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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 for 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. 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. To the extent possible, the Secretariat should be provided with any other written documents in electronic form only, even in arbitrations where the arbitral tribunal also requests 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 relevant 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 a prospective arbitrator or 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. A prospective arbitrator or 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 prospective arbitrator or 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, a prospective arbitrator or arbitrator should in particular, **but not limited to**, pay attention to the following circumstances:
 - The prospective arbitrator or 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 prospective arbitrator or arbitrator or his or her law firm acts or has acted against one of the parties or one of its affiliates.
 - The prospective arbitrator or 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 prospective arbitrator or 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 prospective arbitrator or 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 prospective arbitrator or arbitrator has a professional or close personal relationship with counsel to one of the parties or the counsel's law firm.
 - The prospective arbitrator or arbitrator acts or has acted as arbitrator in a case involving one of the parties or one of its affiliates.
 - The prospective arbitrator or arbitrator acts or has acted as arbitrator in a related case.
 - The prospective arbitrator or 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 necessary time 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 prospective arbitrator or arbitrator to comment on such objections.

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 its website, for arbitrations registered as from 1st 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 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 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 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.

F - ICC Award Checklist

49. 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

50. The arbitral tribunal is encouraged to consult the [Cost Calculator](#) on the ICC website. Fees are fixed exclusively by the Court. Separate fee arrangements between the parties and arbitrators are not permitted.
51. The Court fixes arbitrators' fees at the end of the arbitration, although advances on fees may be granted upon completion of concrete steps in the arbitration.
52. When there is a three-member arbitral tribunal, arbitrators should consider the time spent and the work done by each arbitrator and inform the Secretariat of their opinion on a fair and appropriate allocation of the fees for each arbitrator. Unless we are advised in writing that the arbitral tribunal has agreed to a different allocation, the Court normally fixes the arbitrators' fees so that the president receives 40% of the total fees and each co-arbitrator receives 30%. 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.

53. When fixing the arbitral tribunal's fees in arbitrations where an arbitrator has been replaced, the Court generally deducts the fees of the previous arbitrator from the fees of his or her successor.
54. 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

55. 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)).
56. 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.
57. 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 - Originals of Terms of Reference and Awards

58. An original of the Terms of Reference signed by the parties and the arbitral tribunal must be provided to each party, each member of the arbitral tribunal and the Secretariat. The arbitral tribunal must verify with the parties the number of originals they need. When the Terms of Reference are submitted to the Court for approval (Article 23(3)), the arbitral tribunal must prepare the necessary number of originals as may be requested by the Secretariat (at least one for each party, each member of the arbitral tribunal and the Secretariat).
59. Similarly, 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, and which should be the date on which the last arbitrator signed.
60. 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.

J - Notification of Awards, *Addenda* and Decisions

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

62. 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.

V - Administrative Secretaries

Appointment, Duties and Remuneration of Administrative Secretaries

63. 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

64. 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.
65. 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.
66. 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.
67. 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.
68. 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

69. 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.
70. 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.
71. 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.
 72. 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.
 73. 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.
 74. 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

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

Remuneration

76. 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.
77. 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.
78. 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

79. 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

80. 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.
81. 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.
82. 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 date the Court fixes the costs of arbitration will not be taken into account by the Court and will not be paid.

Travel expenses

83. 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 84 to 86 below.
84. 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.
85. 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.
86. Except for expenses claimed pursuant to paragraph 85(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

print out from www.oanda.com). The date for the currency conversion should be the date on which the expense was incurred.

Per diem allowance

87. In addition to travel expenses, an arbitrator will be paid a flat-rate per diem allowance in accordance with paragraphs 88 to 91 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.
88. If the arbitrator is not required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 400.
89. If the arbitrator is required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 1 200.
90. 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 88 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
91. 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.
92. 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

93. 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

94. An arbitrator may request an advance payment of travel expenses and/or the applicable *per diem* allowance in accordance with paragraphs 83 to 92 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 - VAT

