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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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JOINT AMERICAN LAW INSTITUTE / UNIDROIT WORKING GROUP  
ON  
TRANSNATIONAL RULES OF CIVIL PROCEDURE

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# **PRELIMINARY DRAFT RULES**

## **1. Principles of Interpretation**

1.1 These Rules shall be construed to advance substantive and procedural fairness, having regard for the legal and cultural traditions of the litigants.

1.2 Each party must be granted the right to properly present its case and to receive equal treatment.

1.3 The proceedings must fulfill reasonable expectations regarding fairness, and must be time and cost efficient.

1.4 The court must assure proper and professional conduct of all persons involved in the proceedings.

1.5 Use of procedural restrictions and penalties against parties and nonparties should be only in reasonable proportion to their purpose.

## **A. Scope and Personal Jurisdiction**

### **2. Disputes to Which These Rules Apply**

2.1 Subject to domestic constitutional provisions and statutory provisions not superseded by these Rules, the courts of a state that has adopted these Rules shall apply them in disputes arising from a sale, lease, loan, investment, acquisition, banking, security, property, intellectual property or any other business, commercial, or financial transaction:

2.1.1 That did not arise wholly within that state and concerning a plaintiff and a defendant who are habitual residents of different states; or

2.1.2 Concerning fixed property that is located in the forum state and concerning which a person who is a habitual resident of another state makes a claim of ownership or of a security interest.

2.2 A corporation, société anonyme, unincorporated association, partnership, or other organizational entity is considered a habitual resident both of the state from which it has received its charter of organization and of the state where it maintains its administrative headquarters.

2.3 In cases involving multiple parties or multiple claims, the court shall determine the principal matters in controversy. If those matters are within the scope of these Rules, the Rules apply to all parties and claims. Otherwise, the court shall apply the rules of the forum. The court may also sever the proceeding.

2.4 Participation by additional parties, whether as claimant, defendant, or third party, is determined according to Rule 4.

2.5 Upon demand of all parties who are not habitual residents of the state, the litigation shall proceed according to the ordinary procedural law of the forum.

2.6 A state may apply these rules to other civil matters.

### **3. Special Courts for Transnational Litigation**

3.1 A state that has adopted these Rules may create a Special Court for Transnational Litigation or a specialized division within the courts of general jurisdiction. It may also

similarly create a Special Appellate Court or a division of its appellate courts for Transnational Litigation.

3.2 The Special Court may delegate a case, in whole or in part, to courts of general jurisdiction, whenever the court finds that the nature, the value and relative simplicity of the case do not justify the cost and burden of litigating in the forum.

3.3 The court may travel to hear evidence in a different location and may make use of telecommunication devices. In such event, the court shall allocate among the parties any additional expenses not provided by the court's budget.

#### **4. Personal Jurisdiction and Joinder**

4.1 A proceeding under these Rules may be maintained in the courts of a state:

4.1.1 Designated by prior mutual agreement of the parties; or

4.1.2 In which a defendant is subject to the compulsory judicial authority of that state, as determined by that state's law governing personal jurisdiction or by international convention to which the state is a party; or

4.1.3 Where fixed property is located when the application of these Rules is based on Rule 2.1.2.

4.2 Jurisdiction may be exercised over an additional person who:

4.2.1 Has a legal interest in the dispute or its subject matter and who petitions to intervene in the proceeding; or

4.2.2 Should participate in the interest of fair and efficient adjudication if:

4.2.2.1 The person in question is subject to the compulsory judicial authority of the state; and

4.2.2.2 The court determines that a decision cannot be effective if that person is not present or that the participation of that person is useful in the interest of justice.

4.3 When an additional person ought to be made a party to the proceeding:

4.3.1 If the court has jurisdiction over that person, the person should be summoned as provided in Rule 8;

4.3.2 If the person is not subject to the jurisdiction of the Court, the person should be notified with a copy of the complaint and other pleadings and invited to intervene.

4.4 Jurisdiction under these Rules may be exercised over claims arising from the same transaction, other than those within the scope of these rules, subject to the provisions of Rules 2.2 and 4.5.

4.5 In accordance with the procedure of the forum, any party may join additional parties who are subject to the jurisdiction of the court. Application of these Rules is not affected by joinder or claims or participation of additional parties, except as provided in Rule 2.5. If, prior to plenary hearing, there is joinder of claim or an additional party whose presence as a party would render Rule 2 applicable, these Rules shall apply, unless in accordance with Rule 2.3 the court orders otherwise in the interest of orderly administration of justice.

