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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 2012 ICC Rules of Arbitration (“Rules”) as well as the practices of the International Court of Arbitration of the International Chamber of Commerce (“Court”). For arbitrations conducted pursuant to previous versions of the Rules, please contact the Secretariat of the Court (“Secretariat”).

A - The ICC International Court of Arbitration and its Secretariat

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 nine teams, one of which is based in Hong Kong and one in New York (in affiliation with SICANA), each of which is 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 you will be invited to complete an evaluation form. Your answers will be confidential and will allow us to assess and improve the quality of our services.

B - Communications

5. Pursuant to Article 3(1) of the Rules, 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. There is no need to send hard copies to the Secretariat, even in arbitrations 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

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 offices in Paris, Hong Kong and New York (in affiliation with SICANA) for purposes of Articles 4(1) of the Rules and 5(3) of Appendix II.

B - Representation

9. If the parties foresee being represented by counsel, they must inform the Secretariat and the arbitral tribunal of the name and address of such counsel. The parties must also timely inform the Secretariat and the arbitral tribunal of any changes in their representation.

C - Joinder of Additional Parties

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 of the timing for such joinder, as 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

11. Article 11(4) provides that the Court shall not communicate the reasons for its decisions on the appointment, confirmation, challenge or replacement of an arbitrator. However, upon request of all the parties, 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 all the parties, communicate the reasons for decisions pursuant to Articles 6(4) and 10.
12. The parties may agree to request reasons for the Court's decisions in their arbitration agreement, in the Terms of Reference, or at any other stage of the proceedings. However, 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), the parties are to address their request to the Court when they are invited to comment pursuant to Article 15(3).
13. The Court has full discretion to accept or reject a request for communication of reasons. The Court may subject the communication of reasons to an increase in the administrative expenses, normally not exceeding US\$ 5 000.

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)).

A - Statement of Acceptance, Availability, Impartiality and Independence

15. 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 in particular, **but not limited to**, pay attention to the following circumstances:
 - 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 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

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 the Arbitration

A - Advance on Costs

32. A provisional advance is fixed by the Secretary General upon receipt of the Request for Arbitration (Article 36(1)). It is intended to cover the costs of the arbitration until the Terms of Reference have been drawn up.
33. 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).
34. 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 36 of the Rules and Article 1(4) of Appendix III).
35. The parties will be invited to pay the advance on costs in accordance with paragraphs 2, 3, 4 and 5 of Article 36 of the Rules. The payment must originate from a party to the arbitration in which the payment has been requested. All bank charges must be borne by the party making the payment.
36. The advance on costs may be readjusted by the Court if the development of the arbitration so requires (Article 36(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.
37. 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 - Time Limits under the Rules

38. Rapid and cost-efficient resolution of arbitrations is one of the main priorities of the Court. Arbitrators should devote the time and effort necessary to conduct the arbitration in accordance with the requirements of the Rules. The Rules contain strict time limits, in particular:
 - **Terms of Reference:** must be established within **two months** from the transmission of the file to the arbitral tribunal (Article 23(2)).
 - **Case management conference:** must be convened with the parties when drawing up the Terms of Reference or as soon as possible thereafter (Article 24(1)).
 - **Procedural timetable:** must be established during or immediately following the case management conference and transmitted to the Court and the parties (Article 24(2)).
 - **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).

- **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).
- **Final award:** must be rendered within the time limit fixed by the Court based upon the procedural timetable or, 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 30(1)).

C - Techniques for Controlling Time and Costs

39. 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)).
40. 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.

D - Efficiency in the Submission of Draft Awards to the Court

41. 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 30(1)).
42. While having the power to extend such time limits, the Court will consider the diligence and efficiency, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of submission of draft awards, when fixing arbitrators' fees at the end of the arbitration (Article 2(2) of Appendix III).
43. In this regard, 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).
44. 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.
45. Where the draft award is submitted after the time referred to in paragraph 43 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.

46. In deciding on the above, the Court may also take into account any delays incurred in the submission of one or more partial awards.

E - Closing of the Proceedings and Scrutiny of Awards

47. 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 33).

48. 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.

49. 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.

50. 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.

51. Any draft award submitted to the Court will be scrutinised within three to four weeks of receipt by the Secretariat. 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. 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.

52. 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.

F - ICC Award Checklist

53. 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 33.

G - Arbitral Tribunal's Fees and Administrative Expenses

Advance on Fees

54. 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.

Allocation among Arbitral Tribunal Members

55. 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.

Calculation of Fees

56. Arbitrators' fees in ICC arbitration are calculated on an *ad valorem* basis. Parties and arbitrators are encouraged to consult the [Cost Calculator](#) on the ICC website and the scales contained in Article 4 of Appendix III. 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.
57. Fees are fixed exclusively by the Court. Separate fee arrangements between the parties and arbitrators are not permitted.
58. Advances on costs to cover fees and expenses are normally fixed on the basis of the average fee provided by the scales. The Court may fix or readjust the advance on costs on the basis of a lower or higher amount. 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.
59. 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:
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|----|--|------------------------------------|
| a. | Terms of Reference established | 50% of minimum fee |
| b. | A partial award issued / major hearing | Minimum fee |
| c. | Multiple partial awards | Between 50% of average and average |
| d. | Final award issued | Average fee |

60. 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 IV(D) of the present Note.
61. Pursuant to Article 2 of Appendix III, when fixing the arbitrators' fees the Court may take into consideration, among other criteria, the time spent by arbitrators and the complexity of the dispute. To this end, the Secretariat will 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 are encouraged to use the ICC form for statements of time and travel, 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.

