts of the engineering work.
14. The following projects were terminated according to contract, although later on the contractor switched to Sustainable Consultants for additional work: Sustainable Consultants: Puente Largo, Project X, Estadio Atlético and Swimming Pool, Chismosa Lithium Mine Access Road, Project RSA, Torre Ramírez-Bogotá, and Bucaramanga.
15. *Undercharging some of CLSA's clients:* Marcelo Lee undercharged several of CLSA's clients. This is clearly shown in the case of the project to build the *Bypass Road at El Choto* (Colombia). The invoice sent to the city for the final revision of the engineering drawings for the rainwater drainage system amounted to US \$25,400. However, Marcelo Lee signed off on the invoice after CLSA received a bank transfer of US \$16,400. The financial records of CLSA do not show where the remaining US \$9,000 are. It was Marcelo Lee's obligation to make sure CLSA received the full amount of this bill.

16. According to our expert evaluation's determination, the lost revenue from the fees that were not earned, or not entirely earned, as a result of the diversion of CLSA's work and the undercharge made to some of CLSA's clients by Marcelo Lee, amount to 1,185,000.- Euros.
17. Marcelo Lee was acting on his own benefit during the whole time that he was working as director at CLSA. As a consequence, the Company has also suffered damages that amount to the salaries that Marcelo Lee received over the last three years. As CLSA had established an annual gross salary of US \$180,000 for Marcelo Lee, the total amount of wage payments that Marcelo Lee has to disgorge amounts to \$540,000.

Statement of Relief sought:

On the basis of the above Claimant requests the Arbitral Tribunal to:

1. order Respondent to pay CLSA the amount of US \$540,000 for damages that CLSA suffered as a consequence of breach on his fiduciary duties, plus the amount of 1,185,000 Euros for damages that CLSA suffered as a consequence of the diversion allegations and the undercharge made to some of CLSA's clients by the Respondent.
2. order Respondent to bear the costs of the arbitration.

Respectfully Submitted

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Peter Brandais

Exhibits: Claimant's Exhibits C 1 – C 2

EXHIBITS

C1: CORPORATE AGREEMENT

This CORPORATE AGREEMENT is made on the 20 day of January, 2010 between **Guangzhou Investment Co.**, legally represented by Wu Chong, whose address is Shan Street, Apt. 12, Guangzhou, People's Republic of China and **Marcelo Lee**, whose address is 43 Arco do Teles, Rio de Janeiro, Brazil

Clause 1 - BUSINESS.

CLSA, Inc. is a company incorporated in the State of Delaware, U.S.A., legally represented by Wu Chong, which main business is to provide engineering advice and services. The company practices in Brazil, Colombia, Panama, the Philippines, and South Korea. The company will strive to expand to other countries worldwide.

The principal office of the business shall be at Guangzhou, People's Republic of China.

Clause 2 - TERM.

The company shall begin on the 20 day of February 2010, and shall continue until terminated as herein provided.

Clause 3 – PARTNERS.

This company will have two partners: Mr. Wu Chong, in representation of **Guangzhou Investment Co.**, and Mr. **Marcelo Lee**.

Clause 4 - MANAGEMENT DUTIES AND RESTRICTIONS.

Both partners shall be in charge and responsible for the successful management of the company. Each of them will sign documents in representation of the company as "Director of CLSA."

The directors/partners shall devote their entire time to the performance of their job responsibilities and will not be allowed to engage in any activity which conflicts or interferes with, or in any way compromises, their performance of such responsibilities. No partner will engage in any business, venture or transaction, whether directly or indirectly, that might be competitive with the business of the company or that would be in direct conflict of interest to the company without the unanimous written consent of the remaining partners. Any and all businesses, ventures or transactions with any appearance of conflict of interest must be fully disclosed to all other partners. Failure to comply with any of the terms of this clause will be deemed an Involuntary Withdrawal of the offending partner and may be treated accordingly by the remaining partner.

The directors/partners shall make full disclosure to the other partner of all business opportunities pertaining to CLSA, Inc. and shall restrain to act for their own benefit concerning CLSA's business.

Each partner must account to the company for any benefit derived by that partner without the consent of the other partners from any transaction concerning the company or any use by that partner of the company property, name or business connection.

Clause 5 - SHARES.

The shares of CLSA, Inc. will be divided as follows:

- Thirty three percent (33%) of the shares will be held by Mr. Marcelo Lee.
- Sixty seven percent (67%) of the shares will be held by Guangzhou Investments Co.

Clause 6 - PROFIT AND LOSS.

The net profits and losses of the company shall be divided between the shareholders in proportion to their percentage in the shares property.

Company profits and losses shall be charged or credited to the separate income account of each partner. If a partner has no credit balance in his income account, losses shall be charged to his capital account.

Clause 7 - SALARIES AND DRAWINGS.

For the management services rendered to the company, each partner will receive an annual gross salary of US \$180,000. This amount is in addition to the profits that the directors are entitled to in their capacity as shareholders.

Clause 8 - VOLUNTARY TERMINATION.

This agreement shall terminate by the sole discretion of any of the partners, upon written notice of at least two months in advance. Each partner has the right to get reimbursement of his share value from the available funds in the firm. In the case that one of the partners decides to terminate the company, the other partner will have a preferential right to purchase his shares and continue with the business, including the company name.

If there is no interest for continuing the business, the company shall be dissolved, in which event the partners shall proceed with reasonable promptness to liquidate the business of the company. The company name shall be sold with the other assets of the business. The assets of the company business shall be used and distributed in the following order:

- (a) to pay or provide for the payment of all company liabilities and liquidating expenses and obligations;
- (b) to equalize the income accounts of the partners;
- (c) to discharge the balance of the income accounts of the partners;
- (d) to equalize the capital accounts of the partners; and
- (e) to discharge the balance of the capital accounts of the partners.

Clause 9 - ARBITRATION.

In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If they do not reach settlement, and within 60 days after the failure of the negotiation, any party may start arbitral proceedings for the unresolved controversy or claim. Such arbitration shall be in English in Panama or such

other location as the parties may agree under the rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada.

C2: Email trails between Respondent and staff of Sustainable Consultancy.

From: pp.marambio@horizonconstruction.co
Sent: Tuesday, March 10, 2017 2:22 PM
To: marcelo.lee@clsa.com
Subject: Soccer match

Hey Marcelo!

Pedro Pablo Jr. told me that he and your son will be playing on the same soccer team this weekend. Maybe we can all go to have lunch after the match. What do you think?

By the way, Martín Rocapiedra said today that the project is moving along. Is it true that it will be taller than Torre Tercer Milenio? The skyline of Bogotá is starting to look like Chicago!

See you on Saturday.

Pedro Pablo

From: marcelo.lee@clsa.com
Sent: Tuesday, January 12, 2017 1:22 PM
To: esteban.murillo@granhorizonte.com
Subject: RE: Invoice

Dear Esteban,

I signed the invoice for the agreed amount.

It was the least I could do for you. This is how I like to treat our loyal customers. Just make sure to call me in case you have any future projects.

Also, I would like to apologize in name of Wu Chong for not answering your e-mails promptly. His licentious lifestyle has made him, so to speak, not as committed as he used to be, but you know you can always count on me.

Sincerely,

Marcelo

From: marcelo.lee@clsa.com
Sent: Tuesday, May 24, 2017 2:22 PM
To: cheoy_Chen@SLC.com So_Fo@SLC.com Pedro.Garcia@SLC.com
Subject: Yet another Good news
Dear all,

I have been able to negotiate another deal for us with Consar Works. They engaged CLSA in 2014 for an advisory service. So Fong and Cheoy Chen do you remember working on the project with me back then?

They approached CLSA not long ago about doing a similar project (Project RSA), in Panamá. I mentioned Sustainable Consultants and they were interested in a meeting.

