



30 October 2017

# NOTE TO PARTIES AND ARBITRAL TRIBUNALS ON THE CONDUCT OF THE ARBITRATION UNDER THE ICC RULES OF ARBITRATION

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## I - General Information

This Note is intended to provide parties and arbitral tribunals with practical guidance concerning the conduct of arbitrations under the ICC Rules of Arbitration (“Rules”) as well as the practices of the International Court of Arbitration of the International Chamber of Commerce (“Court”).

### A - The ICC International Court of Arbitration and its Secretariat

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1. The Court is an administrative body which ensures that ICC arbitrations are conducted in accordance with the Rules. It does not itself resolve disputes (Article 1(2)).
2. The Court is assisted by its Secretariat (Article 1(5)). The Secretariat is directed by the Secretary General, the Deputy Secretary General and the Managing Counsel. It is composed of teams headed by a Counsel.
3. The Secretariat closely monitors the progress of the proceedings and assists the parties and the arbitral tribunals on any questions relating to the conduct of an arbitration. The parties and/or their legal representatives are encouraged to contact the Secretariat with any queries or comments arising from the Rules and/or from this Note.
4. At the end of the arbitration parties, their representatives and the arbitrators will be invited to complete an evaluation form. Answers will be confidential and will allow the Court to assess and improve the quality of our services.

### B - Communications

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5. Pursuant to Article 3(1), parties and arbitrators must send copies of all written correspondence directly to all other parties, arbitrators and the Secretariat.
6. The Request for Arbitration (Article 4), the Answer and any counterclaims (Article 5), and any Request for Joinder (Article 7) must be sent to the Secretariat in hard copy as well as in electronic form by email. To the extent possible, any other written documents should be sent to the Secretariat by email in electronic form only. Sending hard copies to the Secretariat is not necessary, even where the arbitral tribunal has asked to be provided with hard copies.
7. The Secretariat will generally send correspondence by email, so parties, their counsel and prospective arbitrators must provide the Secretariat with their email addresses.

## II - Parties

### A - Where Requests for Arbitration can be Submitted

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8. ICC arbitration is commenced upon the Secretariat’s receipt of a Request for Arbitration at any of its offices (Articles 4(1) of the Rules and 5(3) of Appendix II). The Secretariat has in particular offices in Paris, Hong Kong, New York (in affiliation with SICANA) and Sao Paulo for purposes of Articles 4(1) of the Rules and 5(3) of Appendix II. Other offices where a Request for Arbitration may be filed will be mentioned on the Court’s website.

## **B - Representation**

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9. If the parties foresee being represented, they must inform the Secretariat and the arbitral tribunal of the name and address of their representative(s). The parties must promptly inform the Secretariat and the arbitral tribunal of any changes in their representation.

## **C - Joinder of Additional Parties**

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10. Requests for Joinder of a party are similar to Requests for Arbitration (Article 7). When a Request for Joinder is submitted, the additional party becomes a party to the arbitration and may raise pleas pursuant to Article 6(3). It is important to be aware that no additional party may be joined after the confirmation or appointment of an arbitrator, unless the parties and the additional party agree otherwise. Thus, a party to an arbitration wishing to join an additional party must file its Request for Joinder before any arbitrator is confirmed or appointed under the Rules.

## **D - Communication of Reasons for Court Decisions**

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11. Upon request of any party, the Court may communicate the reasons for (i) a decision made on the challenge of an arbitrator pursuant to Article 14, and (ii) a decision to initiate replacement proceedings and subsequently to replace an arbitrator pursuant to Article 15(2). The Court may also, upon request of any party, communicate the reasons for decisions pursuant to Articles 6(4) and 10.
12. Any request for the communication of reasons must be made in advance of the decision in respect of which reasons are sought. For decisions pursuant to Article 15(2), a party shall address its request to the Court when invited to comment pursuant to Article 15(3).
13. The Court has full discretion to accept or reject a request for communication of reasons.

## **III - Arbitral Tribunal**

14. Disputes are resolved by arbitral tribunals, the members of which will be either confirmed, in the case of arbitrators nominated by the parties or the co-arbitrators (Articles 13(1) and 13(2)), or appointed by the Court (Articles 13(3) and 13(4)). Emergency Arbitrators are appointed by the President of the Court pursuant to section V below.

## **A - Statement of Acceptance, Availability, Impartiality and Independence**

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15. All arbitrators, including Emergency Arbitrators, have the duty to act at all times in an impartial and independent manner (Articles 11 and 22(4)).
16. The Court requires all prospective arbitrators to complete and sign a Statement of Acceptance, Availability, Impartiality and Independence ("Statement") (Article 11(2)).
17. The parties have a legitimate interest in being fully informed of all facts or circumstances that may be relevant in their view in order to be satisfied that an arbitrator or prospective arbitrator is and remains independent and impartial or, if they so wish, to explore the matter further and/or take the initiatives contemplated by the Rules.

18. An arbitrator or prospective arbitrator must therefore disclose in his or her Statement, at the time of his or her appointment and as the arbitration is ongoing, any circumstance that might be of such a nature as to call into question his or her independence in the eyes of any of the parties or give rise to reasonable doubts as to his or her impartiality. Any doubt must be resolved in favour of disclosure.
19. A disclosure does not imply the existence of a conflict. On the contrary, arbitrators who make disclosures consider themselves to be impartial and independent, notwithstanding the disclosed facts, or else they would decline to serve. In the event of an objection or a challenge, it is for the Court to assess whether the matter disclosed is an impediment to service as arbitrator. Although failure to disclose is not in itself a ground for disqualification, it will however be considered by the Court in assessing whether an objection to confirmation or a challenge is well founded.
20. Each arbitrator or prospective arbitrator must assess what circumstances, if any, are such as to call into question his or her independence in the eyes of the parties or give rise to reasonable doubts as to his or her impartiality. In making such assessment, an arbitrator or prospective arbitrator should consider all potentially relevant circumstances, including **but not limited to** the following:
  - The arbitrator or prospective arbitrator or his or her law firm represents or advises, or has represented or advised, one of the parties or one of its affiliates.
  - The arbitrator or prospective arbitrator or his or her law firm acts or has acted against one of the parties or one of its affiliates.
  - The arbitrator or prospective arbitrator or his or her law firm has a business relationship with one of the parties or one of its affiliates, or a personal interest of any nature in the outcome of the dispute.
  - The arbitrator or prospective arbitrator or his or her law firm acts or has acted on behalf of one of the parties or one of its affiliates as director, board member, officer, or otherwise.
  - The arbitrator or prospective arbitrator or his or her law firm is or has been involved in the dispute, or has expressed a view on the dispute in a manner that might affect his or her impartiality.
  - The arbitrator or prospective arbitrator has a professional or close personal relationship with counsel to one of the parties or the counsel's law firm.
  - The arbitrator or prospective arbitrator acts or has acted as arbitrator in a case involving one of the parties or one of its affiliates.
  - The arbitrator or prospective arbitrator acts or has acted as arbitrator in a related case.
  - The arbitrator or prospective arbitrator has in the past been appointed as arbitrator by one of the parties or one of its affiliates, or by counsel to one of the parties or the counsel's law firm.
21. The duty to disclose is of an ongoing nature and it therefore applies throughout the duration of the arbitration.
22. Although an advance declaration or waiver in relation to possible conflicts of interest arising from facts and circumstances that may arise in the future may or may not in certain circumstances be taken into account by the Court, it does not discharge an arbitrator from his or her ongoing duty to disclose.

23. When completing his or her Statement and identifying whether he or she should make a disclosure, both at the outset of the arbitration and subsequently, an arbitrator or prospective arbitrator should make reasonable enquiries in his or her records, those of his or her law firm and, as the case may be, in other readily available materials.
24. For the scope of disclosures, an arbitrator will be considered as bearing the identity of his or her law firm, and a legal entity will include its affiliates. In addressing possible objections to confirmation or challenges, the Court will consider the activities of the arbitrator's law firm and the relationship of the law firm with the arbitrator in each individual case. Arbitrators should in each case consider disclosing relationships with another arbitrator or counsel who is a member of the same barristers' chambers. Relationships between arbitrators, as well as relationships with any entity having a direct economic interest in the dispute or an obligation to indemnify a party for the award, should also be considered in the circumstances of each case.
25. Arbitrators have a duty to devote to the arbitration the time necessary to conduct the proceedings as diligently, efficiently and expeditiously as possible. Accordingly, prospective arbitrators must indicate in the Statement the number of arbitrations in which they are currently acting, specifying whether they are acting as president, sole arbitrator, co-arbitrator or counsel to a party, as well as any other commitments and their availability over the next 24 months.
26. If one or more parties object to the confirmation of a prospective arbitrator, or in case of a challenge, the Secretariat will invite the other party or parties and the arbitrator or prospective arbitrator to comment.

