

1 January 2021

# 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

1. This Note is intended to provide parties and arbitral tribunals with practical guidance concerning the conduct of arbitrations under the ICC Rules of Arbitration (“Rules”) as well as the practices of the International Court of Arbitration of the International Chamber of Commerce (“Court”).
2. Unless otherwise indicated, this Note applies to all ICC arbitrations regardless of the version of the Rules pursuant to which they are conducted. The Articles in this Note refer to the 2021 Rules.

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

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3. The Court is an administrative body that ensures that ICC arbitrations are conducted in accordance with the Rules. It does not itself resolve disputes (Article 1(2)).
4. The Court is assisted by its Secretariat (Article 1(5)). The Secretariat is led by the Secretary General, the Deputy Secretary General and the Managing Counsel. It is composed of case management teams, each headed by a Counsel.
5. The Secretariat closely monitors each arbitration and assists parties and arbitral tribunals with any questions relating to the conduct of the arbitration. The parties and/or their representatives are encouraged to contact the Secretariat with any questions or comments arising from the Rules and/or this Note.
6. At the end of each arbitration, the parties, their counsel or other representatives (“counsel”) and the arbitrators will be invited to submit an evaluation form to the Secretariat.

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

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7. ICC arbitration is commenced upon the Secretariat’s receipt of a Request for Arbitration. Requests for Arbitration may be submitted by email [at this address](#) or at any of the Secretariat’s offices in hard copies (Articles 4(1) of the Rules and 5(3) of Appendix II). Updated information on the list of the Secretariat’s offices where Requests for Arbitration may be submitted is maintained [here](#).
8. Upon receipt of the Request for Arbitration, the Secretary General will assign the case to one of the Secretariat’s case management teams in any of the Secretariat’s offices. The case file may be transferred to an office of the Secretariat other than the office in which the Request for Arbitration was filed.

### C - Communications

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9. Pursuant to Article 3(1), parties and arbitrators must send copies of all written communications directly to all other parties, arbitrators and the Secretariat.
10. As a general rule, 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 by email. Hard copies should be submitted only where the party filing the Request, Answer and any counterclaim or any Request for Joinder requests transmission thereof by delivery against receipt, registered post or courier. In all other instances, hard copies should not be sent to the Secretariat, even when the arbitral tribunal has asked to be provided with hard copies.

11. The Secretariat will communicate via email, unless circumstances warrant other means of communication. The parties, counsel and prospective arbitrators must provide the Secretariat with their email addresses.

## **II - Parties**

### **A - Representation**

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12. Parties must inform the Secretariat and the arbitral tribunal of the name(s) and contact details of their representative(s). Parties must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in their representation.
13. Once the arbitral tribunal has been constituted, the parties should refrain from introducing a new representative if a relationship exists between that representative and one or more of the arbitrators that affects the arbitrator's independence and impartiality.
14. Pursuant to Article 17(2), the arbitral tribunal may, after affording an opportunity to the parties to comment in writing within a suitable period of time, take any measure necessary to safeguard the integrity of the arbitration, including, but not limited to, excluding the newly introduced party representative from the proceedings.
15. In deciding whether to exclude a newly introduced party representative from the proceedings, the arbitral tribunal shall carefully consider all relevant circumstances with the aim of safeguarding the integrity of the arbitration, such as (a) the ability of the party that has introduced the new representative to properly submit its case in the absence of that representative, (b) the timing of the addition of such newly introduced party representative, and (c) the disruption to the arbitration that may result from its continuing participation in case of a successful challenge against one or more of the arbitrators.

### **B - Joinder of Additional Parties**

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16. A party wishing to join an additional party shall submit a request for joinder to the Secretariat ("Request for Joinder"). Requests for Joinder are made in the same manner as a Request for Arbitration. Upon being joined, the additional party becomes a party to the arbitration and may raise pleas pursuant to Article 6(3).
17. After the confirmation or appointment of any arbitrator, an additional party may be joined if (i) all parties, including the additional party, so agree (Article 7(1)); or (ii) the arbitral tribunal, once constituted, so decides, provided the additional party accepts the constitution of the arbitral tribunal and agrees to the Terms of Reference, where applicable (Article 7(5)).
18. In deciding on a Request for Joinder under Article 7(5), the arbitral tribunal shall consider all relevant circumstances, such as whether the arbitral tribunal has prima facie jurisdiction over the additional party, the timing of the request, possible conflicts of interest that may arise from the joinder, and the impact of the joinder on the efficient conduct of the arbitration. Any decision to join a consenting additional party is without prejudice to the arbitral tribunal's decision on its jurisdiction regarding that party, in case such jurisdiction is contested.

## C - Consolidation

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19. Article 10 contemplates three possible scenarios in which the Court may, at the request of a party, consolidate two or more pending arbitrations:
- a. when all parties agree to the consolidation (Article 10(a));
  - b. when all claims are based on the same arbitration agreement or arbitration agreements, even if the parties in the pending arbitrations are not the same (Article 10(b)). While previous versions of the Rules limited the possibility of consolidation in the presence of different parties to situations where all claims are made under the same arbitration agreement, the 2021 amendment allows consolidations when all claims are brought under the same arbitration agreement or agreements. For example: parties A, B, C and D are parties to a Share Purchase Agreement (SPA) and a Shareholders Agreement (SHA). Parties A and D are parties to arbitration 1, while parties B and C are parties to arbitration 2. In such a scenario, consolidation of arbitrations 1 and 2 may be possible; or
  - c. the parties in the pending arbitrations are the same and the claims are made under different arbitration agreements (Article 10(c)). For example: arbitration 1 is between parties A and B with claims under an SPA arbitration agreement, and arbitration 2 is between the same parties with claims under a SHA arbitration agreement. In that scenario, consolidation may be possible if the disputes in the arbitrations arise from the same legal relationship and the Court finds these arbitration agreements to be compatible.