4.6 Any person, private or public, may file an *amicus curiae* brief containing data, information, remarks, social background and considerations that may be useful for a fair and just decision of the case. The court may invite a third party to file an *amicus* brief. The parties shall have the opportunity to submit written comment addressed to the matters in an *amicus* brief before the brief is considered by the court.

## **5. Venue**

The proceeding shall be brought in the court of first instance in the locality determined according to the state's rules of territorial competence.

## **6. Composition of the Court**

6.1 The court shall be composed as ordinarily provided by the law of the forum. The court of first instance may appoint not more than two neutral assessors, who are experts in the subject matter of the dispute. In choosing the assessors, the court shall consider recommendations from the parties. The assessors have no vote.

6.2 In its deliberations the court may confer with the assessors in the presence of the parties or through written communication, copies of which are provided to the parties. The fees and expenses of the assessors shall be paid by the parties or as otherwise directed by the court.

## **7. Forum Procedure and General Authority of the Court**

7.1 Subject to the provisions of Rule 1, the procedural law of the forum shall be applied in matters not addressed in these Rules, including the time limits imposed on procedural matters.

7.2 In addition to authority expressly conferred by these Rules, the court has authority to give direction to the proceedings and to make decisions in furtherance of justice.

# **B. Proceedings**

## **8. Commencement of Suit**

8.1 A proceeding shall be deemed commenced at the time of filing of the statement of claims, as long as filing is followed by a timely and valid service of process in accordance with the rules of the forum. The proceeding shall be designated Transnational Proceeding.

8.2 Concurrently with filing the suit, notice shall be given to the defendant in accordance with an applicable international convention or, if no such convention is applicable, by transmitting a copy of the statement of claim and a notice that plaintiff elects to proceed under these Rules.

8.3 The notice shall specify the time provided under these Rules and local law within which defendant must respond and shall state that judgment by default may be entered if defendant does not respond accordingly. Notice of the suit shall be in the language of the forum and in the language of the state of which the defendant is a habitual resident.

## **9. Statements of Claim**

9.1 The plaintiff shall state the facts on which the claim is based, the legal grounds that support the claim, and the basis upon which the claim is brought under these Rules. The statement of facts shall, so far as reasonably practicable, set forth detail as to time, place, participants, and events.

9.2 The plaintiff shall state the judgment demanded, including the amount of damages claimed and any requested declaratory or injunctive relief.

## **10. Statements of Defense; Counterclaims**

10.1 A defendant shall within 30 consecutive days from the date of service of process answer the claim by admissions and denials of the allegations. The time for answer may be extended for 30 days upon request of defendant, or for a reasonable time by agreement of the parties or by court order. The answer shall:

10.1.1 Deny such parts of the statement of claim as defendant wishes to dispute;

10.1.2 Admit with explanation such statements as defendant does not wish to dispute as thus explained or assert an alternative statement of facts;

10.1.3 State the facts and the legal grounds upon which any affirmative defenses are based.

10.2 The provisions of Rule 9 concerning the detail of statements of claims are applicable to the statements of other claims and of defense.

10.3 The defendant may state a claim seeking relief from a plaintiff or against a co-defendant or third party, for example in a claim for indemnity or contribution, as is permitted by the procedure of the forum. The party against whom such a claim is stated shall submit an answer thereto.

10.4 Allegations in a pleading to which a response is not required are deemed denied. Allegations in a pleading to which a response is required are deemed admitted if not denied. Facts admitted or deemed admitted need no proof, except as provided in Rule 12.2 with respect to a default judgment.

10.5 A party against whom a claim is stated may in the answer present objections referred to in Rule 15.1. Submitting an answer or asserting a counterclaim does not waive such objections.

## **11. Amendments**

11.1 A party may amend a pleading upon such terms as the court may permit. If the amendment is required by events occurring subsequent to those alleged in the party's previous pleading, or on the basis of newly discovered evidence or facts, permission to make reasonable amendment shall be afforded. After obtaining disclosure or discovery under Rules 16 and 17, a party may amend a pleading to address information thus obtained. Otherwise, permission to amend shall be afforded only if the amendment will prevent manifest injustice and not impose unfair prejudice.

11.2 The amendment shall be served on opposing party, who shall have 30 days in which to respond, unless the court orders otherwise.