Please tell me if you have some time in your schedule on Friday, so we can set up a meeting with them.

Regards,
Marcelo



Sao Paulo, June 27, 2018

Mr. Marcelo Lee
43 Arco do Teles
Rio de Janeiro
Brazil

RE: Notice for Commencement of Arbitration Proceeding

Arbitration Proceeding Nr. 201/2018/SEC9

Claimant: CLSA, Inc.

Respondent: Mr. Marcelo Lee

Dear Sirs,

On February 15, 2018, the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (“**CAM-CCBC**”) received the attached Request for Arbitration, presented by Consultora Levante, S.A. (“**Claimant**”) against Marcelo Lee (“**Respondent**”), which was amended on June 21, 2018, when Claimant submitted its power of attorney and attached proof of payment of the filing fee.

Therefore, pursuant to Article 4.3¹ of the CAM-CCBC Arbitration Rules, effective from January 1, 2012, with the latest amendments of April 28, 2016² (“Rules”), the Secretariat invites you to describe in brief the nature and circumstances of the dispute giving rise to the claims, the basis upon which the claims are made and their respective amount. We also invite you to comment on the place of arbitration, language, and the law or rules of law applicable to the arbitration. The description in brief and any additional comments must be received within fifteen (15) days.

In light of the appointment of the arbitrator presented by Claimant in his Request for

¹ CAM-CCBC Rules, Article 4.3. The Secretariat of the CAM-CCBC will send a copy of the notice and respective documents that support it to the other party, requesting that, within fifteen (15) days, it describe in brief any matter that may be the subject of its claim and the respective amount, as well as comments regarding the seat of arbitration, language, law or rules of law applicable to the arbitration under the contract.

² Please find attached a copy of the Rules and a copy of the List of Arbitrators. For the purposes of this exercise, Ms. Forster, Mr. Wechselman, and Ms. Vinnen shall be considered members of the CAM-CCBC List of Arbitrators, as per article 3.1 of the CAM-CCBC Rules.

Arbitration, the CAM-CCBC also invites Respondent to appoint its arbitrator pursuant to Article 4.4 of the Rules³.

Please do not hesitate to contact us for further inquiries.

Kind regards,

A handwritten signature in black ink, appearing to read 'H. J. J. J.', is positioned below the text 'Kind regards,'.

Case Manager

³ CAM-CCBC Rules, Article 4.4. The Secretariat of the CAM-CCBC will send both parties a copy of these Rules and the list of the names of the members of the List of Arbitrators, inviting them to, within fifteen (15) days, each appoint one (1) arbitrator and, optionally, one (1) alternate to constitute the Arbitral Tribunal.

Hin-Wa Xiang-Po
Advocate at the Court
Successful Litigators' Firm
1312 K Street, NW
Washington, D.C.
Phone: (202) 333-4455
Email: beingasuccessfullitigator@washington.com

July 10, 2018

By Courier

The President of the Center for Arbitration and Mediation of the Chamber of Commerce
Brazil-Canada (CAM-CCBC)
Rua do Rocio, 220 12o andar - cj.121
São Paulo, SP 04552-000 (Brazil)

CLSA v. Lee

Answer to the Notice of Arbitration
Pursuant to Article 4.3 CAM-CCBC Rules

CLSA, Inc.
c/o Wu Chong
Shan Street, Apt. 12
Guangzhou
People's Republic of China

- CLAIMANT -

Represented in this arbitration by Peter Brandais

Mr. Marcelo Lee
43 Arco do Teles
Rio de Janeiro
Brazil

- RESPONDENT -

Represented in this arbitration by Hin-Wa Xiang-Po

Introduction

1. In its Statement of Claim, Claimant presents a largely accurate picture of the facts as to

the existence of CLSA, the Corporate Agreement between Guangzhou Investments Co. and Marcelo Lee, and the fact that on June 30, 2017, Marcelo Lee left the company. It is also true that after he had left CLSA, Marcelo Lee found work with Sustainable Consultants. In fact, he was admitted as partner in that firm. From such facts, Claimant draws, however, completely wrong legal conclusions.

2. The claims raised by Claimant in this arbitration are neither admissible nor justified. Respondent has fulfilled all his obligations under the CLSA Corporate Agreement. Claimant bases most of his claims on evidence that is inadmissible in this arbitration. In addition, it is the Claimant who—as the sole partner now in charge of CLSA—has still outstanding payment obligations towards Respondent. We will explain these outstanding payment obligations in the counter-claim contained in this Response.

Jurisdiction

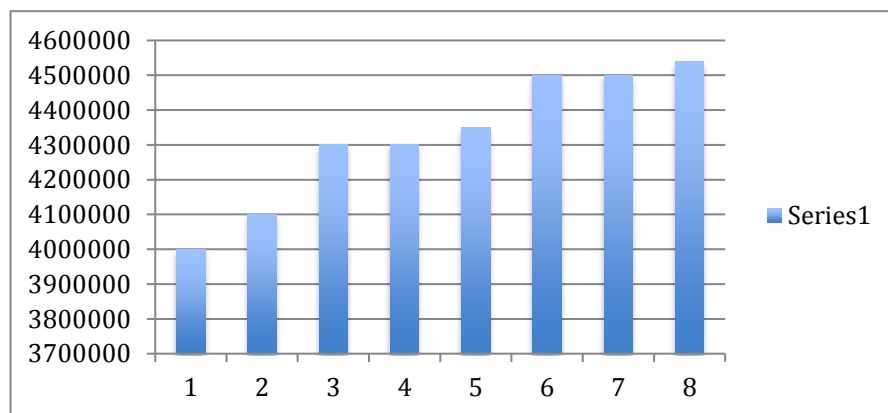
3. Claimant's claim has to be rejected as not admissible as the arbitral proceedings were initiated too late.
4. Pursuant to Clause 9 of the Corporate Agreement, the arbitral proceedings had to be initiated "within 60 days after the failure of the negotiation". In this case, negotiations had failed on December 20, 2017 (Respondent's Exhibit R1). Consequently, the arbitration proceedings had to be initiated on February 20, 2018 at the latest.
5. The request for arbitration was filed on February 15, 2018. However, this Request did not comply with the requirements of Article 4.1 and 4.2 CAM-CCBC Rules. At the time the request was filed, Claimant had not paid the Registration Fee in full nor had it submitted a power of attorney for the arbitration.
6. The arbitration proceedings were only commenced on June 21, 2018 when Claimant finally submitted the signed power of attorney and paid in full the filing fee. In other words, the Request for Arbitration was properly filed more than 6 months after the failure of the negotiations. At that date, the time limit for initiating the arbitral proceedings had already expired.

Merits

7. Even in the unlikely event that the Arbitral Tribunal decided to hear this case, Claimant has no claims for payment against Respondent under the CLSA Corporate Agreement, as Respondent has fully performed his obligations under that agreement. What is more, the evidence provided by Claimant is inadmissible evidence pursuant to the law of the seat of arbitration, i.e. the Law of Panamá. We explain each of these issues in the following paragraphs:
8. *Respondent acted appropriately under the CLSA Agreement:* Claimant's arguments as to the lack of fulfillment of Marcelo Lee's fiduciary duties are frivolous and only aim at punishing him for leaving the company and joining a more dynamic and efficient team at Sustainable Consultants. During the seven years and a half of CLSA's operations, the

company did not expand. The company was stagnant, with only three employees during the time the company was operating. Still, Marcelo Lee was committed to CLSA and Wu Chong. This is clearly apparent from Lee's insertion into the Co-operation Agreement with Sustainable Consultants of the clause that conditioned his joining on the previous rescission and respect of the protective covenant with CLSA.