## D - Third Party Funding

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20. To assist arbitrators and prospective arbitrators in complying with their duty of disclosure (see section III(A)), each party must, pursuant to Article 11(7), promptly inform the Secretariat, the arbitral tribunal and the other parties of the existence and identity of any non-party that has entered into an arrangement for the funding of claims and defences and under which that non-party has an economic interest in the outcome of the arbitration. For example, the non-party is entitled to receive all or part of the proceeds of the award.
21. Subject to any different determination that may be made by the arbitral tribunal in the circumstances of any given case, Article 11(7) would normally not capture (i) inter-company funding within a group of companies, (ii) fee arrangements between a party and its counsel, or (iii) an indirect interest, such as that of a bank having granted a loan to the party in the ordinary course of its ongoing activities rather than specifically for the funding of the arbitration.

## III - Arbitral Tribunal

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

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22. All arbitrators, including emergency arbitrators, have the duty to act at all times in an impartial and independent manner (Articles 11 and 22(4)).
23. The Court requires all prospective arbitrators to complete and sign a Statement of Acceptance, Availability, Impartiality and Independence (“Statement”) (Article 11(2)).

24. The parties have a legitimate interest in being fully informed of all facts or circumstances that may be relevant in their view to be satisfied that an arbitrator or prospective arbitrator is and remains independent and impartial or, if the parties so wish, to explore the matter further and/or take the initiatives contemplated by the Rules.
25. An arbitrator or prospective arbitrator must 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.
26. 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.
27. Each arbitrator or prospective arbitrator must assess what circumstances, if any, are such as to call into question his or her independence in the eyes of the parties or give rise to reasonable doubts as to his or her impartiality. In making such assessment, an arbitrator or prospective arbitrator should consider all potentially relevant circumstances, including **but not limited to** the following:
  - The arbitrator or prospective arbitrator or his or her law firm represents or advises, or has represented or advised, one of the parties or one of its affiliates.
  - The arbitrator or prospective arbitrator or his or her law firm acts or has acted against one of the parties or one of its affiliates.
  - The arbitrator or prospective arbitrator or his or her law firm has a business relationship with one of the parties or one of its affiliates, or a personal interest of any nature in the outcome of the dispute.
  - The arbitrator or prospective arbitrator or his or her law firm acts or has acted on behalf of one of the parties or one of its affiliates as director, board member, officer, or otherwise.
  - The arbitrator or prospective arbitrator or his or her law firm is or has been involved in the dispute, or has expressed a view on the dispute in a manner that might affect his or her impartiality.
  - The arbitrator or prospective arbitrator has a professional or close personal relationship with counsel to one of the parties or the counsel's law firm.
  - The arbitrator or prospective arbitrator acts or has acted as arbitrator in a case involving one of the parties or one of its affiliates.
  - The arbitrator or prospective arbitrator acts or has acted as arbitrator in a related case.
  - The arbitrator or prospective arbitrator has in the past been appointed as arbitrator by one of the parties or one of its affiliates, or by counsel to one of the parties or the counsel's law firm.

In assessing whether a disclosure should be made, an arbitrator or prospective arbitrator should consider relationships with non-parties having an interest in the outcome of the arbitration, such as third-party funders as well as relationships with other members of the arbitral tribunal, as well as experts or witnesses in the case.

28. To assist prospective arbitrators, the Secretariat endeavours to identify, at the outset of the case, entities and individuals in the arbitration that may be relevant for purposes of disclosure. Such an indication does not release an arbitrator or prospective arbitrator from his or her duty to disclose with respect to other relevant entities and individuals he or she may be aware of. In case of doubt with respect to such an indication made by the Secretariat, an arbitrator or prospective arbitrator is encouraged to consult the Secretariat.
29. The duty to disclose is of an ongoing nature and therefore applies throughout the duration of the arbitration.
30. 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, such advance declaration or waiver does not discharge an arbitrator from his or her ongoing duty to disclose.
31. 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.
32. For the scope of disclosures, an arbitrator is considered to bear the identity of his or her law firm, and a legal entity includes 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. In each case, arbitrators should consider disclosing relationships with another arbitrator or counsel who is a member of the same barristers' chambers. Arbitrators should also consider disclosing 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.
33. Arbitrators have a duty to devote to the arbitration the time necessary to conduct the proceedings as diligently, efficiently and expeditiously as possible. Accordingly, prospective arbitrators must indicate in the Statement the number of arbitrations in which they are currently acting, specifying whether they are acting as president, sole arbitrator, co-arbitrator or counsel to a party, as well as any other commitments and their availability over the next 24 months.
34. 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.
35. Arbitrators are encouraged to ensure that they have appropriate insurance to cover their liability. In assessing whether they should seek insurance, arbitrators may want to consider the circumstances of the case, including the amount in dispute, the currencies used, the nationalities and locations of the parties, the place of arbitration and the location of hearings.
36. By signing the Statement, prospective arbitrators acknowledge that their name and contact details, as well as their *curriculum vitae*, may be communicated to the members of the Court, the Secretariat at its various offices, and to ICC National Committees and Groups to perform the functions assigned to them under the Rules. By signing the Statement, prospective arbitrators also acknowledge that their names and related information, as well as their award(s), procedural order(s) and dissenting or concurring opinion(s) may be published pursuant to sections IV(B) and (C), to (a) further the legitimate interests of the parties, arbitrators and the public in accessing transparent information about ICC arbitration; (b) assist them in their decision making and in pursuing their legitimate interests; (c) safeguard the parties' fundamental procedural rights through arbitration and (d) ensure the rendering of high