11.3 If the complaint has been amended, default judgment may be obtained on the basis of an amended pleading only if the amended pleading has been served on the party against whom default judgment is to be entered.

11.4 Any party may request that the court order another party to provide a more specific statement of a claim or defense on the ground that the challenged statement does not comply with the requirements of these rules.

## **12. Default Judgment**

12.1 Default judgment shall be entered against a party who does not answer, fails to offer a substantial answer, or fails to proceed after having answered.

12.2 Before entering a default judgment, the court shall:

12.2.1 Assure that the procedure for giving notice has been properly followed.

12.2.2 Determine that the claim is legally justified concerning liability and remedy, including the amount of damages.

12.3 The remedy awarded in the default judgment shall not be different in kind or in excess of the demand for judgment in the statement of claim.

12.4 A party who has answered after the time provided in these Rules, but before judgment, shall be permitted to appear upon offering justifiable excuse. If the defaulting party makes appearance before entry of default judgment, default judgment should not be entered but the court may order compensation for costs resulting to the opposing party.

### **13. Transnational Dispute Settlement Offer**

13.1 A party may deliver to another party a written offer to settle one or more claims and the related costs and expenses. The offer shall be designated “Transnational Dispute Settlement Offer” and must refer to the penalties imposed under this Rule. The offer shall remain open for 60 days, unless rejected or withdrawn by a writing delivered to the offeree prior to delivery of an acceptance.

13.2 The offeree may deliver a counter-offer, which shall remain open for at least 30 days. If the counter-offer is not accepted, the party may accept the original offer, if still open.

13.3 An offer neither withdrawn nor accepted before its expiration is rejected.

13.4 An offer shall not be made public or revealed to the court before entry of judgment, under penalty of sanctions or dismissal with prejudice or default.

13.5 Within 10 days after entry of judgment, a party may reveal the offer to the court. If the court finds that the rejection was unreasonable, it shall impose an appropriate sanction, considering all the relevant circumstances of the case.

13.6 Unless the court finds that special circumstances justify a different sanction, the sanction shall be the reasonable costs incurred by the offeror from the date of delivery of the offer. That sanction shall be in addition to the costs determined in accordance with Rule 30.

13.7 If an accepted offer is not complied with in a reasonable time, the offeree may either proceed to enforce it or continue with the proceeding.

### **14. Provisional Measures**

14.1 The court has authority to issue an injunction to restrain or require conduct of any person who is subject to the court’s authority, where necessary to preserve the status quo or to prevent irreparable injury pending the litigation.

14.1.1 A court may issue an injunction, before the opposing party has opportunity to respond, only upon proof showing urgent necessity and a preponderance of considerations of fairness in support of such relief. The party or person to whom it is directed shall have the opportunity at the earliest practicable time to respond concerning the appropriateness of the injunction.

14.1.2 The court may, after hearing those interested, issue, dissolve, renew or modify an injunction.

14.1.3 The court may require the posting of bond or other provision for indemnification of the person against whom an injunction is entered.

14.2 An injunction may restrain a person over whom the court has jurisdiction from transferring property, wherever located, pending the conclusion of the litigation and require a party to promptly reveal the whereabouts of its assets, including assets under its control, and of persons whose identity or location is relevant.

14.3 When the property or assets are located abroad, enforcement of an injunction under the previous subsection is governed by the law of the country where the property or assets are located, and by means of an injunction by the competent court of that country.

## **15. Preliminary Determinations and Summary Judgment**

15.1 On motion of a party or upon its own initiative, the court may as soon as practicable determine:

15.1.1 That the dispute is not governed by these Rules, that the court lacks competence to adjudicate the dispute, or that the court lacks jurisdiction over a party;

15.1.2 That a statement of claim or defense or other procedure employed by a party fails to comply with these Rules or is otherwise irregular;

15.1.3 That the dispute involves only questions of law or that a complete or partial decision can be made with the evidence available in the record with no need for an evidentiary hearing, but the court shall have regard for that party's opportunity for discovery under these Rules before making such a determination;

15.1.4 Other matters of substantive law or procedure necessary to advance the proper adjudication of the merits.

15.2 Upon having made a determination as provided in the previous subsection, the court may allow the party against whom the determination is made a reasonable opportunity to amend its statement of claims or defense when it appears that the deficiency could be remedied by amendment.