9. Marcelo Lee never signed any contract with any contractor engaged with CLSA in the name of Sustainable Consultants. If any third party ever switched from CLSA to Sustainable Consultants, this was because they were dismayed about Wu Chong's exuberant lifestyle, liberal manners, and lateness at practically all business meetings. It was always Marcelo Lee who received the business partners after long waits for Wu Chong. Since Marcelo Lee lives between Hong Kong and Rio de Janeiro, he was not always in town to be able to save CLSA's good reputation when Wu Chong showed up late at a meeting or conference, or when he answered to an urgent engineering request from one of the customers that he had to "first get back to my *yin and yang*⁴". These same reasons were the ones that led to the resignation of all CLSA employees. Once they did so, they were legally free to engage in any economic activity they wanted to, including to partner with other people to start a new business. Marcelo Lee is a highly qualified professional and the companies that have been his client have always been very pleased with the excellent results of his work. It was not surprising that clients who used to require CLSA services followed Marcelo Lee once he was working for Sustainable Consultants to require his assistance for future projects. It was Wu Chong rather than Marcelo Lee who violated his fiduciary duties towards CLSA.
10. Contrary to Claimant's allegations, Respondent did not divert any business away from CLSA. As the graph below shows, during the time Marcelo Lee worked for CLSA (2010-2018), the company has had a steady growth of business flow, as measured by gross income:



This graph shows, on the horizontal bar, the number of years in which CLSA was operating (7 years and a half in total), and on the vertical bar the annual gross revenue (in US dollars).

11. Even in the hypothetical situation that Marcelo Lee had conversations with Sustainable

⁴ "Yin and Yang" are the two elements that together represent "balance," in the sense of personal health, in Chinese.

Consultants about his eventual hiring while still at CLSA, this has not had any impact on CLSA's performance. Any other assertion by Claimant based on the emails provided is inadmissible, as we explain in the following paragraphs.

12. *Inadmissibility of Claimant's evidence:* While the CAM-CCBC's Rules of Arbitration do not provide an exhaustive regulation of the evidence that is admissible in arbitral proceedings, the local laws of the seat of arbitration are applicable. The Panamanian Civil Procedure Code indicates:

Article 783. The evidence must adhere to the matter of the process and those that do not refer to the facts discussed, as well as those that are legally ineffective, are inadmissible. The judge can reject outright those means of proof prohibited by law, notoriously dilatory or proposed in order to hinder the progress of the process; he or she can also refuse the practice of obviously inconclusive or ineffective tests.⁵

13. Article 25 of the Panamanian Criminal Code prohibits theft of personal property. Paragraph 4 of this provision establishes a more severe punishment (adding one year to three years of prison) if the theft took place in the personal or family dwelling of the victim.
14. The facts that led Claimant to have a copy of Marcelo Lee's emails result from the theft done by Wu Chong's driver, Mr. Mao Tze. One evening at the end of May 2017, Mao Tze dropped Marcelo Lee off at his Hong Kong apartment. Lee invited Tze to come up to the apartment because he wanted to give Tze the food from his fridge that he otherwise would throw away, as he was about to return to his home in Rio de Janeiro. While standing in the entrance of the apartment waiting for Lee to return from the kitchen, Mao Tze noticed a USB stick lying in a bowl on the desk of the entrance. The USB stick was labeled "Sustainable Consultants" and adorned with a trademark. Tze took the USB stick and gave it to Wu Chong, because he had overheard conversations where Wu Chong complained about Sustainable Consultants' competition. Under Hong Kong law, it is not clear if the rules of criminal law on theft or the finders' rules apply. Many legal authorities, however, say that this situation would constitute theft.⁶ The USB stick turned out to contain a backup copy of Lee's iPad with numerous emails, text messages, and letters between Marcelo Lee and many of his friends, colleagues, and partners. Some of them were exchanges with employees of Sustainable Consultants.
15. Once Tze had left the apartment, and Lee was packing his suitcase, he noticed the missing USB stick. He called after Tze, who did not respond to the phone that night.
16. Since this evidence obtained through theft would not be admissible under Panamanian criminal and civil procedure law, we demand that this arbitral tribunal also rejects Claimants' submissions of emails between Marcelo Lee and various of his personal friends and colleagues.

Parallel proceedings

⁵ Code of Civil Procedure of Panama, art. 783. English translation from the original Spanish done by certified translator, Dr. Brian Gomez-Richards.

⁶ For the purpose of this exercise.

17. CLSA is abusing process, because it is claiming in this arbitration essentially the same things it already advanced before certain national courts of justice. In May 2017, Wu Chong commenced proceedings in Endor, the capital of the Republic of Mustafar against Cheoy Chen and So Fong for an account of profits and damages (“Endor Proceeding”). Wu Chong alleged in the Endor Proceeding, among other things, that Cheoy Chen and So Fong solicited CLSA’s contacts, clients, employees and consultants in breach of the terms of their employment contracts with CLSA, and dishonestly and fraudulently breached their fiduciary duties and duty of care to CLSA. It was alleged that they also knowingly participated and assisted in breaches of fiduciary duties owed by Marcelo Lee to CLSA. It was alleged that Sustainable Consultants knowingly participated and assisted in the alleged breaches of duty owed by Cheoy Chen, So Fong and Marcelo Lee. It was also alleged that they all conspired against CLSA. The allegations included the diversion allegations that are now also being advanced by CLSA in this arbitration.
18. In February 20, 2018, the judge of first instance in Endor, Ms. Victoria Jaramillo, found in favor of CLSA in respect of all the diversion allegations against Sustainable Consultants. The judge made findings of fiduciary liability, breach of contract, and conspiracy to injure by unlawful means. She also made numerous findings of accessorial liability and knowing participation in breaches of duty owed to CLSA by Cheoy Chen, So Fong and (even though they were not parties) Marcelo Lee and Sustainable Consultants. She made various monetary awards against Cheoy Chen, So Fong, and Marcelo Lee in respect of their joint and several liability.
19. There was an appeal from Judge Jaramillo’s orders to the Court of Appeal of the Endor Circuit, and a further appeal from the Court of Appeal to the Supreme Court, which remitted the matter to the Court of Appeal for further consideration. So far as relevant, the final outcome is a March 21, 2018 judgment against Cheoy Chen, So Fong, Marcelo Lee, and Sustainable Consultants for a joint and several liability in favor of CLSA for US\$4,676,000 and €6,900,000 in damages for loss of revenue, together with interest.
20. We demand that in light of this procedure and judgment, this arbitral tribunal holds that the case is moot, and there is no material dispute anymore between the parties. By subjecting to the courts of Endor, claimant waived his right to arbitrate. And even if this arbitral tribunal held that claimant had not waived this right, this arbitration would only lead to a double recovery for claimant. It would be manifestly unjust to pursue this arbitration in light of the fact that already the courts of Endor, Republic of Mustafar, have decided about substantially the same claims.
21. In consequence, all claimants’ claims should be dismissed.

Counter-claim as to the shares of the company and unpaid salaries

22. Pursuant to Clause 5 of the Company Agreement, Marcelo Lee was entitled to 33% of the issued share capital of CLSA. That claim was denied by CLSA on the ground that the conditions under which Marcelo Lee was to become entitled to the shares were not satisfied before his departure.

23. However, these conditions were met, and Marcelo Lee claims the compensation for his 33% share in CLSA, as laid out in the CLSA Agreement, including Clause 8 thereof.
24. In addition, Marcelo Lee worked hard to further CLSA's business during the past three years leading up to his resignation. He is entitled to compensation for the work he has done. In fact, during the summer months of May and June 2016 he did not receive any compensation, although he resided for the full amount of time at the Stardust Beach Resort in Bocas del Toro, Panama, where several company leaders from various construction companies spent their summer. During that time, Marcelo Lee made good contacts with these leaders that eventually led to projects in furtherance of CLSA's corporate objectives. Marcelo Lee spent \$1,540 in drinks and cocktails with these people during his stay at the Stardust Beach Resort. This is a credit he has against CLSA and demands reimbursement, in addition to his accrued wages of US \$25,540.