## **B - Publication of Information Regarding Arbitral Tribunals**

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27. The Court endeavours to make the arbitration process more transparent in ways that do not compromise expectations of confidentiality that may be important to parties. Transparency provides greater confidence in the arbitration process, and helps protect arbitration against inaccurate or ill-informed criticism.
28. Consistent with that policy and unless otherwise agreed by the parties, the Court will publish on the ICC website, for arbitrations registered as from 1 January 2016, the following information: (i) the names of the arbitrators, (ii) their nationality, (iii) their role within a tribunal, (iv) the method of their appointment, and (v) whether the arbitration is pending or closed. The arbitration reference number and the names of the parties and of their counsel will not be published.
29. By accepting to serve as an arbitrator under the Rules, a prospective arbitrator accepts that such information will be published on the ICC website.
30. The information will be published after the Terms of Reference have been transmitted to, or approved by, the Court. It will be updated in the event of a change in the arbitral tribunal's composition (without however mentioning the reason for the change).
31. The information will remain on the ICC website for a period of time after the closure of the arbitration. The parties may request the Court to publish additional information about a particular arbitration.

## IV - Conduct of Participants in the Arbitration

32. Arbitral tribunals, parties and their representatives are expected to abide by the highest standards of integrity and honesty, to conduct themselves with honour, courtesy and professionalism, and to encourage all other participants in the arbitral proceedings to do the same.
33. Parties and arbitral tribunals are encouraged to draw inspiration from and, where appropriate, to adopt the IBA Guidelines on Party Representation in International Arbitration.
34. An arbitrator or prospective arbitrator shall not engage in *ex parte* communications with a party or party representative concerning the arbitration. However:
  - a. A prospective arbitrator may communicate with a party or party representative on an *ex parte* basis to determine his or her expertise, experience, skills, availability, acceptance and the existence of potential conflicts of interest.
  - b. To the extent that the parties so agree, arbitrators may also communicate with parties or party representatives on an *ex parte* basis for the purpose of the selection of the president of the arbitral tribunal.
  - c. In all such *ex parte* communications, an arbitrator or prospective arbitrator shall refrain from expressing any views on the substance of the dispute.

## V - Emergency Arbitrator

35. Pursuant to Article 29 of the Rules and Appendix V (“Emergency Arbitrator Provisions”), a party that needs urgent interim measures (“Emergency Measures”) which cannot await the constitution of an arbitral tribunal may make an application to the Secretariat.
36. The Emergency Arbitrator Provisions apply only to parties that are signatories to the arbitration agreement that is relied upon for the application or successors to such signatories.
37. Furthermore, the Emergency Arbitrator Provisions shall not apply if:
  - a. the arbitration agreement under the Rules was concluded before 1 January 2012;
  - b. the parties have opted out of the Emergency Arbitrator Provisions, whether by the recommended standard clauses contained in the Rules or otherwise; or
  - c. the parties have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures.
38. Parties may agree that the Emergency Arbitrator Provisions apply to arbitration agreements concluded before 1 January 2012.
39. Parties who wish to file an Application for Emergency Measures (“Application”) should inform the Secretariat as soon as possible and preferably before submitting the Application. If the Application precedes the Request for Arbitration, parties should send an email to: [emergencyarbitrator@iccwbo.org](mailto:emergencyarbitrator@iccwbo.org). If the Application is related to an ongoing arbitration, parties should contact the ICC case management team to which the arbitration has been assigned.

40. Upon receipt of the Application, the President of the Court will be invited to consider whether the Emergency Arbitrator Provisions apply. If the President of the Court considers that they apply, the Secretariat will transmit the Application to the responding party. If the President of the Court considers that they do not apply, the Secretariat will inform the parties that the emergency arbitrator proceedings shall not take place. Without prejudice to the parties' status in the main arbitral proceedings, the President of the Court may consider that the Emergency Arbitrator Provisions apply only with respect to some of the parties. In that case, the Secretariat will inform the parties accordingly and transmit a copy of the Application to all parties.
41. The President of the Court will terminate the emergency arbitrator proceedings if a Request for Arbitration has not been received by the Secretariat within 10 days of the Secretariat's receipt of the Application, unless the Emergency Arbitrator determines that a longer period of time is necessary (Article 1(6) of Appendix V).
42. The President of the Court shall appoint the Emergency Arbitrator in as short a time as possible, normally within two days from the Secretariat's receipt of the Application.
43. Emergency Arbitrators are subject to the requirements set forth in Section III above. A challenge against an Emergency Arbitrator must be made within three days from the challenging party's receipt of the notification of the Emergency Arbitrator appointment or from the date when that party was informed of the facts and circumstances on which the challenge is made if such date is subsequent to the appointment notification. A challenge may be decided by the Court, after affording all parties and the Emergency Arbitrator an opportunity to comment in writing, before or after the Emergency Arbitrator Order ("Order") is rendered.
44. The Emergency Arbitrator's first task is to establish a procedural timetable as soon as possible, normally within two days from the transmission of the file to the Emergency Arbitrator (Article 5 of Appendix V). In doing so, the Emergency Arbitrator must ensure that the responding party is granted time to respond to the Application.
45. The Order must be made no later than 15 days from the date on which the file was transmitted to the Emergency Arbitrator (Article 6(4) of Appendix V). The President may extend that time limit pursuant to a reasoned request or on his or her own initiative (Article 6(4) of Appendix V).
46. The Order shall not be scrutinised by the Court. The Emergency Arbitrator is however encouraged to seek guidance by the Secretariat, in particular by submitting his/her draft Order for review prior to the expiration of the time limit set out in Article 6(4) of Appendix V. The Emergency Arbitrator Order Checklist may also serve as guidance to the Emergency Arbitrator in drafting the Order.
47. The Order may be signed and notified in electronic form if the Emergency Arbitrator so decides after having consulted the parties. In any event, the Emergency Arbitrator shall send two originals of the Order to the Secretariat.
48. The effects of the Order are set forth in Article 29(2), (3) and (4) of the Rules, and Articles 6(6), (7) and (8) of Appendix V.



## VI - Conduct of the Arbitration

### A - Advance on Costs

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49. A provisional advance may be fixed by the Secretary General upon receipt of the Request for Arbitration (Article 37(1)). It is intended to cover the costs of the arbitration until the Terms of Reference have been drawn up or, when the Expedited Procedure Provisions apply, until the case management conference.
50. Payment of the provisional advance will be considered as a partial payment by the claimant of the advance on costs subsequently fixed by the Court. Transmission of the file to the arbitral tribunal, once constituted, will be subject to prior payment of the provisional advance (Article 16).
51. The advance on costs is intended to cover the arbitral tribunal's fees and arbitration-related expenses, as well as the ICC administrative expenses (Article 37 of the Rules and Article 1(4) of Appendix III). It comprises the total of (i) a figure between the minimum and maximum fee suggested under the scales, (ii) a reasonable amount for tribunal-related expenses and (iii) the figure of administrative expenses under the scales. Whenever the Court fixes or readjusts the advance on costs, a detailed financial table is provided to the parties and arbitrators for information and guidance. The advance on costs is not necessarily used in its entirety by the Court when fixing the fees of the arbitrators at the end of the arbitration.
52. Where the amount in dispute is significant, the Court may initially fix the advance on costs at an amount which will not cover the full ICC administrative expenses and arbitrator fees and expenses. In such cases, the Secretariat will inform the parties and arbitrators not to assume that the advance covers the costs until the end of the arbitration and that future readjustments of the advance on costs are likely. The Court may proceed with multiple readjustments of the advance by considering the progress of the case. This practice allows the Court to better appreciate all relevant elements of the case as they occur rather than forecast what the suggested fees may be.
53. The advance on costs may be readjusted by the Court if the development of the arbitration so requires (Article 37(5)). The arbitral tribunal should inform the Secretariat of any developments in the value and complexity of the arbitration or any other issues it considers relevant. To this end, the Secretariat will also request from the arbitrators a periodical report on their activities, which should include a description of the tasks performed, an estimate of the amount of time spent on each of those tasks, and any other information related to those tasks that the arbitrators may deem relevant. For this purpose, arbitrators should use the ICC form on [Statement of Time and Travel for Work Done](#), available on the ICC website. If arbitrators use time sheets as part of their normal professional activities, they may provide the Secretariat with such time sheets instead. Arbitrators are encouraged to send such reports to the Secretariat also on their own initiative after completing a procedural milestone or when requesting advances on fees or the readjustment of the advance on costs.
54. The parties will be invited to pay the advance on costs in accordance with paragraphs 2, 3, 4 and 5 of Article 37. Payments originating from third parties must be substantiated to the satisfaction of ICC's bank(s). All bank charges must be borne by the party making the payment.
55. Where claims are made under Articles 7 and 8, the Court may either (1) fix several advances on costs, or (2) fix one advance on costs and establish the respective portions to be paid by each party (Article 37(4)). The parties may also agree to a different apportionment.