quality awards. The prospective arbitrator may object to the publication if his/her interests and fundamental rights override such legitimate interests.

## **B - Assistance by the Secretariat with the Nomination or Appointment of Arbitrators**

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37. Parties nominating a sole arbitrator or a presiding arbitrator for confirmation by the Secretary General or the Court, and co-arbitrators nominating a presiding arbitrator, may jointly seek the Secretariat's assistance by requesting that the Secretariat either propose names of possible candidates or provide non-confidential information on prospective arbitrators. Upon joint request of the parties, the Secretariat may also contact prospective arbitrators in order to check their experience, availability and possible conflicts of interests.
38. The parties may agree that the Court's appointment of a sole arbitrator or a presiding arbitrator will occur in consultation between the parties and the Secretariat. In particular, the parties may agree that any such appointment will occur following a list procedure, whereby the Secretariat will establish a list of candidates and submit it to the parties (for example by allowing the parties to strike a limited number of candidates and rank the others by order of preference) before proceeding with the appointment.

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

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39. Arbitral tribunals are constituted under the Rules in accordance with the parties' agreement, as recorded in the arbitration agreement or subsequently.
40. Where the parties have not agreed upon the number of arbitrators, the Court will in general appoint a sole arbitrator, save where it appears that the complexity of the dispute or the interests at stake warrant the appointment of three arbitrators. Without prejudice to other relevant circumstances that may lead to the constitution of a three-member arbitral tribunal, the Court will normally decide in favour of a sole arbitrator where the amount in dispute is less than US\$ 10,000,000 and in favour of three arbitrators where the amount in dispute exceeds US\$ 30,000,000.
41. Article 12(6) addresses the constitution of three-member arbitral tribunals in multiparty arbitrations and requires the multiple claimants, jointly, and multiple respondents, jointly, to nominate an arbitrator. Article 12(7) provides that an additional party may jointly nominate an arbitrator with the claimant(s) or respondent(s).
42. In the absence of the aforementioned joint nomination, the Court may appoint an arbitrator on behalf of the parties that failed to jointly nominate pursuant to Article 12(4). Alternatively, the Court may appoint each member of the arbitral tribunal and designate one of them to act as president pursuant to Article 12(8), unless the parties agree to a method for the constitution of the arbitral tribunal. Where it appears that the interests of multiple parties that failed to nominate jointly may not be aligned, the Court applies Article 12(8) with the aim of ensuring that all parties are treated equally in the process for the constitution of the arbitral tribunal.
43. Article 12(9) provides that, in exceptional circumstances, the Court may appoint each member of the arbitral tribunal, notwithstanding any agreement by the parties on the method for constituting the arbitral tribunal, when the provisions of the arbitration agreement are unconscionable and applying them would result in a significant risk of unequal treatment and unfairness that may affect the validity of the award. For example, the Court may apply Article 12(9) when the arbitration agreement provides that one of the parties will have the right to constitute the arbitral tribunal unilaterally, and such unilateral right is not admitted by the law at the place of the arbitration.



44. Pursuant to Article 13(5), when the Court appoints the sole arbitrator or the president of the arbitral tribunal, that arbitrator must be a nationality other than those of the parties. That rule seeks to ensure that the presiding arbitrator or the sole arbitrator is fully neutral and equidistant from the parties, while acknowledging the right of the parties to nominate co-arbitrators sharing their nationality. Where all parties share the same nationality, however, the Court may appoint a presiding arbitrator or a sole arbitrator having the same nationality of the parties, provided that none of the parties objects. That possibility will normally not be used in a context where the parties are the same nationality but the dispute is international in nature (e.g. one of the parties is a Special Purpose Vehicle (SPV) or the local subsidiary of an international group).
45. Article 13(6) acknowledges the specific nature of treaty-based arbitration, where the arbitral tribunal has to apply international law and may have to assess the legitimacy of public policies, regulation and legislation taken in the interest of the public. In such a context, none of the arbitrators may have the same nationality as any party to the arbitration, unless the parties agree otherwise.

## IV - Transparency

### A - Communication of Reasons for the Court's Decisions

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46. Pursuant to Article 5 of Appendix II, upon request of any party, the Court will communicate the reasons for a decision on (i) *prima facie* jurisdiction (Article 6(4)); (ii) consolidation (Article 10); (iii) Article 12(8); (iv) Article 12(9); (v) the challenge of an arbitrator pursuant to Article 14; (vi) whether to replace an arbitrator pursuant to Article 15(2).
47. In exceptional circumstances, however, the Court may decide not to communicate the reasons for any of these decisions.
48. For arbitrations conducted under the Rules in effect prior to the entry into force of the 2017 Rules, a request for communication of reasons must be made by all parties.
49. Any request for the communication of reasons must be made in advance of the decision in respect of which reasons are sought. Such request may be made when the Secretariat invites parties to comment ahead of the Court's decision.