Request for provisional measures

25. Claimant submits this arbitration claim as a last attempt at recovering a Company that Claimant himself lost due to his irresponsible actions during a long period of time. In fact, Marcelo Lee had no other choice than to leave CLSA and search for work elsewhere, and he was lucky enough to have been hired by Sustainable Consultants. The situation is so dire for the Claimant that he had to contract a third party funder, in particular a bank, to obtain a loan to cover the costs of this procedure and his attorneys' fees. These elements show that Claimant has no sufficient funds to cover the costs of an eventual award against it for the damages claimed by Respondent.
26. In light of these circumstances, and in compliance with Article 8 of the CAM-CCBC Rules of Arbitration, we request the imposition of provisional measures in the form of a security for costs in an amount of at least \$1,000,000, as a payment to an escrow account to be opened in the M&M Bank, Account No. 444455558888.

Nomination of Arbitrator

27. Claimants nominate Mr. Reinhard Wechselman, a dual German-Brazilian citizen, as arbitrator. Mr. Wechselman is part of the List of Arbitrators provided for in Article 3 of the CAM-CCBC Rules of Arbitration. He has a flawless reputation and recognized legal expertise.

Costs

28. Respondent has shown that Claimant does not have a valid claim against him. In addition, Respondent has shown a demonstrable case against Claimant for the expenditures, lost wages and other compensation it is entitled to. As a consequence, Respondent requests that Claimant's third-party funder, the National Royal Bank, be joined to these proceedings, so that any eventual costs award on Claimant's claim as well as Respondent's counterclaim be equally effective against Respondent and the Bank.
29. Respondent also requests the Arbitral Tribunal, in light of the information provided by Claimant's funder, "to perform a conflict check and to reveal any information that may raise justifiable doubts as to their independence and impartiality," pursuant to article 4 of the CAM-CCBC Administrative Resolution 18/2016, which deals with

Recommendations regarding the existence of third-party funding in arbitrations administered by CAM-CCBC. In particular, it has come to Respondent's attention that Wu Chong, currently the sole proprietor of the company CLSA, has his business and private bank accounts with the National Royal Bank. This situation may create a conflict of interest that would either require this Arbitral Tribunal to join the Bank to these proceedings, or require the Bank to not fund this proceeding.

In light of this, Respondent requests the Arbitral Tribunal:

1. to dismiss Claimant's claims as belated;
2. to reject all claims for payment raised by Claimant;
3. to order provisional measures against Claimant, and for Respondent, in the form of security for costs;
4. to order Claimant to pay out Respondent's 33% CLSA share;
5. to order Claimant to reimburse Respondent the amounts of \$1,540 and \$25,540, for the corporate advancements paid at Stardust Beach Resort and unpaid wages in summer 2017.
6. to order Claimant to pay Respondent's costs incurred in this arbitration.
7. To order that Claimant's third-party funder, the National Royal Bank be joined to these proceedings.

Respectfully submitted,

.....
Hin-Wa Xiang-Po
Advocate at the Court

Exhibits:

Exhibit R1: Letter from CLSA evidencing failure of negotiations

EXHIBIT R1

Received by: Signed Marcelo Lee 12/22/2017

December 21, 2017

By Courier

Mr. Marcelo Lee
43 Arco do Teles
Rio de Janeiro
Brazil

Dear Marcelo,

NOTICE OF INTENTION TO ARBITRATE

I very much regret that our last offer was not acceptable to you and the outcome of yesterday's meeting shows that it is presently not possible to find an amicable solution. Consequently, we have instructed our lawyer to take the necessary steps to initiate arbitration proceedings against you.

We had hoped to avoid such proceedings but your insistence of not making any payments towards the losses (calculated at US \$540,000 and 1,185,000 Euros) that CLSA has suffered as a consequence of the breach of your fiduciary duties, and also as a consequence of the diversion allegations leaves us no other options.

Should you reconsider your view I am always available and we remain open for any meaningful negotiations.

Please take into account, however, that from now on the costs incurred for our lawyer must be part of any settlement reached.

Sincerely,
Wu Chong
(For and on behalf of CLSA, Inc.)

Arbitration Proceeding Nr. 201/2018/SEC9

Claimant: CLSA, Inc.
Respondent: Marcelo Lee

Order of the President of the CAM-CCBC

1. On 15 February 2018, CLSA, Inc. ("Claimant") presented a request for arbitration at CAM-CCBC against Marcelo Lee ("Respondent"), which was amended on 21 June 2018. On July 10, 2018, Respondent presented its Answer to the Request for Arbitration, in accordance with Article 4.3⁷ of the Rules.
2. For the constitution of the Arbitral Tribunal, Claimant appointed Ms. Rachel Forster and Respondent appointed Mr. Reinhard Wechselman. The party-appointed arbitrators then jointly appointed Ms. Margarete Vinnen to act as president of the Arbitral Tribunal.
3. All arbitrators answered the CAM-CCBC's Conflict of Interest and Availability Questionnaire, indicating they are apt to constitute the Arbitral Tribunal. None of the parties raised any objections to the answers and comments presented by the arbitrators in the Questionnaire in response to the notification of Article 4.7⁸ of the Rules.
4. Finally, the arbitrators signed the Statements of Independence, attesting their formal acceptance of the task, as per Article 4.14⁹ of the Rules.
5. Therefore, I hereby confirm the constitution of the Arbitral Tribunal. Accordingly, I notify the parties and the Arbitral Tribunal to sign the Terms of Reference within 30 (thirty) days from the receipt of this Order. The Secretariat shall observe compliance of this term.

São Paulo, September 26, 2018.



Carlos Suplicy de Figueiredo Forbes
President of the CAM-CCBC

⁷ CAM-CCBC Rules, Article 4.3. The Secretariat of the CAM-CCBC will send a copy of the notice and respective documents that support it to the other party, requesting that, within fifteen (15) days, it describe in brief any matter that may be the subject of its claim and the respective amount, as well as comments regarding the seat of arbitration, language, law or rules of law applicable to the arbitration under the contract.

⁸ CAM-CCBC Rules, Article 4.7. The answers to the Questionnaires and any material facts will be sent to the Parties, after which they will have ten (10) days to submit comments.

⁹ CAM-CCBC Rules, Article 4.14. The Secretariat will notify the arbitrators to sign the Statement of Independence within ten (10) days, which will demonstrate formal acceptance of the arbitrators' duties, for all purposes, and the parties will be notified for the preparation of the Terms of Reference.

ANNEXES to this Moot Arbitration Case

CAM-CCBC Arbitration Rules

Approved by an Extraordinary General Meeting of the Brazil-Canada Chamber of Commerce on September 1st, 2011, with amendments on April 28th, 2016

CHAPTER I – THE CAM-CCBC

ARTICLE 1 – SCOPE OF APPLICATION OF THE RULES

1.1 These Rules are binding on parties who have decided to submit a dispute to the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada, which is abbreviated as CAM-CCBC.

1.2. Any variation to these Rules that may have been agreed to by the parties in their respective proceedings will apply only to the specific case and so long as it does not affect any provision regarding the administrative organization of the CAM-CCBC nor the conduct of its duties.

ARTICLE 2 – NAME, HEAD OFFICE, PURPOSE AND COMPOSITION OF THE CAM-CCBC

2.1. The CAM-CCBC will operate under this name and have its head office in the city of São Paulo, state of São Paulo, without prejudice to the possibility that it administers proceedings that take place at any other location in Brazil or abroad, as provided in article 9.1 of these Rules.