15.3 If necessary, before an adjudication under this Rule, the court shall order each party to reveal information as described in Rules 16 and 17.

## **16. Disclosure**

16.1 In a pleading the parties shall attach copies of all documents and list all witnesses, including parties and nonparties, through whom they intend to present evidence. The list shall include all such documents and witnesses as are known to the party when the pleading is submitted and shall identify witnesses by name, address, and telephone number.

16.2 A party may amend the list specified in the previous subsection to include documents or witnesses not known when the list was originally prepared. Any change in the list of documents or witness shall be communicated in writing to opposing party not later than 30 days before the plenary hearing, unless the court orders otherwise.

16.3 Within 30 days after the answer, each party shall supply to all other parties a summary of the testimony expected of each witness it intends to present. If pleadings are amended, the parties shall supply amended summaries of testimony.

16.4 In lieu of the summary referred to in the previous subsection, a party may present a statement of sworn written testimony by any witness it intends to present. The written testimony may be presented in the plenary hearing and the examination of that witness will begin with supplemental questioning by the opposing party.

16.5 For the purpose of this Rule, an advocate for a party may interview potential witnesses.

## **17. Discovery**

17.1 A party who has complied with disclosure duties prescribed in Rule 16 may demand production by any person, including third persons as provided in Rule 27, of any

matter, not privileged, that is directly relevant to the case, not already produced in disclosure and that may be admissible in the dispute, as follows:

17.1.1 Documents and other records of information that are specifically identified or identified within specifically defined categories;

17.1.2 The identity and whereabouts of persons having personal knowledge of matters in issue;

17.1.3 The identity of any expert that another party intends to present and a statement expressing the opinion of the expert concerning controverted issues.

17.2 Unless otherwise agreed or ordered by the court, discovery demands may be made as follows:

17.2.1 Initial demands by plaintiff shall be made in the complaint or within 60 days after defendant has answered. Initial demands by defendants shall be made in the answer or within 15 days after plaintiff's demands.

17.2.2 A second demand may be made within 30 days after the opposing party has complied with initial demands.

17.2.3 The court may order additional discovery directed toward any relevant matter, not privileged, whose production appears necessary to prevent substantial injustice, including oral or written deposition of a party or other witness. Such a deposition shall be taken as provided in Rule 18.

17.2.4 A response to such an order shall be made within 30 days.

17.3 Any person may invoke a protection against self-incrimination recognized according to the law of the forum, but it is not a valid objection that the information is adverse to the interest of the party to whom the demand is directed. See Rule 24.

17.4 On request of a party, the court may appoint a special officer to preside at a deposition or to supervise document production or otherwise to assist in supervising compliance with this Rule. Decisions made by the special officer are subject to immediate review by the court.

17.5 To give effect to a proper discovery demand, the court may:

17.5.1 Draw adverse inferences concerning facts in issue against a party that failed to comply with the discovery demand;

17.5.2 Employ the measures authorized by Rules 26 and 27;

17.5.3 Dismiss claims, defenses, or allegations to which the discovery is relevant;

17.5.4 Enter judgment of dismissal with prejudice against a plaintiff or judgment by default against a defendant.

## **18. Deposition and Testimony by Affidavit**

18.1 A deposition may be taken when the court so orders in the interest of justice as provided in Rule 17.2.3.

18.2 The testimony shall be upon affirmation as provided in Rule 25.3.1 and shall be transcribed verbatim or by audio or video recording, as the parties may agree or as the court orders. The cost of the transcription shall be paid by the party that requested the deposition, unless the court orders otherwise.

18.3 The deposition shall be taken at such time and place as the parties may agree or as the court orders. All parties and the court shall be given written notice, at least 30 days in advance, of the time and place of the deposition. The examination shall be conducted as provided in Rule 25. Prior to the deposition the court may submit supplemental questions to be answered by the person deposed.

18.4 A deposition may be presented as testimony in the record by agreement of the parties or by order of the court.

18.5 A party may present an affidavit signed by a nonparty who makes an affirmation to tell the truth, containing statements about relevant facts of the case. The court, in its discretion, may consider such statements as if they were made by oral testimony. If another party denies the truth of the statements made by affidavit, that party may move for an order of the court requiring the personal appearance of the affidavit's author at the plenary hearing.