### B - Publication of Information Regarding Arbitral Tribunals, Industry Sector and Law Firms Involved

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50. Increasing the information available to parties, the business community at large and academia is key to ensuring that arbitration remains a trusted tool to facilitate trade. Transparency provides greater confidence in the arbitration process, and helps protect arbitration against inaccurate or ill-informed criticism. The Court therefore endeavours to make the arbitration process more transparent without compromising the parties' expectations, if any, of confidentiality.
51. Consistent with that policy and unless otherwise agreed by the parties, the Court publishes on the ICC website, for arbitrations registered as of 1 January 2016, the following information: (i) the names of the arbitrators, (ii) their nationality, (iii) their role within an arbitral 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.

52. For arbitrations registered as of 1 January 2020, the Court publishes on the ICC website the following additional information: (vi) the industry sector involved, (vii) law firms representing the parties in the case. For arbitrations registered as of 1 January 2021, the Court will also, as of 1 July 2021, publish the names of administrative secretaries.
53. This information is published once the Terms of Reference have been transmitted to, or approved by, the Court (or after the case management conference in expedited proceedings) and updated in the event of a change in the arbitral tribunal's composition or party representation (without however mentioning the reason for the change).
54. This information remains on the ICC website after the closure of the arbitration unless the concerned individual requests erasure in accordance with applicable data protection laws and regulations.
55. The parties may jointly request the Court to publish additional information about a particular arbitration in which they are involved.

### **C - Publication of Awards, Procedural Orders, Dissenting and/or Concurring Opinions**

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56. Publicising and disseminating information about arbitration has been one of ICC's commitments since its creation and an instrumental factor in facilitating the development of trade worldwide.
57. ICC awards and/or orders, as well as any dissenting and/or concurring opinions made as of 1 January 2019 ("ICC awards and related documents"), may be published according to the following provisions.
58. The Secretariat will inform the parties and arbitrators, during the proceedings and at the time of notification of any final award made as of 1 January 2019, that the final award, as well as any other awards and/or orders, as well as dissenting and/or concurring opinions made in the case, may be published in their entirety, including the names of the parties and of the arbitrators, no less than two years after the date of said notification. The parties may agree to a longer or shorter time period for publication. Prior to publication, the Secretariat will send the documents to be published to the parties and/or their representatives for their information by using the contact details indicated in the award or any other contact details subsequently provided.
59. At any time before publication, any party may object to publication or require that any award and related documents be in all or part anonymised (removal of names and any contextual data that may lead to identification of individuals, parties or disputes) or pseudonymised (replacement of any name by one or more artificial identifiers or pseudonyms), in which case they will not be published or will be anonymised or pseudonymised. If a party requires anonymisation or pseudonymisation, it will be upon the parties to agree on the redactions or accept the redactions proposed by the Secretariat. ICC endeavours its best efforts to ensure the non-identification of parties by publishing anonymised excerpts. At any time, any individual or entity may also convey to the Secretariat that it does not wish, as a general policy, any ICC award and related documents to which it is a party to be published, in which case none of these awards or decisions will be published. However, ICC cannot be aware of all publicly available data, and possible results of combined information from various sources that may lead to potential identification of the case or the dispute.

60. In case of a confidentiality agreement, order or explicit provisions under the law of the place of arbitration covering certain aspects of the arbitration or of the award, publication will be subject to the parties' specific consent.
61. The Secretariat may anonymise or pseudonymise personal data included in the award and/or orders, dissenting and/or concurring opinions as necessary pursuant to the applicable data protection laws and regulations. Arbitral tribunals will be encouraged to include in their award a list of the names of relevant individuals or entities involved in the case.
62. The Secretariat may, in its discretion, exempt ICC awards and related documents from publication.
63. Parties and/or their representatives should consider the relevant applicable laws and establish whether any legal requirements or limitations may prevent the publication of ICC awards and related documents and inform the arbitral tribunal and the Secretariat accordingly. Any information in this regard available to the Secretariat will be communicated to the parties and the arbitral tribunal.
64. Non-confidential ICC awards and related documents may be consulted for research purposes (Articles 1(5) and 1(6) of Appendix II) and selected extracts thereof may be published in anonymised form, no less than two years after the closing of the case.

## V - Conduct of Participants in the Arbitration

65. Arbitral tribunals, parties and their representatives are expected to abide by the highest standards of integrity and honesty, to conduct themselves with honour, courtesy and professionalism, and to encourage all other participants in the arbitral proceedings to do the same.
66. Arbitrators shall discharge their duties in accordance with the Rules, be at all times independent and impartial, avoid any behaviour that may create a conflict of interest, a bias or an appearance of bias, and not allow any consideration that is extraneous to the case to influence their decisions.
67. Parties and arbitral tribunals are encouraged, where appropriate, to adopt or otherwise be guided by the IBA Guidelines on Party Representation in International Arbitration.
68. An arbitrator or prospective arbitrator shall not engage in *ex parte* communications with a party or party representative concerning the arbitration. However:
  - a. A prospective arbitrator may communicate with a party or party representative on an *ex parte* basis to determine his or her expertise, experience, skills, availability, acceptance and the existence of potential conflicts of interest.
  - b. To the extent that the parties so agree, arbitrators may communicate with parties or party representatives on an *ex parte* basis for the purpose of the selection of the president of the arbitral tribunal.
  - c. In all such *ex parte* communications, an arbitrator or prospective arbitrator shall refrain from expressing any views on the substance of the dispute.