2.2. By performing the acts and services provided for in these Rules, the CAM-CCBC's purpose is to administer arbitration, mediation and other dispute resolution proceedings that are submitted to it by the interested parties, regardless of whether or not they are members of the Chamber of Commerce Brazil-Canada, hereinafter referred to simply as the Chamber, and regardless of their nationality, domicile or origin.

2.3. The CAM-CCBC can become a member of associations or bodies that represent arbitration or mediation institutions, or associate with other counterpart institutions in Brazil and abroad, and maintain exchange agreements with them.

2.4. The CAM-CCBC governing bodies are:

- (a) The Executive Committee, consisting of one (1) President, five (5) Vice Presidents and one (1) General Secretary, who are responsible for its administration, in keeping with the specific duties established in these Rules.
- (b) The Advisory Committee, consisting of the former Presidents of the CAM-CCBC, as permanent members, and of at least five (5) representatives of the List of Arbitrators, chosen by the permanent members, with a term in office of two (2) years, with reelection being allowed.

2.5. The President of the CAM-CCBC will be elected by the General Meeting of the Chamber to a term in office of two (2) years, with reelection allowed, and the other members of the Executive Committee will be appointed by the President.

2.6. The duties of the President of the CAM-CCBC are to:

- (a) Represent the CAM-CCBC;

- (b) Convene and chair the meetings of the Executive Committee and convene the meetings of the Advisory Committee;
- (c) Issue Administrative Resolutions;
- (d) Approve Rules and norms related to other methods of alternative dispute resolution;
- (e) Apply these Rules and have them applied;
- (f) Issue complementary rules to resolve doubts and provide guidance for the application of these Rules, including in cases of gaps;
- (g) Appoint arbitrators in ad hoc arbitrations, upon request from interested parties;
- (h) Appoint arbitrators in the cases provided for in these Rules;
- (i) Decide on the extension of time periods that do not fall within the authority of the Arbitral Tribunal, as well as those in reference to the appointment of arbitrators and mediators;
- (j) Appoint arbitrators, mediators and specialists to be members of the respective lists of professionals;
- (k) Perform other duties provided for in these Rules.

2.7. The President of the CAM-CCBC can, without prejudice to the authority of the Advisory Committee, form Commissions to conduct studies and make specific recommendations for the purpose of developing and improving the CAM-CCBC's activities.

2.8. It falls upon the President of the CAM-CCBC to hear the Advisory Committee in the cases expressly referred to in these Rules. The President can convene the Advisory Committee whenever he or she believes it necessary.

2.8.1. The Advisory Committee can also be convened by two (2) Vice Presidents, jointly, in instances where the Advisory Committee should be heard and has not been regularly convened by the President.

2.9. The Vice Presidents' duties are to:

- (a) Substitute for the President of the CAM-CCBC, as designated by the President, when he or she is absent or prevented from performing his or her duties;
- (b) Assist the President in the performance of his or her duties;
- (c) Convene the meetings of the Advisory Committee, in the situations and manner provided for in article 2.8.1.;
- (d) Perform duties assigned to them by the President.

2.10. The General Secretary's duties are to:

- (a) Maintain, under his or her responsibility, the CAM-CCBC's records and documents;
- (b) Be responsible for the supervision and coordination of the CAM-CCBC's administrative activities;
- (c) See to the progress of the proceedings administered by the CAM-CCBC, especially in regard to meeting deadlines, as well as to perform the duties that are given him or her by the President;
- (d) Take part, as a subsidiary duty, in the organization of events connected with spreading awareness of arbitration and of the CAM-CCBC's activities, as well as in other administrative tasks, such as the Quality Management System.

2.11. The Advisory Committee shall assist the CAM-CCBC's President in his or her duties, whenever he or she so requests, as well as suggest measures that strengthen the institution's

prestige and the good quality of its services.

2.12. The Advisory Committee will meet regularly one (1) time every four months and, extraordinarily, whenever convened by the President or by two (2) Vice Presidents.

ARTICLE 3 – LIST OF ARBITRATORS

3.1. The List of Arbitrators is constituted of professionals domiciled in Brazil or abroad, with flawless reputation and recognized legal expertise, who are appointed by the President of the CAM-CCBC, with the Advisory Committee being heard, for a period of five (5) years, with reappointment allowed.

3.2. The President of the CAM-CCBC, with the Advisory Committee being heard, can replace any member of the List of Arbitrators.

CHAPTER II – THE ARBITRATION PROCEEDINGS

ARTICLE 4 – COMMENCEMENT OF THE ARBITRATION

4.1. The party desiring to commence an arbitration will notify the CAM-CCBC, through its President, in person or by registered mail, providing sufficient copies for all the parties, arbitrators and the Secretariat of the CAM-CCBC to receive a copy, enclosing:

- (a) A document that contains the arbitration agreement, providing for choice of the CAM-CCBC's to administer the proceedings;
- (b) A power of attorney for any lawyers providing for adequate representation;
- (c) A summary statement of the matter that will be the subject of the arbitration;
- (d) The estimated amount in dispute;
- (e) The full name and details of the parties involved in the arbitration; and
- (f) A statement of the seat, language, law or rules of law applicable to the arbitration under the contract.

4.2. The party will attach proof of payment of the Registration Fee together with the notice, in accordance with article 12.5 of the Rules.

4.3. The Secretariat of the CAM-CCBC will send a copy of the notice and respective documents that support it to the other party, requesting that, within fifteen (15) days, it describe in brief any matter that may be the subject of its claim and the respective amount, as well as comments regarding the seat of arbitration, language, law or rules of law applicable to the arbitration under the contract.

4.4. The Secretariat of the CAM-CCBC will send both parties a copy of these Rules and the list of the names of the members of the List of Arbitrators, inviting them to, within fifteen (15) days, each appoint one (1) arbitrator and, optionally, one (1) alternate to constitute the Arbitral Tribunal.

4.4.1. The parties can freely appoint the arbitrators who will constitute the Arbitral Tribunal. However, if a professional who is not a member of the List of Arbitrators is appointed, the appointment must be accompanied by that person's résumé, which will be submitted for the approval of the President of the CAM-CCBC.

4.5. Before the Arbitral Tribunal is constituted, the President of the CAM-CCBC will examine objections regarding the existence, validity or effectiveness of the arbitration agreement that can be immediately resolved, without the production of evidence, and will examine requests regarding joinder of claims, under article 4.20. In both cases, the Arbitral Tribunal, once it is constituted, will decide on its jurisdiction, confirming or modifying the decision previously made.

4.6. The Secretariat of the CAM-CCBC will inform the Parties and the arbitrators of the appointments made. At the same time, the arbitrators who are appointed will be asked to fill out CAM-CCBC's Conflict of Interest and Availability Questionnaire, referred to simply as the Questionnaire, within ten (10) days.

4.6.1. The Questionnaire will be prepared by the CAM-CCBC's Executive Committee, together with the Advisory Committee. Its purpose will be to gather information about the arbitrators' impartiality and independence, as well as time availability and other information related to their duty of disclosure.

4.7. The answers to the Questionnaires and any material facts will be sent to the Parties, after which they will have ten (10) days to submit comments.

4.8. If the parties raise an objection related to the independence, impartiality or any material issue in regard to an arbitrator, the arbitrator involved will have ten (10) days to submit comments, after which the parties will have ten (10) days to present any challenge, which will be processed under article 5.4.

4.9. Upon expiration of the time periods in articles 4.7 and 4.8, the Secretariat of the CAM-CCBC will notify the arbitrators appointed by the parties, who must, within fifteen (15) days, choose the third arbitrator from among the members of the List of Arbitrators, to act as President of the Arbitral Tribunal.