56. The arbitral tribunal should clarify with the parties whether they will be directly responsible for the costs of any hearing or whether such costs should be included in the arbitration-related expenses. If hearing costs will be included in the arbitration-related expenses, the arbitral tribunal should provide the Secretariat with an estimate of such costs. Thereafter, the Secretariat may examine whether it is appropriate to invite the Court to reconsider the advance on costs.

## **B - Expeditious and Efficient Conduct of the Arbitration**

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57. The Rules require the arbitral tribunal and the parties to make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute (Article 22(1)).
58. In order to ensure effective case management, the arbitral tribunal, after consulting the parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties (Article 22(2)). The arbitral tribunal should consider the case management techniques referred to in Appendix IV to the Rules and the report of the ICC Commission on Arbitration and ADR entitled [\*Controlling Time and Costs in Arbitration\*](#), available on the ICC website.

## **C - Expeditious Determination of Manifestly Unmeritorious Claims or Defenses**

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59. This section includes guidance as to how an application for the expeditious determination of manifestly unmeritorious claims or defenses may be dealt with, within the broad scope of Article 22.
60. Any party may apply to the arbitral tribunal for the expeditious determination of one or more claims or defenses, on grounds that such claims or defenses are manifestly devoid of merit or fall manifestly outside the arbitral tribunal's jurisdiction ("application"). The application must be made as promptly as possible after the filing of the relevant claims or defenses.
61. The arbitral tribunal has full discretion to decide whether to allow the application to proceed. In so doing, it shall take into consideration any circumstances it considers to be relevant, including the stage of the proceedings and the need to ensure time and cost efficiency.
62. If the arbitral tribunal allows the application to proceed it shall promptly adopt the procedural measures it considers appropriate, after consulting the parties. The responding party or parties shall be given a fair opportunity to answer the application. Further presentation of evidence will be allowed only exceptionally. When the arbitral tribunal determines that a hearing is appropriate, such hearing may be conducted by videoconference, telephone or similar means of communication.
63. Consistent with the nature of the application, the arbitral tribunal shall decide the application as promptly as possible and state the reasons for its decision in as concise a fashion as possible. The decision may be in the form of an order or award. In either case, the arbitral tribunal may decide on the costs of the application pursuant to Article 38 or reserve this decision to a later stage.
64. The Court will scrutinise any award made on an application for expeditious determination, in principle within one week of receipt by the Secretariat.

## D - Time Limits under the Rules

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65. The Rules contain strict time limits which arbitrators and parties must endeavour to comply with, in particular:
- a. **Terms of Reference:** must be established within **one month** from the transmission of the file to the arbitral tribunal (Article 23(2)). Terms of Reference are not applicable to arbitrations under the Expedited Procedure Provisions.
  - b. **Case management conference:** must be convened (1) when drawing up the Terms of Reference or as soon as possible thereafter (Article 24(1)), or (2) no later than 15 days after the date on which the file was transmitted to the arbitral tribunal in arbitrations under the Expedited Procedure Provisions.
  - c. **Procedural timetable:** must be established during or immediately following the case management conference and transmitted to the Court and the parties Article 24(2).
  - d. **Closing of the proceedings:** must be done as soon as possible after the last hearing on matters to be decided in an award, or the filing of the last authorised submissions concerning such matters (Article 27).
  - e. **Date for submission of draft awards:** must be indicated to the Secretariat and the parties when the arbitral tribunal closes the proceedings in relation to the award (Article 27).
  - f. **Final award:** must be rendered within (1) the time limit fixed by the Court based upon the procedural timetable, (2) if the Court does not fix such time limit within **six months** from the date of the last signature added to the Terms of Reference or the date of notification of their approval (Article 31(1)), or (3) **six months** from the date of the case management conference in arbitrations under the Expedited Procedure Provisions.

## VII - Expedited Procedure Provisions

### A - Scope of the Expedited Procedure Provisions

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66. By agreeing to the Rules, the parties agree that Article 30 of the Rules and Appendix VI (collectively, the “Expedited Procedure Provisions”) shall take precedence over any contrary terms of the arbitration agreement.
67. The Expedited Procedure Provisions shall apply if:
- a. the arbitration agreement was concluded after 1 March 2017; and
  - b. the amount in dispute does not exceed US\$ 2 000 000; and
  - c. the parties have not opted out of the Expedited Procedure Provisions in the arbitration agreement or at any time thereafter. Agreements to opt out should express in specific terms the parties’ intention not to subject themselves to the Expedited Procedure Provisions. It is not sufficient, to that effect, that the parties have referred in the arbitration agreement to a three-member arbitral tribunal, or have adopted time limits that depart from those provided by the Expedited Procedure Provisions. It is recommended that parties wishing to opt out of the Expedited Procedure Provisions use the standard clauses contained in the Rules.
68. The Expedited Procedure Provisions shall also apply, irrespective of the date of conclusion of the arbitration agreement or the amount in dispute, if the parties have agreed to opt in. Such opt in agreements can be concluded in the arbitration agreement or by separate or

subsequent agreement. It is recommended that the parties wishing to opt in to the Expedited Procedure Provisions use the standard clauses contained in the Rules.

69. The Court may at any time, upon request of a party or on its own motion after consulting the arbitral tribunal and the parties, decide that the Expedited Procedure Provisions shall no longer apply (Article 1(4) of Appendix VI). The Court may in particular use such power in case new circumstances arise that make the Application of the Expedited Procedure Provisions no longer appropriate.

## **B - Determination of the Amount in Dispute for the Purpose of the Application of the Expedited Procedure Provisions**

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70. For purposes of deciding whether the Expedited Procedure Provisions apply, the amount in dispute includes all quantified claims, counterclaims, cross-claims and claims pursuant to Articles 7 and 8. Claims relating to interest and costs will not be considered to that effect.
71. Pursuant to the Rules (Articles 4(3), 5(5)(b), 7(2), 7(4), 8(2) and 8(3)), the parties shall quantify their claims and, to the maximum extent possible, provide an estimate of the value of any non-monetary claims.
72. For purposes of deciding whether the Expedited Procedure Provisions apply, the Secretariat will consider the quantifications or estimates submitted by the parties.
73. In principle, the Expedited Procedure Provisions shall not apply in presence of declaratory or non-monetary claims which value cannot be estimated, unless it appears that such claims are the mere support of a monetary claim or that they do not add significantly to the complexity of the dispute.
74. In case of an objection as to the applicability of the Expedited Procedure Provisions, the matter will be decided by the Court after giving an opportunity to the other parties to state their views.
75. Any submission by the parties with respect to the applicability of the Expedited Procedure Provisions shall be made in the Request for Arbitration and in the Answer, or in any time limit subsequently given by the Secretariat.
76. Any decision made by the Secretariat or by the Court as to the amount in dispute for purposes of deciding whether the Expedited Procedure Provisions apply shall not bind the arbitral tribunal when deciding the substance of the dispute.
77. The arbitral tribunal may take into account, in assessing costs pursuant to Article 38(5), whether by artificially inflating its claims, a party has prevented the Expedited Procedure Provisions from applying.

## **C - Scales**

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78. In all cases conducted under the Expedited Procedure Provisions, the Scales of Administrative Expenses and Arbitrator's Fees for the Expedited Procedure shall apply as indicated in section XI below and any advance on costs will be fixed on this basis. The arbitrators' fees pursuant to these scales are 20% less than under the general scales.