## VI - Emergency Arbitrator

69. Pursuant to Article 29 and Appendix V (“Emergency Arbitrator Provisions”), a party that needs urgent interim or conservatory measures (“Emergency Measures”) which cannot await the constitution of an arbitral tribunal may make an application to the Secretariat.
70. The Emergency Arbitrator Provisions apply only to parties that are signatories to the arbitration agreement that is relied upon for the application or successors to such signatories.
71. The Emergency Arbitrator Provisions do not apply if:
  - a. the arbitration agreement under the Rules was concluded before 1 January 2012;
  - b. the parties have opted out of the Emergency Arbitrator Provisions; or
  - c. the arbitration agreement upon which the arbitration is based arises from a treaty.
72. Parties may agree that the Emergency Arbitrator Provisions apply to arbitration agreements concluded before 1 January 2012.
73. Parties who wish to file an Application for Emergency Measures (“Application”) should inform the Secretariat as soon as possible and preferably before submitting the Application. If the Application precedes the Request for Arbitration, parties should send an email to: [emergencyarbitrator@iccwbo.org](mailto:emergencyarbitrator@iccwbo.org). If the Application relates to an ongoing arbitration, parties shall contact the ICC case management team to which the arbitration has been assigned.
74. Upon receipt of the Application, the President of the Court will consider whether the Emergency Arbitrator Provisions apply. If the President of the Court considers that they apply, the Secretariat will transmit the Application to the responding party. If the President of the Court considered that they do not apply, the Secretariat will inform the parties that the Emergency Arbitrator proceedings shall not take place. Without prejudice to the parties’ status in the main arbitral proceedings, the President of the Court may consider that the Emergency Arbitrator Provisions apply only with respect to some of the parties. In that case, the Secretariat will inform the parties accordingly and transmit a copy of the Application to all parties.
75. The President of the Court will terminate the Emergency Arbitrator proceedings if the Secretariat has not received a Request for Arbitration within 10 days from the Secretariat’s receipt of the Application, unless the Emergency Arbitrator determines that a longer period of time is necessary (Article 1(6) of Appendix V).
76. The President of the Court shall appoint the Emergency Arbitrator in as short a time as possible, normally within two days from the Secretariat’s receipt of the Application.
77. Emergency Arbitrators are subject to the requirements set forth in section III. A challenge against an Emergency Arbitrator must be made within three days from the challenging party’s receipt of the notification of the Emergency Arbitrator appointment or from the date when that party was informed of the facts and circumstances on which the challenge is made if such date is subsequent to the appointment notification. The Court may decide the challenge, after affording all parties and the Emergency Arbitrator an opportunity to comment in writing, before or after the Emergency Arbitrator Order (“Order”) is rendered.
78. The Emergency Arbitrator’s first task is to establish a procedural timetable as soon as possible, normally within two days from the transmission of the file to the Emergency Arbitrator (Article 5 of Appendix V). In doing so, the Emergency Arbitrator must ensure that the responding party is granted time to respond to the Application.

79. The Order must be made no later than 15 days from the date on which the file was transmitted to the Emergency Arbitrator (Article 6(4) of Appendix V). The President of the Court may extend that time limit pursuant to a reasoned request or on his or her own initiative (Article 6(4) of Appendix V).
80. The Court will not scrutinise the draft Order. The Emergency Arbitrator is however encouraged to seek guidance from the Secretariat, in particular by submitting his/her draft Order for review prior to the expiration of the time limit set out in Article 6(4) of Appendix V. The [Emergency Arbitrator Order Checklist](#) may also provide guidance to the Emergency Arbitrator in drafting the Order.
81. The Order may be signed and notified in electronic form if the Emergency Arbitrator so decides after having consulted the parties.
82. The effects of the Order are set forth in Article 29(2), (3) and (4) of the Rules, and Articles 6(6), (7) and (8) of Appendix V.

## VII - Conduct of the Arbitration

### A - Advance on Costs

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83. Together with the Request for Arbitration, a claimant must pay the filing fee of US\$ 5,000. Such payment is non-refundable and shall be credited to the claimant's portion of the advance on costs (Article 1(1) of Appendix III). Notification of the Request for Arbitration to respondent will be subject to prior payment of the filing fee (Article 4(5)).
84. Upon receipt of the Request for Arbitration, the Secretary General may fix a provisional advance (Article 37(1)). The provisional advance is intended to cover the costs of the arbitration until the Terms of Reference have been established or, when the Expedited Procedure Provisions apply, until the case management conference.
85. Payment of the provisional advance is considered a partial payment by the claimant of the advance on costs subsequently fixed by the Court. The Secretariat will transmit the file to the arbitral tribunal, once constituted, only upon payment of the provisional advance (Article 16).
86. The advance on costs is fixed by the Court and is intended to cover the arbitral tribunal's fees and arbitration-related expenses, as well as the ICC administrative expenses (Article 37 of the Rules and Article 1(4) of Appendix III). The advance on costs includes (i) an amount between the minimum and maximum fee suggested under the scales, (ii) a reasonable amount for tribunal-related expenses and (iii) the amount of administrative expenses under the scales. Whenever the Court fixes or readjusts the advance on costs, a financial table is provided to the parties and arbitrators for information and guidance. The Court fixes the fees of the arbitrators at the end of the arbitration based on factors detailed in section XIV. Such fees may be less than the entire advance on costs.
87. The Court may readjust the advance on costs if the development of the arbitration so requires (Article 37(5)). The arbitral tribunal should inform the Secretariat of any developments in the value and complexity of the arbitration or any other issues it considers relevant. To this end, the Secretariat will also request from the arbitrators a periodical report on their activities, which should include a description of the tasks performed, an estimate of the amount of time spent on each of those tasks, and any other information related to those tasks that the arbitrators may deem relevant. For this purpose, arbitrators should use the ICC form, [Statement of Time](#)