4.9.1. The expression "Arbitral Tribunal" applies without distinction to a Sole Arbitrator and an Arbitral Tribunal.

4.9.2. On an exceptional basis and based on a reasoned justification and approval of the President of the CAM-CCBC, the arbitrators chosen by the parties can appoint a person who is not a member of the List of Arbitrators as President of the Arbitral Tribunal.

4.10. In the event of a successful challenge to or the resignation of an appointed arbitrator, the Secretariat of the CAM-CCBC will notify the party to make a new appointment within ten (10) days.

4.11. The Secretariat of the CAM-CCBC will inform the Parties and the arbitrators regarding the appointment of the arbitrator who will act as President of the Arbitral Tribunal, requesting that the appointed arbitrator state his or her acceptance in the manner and by the time provided for in article 4.6.

4.12. If either of the parties fails to appoint an arbitrator or the arbitrators appointed by the party fail to appoint the third arbitrator, the President of the CAM-CCBC will make this

appointment from among the members of the List of Arbitrators.

4.13. If the arbitration agreement states that the arbitration proceedings will be conducted by a sole arbitrator, the sole arbitrator must be appointed by agreement between the parties, within fifteen (15) days from notification by the Secretariat. Upon expiration of this time period, if the parties fail to appoint the sole arbitrator or to agree on his or her appointment, the President of the CAM-CCBC will appoint the sole arbitrator, with observance of article 4.12.

4.13.1. The parties can freely appoint the sole arbitrator. However, if a person who is not a member of the List of Arbitrators is appointed, the appointment must be accompanied by the person's résumé, which will be submitted for the approval of the President of the CAM-CCBC.

4.13.2. The commencement and conduct of an arbitration with a sole arbitrator will follow the same procedures under these Rules as for an arbitration conducted by an Arbitral Tribunal.

4.14. The Secretariat will notify the arbitrators to sign the Statement of Independence within ten (10) days, which will demonstrate formal acceptance of the arbitrators' duties, for all purposes, and the parties will be notified for the preparation of the Terms of Reference.

4.15. In proceedings in which one of the parties has its head office or domicile abroad, either of them can request that the third arbitrator be of a nationality different from those of the parties involved. The President of the CAM-CCBC, with the Advisory Committee being heard, will evaluate the necessity or convenience of granting the request in each particular case.

4.16. In arbitration cases with multiple parties as claimants and/or respondents, if there is no consensus regarding the appointment of an arbitrator by the parties, the President of the CAM-CCBC shall appoint all the members of the Arbitral Tribunal, designating one of them to act as President, with observance of the requirements of article 4.12 of these Rules.

4.17. The parties will sign the Terms of Reference together with the arbitrators, a representative of the CAM-CCBC and two witnesses.

4.18. The Terms of Reference will contain:

- (a) Name and details of the parties and arbitrators;
- (b) Seat of arbitration;
- (c) The transcription of the arbitration agreement;
- (d) If applicable, authorization for the arbitrators to decide *ex aequo et bono*;
- (e) The language in which the arbitration will be conducted;
- (f) Subject matter of the dispute;
- (g) Applicable law;
- (h) The claims of each of the parties;
- (i) Amount in dispute;
- (j) Express acceptance of liability for the payment of the administrative costs for the proceedings, expenses, experts' fees and arbitrators' fees upon request of the CAM-CCBC.

4.19. The absence of any of the parties regularly convened to appear at the initial meeting or its refusal to sign the Terms of Reference will not prevent the normal course of the arbitration.

4.20. If a request for the commencement of an Arbitration is submitted and has the same purpose or same cause of action as an arbitration currently proceeding at the CAM-CCBC or if the same parties and causes of action are present in two arbitrations, but the subject matter of one, because it is broader, includes that of the others, the President of the CAM-CCBC can,

upon request of the parties, up to the time the Terms of Reference are signed, order joinder of the proceedings.

4.21. The Parties can change, modify or amend the claims and causes of action until the date the Terms of Reference are signed.

ARTICLE 5 – ARBITRAL TRIBUNAL

5.1. Members of the List of Arbitrators and/or others designated by the parties can be appointed as arbitrators, with the provisions of article 4.4.1 of these Rules, the CAM-CCBC Code of Ethics and the requirements of independence, impartiality and availability always being observed.

5.2. A person cannot be appointed as an arbitrator if he or she:

- (a) Is a party to the dispute;
- (b) Has participated in the resolution of the dispute as legal representative for one of the parties before a judicial authority, testified as a witness, served as an expert or presented an opinion;
- (c) Is a spouse or relative, whether by blood or marriage, as an ancestor, descendent or collaterally, to the third degree, of one of the parties;
- (d) Is a spouse or relative, whether by blood or marriage, as an ancestor, descendent or collaterally, to the second-degree, of the attorney or representative of one of the parties;
- (e) Participates in a management or administrative body of a corporate entity that is a party to the litigation or is a shareholder or partner;
- (f) Is a personal friend or enemy of one of the parties;
- (g) Is a creditor or debtor of one of the parties or of his or her spouse or of relatives, whether ancestors, descendents or collaterally, to the third degree;
- (h) Is a presumptive heir, legatee, employer or employee of one of the parties;
- (i) Receives gifts before or after the dispute begins, advises one of the parties regarding the subject matter of the case or provides funds to cover the expenses of the proceedings;
- (j) Has a direct or indirect interest in the decision of the dispute in favor of one of the parties;
- (k) Has served as a mediator or conciliator in the dispute before the commencement of arbitration, unless expressly agreed to by the parties;
- (l) Has an economic interest related to any of the parties or their lawyers, unless there is express agreement of all parties.

5.3. It falls upon the Arbitrator to disclose, at any time, if he or she is prevented from acting and to refuse the appointment or tender a resignation.

5.4. The parties can challenge the arbitrators for lack of independence or impartiality or for other justified reason within fifteen (15) days from awareness of the fact. The challenge will be decided by a Special Committee composed of three (3) members of the List of Arbitrators appointed by the President of the CAM-CCBC.

5.5. If in the course of the proceedings there should arise any cause that prevents an arbitrator from acting or if an arbitrator should die or become incapacitated, that arbitrator will be replaced by another arbitrator appointed by the same party. If the President of the Arbitral Tribunal should become prevented from acting, he or she will be replaced by another President appointed by the other arbitrators. In either case, if an appointment fails to be made, the President of the CAM-CCBC will make the appointment.

ARTICLE 6 – NOTICES AND TIME PERIODS

6.1. Unless expressly provided otherwise, all communications, notices or the like will be made

to the representatives appointed by the party, at the addresses informed by the representatives.

6.2. For all purposes of these Rules, the communications, notices or the like will be made by letter, fax, e-mail or equivalent means, with confirmation of receipt.

6.3. Any and all documents addressed to the Arbitral Tribunal will be sent to the Secretariat of the CAM-CCBC, with sufficient copies for each arbitrator and representative of the parties, as well as an additional copy for the CAM-CCBC case file, unless otherwise agreed by the parties.

6.4. The time periods provided in these Rules can be extended, at the discretion of the Arbitral Tribunal.

6.5. If no time period is stated in these Rules or established by the Arbitral Tribunal, the time period will be ten (10) days.

6.6. A time period is counted in calendar days and will be counted so as to exclude the day of receipt of the notice and include the day on which the deadline expires.

6.6.1. A time period only begins to run on the first business day after notice.

6.6.2. A time period will be considered to extend to the next business day if it expires on a day during which the CAM-CCBC is not open for business.

ARTICLE 7 – PROCEDURE

7.1 Upon commencement of the arbitration, as provided in article 4.14, the Secretariat of the CAM-CCBC will notify the parties and the arbitrators for the signing of the Terms of Reference, which must take place within thirty (30) days.