## **19. Protective Orders Concerning Discovery and Disclosure**

19.1 The court, on its own initiative or on motion of a party or third person who is subject to a disclosure or discovery obligation under Rules 16, 17 or 27, shall limit or prohibit disclosure or discovery when it appears that compliance with the request would be onerous or is unlikely to produce admissible evidence or requires production of evidence protected by a privilege.

19.2 When the information sought to be revealed is a trade or business secret, or its public disclosure would otherwise cause injury or embarrassment that could be avoided or mitigated by a protective order, the court should issue a suitable order imposing obligation of confidentiality on the parties, their counsel and witnesses.

19.3 When it would assist the court in exercising its authority under this Rule, the evidence that is sought may be examined by the court *in camera*.

## **20. Conferences**

20.1 The court may schedule one or more conferences at any phase of the proceeding. The advocates for the parties shall attend all conferences and the court may order that the parties attend or, in the case of an organization, a responsible officer thereof.

20.2 At a conference, the court may:

20.2.1 Order the addition, elimination, or revision of claims, defenses, and issues in light of the parties' contentions at that stage.

20.2.2 Order the isolation for separate hearing and decision of one or more issues in the case. The court shall enter an interlocutory judgment addressing that issue and its relation to the remainder of the case.

20.2.3 Order the consolidation of cases pending before itself, whether under these Rules or those of the forum, when they deal with the same or related transactions, and when consolidation may facilitate the proceeding and decision. The final judgment shall address all the cases.

20.2.4 Make rulings on the admissibility of evidence and other procedural matters.

20.2.5 Prescribe the sequence for hearing witnesses and experts.

20.2.6 Fix the date for the plenary hearing and simplify the plenary hearing.

20.2.7 Enter other orders to expedite the proceeding.

20.3 The court may suggest that the parties consider settlement, mediation, or arbitration or any other form of alternative dispute resolution.

## **21. Languages**

21.1 The proceedings, including documents, oral proceedings, and evidence, shall be conducted in the language of the court, except to the extent that the court, with the agreement of the parties, otherwise permits.

21.2 Translation of documents that are lengthy or voluminous shall be limited to relevant portions, as selected by the parties or determined by the court.

21.3 Translation should be made by a neutral translator selected by the parties or appointed by the court.

21.4 The cost of translations shall be paid by the party presenting the person or document unless the court orders otherwise.

## **22. Relevance and Admissibility of Evidence**

22.1 Except as provided in Rule 24, all evidence relevant to matters in issue is admissible, including circumstantial evidence.

22.2 Any person having mental capacity is competent to give evidence, including parties.

22.3 A party may call any person whose testimony is relevant and admissible, including that party. The court may call any person on its own motion under the same conditions.

22.4 The parties may offer in evidence any relevant document or thing. The court may order any party or nonparty to present any relevant document or thing in that person's possession.

## **23. Expert Evidence**

23.1 The court may appoint a neutral expert or panel of experts whenever, in the court's discretion, expert evidence may be helpful in resolving issues in the case. Expert testimony may address the rules of foreign law and international law.

23.2 The court determines the issues that are to be addressed by the expert and such tests, evaluations, or other procedures as are to be employed by the expert. The court may issue orders necessary to facilitate the inquiry and report by the expert and may specify the form in which the expert shall make its report.

23.3 A party may designate its own expert or panel of experts on an issue. The parties' experts are entitled to participate in or observe the tests, evaluations, or other procedures conducted by the court's expert. The court may order all the experts to confer with each other before presenting their opinions. The parties' experts may submit their own opinions to the court in the same form as the report made by the court's expert. Each party pays for an expert whom that party has retained.

## **24. Evidentiary Privileges**

24.1 Evidence cannot be admitted of information covered by the following privileges:

24.1.1 Legal profession privilege;

24.1.2 Communications between counsel in settlement negotiation;

[24.1.3 National defense and security].

24.2 Evidence cannot be admitted of information covered by other privileges recognized by the law of the place with the most significant relationship to the parties to the communication, unless the court determines that the need for the evidence to establish truth is of greater significance than the need to maintain confidentiality of the information. Such evidence shall be produced in closed session of the court but in the presence of the parties and their lawyers. In case the information includes secret or highly sensitive matters, the court may require inspection by the court alone or with help of experts. The court shall order protection of the secrecy concerning the privileged material.

24.3 A claim of privilege made with respect to a document shall describe the document in detail sufficient to enable another party to challenge the claim of privilege.