[and Travel for Work Done](#), or if arbitrators use time sheets as part of their normal professional activities, they may provide the Secretariat with such time sheets. Arbitrators are also encouraged to send such reports to the Secretariat on their own initiative after completing a procedural milestone or when requesting advances on fees or the readjustment of the advance on costs. Every arbitrator should provide information regarding his or her time spent, exclusive of the time spent by the administrative secretary, if any. In addition, the arbitral tribunal may report the time spent by the administrative secretary, if it wishes to do so.

88. Whenever the amount in dispute is significant, the Court may initially fix the advance on costs at an amount that will not cover all of the ICC administrative expenses and arbitrator fees and expenses. In such cases, the Secretariat will inform the parties and arbitrators not to assume that the advance covers the costs until the end of the arbitration and that future readjustments of the advance on costs are therefore likely. To take into account the developments in the case, the Court may make further readjustments to the advance on costs as the case progresses.
89. The parties must pay the advance on costs in accordance with paragraphs 2, 3, 4 and 5 of Article 37 and paragraphs 4, 5, 6, 7, 8 and 9 of Article 1 of Appendix III. As a general rule, payments must originate directly from the parties to the case. However, ICC will accept payments made by duly mandated representatives, provided that the legal relationship between the third-party payer and the party in the case is evidenced. Should the legal document not be considered as satisfactory by ICC's banks pursuant to their legal obligations under French law, the payment received by ICC may be cancelled and the lack of relevant information reported to the relevant regulatory authorities. The party making the payment must pay all bank charges and/or taxes applicable to the payment of the advance on costs. However, bank transfers made within the European Economic Area (EEA) are subject to shared banking fees.
90. Where claims are made under Articles 7 and 8, the Court may either (1) fix several advances on costs, or (2) fix one advance on costs and establish the respective portions to be paid by each party (Article 37(4)). The parties may also agree to a different apportionment.
91. The arbitral tribunal should clarify with the parties whether any hearing costs should be covered by the advance on costs or settled directly between the parties and the hearing facility. If hearing costs are to be included in the advance on costs, 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 readjust the advance on costs.

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

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92. The arbitral tribunal and the parties must conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute (Article 22(1)).
93. In order to ensure effective case management, the arbitral tribunal, after consulting the parties, shall adopt the procedural measures that it considers appropriate, provided that they are not contrary to any agreement of the parties (Article 22(2)). Such measures may include one or more of the case management techniques referred to in Appendix IV to the Rules. In particular, the arbitral tribunal may encourage the parties to consider settling all or part of their disputes, either by negotiation or through any form of amicable dispute resolution method, such as mediation under the ICC Mediation Rules.
94. The arbitral tribunal should give due consideration to the ICC Commission on Arbitration and ADR report entitled [Controlling Time and Costs in Arbitration](#).



## C - Hearings – Virtual Hearings

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95. Pursuant to Article 26(1), a hearing shall be held if any of the parties so requests or, failing such a request, if the arbitral tribunal on its own motion decides to hear the parties.
96. A party's request for a hearing pursuant to Article 26(1) may be satisfied by the organisation of at least one hearing and does not require that each single question in dispute be discussed at a hearing. After consulting the parties, the arbitral tribunal may decide to organise several hearings if doing so results in greater efficiency.
97. The arbitral tribunal may decide, after consulting the parties, to conduct any hearing either by physical attendance or by remote means of communication, such as videoconference ("virtual hearing"), or both.
98. The organisation of a virtual or hybrid hearing may be particularly appropriate for case management conferences (Article 24(4)), as well as for any hearing in Expedited Procedure Provisions (see section VIII), Emergency Arbitrator Provisions (see section VI), or with respect to dispositive motions (see paragraph 109).
99. The arbitral tribunal must take any decision to hold an evidentiary hearing by remote means of communication rather than by physical attendance after careful consideration of all relevant circumstances, including the nature of the hearing, the possible existence of travel constraints, the planned duration of the hearing, the number of participants and of witnesses and experts to be examined, the size and complexity of the case, the need for the parties to properly prepare for the hearing, the costs and the gains of efficiency that may be expected by resorting to virtual means of communication, and whether rescheduling the hearing would entail unwarranted or excessive delays.
100. If an arbitral tribunal determines to proceed with a virtual hearing without party agreement, or over party objection, it should carefully consider the relevant circumstances, including those mentioned in paragraph 99, assess whether the award will be enforceable at law, as provided by Article 42, and provide reasons for that determination. In making such a determination, arbitral tribunals may take into account their broad procedural authority under Article 22(2), to, after consulting the parties, adopt such procedural measures as they consider appropriate, provided that they are not contrary to any agreement of the parties.
101. Any virtual hearing requires a consultation between the arbitral tribunal and the parties with the aim of implementing measures – often called a cyber-protocol – that are needed in order to comply with any applicable data privacy regulations. Such measures should also deal with the privacy of the hearing and the protection of the confidentiality of electronic communications within the arbitration proceeding and any electronic document platform.
102. In preparation for a virtual hearing, and in order to ensure that parties are treated with equality and that each party is given a full opportunity to present its case, the arbitral tribunal should consider:
  - Different time zones in fixing the hearing dates, start and finish times, breaks and length of each hearing day;
  - Logistics of the location of participants, including, but not limited to, the total number of participants, the number of remote locations, the extent to which any participants will be in the same physical venue, the extent to which members of the arbitral tribunal may be in the same physical venue as one another and/or any other participants, and the availability and control of break out rooms;
  - Use of real-time transcript or another form of recording;