Replacement

62. 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.

Administrative Expenses

63. ICC administrative expenses are calculated on an *ad valorem* basis. Parties and arbitrators are encouraged to consult the [Cost Calculator](#) on the ICC website and the scales contained in Article 4 of Appendix III. 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.
64. 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. | Terms of Reference established | 50% |
| c. | Partial award(s) or other major procedural milestones completed | 75% |
| d. | Final award | 100% |
65. 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 II(D) of the present Note, or additional advances to cover Article 35 applications.

Declaration to French Tax Authorities

66. 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.

H - Decisions as to the Costs of the Arbitration

67. 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 37(3)).
68. 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 37(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.
69. 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 37(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.

I - Signature of Terms of Reference and Awards

70. 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 of the Rules by email or any other means of telecommunication that provides a record of the sending thereof.
71. 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.
72. 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.
73. 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 34 of the Rules.

J - Notification of Awards, *Addenda* and Decisions

74. The Secretariat will notify to the parties an original of the awards, *addenda* and decisions (Article 34(1)).
75. 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.

K - International Sanctions Regulations

76. 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](#).

V - Administrative Secretaries

Appointment, Duties and Remuneration of Administrative Secretaries

77. The Rules are silent as to the appointment, duties and remuneration of arbitral tribunal administrative secretaries or other assistants (“Administrative Secretaries”). This Note sets out the policy and practice of the Court and its Secretariat regarding the engagement of Administrative Secretaries by arbitral tribunals. It applies with respect to any Administrative Secretary appointed on or after 1 August 2012.

Appointment

78. 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.
79. 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.
80. 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.
81. 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.
82. 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.

Duties

83. 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.
84. 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.
85. 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.
86. 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.
87. 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.
88. When in doubt about which tasks may be performed by an Administrative Secretary, the arbitral tribunal or the Administrative Secretary should contact the Secretariat.

Disbursements

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

Remuneration

90. 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.
91. 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.
92. 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.

VI - Expenses

Personal and Arbitral Tribunal Expenses

How to Submit a Request for Expenses

93. 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.

When to Submit a Request for Expenses

94. 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.
95. 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.
96. 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.

Travel Expenses

97. 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 98 to 100 below.
98. 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.
99. 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.

100. Except for expenses claimed pursuant to paragraph 99(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). The date for the currency conversion should be the date on which the expense was incurred.

Per Diem Allowance

101. In addition to travel expenses, an arbitrator will be paid a flat-rate *per diem* allowance in accordance with paragraphs 102 to 105 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.

102. If the arbitrator is not required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 400.

103. If the arbitrator is required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 1 200.

104. 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 102 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

105. 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.

106. 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.

General Office Expenses and Courier Charges

107. 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.

Advance Payments on Expenses

108. An arbitrator may request an advance payment of travel expenses and/or the applicable *per diem* allowance in accordance with paragraphs 97 to 106 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.

VII - Administrative Services

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

ICC as Depositary

109. 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.
110. When arbitrators and parties avail themselves of this service and ICC consents to provide it, ICC acts as the depositary 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.
111. ICC acts as depositary of funds related to:
- a. VAT, taxes, charges and imposts applicable to arbitrators' fees;
 - b. Experts;
 - c. Escrow accounts.
112. This service is available to arbitrators and parties from any country.
113. The deposit accounts are administered solely in US dollars or in Euros.
114. The deposit accounts do not yield interest for the parties or the arbitrators.

Procedure

115. 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 depositary 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.

116. **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.

117. **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.

118. **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.

119. **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.

120. **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.

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

121. 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.
122. 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.
123. 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.
124. 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.
125. 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.
126. ICC acts exclusively as depositary and is not in a position to advise arbitrators on tax law issues.
127. 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.
128. 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.
129. 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.
130. 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.

B - Assistance with the Conduct of the Arbitration

Conduct of the Arbitration

131. 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 act as depositary of documents such as settlement or sealed offers or similar (see paragraph 97 of the ICC Commission Report [Decisions on Costs in International Arbitration](#), available on the ICC website).
 - 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 V 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 VIII 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).

Hearings and Meetings

132. 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. 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.

Post-Award Services

133. In accordance with Article 34 of the Rules, 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.
134. As some post-award services take time and preparation, parties should allow sufficient time when requesting such assistance from the Secretariat.

VIII - ICC International Centre for ADR

A - ICC Mediation Rules

135. 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.
136. Where appropriate, arbitrators may wish to remind the parties about the ICC Mediation Rules.
137. Further information is available from the Centre at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

B - ICC Expert Rules

138. 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.
139. 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.
140. Further information is available from the Centre at +33 1 49 53 30 53 or expertise@iccwbo.org or www.iccexpertise.org.

IX - Dispatch of Materials to ICC and Customs Charges

141. 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.