79. Any provisional advance on costs may be fixed by the Secretary General after receipt of the Request for Arbitration on the basis of the Expedited Procedure Provisions and the amount in dispute at that stage. The provisional advance on costs may be readjusted on the basis of the general scales if the Expedited Procedure Provisions ultimately do not apply.

#### **D - Information to the Parties**

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80. Pursuant to Article 1(3) of Appendix VI, the Secretariat will inform the parties that the Expedited Procedure Provisions shall apply (1) upon receipt of the Answer to the Request for Arbitration, (2) upon expiry of the time limit for the Answer, or (3) at any relevant time thereafter.
81. If a Request for Joinder is filed or claims pursuant to Article 8 are made, the Secretariat will inform the parties as to the applicability of the Expedited Procedure Provisions upon receipt of an answer to the Request for Joinder or to such claims or upon expiry of the time for such answer.

#### **E - Constitution of the Arbitral Tribunal**

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82. According to Article 2 of Appendix VI, the Court may appoint a sole arbitrator notwithstanding any contrary provision of the arbitration agreement.
83. By submitting to arbitration under the Rules, the parties agree that any reference of disputes to three arbitrators in their arbitration agreement is subject to the Court's discretion to appoint a sole arbitrator if the Expedited Procedure Provisions apply.
84. When the Expedited Procedure Provisions apply, the Court will normally appoint a sole arbitrator in order to ensure that the arbitration is conducted in an expeditious and cost-effective manner.
85. The Court may nevertheless appoint three arbitrators if appropriate in the circumstances. In all cases, the Court will invite the parties to comment in writing before taking any decision and shall make every effort to ensure that the award is enforceable at law.
86. If the Court decides that the Expedited Procedure Provisions shall no longer apply (paragraph 69 above), the arbitral tribunal shall normally remain in place, unless the Court finds, at the request of the parties or on its own initiative, after giving an opportunity to the parties and the arbitral tribunal to state their views, that circumstances exist which justify to replace and/or reconstitute the arbitral tribunal. If the Court decides to reconstitute the arbitral tribunal and proceed with a three-member arbitral tribunal, it may consider appointing the individual that was acting as sole arbitrator as president of the arbitral tribunal.

#### **F - Proceedings before the Arbitral Tribunal**

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87. In conducting the arbitration under the Expedited Procedure Provisions, the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.
88. Under the Expedited Procedure Provisions, the arbitral tribunal has discretion to adopt such procedural measures as it considers appropriate to conduct the arbitration in accordance with the time limits established therein. In particular, the arbitral tribunal may, after giving an

opportunity to the parties to state their views, (1) decide the case on documents only, with no hearing and no examination of witnesses, (2) decide not to allow requests for the production of documents and (3) limit the number, scope and length of submissions.

## G - Award

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89. The final award shall be made within six months from the date of the case management conference. The Court expects arbitral tribunals acting under the Expedited Procedure Provisions to conduct the procedure in order for this time limit to be effectively complied with, with no need for extensions. In case an extension would nonetheless be needed, the arbitral tribunal shall submit a reasoned application to the Court.
90. Any award under the Expedited Procedure Provisions shall be reasoned. Arbitral tribunals may limit the factual and/or procedural sections of the award to what they consider to be necessary to the understanding of the award, and state the reasons of the award in as concise a fashion as possible.

## VIII - Efficiency in the Submission of Draft Awards to the Court

### A - General Practice

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91. The Court expects arbitral tribunals to render awards within six months from the drawing up of the Terms of Reference, or within the time limit fixed by the Court for this purpose (Article 31(1)).
92. While the Court has the power to extend such time limits, sole arbitrators are expected to submit draft awards within two months and three-member arbitral tribunals within three months after the last substantive hearing on matters to be decided in the award or the filing of the last written submissions concerning such matters (excluding cost submissions), whichever is later (Article 27).
93. Whenever the arbitral tribunal has conducted the arbitration expeditiously, the Court may increase the arbitrators' fees above the amount that it would otherwise consider fixing.
94. Where the draft award is submitted after the time referred to in paragraph 92 above, the Court may lower the fees as set out below, unless it is satisfied that the delay is attributable to factors beyond the arbitrators' control or to exceptional circumstances, and without prejudice to any other measures that it may take, such as replacing one or more of the arbitrators:
  - If the draft award is submitted for scrutiny up to 7 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 5% to 10%.
  - If the draft award is submitted for scrutiny up to 10 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 10% to 20%.
  - If the draft award is submitted for scrutiny more than 10 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 20% or more.
95. In deciding on the above, the Court may also take into account any delays incurred in the submission of one or more partial awards.

## **B - Practice under the Expedited Procedure Provisions**

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96. Under the Expedited Procedure Provisions, the arbitral tribunal must render the final award in six months from the case management conference, with extensions to be granted only in limited and justified circumstances.
97. The Court considers that compliance with such time limit is of the essence under the Expedited Procedure Provisions.
98. In order to effectively comply with such time limit, an arbitral tribunal acting under the Expedited Procedure Provisions is expected to submit its draft award within five months from the case management conference.
99. Whenever the arbitral tribunal has conducted the arbitration expeditiously, the Court may increase the arbitrators' fees above the amount that it would otherwise consider fixing.
100. Where the draft award is submitted after the time referred to in paragraph 96 above, the Court may lower the fees as set out below, unless it is satisfied that the delay is attributable to factors beyond the arbitrators' control or to exceptional circumstances, and without prejudice to any other measures that it may take, such as replacing one or more of the arbitrators:
- If the draft award is submitted for scrutiny up to 7 months after the case management conference, the fees that the Court would otherwise consider fixing are reduced by 5% to 10%.
  - If the draft award is submitted for scrutiny up to 10 months after the case management conference, the fees that the Court would otherwise consider fixing are reduced by 10% to 20%.
  - If the draft award is submitted for scrutiny more than 10 months after the case management conference, the fees that the Court would otherwise consider fixing are reduced by 20% or more.

## **IX - Closing of the Proceedings and Scrutiny of Awards**

### **A - Closing of the Proceedings**

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101. An arbitral tribunal should declare the proceedings closed as soon as possible after the last hearing or the last authorised submission filed in relation to matters to be decided in an award, whether final or otherwise (Article 27). Upon doing so, the arbitral tribunal must inform the Secretariat and the parties of the date by which it expects to submit the draft award for the Court's scrutiny (Article 34).

### **B - Scrutiny Process**

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102. The scrutiny process carried out by the Court with the assistance of its Secretariat is a unique and thorough procedure designed to ensure that all awards are of the best possible quality and are more likely to be enforced by state courts. All draft awards undergo a three-step review process, starting with the Counsel of the team in charge of the arbitration that has followed the proceedings since the inception of the arbitration, followed by review by the Secretary General, the Deputy Secretary General or the Managing Counsel, before being submitted for the Court's scrutiny. For certain arbitrations, generally those involving state

parties or dissenting opinions, a Court member will draft a report with recommendations on the draft award.

103. All draft awards are scrutinised at a Committee Session of the Court, composed of three Court members, or at a Plenary Session of the Court. Draft awards scrutinised at a Plenary Session include, but are not limited to, matters involving a state or a state entity, matters in which one or more arbitrators have dissented, matters raising issues of policy, and matters in which a Committee Session has been unable to reach a unanimous decision or otherwise makes a referral to the Plenary.

## **C - Information to the Parties**

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104. Upon receipt of a draft award, the Secretariat promptly informs the parties and the arbitral tribunal that the draft will be scrutinised at one of the Court's next Sessions. After scrutiny, the Secretariat informs the parties and the arbitral tribunal that the award either was approved or will be further scrutinised at one of the Court's next Sessions.

## **D - Timing of Scrutiny**

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105. Any draft award submitted to the Court will be scrutinised within three to four weeks of receipt by the Secretariat. As a Plenary Session of the Court is held only once a month (generally the last Thursday of the month), the time needed for Plenary review of a draft award will depend on when it is submitted, and may take up to five or six weeks.
106. If the Expedited Procedure Provisions apply, any draft award submitted to the Court will be scrutinised as soon as possible, and in any event no later than two to three weeks of receipt by the Secretariat. The Court may decide, in exceptional circumstances, that any award made under the Expedited Procedure Provisions will be scrutinised by a Committee consisting of one member of the Court (Article 4(6) of Appendix II).
107. If delay in the scrutiny process is not attributable to exceptional circumstances beyond the Court's control, the Court's administrative expenses will be reduced by up to 20% depending on the length of the delay.
108. For purposes of timing, scrutiny is the first submission of the award to the Court for approval, irrespective of whether the award is approved or not at that Court Session.