7.1.1. The Terms of Reference can establish the initial timetable for the proceedings, established by agreement among the parties and the Arbitral Tribunal.

7.2. The arbitration briefs will be presented by the time agreed to by the parties or, if none is agreed to, that established by the Arbitral Tribunal. If none is established, they must be presented concurrently within at most thirty (30) days from the date the meeting to sign the Terms of Reference is held.

7.3. During the five (5) days after receiving the parties' arbitration briefs, the Secretariat of the CAM-CCBC will send the respective copies to the arbitrators and to the parties, the latter of which will present their respective answers within twenty (20) days, unless another time period is established in the Terms of Reference.

7.3.1. Rebuttals and Surrebuttals can be presented, at the discretion of the parties and of the Arbitral Tribunal, in the manner and by the times established in article 7.3.

7.4. Within ten (10) days from receipt of the documents mentioned above, the Arbitral Tribunal will evaluate the status of the proceedings and order, if judged necessary, the production of evidence.

7.4.1. It will be the responsibility of the Arbitral Tribunal to grant and establish the burden of evidence it considers useful, necessary and appropriate in the manner and order held to be convenient under the circumstances.

7.5. The proceedings will continue in the absence of any of the parties provided that, having been properly notified, that party does not appear.

7.5.1. The arbitration award cannot be based on the default of a party.

7.6. Aspects of a technical nature involved in the arbitration proceedings can be the subject of expert examination or clarifications presented by specialists appointed by the parties, who can be convened to testify at a hearing, as decided by the Arbitral Tribunal.

7.7. When the evidentiary phase is concluded, the Arbitral Tribunal will establish a time of up to thirty (30) days for the parties to present their closing arguments.

7.8. The Arbitral Tribunal will adopt the necessary and convenient measures for the

appropriate conduct of the proceedings, observing the right to fully defend oneself and the right to dispute the allegations of the other party, as well as the equal treatment of the parties.

ARTICLE 8 – PROVISIONAL MEASURES

8.1. Unless the parties have otherwise agreed, the Arbitral Tribunal can grant provisional measures, both injunctive and anticipatory, that can, at the discretion of the Arbitral Tribunal, be subject to the provision of guarantees by the requesting party.

8.2. If there is an urgent matter and the Arbitral Tribunal has not yet been constituted, the parties can seek provisional or injunctive measures from the competent judicial authority, if another manner has not been expressly agreed by them. In this case, the parties must inform the CAM-CCBC of the decisions.

8.2.1. As soon as the Arbitral Tribunal is constituted, it will have the authority to uphold, amend or revoke the previously granted measures.

8.2.2. A request made by one of the parties to a judicial authority to obtain these measures, or the enforcement of similar measures granted by an Arbitral Tribunal, will not be considered a violation of, or waiver to, the arbitration agreement and will not interfere with the jurisdiction of the Arbitral Tribunal.

ARTICLE 9 – SEAT OF ARBITRATION, APPLICABLE LAW AND LANGUAGE

9.1. The arbitration can be seated at any place in Brazil or abroad.

9.2. If the parties have not indicated the seat of the arbitration, if there is not agreement regarding the seat or if the designation is incomplete or obscure, the President of the CAM-CCBC can, if necessary, determine the seat on a provisional basis, falling upon the Arbitral Tribunal, once it is constituted, to definitively decide regarding the seat of the arbitration, after the parties have been heard.

9.3. The acts of the arbitration proceedings can occur at a place different from the seat of the arbitration, at the discretion of the Arbitral Tribunal.

9.4. The parties will be able to choose the rules of law to be applied by the Arbitral Tribunal to the merits of the dispute. In case of omission or divergence, it falls upon the Arbitral Tribunal to decide in this regard.

9.4.1. Permission for the Arbitral Tribunal to decide *ex aequo et bono* must be expressed either in the arbitration agreement or in the Terms of Reference.

9.5. The arbitration will be conducted in the language agreed by the Parties.

9.5.1. If there is no agreement, the Arbitral Tribunal will choose the language, taking into consideration all relevant circumstances, including the contract.

ARTICLE 10 – ARBITRAL AWARD

10.1. The Arbitral Tribunal will issue the arbitral award within sixty (60) days from receipt by the arbitrators of the final arguments presented by the parties (or of their notification that the referred time period has expired), unless another time period is established in the Terms of Reference or agreed to with the parties.

10.1.1. The time period in the article above can be extended by up to thirty (30) days, at the discretion of the President of the Arbitral Tribunal.

10.2. The arbitral award can be partial or final.

10.2.1. In the event of a partial award, the Arbitral Tribunal will indicate the later procedural steps necessary for the preparation of the final award.

10.3. The arbitral award will be expressed in a written document.

10.3.1. Where there is an Arbitral Tribunal, the arbitral award shall be issued by consensus

whenever possible and, if this is not viable, by a majority vote, with each arbitrator, including the President of the Arbitral Tribunal, having one vote. Failing a majority opinion, the vote of the President of the Arbitral Tribunal will prevail.

10.3.2. The arbitration award will be reduced to writing by the President of the Arbitral Tribunal and signed by all the arbitrators. If one or more of the arbitrators do not sign the award, it will fall upon the President of the Arbitral Tribunal to state that fact.

10.3.3. An arbitrator who dissents from the majority can explain his or her dissenting vote, which will be included in the arbitration award.

10.4. The arbitration award must contain:

- (a) The facts, with the parties' names and a summary of the dispute;
- (b) The reasons for the decision, which will address both questions of fact and of law, with an express statement that it was issued *ex aequo et bono*, when that is the case;
- (c) The order, with all the specifications and time assigned for performance, when appropriate;
- (d) The day, month and year on which it was issued and the seat of the arbitration.

10.4.1. The award will also contain, where appropriate, the parties' liability for the administrative costs, arbitrators' fees, expenses, and attorneys' fees, as well as the respective apportionment, also observing that which was agreed by the parties in the Terms of Reference.

10.5. Once the final arbitral award is issued and the parties notified, the arbitration will be considered closed, unless there is a request for clarification as provided in the following article, in which case jurisdiction will be extended until the respective decision.

10.5.1. The President of the Arbitral Tribunal will send the original copies of the decision to the Secretariat of the CAM-CCBC, who will send them to the parties.

10.6. The parties can, within fifteen (15) days from the date they receive the arbitral award, request clarifications regarding any contradiction, omission or obscurity by request directed to the Arbitral Tribunal.

10.6.1. The Arbitral Tribunal will decide during the following ten (10) days, counted from their notification regarding the request for clarification.

10.7. None of the arbitrators, or the CAM-CCBC or the people connected to the Chamber, are liable to any persons for any acts, facts or omissions related to the arbitration.

10.8. If the parties reach a settlement during the arbitration proceedings, putting an end to the dispute, the Arbitral Tribunal, upon request of the parties, will record that agreement in an arbitral award.

ARTICLE 11 – COMPLIANCE WITH THE ARBITRAL AWARD

11.1. The parties are obliged to comply with the arbitral award as issued, in the manner and by the time provided for in it, and if they do not do so the losing party will be liable for the harm caused to the prevailing party.

11.2. If the arbitral award is not complied with, the injured party can communicate this fact to the CAM-CCBC so that it can disclose this fact to other arbitration institutions and chambers of commerce or analogous entities in Brazil or abroad.

11.3. Upon written request from any of the parties or of the arbitrators, the CAM-CCBC can provide copies of documents regarding the arbitration proceedings that are necessary to start court proceedings directly related to the arbitration.

11.4. The case file of the arbitration proceedings will remain in the CAM-CCBC's archives for five (5) years from the closing of the arbitration. Within this period, an interested Party can request, at its expense, a copy of the arguments and documents it wishes.