- Use of interpreters, including whether simultaneous or consecutive;
  - Procedures for verifying the presence of and identifying all participants, including any technical administrator;
  - Procedures for the taking of evidence from fact witnesses and experts to ensure that the integrity of any oral testimonial evidence is preserved;
  - Use of demonstratives, including through shared screen views; and
  - Use of an electronic hearing bundle hosted on a shared document platform that ensures access by all participants.
103. [A Checklist for a Protocol on Virtual Hearings, and Suggested Clauses for Cyber-Protocols and Procedural Orders Dealing with the Organisation of Virtual Hearings](#) are available on the ICC website.
104. The [ICC Hearing Centre in Paris](#) offers technical support and assistance to arbitral tribunals seeking to better understand the options for virtual hearing and electronic bundle facilities and how to operate those facilities in a manner that best preserves the integrity of the arbitral process, preserves confidentiality and ensures proper data protection. In addition, ICC has signed [Memoranda of Understanding](#) with other hearing centres in most major arbitral seats and is able to coordinate with arbitral tribunals in order to access virtual hearing facilities on offer at those centres and obtain necessary technical support and guidance. Additional information may be obtained by emailing: [infohearingcentre@iccwbo.org](mailto:infohearingcentre@iccwbo.org).
105. Various videoconference platform options are available for virtual hearings. A third-party comparative table of available options can be found [here](#). These range from customised hearing solutions offered by some hearing centres and/or service providers to licenced publicly available platforms to free-to-use public platforms. Customised or licensed, fee-based videoconference platforms may offer greater security, confidentiality and data protection than free use, public platforms.
106. Arbitral tribunals should consult with the parties to ensure that any video sharing platform that is used for virtual hearings is licensed and is set to maximum security settings. ICC has licensed access to the following videoconference platform options: Microsoft Teams, Vidyocloud and Skype for Business. ICC technical support is available remotely to assist arbitral tribunals with using such platforms, joining a meeting (or hearing), operating in-meeting audio and video functions, and operating screen sharing functions. Other platforms that have been used in recent cases include Zoom, Blue Jeans and GoToMeeting.
107. Various documents sharing platforms are available for electronic bundles. Like videoconference platforms, these also range from customised hearing solutions offered by some hearing centres and/or service providers (such as Opus, Transperfect and XBundle) to licensed publicly available platforms to free-to-use public platforms. Customised or licensed, fee-based document sharing platforms may offer greater security, confidentiality and data protection than free-to-use, public platforms.
108. ICC does not endorse or make any representation or warranty with respect to any third-party vendor mentioned in this Note. Parties, their representatives and arbitral tribunals should conduct their own due diligence as to their suitability in any given case.

#### **D - Expeditious Determination of Manifestly Unmeritorious Claims or Defences**

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109. This section includes guidance as to how an application for the expeditious determination of manifestly unmeritorious claims or defences may be addressed within the broad scope of Article 22.

110. Any party may apply to the arbitral tribunal for the expeditious determination of one or more claims or defences, on grounds that such claims or defences are manifestly devoid of merit or fall manifestly outside the arbitral tribunal's jurisdiction ("application"). The application must be made as promptly as possible after the filing of the relevant claims or defences.
111. The arbitral tribunal has full discretion to decide whether to allow the application to proceed, taking into consideration any circumstances it considers to be relevant, including the stage of the proceedings and the need to ensure time and cost efficiency.
112. If the arbitral tribunal allows the application to proceed, it shall promptly adopt the procedural measures it considers appropriate, after consulting the parties. The responding party or parties shall be given a fair opportunity to answer the application. Further presentation of evidence will only be allowed in exceptional circumstances.
113. The arbitral tribunal shall decide the application as promptly as possible, consistent with the nature of the application, and may state the reasons for its decision in as concise a fashion as possible. The decision may be in the form of an order or award. In either case, the arbitral tribunal may decide on the costs of the application pursuant to Article 38 or reserve this decision to a later stage.
114. The Court will scrutinise any award made on an application for expeditious determination, typically within one week of receipt by the Secretariat.