24.4 A privilege may be waived by or on behalf of the person who is entitled to take advantage of it. A party waives a privilege, for example, by omitting to make a timely objection to a question or discovery demand seeking information covered by a privilege. The court in the interest of justice may relieve a party of waiver of a privilege.

## **25. Plenary Hearing**

25.1 Documentary evidence not earlier produced to the court shall be produced prior to the plenary hearing by the party intending to rely on such evidence.

25.2 Receipt of oral evidence shall be concentrated in a single hearing, or hearings on consecutive judicial days, except when the court orders otherwise for the convenience of the parties or persons giving evidence or the administration of justice.

25.3 Evidence at plenary hearing will be received according to the following rules:

25.3.1 A person giving evidence must affirm to tell the truth. The court will determine the terms of the affirmation.

25.3.2 A person giving evidence is directly questioned by the lawyer of the party who called the person. The lawyers of the other parties are then permitted to ask supplemental questions. Further direct and supplemental questioning may be permitted by the court. The court shall exclude, on objection or on its own motion, irrelevant evidence and improperly leading questions. The court shall prevent embarrassment and harassment of persons giving evidence.

25.3.3 The court may at any time conduct questioning in order to clarify the testimony, including additional questions after the questioning by the parties.

25.3.4 A person called to give evidence by the court may be examined by the court first. The person then may be questioned by the lawyers for the parties.

25.3.5 Direct questions may deal with any relevant issue in the case. Supplemental questioning may deal with any issue addressed in the direct questioning, unless the court permits a more extensive scope.

25.3.6 A statement made by a party outside of the record against that party's own interest is admissible as evidence.

25.3.7 Any party may challenge the credibility of a witness or an expert by means of questioning or consideration of prior inconsistent statements or other evidence that may affect the credibility of the witness. The court may ask questions that affect the person's credibility. These challenges are allowed only concerning material issues.

25.3.8 The court may permit similar contest of the authenticity or accuracy of a document or an item of real and demonstrative evidence.

## **26. Powers and Remedies Concerning Evidence**

The court may on its own motion or motion of a party:

26.1 Exclude irrelevant or redundant evidence, or evidence whose presentation involves excessive cost, burden, or delay.

26.2 Draw adverse inferences from a party's failure to give testimony, or to present a witness, or to produce a document or other item of evidence that the party was in a position to present.

26.3 Impose a fine on or hold in contempt of court any person who without justification, on being lawfully ordered to do so, fails to attend to give evidence, fails to

answer proper questions, fails to produce a document or other item of evidence, or who otherwise obstructs the administration of justice.

26.4 In the interest of justice, relieve a party from a failure to comply with the rules concerning evidence.

## **27. Orders Directed to a Third Person**

27.1 The court may order persons subject to its jurisdiction who are not parties to the proceeding:

27.1.1 To comply with an injunction issued in accordance with Rule 14.1;

27.1.2 To retain funds or other property the right to which is in dispute in the proceeding, and to disburse the same only in accordance with an order of the court;

27.1.3 To give testimony in discovery or at the hearing;

27.1.4 To produce documents or other things as evidence.

27.2 The court may require a party seeking an order directed to a third person to provide indemnification for the costs of compliance.

27.3 An order directed to a third person may be enforced by imposition of a monetary penalty for noncompliance and by other legal compulsion authorized by the court, such as contempt of court or direct seizure of evidentiary material or other things. See also Rule 35.

## **28. Record of the Evidence**

28.1 A summary record of the proceeding shall be kept by the court's clerk under the court's direction.

28.2 A verbatim transcript of the proceeding or an audio or video recording shall be kept upon the demand of any party, who shall pay the expense thereof.

## **29. Final Discussion and Judgment**

29.1 After the presentation of all evidence, each party is entitled to present a written submission of its contentions. With permission of the court all parties may present an oral closing statement. The court may allow the parties' advocates to engage with each other and with the court in an oral discussion concerning the main issues of the case.

29.2 The court will then publish, without undue delay, a written judgment and an explanatory opinion including the findings of fact based upon the relevant evidence and the supporting inferences, and the principal legal propositions supporting the decision. The judgment shall be dated. Issues of fact shall be determined according to the applicable law governing burden of proof.

## **30. Costs**

30.1 Each party initially pays its own costs and expenses, including court fees, attorney's fees, and incidental expenses.

30.2 The interim costs of the fees and expenses of an assessor, expert, translator, other judicial officer or other person appointed by the court shall be provisionally paid equally by the parties or as otherwise ordered by the court. The court shall order final payment according to this Rule.