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

95. 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.
96. ICC nonetheless offers arbitrators subject to VAT and other taxes, charges and imposts (hereinafter "VAT"), who expressly request in writing, a service allowing them to have the funds corresponding to their estimate of the VAT due on their fees and expenses (hereinafter "fees") administered by ICC.
97. 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 arbitral proceedings.
98. Any arbitrator subject to VAT may take advantage of this service. ICC acts as the "depository" of the funds, receives funds from parties who have been instructed to this effect by an arbitrator, and makes the payments corresponding to the VAT at the arbitrator's request.
99. The initiative of requesting that a VAT account be opened, of calling advances for the payment of VAT on fees ("VAT advance") and paying arbitrators on the basis of the amounts deposited lies solely with the arbitrators.
100. This service is available to arbitrators from any country.
101. The VAT advance is only administered in US dollars and does not yield interest for the parties or the arbitrators.
102. It is the arbitrators' sole responsibility to ensure that the procedure described below complies with the tax law provisions 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.
103. ICC acts exclusively as depository and is not in a position to advise the arbitrators on any tax law.

Procedure

104. ***Step 1: Request for VAT account***

Any arbitrator wishing to use this service shall inform the Secretariat in writing and request ICC to act as depository for the sums paid by the parties as an advance on the VAT due on the arbitrators' fees.

105. **Step 2: Estimation of amounts**

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.

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 proportions in which the total amount of the fees is divided between the members of the arbitral tribunal (40% for the president, 30% for each co-arbitrator) are given merely as a guide and may be changed by the Court.

If, in the course of an arbitration, the amount of the advance is increased pursuant to a decision of the Court, this step may be repeated.

106. **Step 3: Disclosure of the estimated amounts of VAT**

The arbitrator fixes a time limit in this respect and requests the parties to:

- pay the VAT advance in US dollars
- bear any banking charges associated with the payment
- use the following banking instructions:

Beneficiary (<i>Account holder</i>):	International Chamber of Commerce 33-43 avenue du Président Wilson 75116 Paris France
Bank of Beneficiary:	NATIXIS 30 Avenue Pierre Mendes France 75013 Paris France
SWIFT/BIC code:	NATXFRPP
IBAN:	FR 76 3000 7999 9927 8288 3000 109
Reference of the arbitration:	*****/***/VAT Arbitrators Claimant(s)/Respondent(s)

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

The arbitrator must also inform the Secretariat of the substance of this request.

If the president calls for a VAT advance on behalf of the members of the arbitral tribunal subject to VAT, he or she shall inform the Secretariat of the breakdown of this advance arbitrator-by-arbitrator.

107. **Step 4: Acknowledgement of payments and administration**

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

In the absence of communication to the arbitrator by the Secretariat of any receipt of payments on the advance on VAT made by the parties, it is up to the arbitrator to renew his or her request to the parties and to fix a time limit in this respect.

ICC administers the VAT advance on behalf of the arbitrator.

108. **Step 5: Payments to the arbitrator**

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 parties. 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.

Payments are made to the arbitrators by ICC on behalf of the parties and within the limits of the VAT advances already provided.

109. **Step 6: Balance of account**

At the end of the arbitration proceedings the Secretariat seeks instructions from the arbitrator for closing the VAT account. On the basis of the information provided by the arbitrator and in accordance with his or her instructions, the Secretariat closes the VAT account and returns to the parties any amounts remaining from the VAT advance deposited with ICC.

After advising the arbitrator, ICC may close the account if no balance remains. The account will be closed even if the parties have not paid any additional VAT advance requested by the arbitrator.

VIII - ICC International Centre for ADR

A - ICC Mediation Rules

110. 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 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.
111. Where appropriate, arbitrators may wish to remind the parties about the ICC Mediation Rules.
112. 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

113. 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.
114. 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.
115. Further information is available from the Centre at +33 1 49 53 30 53 or expertise@iccwbo.org or www.iccexpertise.org.

IX - Miscellaneous

A - Dispatch of Materials to the ICC and Customs Charges

116. 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 tax. Other material may be subject to tax, which varies according to the origin, content and weight of such material. Customs charges, if any, will increase the costs of arbitration.

B - Post-Arbitration Services

117. Disbursements in connection with services requested after this arbitration is closed may be charged to the requesting party.

C - ICC Hearing Centre

118. The ICC Hearing Centre in Paris (France) is an integral part of ICC Services, a wholly-owned affiliate of ICC. The ICC Hearing Centre offers flexible packages and a range of specialised facilities and services for hearings and meetings. Further information is available on our website at www.icchearingcentre.org.
119. 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.