## **X - ICC Award Checklist**

109. The Checklist is intended to provide arbitrators with guidance when drafting awards and is not an exhaustive, mandatory or otherwise binding document. It should not be thought to reflect the opinion of the members of the Court or of its Secretariat, but is intended to facilitate the arbitrators' mission. It may not be published or used for any purpose other than the conduct of ICC arbitrations. The Checklist is not exhaustive of issues that may be raised by the Court under Article 34.



## XI - Arbitral Tribunal's Fees and Administrative Expenses

### A - Scales

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110. Arbitrators' fees in ICC arbitration are calculated on an *ad valorem* basis pursuant to the scales set forth in Article 4 of Appendix III which provides two scales: the general scales of administrative expenses and arbitrator's fees, and the scales applicable to the cases conducted under the Expedited Procedure Provisions. Parties and arbitrators are encouraged to consult the [Cost Calculator](#) on the ICC website and the applicable scales contained in Article 4 of Appendix III.

### B - Advance on Fees

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111. The Court fixes arbitrators' fees at the end of the arbitration, although advances on fees may be granted upon request and the completion of concrete milestones in the arbitration.

### C - Allocation among Arbitral Tribunal Members

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112. When there is a three-member arbitral tribunal, arbitrators may agree on the fee allocation for each arbitrator and inform the Secretariat of their agreement as early as possible in the proceedings. Arbitrators may modify their agreement in the course of the proceedings. Unless the Court is advised in writing that the arbitral tribunal has agreed on a different allocation, the Court will fix the arbitrators' fees so that the president receives between 40% and 50% of the total fees and each co-arbitrator receives between 25% and 30%, as the case may be. The Court may decide upon a different allocation based on the circumstances. Unless otherwise agreed, the same allocation may apply to any advances on fees granted by the Court.

### D - Fixing of Fees

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113. Arbitrators' fees are fixed exclusively by the Court. Separate fee arrangements between the parties and arbitrators are not permitted.
114. Arbitrators' fees will normally be fixed by the Court at a figure within the limits specified in the scales or, in exceptional circumstances, at a figure higher or lower than those limits. An exceptionally high amount in dispute may be considered as such a circumstance in deciding whether to fix arbitrators' fees at a figure lower than the limits specified in the scales.
115. Pursuant to Article 2 of Appendix III, when fixing the arbitrators' fees the Court will take into consideration the diligence and efficiency of the arbitrator, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of any draft award. To this end, the Secretariat will request from the arbitrators the information specified in paragraph 53.
116. The Court may therefore fix the arbitrators' fees below the average, including at the minimum under the scales, where the amount in dispute is high or very high, or towards the maximum where the amount in dispute is low or very low. The amount of the advance on costs is not an indication of the final amount of the arbitrators' fees.
117. As a matter of guidance only, the Court may proceed as follows when fixing the fees of the arbitrators or granting advances on fees when the advance on costs has been fixed on the basis of the average fee:

- |    |  |                                    |
|----|--|------------------------------------|
| a. | Case Management Conference<br>(in Expedited procedure cases) | 35% of minimum fee                 |
| b. | Terms of Reference established                               | 50% of minimum fee                 |
| c. | A partial award issued / major hearing                       | Minimum fee                        |
| d. | Multiple partial awards                                      | Between 50% of average and average |
| e. | Final award issued   | Average fee                        |

118. The Court may depart from this guidance depending on the circumstances of each arbitration, the criteria set forth in Article 2 of Appendix III, and the practice set forth in section VIII(A) of the present Note.

## E - Replacement

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119. When fixing the fees of an arbitrator who has been replaced, the Court will take into consideration the nature of and reasons behind the replacement, the milestones completed in the arbitration, and the work expected to be completed by the successor. The Court may deduct the replaced arbitrator's fees from those of the successor.

## F - Administrative Expenses

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120. ICC administrative expenses will normally be fixed by the Court in accordance with the scale. In exceptional circumstances, the Court may fix them at a figure higher or lower than that which would result from the application of such scale, provided that they shall normally not exceed the maximum amount of the scale.

121. As a matter of guidance only, the Court may proceed as follows when fixing the ICC administrative expenses:

- |    |   |      |
|----|---|------|
| a. | File transmitted to the arbitral tribunal                       | 25%  |
| b. | Case Management Conference<br>(in Expedited procedure cases)    | 35%  |
| c. | Terms of Reference established                                  | 50%  |
| d. | Partial award(s) or other major procedural milestones completed | 75%  |
| e. | Final award   | 100% |

122. The Court may depart from this guidance depending on the circumstances of each arbitration. In any event, the figures above do not include abeyance fees, increases in the administrative expenses pursuant to section VIII(A) of the present Note, or additional advances to cover Article 36 applications.

## G - Declaration to French Tax Authorities

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123. Under French tax laws, ICC is required to declare the amount of fees, including advances on fees, paid to any arbitrator during each calendar year, as well as any expenses reimbursed during the same period.

## XII - Decisions as to the Costs of the Arbitration

124. Arbitral tribunals may make decisions as to costs, except for those to be fixed by the Court, and order payment thereof at any time during the proceedings (Article 38(3)).

125. In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 38(5)). Further information on this topic may be found in the ICC Commission Report [Decisions on Costs in International Arbitration](#), available on the ICC website.
126. If the parties withdraw their claims or the arbitration terminates before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the arbitral tribunal (Article 38(6)). If the arbitral tribunal has not been constituted at the time of the withdrawal, any party may request the Court to proceed with the constitution of the arbitral tribunal so that it may make decisions as to costs.

### XIII - Signature of Terms of Reference and Awards

127. Subject to any requirements of mandatory law that may be applicable, and unless the parties agree otherwise, (1) the Terms of Reference may be signed by each party and member of the arbitral tribunal in counterparts, and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 by email or any other means of telecommunication that provides a record of the sending thereof.
128. Each party, each arbitrator and the Secretariat receive an original of the awards, *addenda* and decisions signed by the arbitrators after approval of the drafts by the Court. The arbitral tribunal must thus provide the Secretariat with the required number of originals (unbound) requested by the Secretariat. The originals must be signed and dated after the date of the Court Session at which awards, *addenda* and decisions were approved; their date should be the date on which the last arbitrator signed.
129. The arbitral tribunal must also provide the Secretariat with a PDF of the signed original by email, which will be sent to the parties before the originals are received and notified.
130. Subject to any requirements of mandatory law that may be applicable, the parties may agree (1) that any award be signed by the members of the arbitral tribunal in counterparts, and/or (2) that all such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means of telecommunication that provides a record of the sending thereof, pursuant to Article 35.

### XIV - Correction and Interpretation of Awards

131. If the arbitral tribunal decides to correct the award on its own initiative, pursuant to Article 36(1), it should inform the parties and the Secretariat of its intention to do so and grant a time limit to the parties to comment in writing. The arbitral tribunal should submit the draft *Addendum* to the Court for scrutiny within 30 days of the date of the award.
132. Upon receipt of an Article 36(2) application, the Secretariat may submit the matter to the Court for it to consider whether, in view of the circumstances of the case, an advance to cover additional fees and expenses of the arbitral tribunal and additional ICC administrative expenses (Article 2(10) of Appendix III) is warranted. Should the Court fix an additional advance, such advance must be paid before the Secretariat will transmit the application to the arbitral tribunal. Otherwise, the Secretariat will transmit the application directly to the

arbitral tribunal. The arbitral tribunal should not address an application until the Secretariat transmits it to them.