30.3 The prevailing party shall be reimbursed of its reasonable costs and expenses from the losing party, but determination of costs may be stayed with a stay of enforcement as provided in Rule 35.3.

30.4 The prevailing party shall within 30 days after rendition of the judgment submit a statement, certified by the party or its attorney, of its costs and expenses. The losing party shall promptly pay the amount requested except for such items as it disputes. Disputed items shall be determined by the court or by such other procedure as the parties may agree upon.

30.5 The court may reduce or preclude recovery of costs and expenses against a losing party who had reasonable factual or legal basis for its position. The court may also impose a penalty not to exceed twice the amount provided by Rule 30.3 against a party whose disputation the court determines was not conducted in good faith.

30.6 If there is appellate review, the rules and procedure stated above shall apply to costs and expenses incurred in connection with the appeal.

30.7 If it is authorized by the law of the forum, the court may require a party to give a security for costs and expenses.

## **C. Subsequent Proceedings**

### **31. Appellate Review**

31.1 Except as stated in the following subsection, an appeal may be taken only from a final judgment of the court of first instance. The judgment shall be enforceable pending appeal, subject to the provisions of Rule 35.3 and 35.4.

31.2 An order of a court of first instance granting or denying an injunction sought under Rule 14 is subject to immediate review. The injunction remains in effect during the pendency of the review, unless the reviewing court orders otherwise.

31.3 Orders of the court other than a final judgment and an order appealable under the previous subsection are subject to immediate review only upon permission of the court of first instance or upon order of the appellate court. Such permission may be granted when an immediate appeal will resolve an issue of general legal importance or of special importance in the immediate proceeding.

31.4 Appellate review is limited to the claims, defenses, and counterclaims asserted in the court of first instance. No additional previously available evidence should be admitted except to prevent manifest miscarriage of justice.

### **32. Further Appellate Review**

An appeal or other form of review may be taken from the decision of a court of second instance in accordance with the law of the forum. The review performed by the court of second appeal will deal only with issues of substantive or procedural law. The facts in issue will not be reconsidered. No evidence or additional claims or defenses will be admitted.

### **33. Nullification of judgment**

A judgment may be nullified only through a new proceeding and only upon showing that the applicant acted with due diligence and that:

33.1 The judgment was procured without jurisdiction over the party seeking relief; or

33.2 The judgment was procured through fraud; or

33.3 There is evidence available which was not previously available by reason of fraud in disclosure, discovery or presentation of evidence that would lead to a different outcome; or

33.4 The judgment constitutes a manifest miscarriage of justice.

### **34. Expiration of Time to Appeal**

Except as stated in Rule 33, a judgment is not subject to reexamination for procedural regularity or substantive propriety upon expiration of the time for appellate review of such a judgment.

### **35. Enforcement of Judgment**

35.1 A final judgment, including judgment for a provisional remedy, is immediately enforceable, unless it has been stayed as provided in Rule 35.3. In particular, a final judgment may be enforced through attachment of property owned by or an obligation owed to the judgment obligor.

35.2 If a person against whom a judgment has been entered does not comply within the time specified, or within 30 days after the judgment becomes final if no time is specified, the court may impose enforcement measures on the obligor. These measures may include compulsory revelation of assets and a monetary penalty on the obligor, payable to the opposing party or to whom the court may direct.

35.2.1 Application for such a sanction must be made by a person entitled to enforce the judgment.

35.2.2 The penalty for noncompliance will include the cost and expense incurred by the party seeking enforcement of the judgment, including attorney's fees, and may also include a penalty for defiance of the court, not to exceed twice the amount of the judgment.

35.2.3 If the person against whom the judgment is rendered persists in refusal to comply, the court may impose additional penalties.

35.2.4 No penalty shall be imposed on a person who demonstrates to the court financial or other inability to comply with the judgment.

35.2.5 The court may order third parties to reveal information relating to the assets of the debtor.

35.3 The trial court or the appellate court, on motion of the party against whom the judgment was rendered, may grant a stay of enforcement of the judgment pending appeal when necessary in the interest of justice.

35.4 The court may require a suitable bond or other security from appellant as a condition of granting a stay or from respondents as a condition of denying a stay.

### **36. Judicial Assistance**

The courts of a state that has recognized these Rules shall, and courts of other states may, enforce orders in aid of proceedings in another state.

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