CHAPTER III – COSTS AND EXPENSES

ARTICLE 12 – ARBITRATION EXPENSES

12.1. The CAM-CCBC will maintain a table of administrative fees and arbitrators' fees, referred to simply as the Table of Expenses. The manner the Table of Expenses is applied and its content can be periodically revised by an act of the President of the CAM-CCBC.

12.2. The Administrative Fee owed to the CAM-CCBC will be required from the claimant from the date the notice to the President is filed requesting commencement of arbitration, and from the respondent from the date it is notified.

12.3. In an arbitration in which there are multiple parties, as claimants or as respondents, each of them, separately, must pay in full the Administrative Fee owed as a result of the services performed by the CAM-CCBC.

12.3.1. If more than one party on the same side is represented by the same lawyers, each one of them will have a fifty percent (50%) discount on the amount for the Administrative Fee owed to the CAM-CCBC.

12.4. Fulfillment of the provisions contained in the Table of Expenses will be mandatory for the parties and for the arbitrators.

12.5. At the time of presentation of the notice for commencement of arbitration, the claimant must pay to the CAM-CCBC the Registration Fee, in the amount stated in the Table of Expenses, which cannot be set off or reimbursed.

12.6. After receipt of the notice for commencement of arbitration, the parties will be notified to pay the Administrative Fees in advance for the first ten (10) months of the proceedings.

12.6.1. At the same time, the Secretariat of the CAM-CCBC can request that the claimant pay the estimated expenses in advance when the Terms of Reference are signed. This payment can be set off when the expense fund is established under article 12.8 of these Rules.

12.7. Each party will deposit with the CAM-CCBC its portion of the amount of the arbitrators' fees, corresponding to a minimum number of hours established in the Table of Expenses or a percentage of the amount in dispute. This deposit must be made by the time established in the Table of Expenses.

12.8. After the Terms of Reference are signed, the Secretariat of the CAM-CCBC will be able to request that the parties make advance payment of the estimated expenses for the proceedings to establish an expense fund, with the amount paid by the claimant being set off under article 12.6.1 of these Rules.

12.9. All the expenses that are incidental to, or incurred during, the arbitration will be paid in advance by the party who requested the act, or by the parties, equally, if resulting from acts requested by the Arbitral Tribunal.

12.10. In the event that the Administrative Fees, arbitrators' fees and experts' fees or any arbitration expenses are not paid, one of the parties will have the option of making the payment for the other's account, by a time to be established by the Secretariat of the CAM-CCBC.

12.10.1. If the payment is made by the other party, the Secretariat of the CAM-CCBC will give notice to the parties and to the Arbitral Tribunal, in which case the latter will consider the claims, made by the party which failed to pay, withdrawn, if any.

12.10.2. If neither of the parties is willing to make payment, the proceedings will be stayed.

12.11. Once the proceedings have been stayed for thirty (30) days for lack of payment, without either of the parties effectuating the provision of funds, the proceedings can be terminated, without prejudice to the right of the parties to present a request for the commencement of new arbitration proceedings seeking resolution of the dispute, so long as the amounts in arrears are paid.

12.12. Independently of the provisions in articles 12.10 and 12.11 of these Rules, the CAM-CCBC can demand payment, in court or out of it, of the Administrative Fees, arbitrators' fees or expenses, which will be considered liquidated debts, and can collect them through judicial execution, together with interest and inflation adjustment, as provided in the Table of Expenses.

12.12.1. The experts' work will not begin before the full amount of their fees is deposited, even if payment to the experts is effectuated in a different manner.

12.13. The Special Committee provided for in article 5.4 of these Rules can only be established on payment of the amounts stated in the Table of Expenses. Unless otherwise expressly and specifically provided, the fees must be paid by the party who brought the challenge.

12.14. The president of the CAM-CCBC can order reimbursement of amounts that the institution has advanced or of expenses it has endured, as well as the payment of all fees or charges owed and not paid by any of the parties.

CHAPTER IV – GENERAL PROVISIONS

ARTICLE 13 – INTERPRETATION

13.1. The arbitrators will interpret and apply these Rules in all matters concerning their authority and duties.

13.2. Majority rule will also be followed for interim decisions that fall upon the Arbitral Tribunal, including regarding the interpretation and application of these Rules.

13.3. The arbitrators can submit a question regarding the interpretation of the provisions of these Rules to the President of the CAM-CCBC, without prejudice to the provisions in article 2.6.(f).

13.4. The CAM-CCBC Code of Ethics is an integral part of these Rules for all purposes of law and should be used, as a secondary source, for the interpretation of the provisions of these Rules.

ARTICLE 14 – CONFIDENTIALITY

14.1. The arbitration proceedings are confidential, except for the situations provided for in statute or by express agreement of the parties or in light of the need to protect the right of a party involved in the arbitration.

14.1.1. For the purposes of research and statistical surveys, the CAM-CCBC reserves the right to publish excerpts from the award, without mentioning the parties or allowing their identification.

14.2. Members of the CAM-CCBC, the arbitrators, the experts, the parties and others who participate are prohibited from disclosing any information to which they have had access as a result of their role or participation in the arbitration proceedings.

ARTICLE 15 – ENTER INTO FORCE

15.1. These Rules, approved by an Extraordinary General Meeting of the Chamber of Commerce Brazil-Canada held on September 1, 2011, will enter into force on January 1, 2012, except for articles 2 and 3 of these Rules, which will enter into force from September 1, 2011.

15.2. These Rules revoke the former ones, which were approved on July 15, 1998.

15.3. Unless otherwise agreed by the parties, the CAM-CCBC Rules in force on the date the notification described in article 4.1 is filed will apply.

15.4. At the parties' option, any arbitration filed before January 1, 2012, but whose Terms of Reference are signed after the beginning of the enter into force of these Rules, can also be governed by them.

Resolution 18/2016

CAM-CCBC Administrative Resolution No. 18 of 20 July 2016

Ref.: Recommendations regarding the existence of third-party funding in arbitrations administered by CAM-CCBC

The President of the CAM-CCBC ("*Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada*"), exercising its powers under Article 2.6(c) of the CAM-CCBC Rules, approved on 1 September 2011, with amendments approved on 28 April 2016, after hearing the Advisory Council, hereby decides to disclose the following recommendation regarding the existence of third-party funding in arbitrations administered by the CAM-CCBC.

The purpose of this recommendation is to inform and guide the parties and the arbitrators on how to address the existence of third-party funding in arbitration proceedings administered by the CAM-CCBC, as well as to clarify the procedure to be adopted by the CAM-CCBC in these cases.

Third-Party Funding

Article 1 – It is considered third-party funding when a natural or legal person who is not party to the arbitration proceedings provides full or partial resources to one party so as to enable or assist the payment of the arbitration costs, receiving in return a portion or percentage of any profits earned from the award or from the agreement.

Article 2 - "Arbitration costs" are considered any amount spent with the proceedings, encompassing, but not limited to, administrative costs, arbitrators' fees, experts' fees, attorneys' fees, costs and defeat fees and conviction values.

Conflicts of interest with the third-party funder

Article 3 - The presence of a third-party funder can raise reasonable doubt as to the impartiality or independence of the arbitrators, due to possible past or current relationship between the arbitrator and the third-party funder.

Communication

Article 4 - In order to avoid potential conflicts of interest, CAM-CCBC recommends the parties to report the existence of third-party funding to CAM-CCBC at the earliest opportunity. The complete qualification of the funder should be included in this communication.

Article 5 – When this communication is received, CAM-CCBC shall inform the arbitrators and invite them to perform a conflict check and to reveal any information that may raise justifiable doubt as to their independence and impartiality. The third-party funding information shall also be provided to the other party.

São Paulo, 20 July 2016.

Carlos Suplicy de Figueiredo Forbes
President of CAM-CCBC