133. If the Court has not asked for an advance on costs upon filing of the application, it can nevertheless take a decision on costs at the time of the scrutiny and make the notification of the *Addendum* or the Decision contingent upon the payment by one or both parties of the costs fixed by the Court.
134. Upon receipt of the application from the Secretariat, the arbitral tribunal should grant the other parties a short time limit, normally not exceeding 30 days, for comments.
135. The arbitral tribunal should then submit its draft decision to the Court for scrutiny not later than 30 days following the expiration of the time limit granted for comments. Should the arbitral tribunal require an extension of such time limit, it should inform the Secretariat.
136. The arbitral tribunal's disposition can take one of four forms:
  - a. **Addendum:** if the arbitral tribunal decides to correct or interpret the award, as this shall constitute part of the award;
  - b. **Decision:** if the arbitral tribunal decides that the award does not need to be corrected or interpreted and does not take a decision on costs;
  - c. **Addendum and Decision:** if there are two or more applications and the arbitral tribunal decides to correct or interpret the award on the basis of one or more, but not all applications;
  - d. **Decision and Addendum on Costs:** if the arbitral tribunal decides that the award does not need to be corrected or interpreted but takes a decision on costs related to the application.
137. All Decisions and *Addenda* shall state the reasons upon which they are based. They should also include operative conclusions ("*dispositif*") or a finding either rejecting or granting the application as the case may be. For further guidance about what should be included in a draft Decision or *Addendum*, see the ICC Checklist on Correction and Interpretation of Arbitral Awards. The Court will scrutinise all draft Decisions and *Addenda*. Upon approval by the Court, the Decision or *Addendum* shall be signed by the arbitral tribunal and sent to the Secretariat for notification to the parties as per section XV below.
138. In all cases, the arbitral tribunal must first ensure that mandatory rules of law at the place of arbitration do not exclude the correction or interpretation of an award by the tribunal.
139. Where the relevant national law or court practice provide specific circumstances in which an arbitral tribunal may render certain decisions other than corrections or interpretation regarding an award which has already been approved and notified, such situations shall be treated in the spirit of the Rules and this Note.

## XV - Notification of Awards, *Addenda* and Decisions

140. The Secretariat will notify to the parties an original of the awards, *addenda* and decisions (Article 35(1)).
141. A courtesy copy of the PDF signed original of the awards, *addenda* and decisions will be sent to the parties by email. The sending of a courtesy copy by email does not trigger any of the time limits under the ICC Rules of Arbitration.

## XVI - International Sanctions Regulations

142. International sanctions regulations may in certain cases apply to the arbitration. Parties and arbitrators must consult the [Note to Parties and Arbitral Tribunals on ICC Compliance](#), available on the ICC website.

## XVII - Administrative Secretaries

143. This section sets out the policy and practice of the Court regarding the appointment, duties and remuneration of arbitral tribunal administrative secretaries or other assistants (“Administrative Secretaries”). It applies with respect to any Administrative Secretary appointed on or after 1 August 2012.
144. Administrative Secretaries can provide a useful service to the parties and arbitral tribunals in ICC arbitration. While principally engaged to assist three-member arbitral tribunals, an Administrative Secretary may also assist a sole arbitrator. Administrative Secretaries can be appointed at any time during an arbitration.

### A Appointment

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145. If an arbitral tribunal envisages the appointment of an Administrative Secretary, it shall consider carefully whether in the circumstances of that particular arbitration such an appointment would be appropriate.
146. Administrative Secretaries must satisfy the same independence and impartiality requirements as those which apply to arbitrators under the Rules. ICC staff members are not permitted to serve as Administrative Secretaries.
147. There is no formal process for the appointment of an Administrative Secretary. However, before any steps are made to appoint an Administrative Secretary, the arbitral tribunal shall inform the parties of its proposal to do so. For this purpose, the arbitral tribunal shall submit to the parties the proposed Administrative Secretary’s *curriculum vitae*, together with a declaration of independence and impartiality, an undertaking on the part of the Administrative Secretary to act in accordance with the present Note and an undertaking on the part of the arbitral tribunal to ensure that this obligation on the part of the Administrative Secretary shall be met.
148. The arbitral tribunal shall make clear to the parties that they may object to such proposal and an Administrative Secretary shall not be appointed if a party has raised an objection.

### B - Duties

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149. Administrative Secretaries act upon the arbitral tribunal’s instructions and under its strict supervision. The arbitral tribunal shall, at all times, be responsible for the Administrative Secretary’s conduct in relation to the arbitration.
150. An Administrative Secretary may perform organisational and administrative tasks such as:
- transmitting documents and communications on behalf of the arbitral tribunal;
  - organising and maintaining the arbitral tribunal’s file and locating documents;
  - organising hearings and meetings;
  - attending hearings, meetings and deliberations; taking notes or minutes or keeping time;

- conducting legal or similar research; and
- proof-reading and checking citations, dates and cross-references in procedural orders and awards, as well as correcting typographical, grammatical or calculation errors.

151. Under no circumstances may the arbitral tribunal delegate decision-making functions to an Administrative Secretary. Nor should the arbitral tribunal rely on the Administrative Secretary to perform any essential duties of an arbitrator.
152. The Administrative Secretary may not act, or be required to act, in such a manner as to prevent or discourage direct communications among the arbitrators, between the arbitral tribunal and the parties, or between the arbitral tribunal and the Secretariat.
153. A request by an arbitral tribunal to an Administrative Secretary to prepare written notes or memoranda shall in no circumstances release the arbitral tribunal from its duty personally to review the file and/or to draft any decision of the arbitral tribunal.
154. When in doubt about which tasks may be performed by an Administrative Secretary, the arbitral tribunal or the Administrative Secretary should contact the Secretariat.

## C - Disbursements

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155. The arbitral tribunal may seek reimbursement from the parties of the Administrative Secretary's justified reasonable personal disbursements for hearings and meetings.

## D - Remuneration

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156. With the exception of the Administrative Secretary's reasonable personal disbursements, the engagement of an Administrative Secretary should not pose any additional financial burden on the parties. Accordingly, the arbitral tribunal may not look to the parties for the reimbursement of any costs associated with an Administrative Secretary beyond the scope prescribed in this Note.
157. Any remuneration payable to the Administrative Secretary shall be paid by the arbitral tribunal out of the total funds available for the fees of all arbitrators, such that the fees of the Administrative Secretary will not increase the total costs of the arbitration.
158. In no circumstances should the arbitral tribunal seek from the parties any form of compensation for the Administrative Secretary's activity. Direct arrangements between the arbitral tribunal and the parties on the Administrative Secretary's fees are prohibited. Since the fees of the arbitral tribunal are established on an *ad valorem* basis, any compensation to be paid to the Administrative Secretary is deemed to be included in the arbitral tribunal's fees.

## XVIII - Expenses

### A - How to Submit a Request for Expenses

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159. The Secretariat will reimburse expenses and pay *per diem* allowances only upon receipt of a request in a readily comprehensible form including a cover page listing each payment claimed and the reason for it. Expense reimbursement claims must be supported by original receipts. This is necessary so that the Secretariat can carry out its accounting responsibilities and, from time to time, provide the parties with comprehensive statements of expenses incurred by arbitrators.

## B - When to Submit a Request for Expenses

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160. Arbitrators should submit their requests for the reimbursement of expenses and/or the payment of *per diem* allowances, together with any required supporting documentation as specified below, **as soon as possible after expenses are incurred**. This will help ensure that the advance on costs paid by the parties is adequate to cover the costs of the arbitration.
161. All requests for the reimbursement of expenses and/or the payment of *per diem* allowances relating to any period prior to the submission of the draft final award must be provided at the latest when the draft final award is submitted to the Secretariat. Three-member arbitral tribunals should co-ordinate their submission of requests for reimbursement of expenses and/or payment of *per diem* allowances in order to ensure that they reach the Secretariat no later than the draft final award. Requests for the reimbursement of expenses and/or the payment of *per diem* allowances submitted **after the Court has approved the final award will not be taken into account by the Court when fixing the costs of the arbitration and will not be paid**, save in exceptional circumstances as decided by the Secretary General.
162. In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, all requests for the reimbursement of expenses and/or the payment of *per diem* allowances must be submitted within the time limit granted by the Secretariat. Requests for the reimbursement of expenses and/or the payment of *per diem* allowances submitted after the Court has fixed the costs of arbitration will not be taken into account by the Court and will not be paid.

## C - Travel Expenses

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163. If required to travel for the purpose of an ICC arbitration, an arbitrator will be reimbursed for the actual travel expenses he or she incurs travelling from and returning to his or her usual place of business as indicated on the *curriculum vitae* filed for the relevant ICC arbitration. Travel expenses will be reimbursed in accordance with paragraphs 164 to 166 below.
164. A request for reimbursement of travel expenses must be accompanied by the originals of all receipts claimed or other proper substantiation if receipts are unavailable. Travel expenses that are not fully and comprehensively justified will not be reimbursed.
165. The reimbursement of travel expenses is subject to the following strict limits:
- a. Air travel: an airfare equivalent to the applicable standard business-class airfare.
  - b. Rail travel: the applicable first-class train fare.
  - c. Transport to and from airport(s) and/or train station(s): the applicable standard taxi fare.
  - d. Travel by private car: a flat rate for every kilometre driven, plus all necessary actual parking and toll charges incurred. The flat rate is US\$ 0.80 per kilometre.
166. Except for expenses claimed pursuant to paragraph 165(d) above, travel expenses will, where possible, be reimbursed in the currency in which they were incurred. An arbitrator may alternatively request reimbursement in US dollars provided that the request is accompanied by a statement of the US dollar amount and evidence of the exchange rate (for example, a printout from [www.oanda.com](http://www.oanda.com)). The date for the currency conversion should be the date on which the expense was incurred.

## D - Per Diem Allowance

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167. In addition to travel expenses, an arbitrator will be paid a flat-rate *per diem* allowance in accordance with paragraphs 168 to 171 below for every day of an ICC arbitration that he or she is required to spend outside his or her usual place of business as indicated on the *curriculum vitae* filed for the relevant ICC arbitration. The arbitrator is not required to submit receipts in order to claim the *per diem* allowance, but simply evidence of the travel for purposes of the arbitration.
168. If the arbitrator is not required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 400.
169. If the arbitrator is required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 1 200.
170. The applicable *per diem* allowance is deemed to cover fully all personal living expenses of whatever nature and of whatever actual value (other than travel expenses) incurred by an arbitrator. In particular, the applicable *per diem* allowance is deemed to cover, among other expenses, the total cost of:
- Accommodation (except where paragraph 168 above applies)
  - Meals
  - Laundry/ironing/dry cleaning and other housekeeping or similar services
  - Inner-city transport
  - Telephone calls, faxes, emails and other means of communication
  - Gratuities
171. For the avoidance of doubt, no *per diem* allowance will be paid in respect of time spent by an arbitrator travelling to or from the relevant destination.
172. Since the *per diem* allowance is deemed to cover all personal living expenses incurred by an arbitrator while outside his or her usual place of business on ICC arbitration business, the Secretariat will not reimburse expenses over and above the applicable *per diem* allowance under any circumstances.

## E - General Office Expenses and Courier Charges

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173. General office expenses and overheads incurred in the ordinary course of business by an arbitrator or an arbitral tribunal in connection with an ICC arbitration will not be reimbursed. However, an arbitrator or an arbitral tribunal may request to be reimbursed at cost for any courier, photocopying, fax or telephone charges incurred for the purposes of an ICC arbitration, provided such request is accompanied by detailed receipts.

## F - Advance Payments on Expenses

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174. An arbitrator may request an advance payment of travel expenses and/or the applicable *per diem* allowance in accordance with paragraphs 163 to 172 above. If an advance is granted, the arbitrator must subsequently submit the relevant supporting documentation to the Secretariat, including all receipts and a statement of working days and nights spent outside of his or her usual place of business on ICC arbitration business.



## XIX - Administrative Services

### A - Deposit of Funds other than the Advance on Costs for Arbitration

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175. ICC may offer arbitrators and parties who expressly so request in writing a service allowing funds to be deposited, in the course of an arbitration, into an account administered by ICC for the purpose of paying an advance on VAT due on the arbitrators' fees or an advance to cover fees and expenses of any expert appointed by the arbitral tribunal, or for escrow purposes.
176. When arbitrators and parties avail themselves of this service and ICC consents to provide it, ICC acts as the depository of the funds. ICC receives funds from one or more parties who have been instructed accordingly by an arbitrator (president or member of an arbitral tribunal on behalf of the other tribunal members, or sole arbitrator) and makes the payments from the account at the request of the arbitrator.
177. ICC acts as depository of funds related to:
- a. VAT, taxes, charges and imposts applicable to arbitrators' fees;
  - b. Experts;
  - c. Escrow accounts.
178. This service is available to arbitrators and parties from any country.
179. The deposit accounts are administered solely in US dollars or in Euros.
180. The deposit accounts do not yield interest for the parties or the arbitrators.
181. ***Step 1: Request for a Deposit Account***

Any arbitrator wishing to use this service shall inform the Secretariat in writing and request ICC to act as depository of funds to be paid by one or more parties as an advance on the VAT due on the arbitrators' fees or an advance to cover fees and expenses of any expert appointed by the arbitral tribunal, or for escrow purposes.

The initiative of requesting the opening of a deposit account, calling deposits, and making payments from the amounts deposited lies solely with the arbitrators.

Arbitrators are responsible for ensuring that payments are made in compliance with applicable laws and banking practices.

182. ***Step 2: Estimation of Amounts***

The arbitrator determines the funds to be paid by one or more parties into a deposit account.

If, in the course of an arbitration, the amount of the advance on costs is increased pursuant to a decision of the Court, this step may be repeated. Likewise, if, in the course of the arbitration, the amount of the funds deposited to cover the fees and expenses of any expert or the amount of the funds deposited into an escrow account is increased pursuant to a decision of the arbitral tribunal, this step may be repeated.

**183. *Step 3: Funds to be Deposited***

The arbitrator requests one or more parties to pay the funds and sets a time limit in which to do so.

The Secretariat will provide the party/parties with the relevant banking instructions.

All bank charges must be borne by the party making the payment.

The payment must originate from a party to the arbitration in which the payment has been requested.

**184. *Step 4: Acknowledgement of Payments and Administration***

The Secretariat confirms to the arbitrator and the parties receipt of the amounts paid by the party/parties.

If the arbitrator receives no confirmation from the Secretariat of receipt of payment by the party or parties, it is up to the arbitrator to renew his or her request for payment and to fix a time limit for this purpose.

ICC administers the funds on behalf of the arbitrator.

**185. *Step 5: Payments***

The arbitrator requests ICC to make payments from the funds deposited by the parties.

Payments are made by ICC within the limits of the funds deposited.

**186. *Step 6: Balance of Account***

At the end of the arbitration the Secretariat seeks instructions from the arbitrator with regard to closing the deposit account. On the basis of the information provided by the arbitrator and in accordance with his or her instructions, the Secretariat closes the deposit accounts and returns to the party or parties any amounts remaining from the funds deposited with ICC.

After advising the arbitrator, ICC may close the deposit account if no balance remains. The account will be closed even if a request by the arbitrator for the payment of funds is still outstanding.

**B - Deposits for VAT, Taxes, Charges and Imposts Applicable to Arbitrators' Fees**

187. Amounts paid to an arbitrator do not include any possible value added taxes (VAT) or other taxes or charges and imposts applicable to the arbitrator's fees (Article 2(13) of Appendix III). Parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.

188. Arbitrators subject to VAT and other taxes, charges and imposts (“VAT”) can expressly request in writing their wish to use the service described above allowing them to have the funds corresponding to their estimate of the VAT due on their fees and expenses (hereinafter “Fees”) administered by ICC.
189. This service is totally separate from, and has no effect on, the procedure for paying advances as set out in the Rules. Should the parties fail to pay the VAT on the arbitrators’ fees, this cannot be invoked by the arbitrators before the Court, for instance as a ground for suspending the arbitration.
190. If the president of an arbitral tribunal requests a VAT advance on behalf of all those members of the arbitral tribunal who are subject to VAT, the president shall inform the Secretariat of the breakdown of this advance arbitrator-by-arbitrator.
191. Arbitrators bear sole responsibility for ensuring that the procedure described above complies with the tax laws and regulations applicable to the exercise of their profession as arbitrators, including the payment of their fees. Arbitrators are encouraged to check the basis on which they should calculate the amount of VAT due.
192. ICC acts exclusively as depositary and is not in a position to advise arbitrators on tax law issues.
193. The arbitrator determines the amount of VAT on his or her fees in light of the rules that apply at the place where he or she is taxable.
194. Arbitrators may use the [Cost Calculator](#) on the ICC website to estimate the amount of the fees that may be payable. They are however reminded that the breakdown of fees between the members of the arbitral tribunal (from 40% to 50% for the president, and 25% to 30% for each co-arbitrator) is given merely as a guide and may be changed by the Court.
195. Any invoice issued by an arbitrator to a party for fees and, as the case may be, VAT applicable to those fees should be for the portion of the fees and the amount of tax payable by that party. No invoice should in principle be issued by an arbitrator to ICC, save in special circumstances to be discussed in advance with the Secretariat.
196. When drawing up his or her invoice, the arbitrator requests ICC to pay the amount corresponding to the VAT on the fees due by the party. This applies at the time of the final award, but also in the event that the Court decides to pay an advance on fees to arbitrators who reside in countries where, under local tax law, VAT becomes payable to the tax authorities when fees are paid in advance.

## XX - Assistance with the Conduct of the Arbitration

### A - Conduct of the Arbitration

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197. The Secretariat may provide parties and arbitral tribunals with assistance regarding the conduct of the arbitration. The services the Secretariat may offer include but are not limited to:
  - a. **Deposit of documents:** the Secretariat may in certain circumstances act as depositary of documents.
  - b. **Conference calls:** the Secretariat may assist arbitral tribunals in organising conference calls with the parties and, when required, participate in such calls.

- c. **Administrative secretaries:** the Secretariat may assist arbitral tribunals in identifying administrative secretaries for appointment pursuant to section XVII above.
- d. **Model documents:** the Secretariat may provide arbitral tribunals with model documents related to the conduct of the arbitration, in particular terms of reference and procedural timetables.
- e. **Transparency:** pursuant to paragraph 31 above, the Court may, at the request of parties, publish on its website or otherwise make available to the public information or documents related to an ICC arbitration that is subject to transparency rules or regulations.
- f. **ADR:** the ICC International Centre for ADR provides parties and arbitral tribunals with a number of services relevant to ongoing ICC arbitrations, in particular the proposal and appointment of experts (see section XXII below).
- g. **ICC Commercial Crime Services:** the Secretariat may assist arbitral tribunals and parties in liaising with ICC Commercial Crime Services (for more information visit: [www.icc-ccs.org](http://www.icc-ccs.org)).

## B - Hearings and Meetings

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198. The Secretariat may provide services or assist parties and arbitral tribunals with the organisation of hearings and meetings, in particular:
- a. **ICC Hearing Centre in Paris (France):** the ICC Hearing Centre offers flexible packages and a range of specialised facilities and services for hearings and meetings. Parties and arbitral tribunals may contact the Secretariat for further information or visit the website at [www.icchearingcentre.org](http://www.icchearingcentre.org). By reserving a room at the ICC Hearing Centre for an ICC arbitration, parties and arbitrators accept that their contact details be communicated by the Secretariat to the ICC Hearing Centre for the sole purpose of their booking.
  - b. **Other hearing facilities:** ICC has agreements with other hearing facilities around the globe. Parties and arbitral tribunals may consult the Secretariat for further information.
  - c. **Court reporting:** the Secretariat may also provide parties and arbitral tribunals with information regarding services for hearings such as court reporting and simultaneous interpretation.
  - d. **Visas and other authorisations:** the Secretariat may issue letters to facilitate the obtaining of visas or other authorisations for individuals participating in a hearing or meeting related to an ICC arbitration.
  - e. **Hotels:** ICC negotiates preferential rates with a number of hotels in Paris and other jurisdictions. Parties and arbitral tribunals may consult the Secretariat for further information.

## C - Sealed Offer(s)

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199. The Secretariat may assist the Parties to put information relating to certain unaccepted settlement offers, and related correspondence (commonly referred to as “Sealed Offer(s)”), before an arbitral tribunal. The Secretariat may also assist with any counter-offer(s) made as Sealed Offer(s) by the offeree.
200. The arbitral tribunal should consider consulting the parties at an early stage (e.g. at the first case management conference pursuant to Article 24) and inviting them to agree on a procedure for the possible use of Sealed Offer(s) in the arbitration. Absent initiative by the arbitral tribunal in this respect, any party is free to raise this issue.

201. The Secretariat will keep any such correspondence (referred to in paragraph 199) confidential from the tribunal until all issues of liability and quantum have been resolved.
202. To obtain the Secretariat's assistance, the following procedure should be followed:
- a. At any point after the Secretariat has transmitted the Request for Arbitration to the respondent(s), any party to the arbitration may send to the Secretariat a copy of an offer of settlement previously made to any other party in the arbitration, but not accepted, that is marked "without prejudice save as to costs". The offer should be submitted to the Secretariat in a sealed envelope marked "without prejudice save as to costs". An accompanying letter should request the Secretariat to treat the sealed envelope as confidential and not to transmit it to the tribunal until the tribunal has resolved all issues of liability and quantum and is ready to consider the allocation of costs. The sending party should address such correspondence to the Secretariat and simultaneously copy the original recipient of the offer.
  - b. Following receipt of correspondence pursuant to paragraph (a) above, the Secretariat will inform:
    - (i) the sending party (copying the other party) that the sealed envelope will be held in confidence, and
    - (ii) the original recipient of the offer (copying the other party) of the circumstances in which the sealed envelope may be submitted to the tribunal and solicit any comments.
  - c. Further correspondence arising from the original offer (including, for example, any counter-offers) which is sent by a party to the Secretariat in a sealed envelope marked "without prejudice save as to costs" will be held by the Secretariat on the same basis as the original offer.
  - d. At an appropriate stage in the proceedings, the Secretariat will write to the tribunal to inform it that the Secretariat is holding correspondence exchanged between the parties that is potentially relevant to its determination of costs under Article 38. The Secretariat will request the tribunal to: (i) inform the Secretariat in writing whether it accepts to receive the Sealed Offer(s); and in such case to (ii) inform the Secretariat in writing once it has completed its deliberations on all liability and quantum issues and is ready to apportion costs.
  - e. If the tribunal accepts to receive the Sealed Offer(s), it should refrain from closing the proceedings pursuant to Article 27 to the extent necessary to allow the parties to make further submissions on costs.
  - f. Once the tribunal has informed the Secretariat that it is ready to apportion costs under Article 38, the Secretariat will send to the tribunal all the correspondence marked "without prejudice save as to costs" and held by the Secretariat. Once the tribunal has received this information, it shall open the sealed envelopes and provide copies of any documents contained therein to the parties.
  - g. The tribunal will decide whether any further procedural steps are necessary or whether it can proceed to allocate costs pursuant to Article 38. For the avoidance of doubt, the tribunal retains discretion to decide what weight, if any, should be given to correspondence marked "without prejudice save as to costs" and received from the Secretariat.
  - h. Once the tribunal has completed its deliberations on costs, it will add its decision as to the allocation of costs to the draft final award, which will be submitted to the ICC Court for scrutiny pursuant to Article 34.

## XXI - Post-Award Services

203. In accordance with Article 35, the Secretariat shall assist the parties in complying with whatever formalities that may be necessary. These may include, but are not limited to:

- a. Certified copies of awards, Terms of Reference, correspondence or any other document issued or approved by the Secretariat or the Court;
- b. Notarisation by the ICC notary public in Paris of signatures of members of the Secretariat who certify copies of documents;
- c. Certificates;
- d. Non-certified copies of documents from the case file, limited in size and number;
- e. Letters reminding parties of their obligation to comply with the award.

204. As some post-award services take time and preparation, parties should allow sufficient time when requesting such assistance from the Secretariat.

## XXII - International Centre for ADR

### A - ICC Mediation Rules

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205. Parties are free to settle their dispute amicably prior to or at any time during an arbitration. They may wish to consider conducting an amicable dispute resolution procedure administered by the ICC International Centre for ADR (“Centre”) pursuant to the ICC Mediation Rules, which, in addition to mediation, allow for the use of other amicable settlement procedures. The Centre can also assist the parties in finding a suitable mediator.

206. Where appropriate, arbitrators may wish to remind the parties about the ICC Mediation Rules.

207. Further information is available from the Centre at +33 1 49 53 30 53 or [adr@iccwbo.org](mailto:adr@iccwbo.org) or [www.iccadr.org](http://www.iccadr.org).

### B - ICC Expert Rules

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208. If a party requires the assistance of an expert, the Centre can, upon request, propose experts with a wide range of specialisations. The fee for this service is US\$ 3 000.

209. Likewise, if the assistance of an expert is required by the arbitral tribunal, the Centre can, upon request, propose experts. This service is provided free of charge to arbitrators.

210. Further information is available from the Centre at +33 1 49 53 30 53 or [expertise@iccwbo.org](mailto:expertise@iccwbo.org) or [www.iccexpertise.org](http://www.iccexpertise.org).

## XXIII - Dispatch of Materials to ICC and Customs Charges

211. Materials sent to ICC (correspondence, submissions, binders, tapes, CDs, etc.) must be sent exclusively as “Documentation”. No other description should be indicated on the transportation slip or waybill. Generally, documentation is not subject to customs taxes. Other material may be subject to taxes, which vary according to the origin, content and weight of such material. Customs charges, if any, will increase the costs of arbitration.