## **E - Protection of Personal Data**

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115. ICC recognises the importance of effective and meaningful personal data protections when it collects and uses such personal data as data controller pursuant to data protection laws and regulations, including the European Union Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "General Data Protection Regulation" or "GDPR"). To that effect, ICC has published the [ICC Data Privacy Notice for ICC Dispute Resolution Proceedings](#).
116. In order to comply with the Court's (i) mission to disseminate and improve international knowledge of arbitration and (ii) obligations under the Rules, ICC, the Court and its Secretariat collect and process the personal data of the parties, their representatives, the arbitrators, the administrative secretary, the witnesses, the experts, and any other individuals that may be involved in any capacity in the arbitration. In performing their duties under the Rules, arbitral tribunals also have to collect and process such personal data. For this purpose, such personal data may be transferred by or to the various offices of the Secretariat in and out of the European Union.
117. The parties, their representatives, the arbitrators, the administrative secretary, the witnesses, the experts, and any other individuals who may be involved in any capacity in the arbitration, acknowledge that collecting, transferring and archiving personal data is necessary for the purposes of arbitration proceedings, and that said data may be published in case of a publication of an award, procedural order and dissenting and/or concurring opinion.
118. The parties shall ensure that (i) their representatives, as well as their witnesses, party-appointed experts and any other individual appearing on their behalf or in their interest in the arbitration, are aware that their personal data may have to be collected, transferred, published and archived for purposes of the arbitration, and (ii) applicable data protection regulations, including the GDPR, are complied with.

119. At an appropriate time in the arbitration, the arbitral tribunal shall remind the parties, representatives, witnesses, experts and any other individuals appearing before it that the GDPR or other data protection laws and regulations apply to the arbitration and that their personal data may be collected, transferred, published and archived pursuant to the arbitration agreement or the legitimate interests to resolve the dispute and that arbitration proceedings operate fairly and efficiently. Arbitral tribunals are encouraged to draw up a data protection protocol to that effect.
120. Parties and arbitrators shall ensure that only personal data that are necessary and accurate for the purposes of the arbitration proceedings are processed. Any individual whose data is collected and processed in the context of an arbitration may at any time request the appropriate data controller to exercise notably his right of access and that inaccurate data be corrected or suppressed, according to the applicable data protection laws and regulations.
121. The arbitral tribunal, the parties and their representatives shall put in place and ensure that all those acting on their behalf put in place appropriate technical and organisational measures to ensure a reasonable level of security appropriate to the arbitration, taking into account the scope and risk of the processing, the state of the art, the impact on data subjects, the capabilities and regulatory requirements of all those involved in the arbitration, the costs of implementation, and the nature of the information being processed or transferred, including whether it includes personal data or sensitive business, proprietary or confidential information. To that effect, arbitral tribunals and parties are encouraged to consult the [Report on the Use of Information Technology in International Arbitration](#) by the ICC Commission on Arbitration and ADR.
122. Any breach of the security and confidentiality of personal data, such as unauthorised access to or use of personal data or inadvertent disclosure to persons who should not have been identified as recipients, must be reported immediately to the individual whose personal data may be affected and to the Secretariat. Pursuant to the applicable data protection laws and regulations, ICC, when it acts as data controller, must notify the competent supervisory authority and as the case may be the concerned individuals of such breach.
123. Once an arbitration is completed, arbitrators may retain the personal data that were processed during the proceedings for as long as they keep the case file in their archives pursuant to applicable laws. Such duration shall be communicated to the parties and the Secretariat.
124. At the end of each case, the Secretariat shall retain, pursuant to its obligations (Article 1(7) of Appendix II), personal data pertaining to the case. Such data shall be archived. Other personal data that are no longer necessary for ICC to discharge its obligation under the Rules shall be destroyed or erased.
125. The archives of the Court and its Secretariat are also kept for scientific and historical research purposes. Access to archives and their publication either in full, as excerpts redacted or not, or in a summarised form, may be allowed by the President or the Secretary General of the Court in furtherance of ICC's mission to disseminate and improve international knowledge of arbitration.

## **F - Time Limits under the Rules**

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126. The Rules contain time limits which arbitrators and parties must endeavour to comply with, including:

- a. **Terms of Reference:** must be established within **one month** from the transmission of the file to the arbitral tribunal (Article 23(2)). Terms of Reference are not required in arbitrations under the Expedited Procedure Provisions.
- b. **Case management conference:** must be convened (1) when drawing up the Terms of Reference or as soon as possible thereafter (Article 24(1)), or (2) no later than 15 days after the date on which the file was transmitted to the arbitral tribunal in arbitrations under the Expedited Procedure Provisions.
- c. **Procedural timetable:** must be established during or immediately following the case management conference and transmitted to the Court and the parties (Article 24(2)).
- d. **Closing of the proceedings:** must be done as soon as possible after the last hearing on matters to be decided in an award, or the filing of the last authorised submissions concerning such matters (Article 27).
- e. **Date for submission of draft awards:** must be indicated to the Secretariat and the parties when the arbitral tribunal closes the proceedings (Article 27). Draft final awards must be submitted to the Secretariat three months after the last substantive step in the arbitration for three-member arbitral tribunals and two months for sole arbitrators (see paragraph 153).
- f. **Final award:** must be rendered within six months from the date of the last signature added to the Terms of Reference or the date of notification of their approval (Article 31(1)) or otherwise the time limit fixed by the Court based upon the procedural timetable, or six months from the date of the case management conference in arbitrations under the Expedited Procedure Provisions.

## VIII - Expedited Procedure Provisions

### A - Scope of the Expedited Procedure Provisions

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127. By agreeing to the Rules, the parties agree that Article 30 of the Rules and Appendix VI (collectively, the “Expedited Procedure Provisions”) takes precedence over any contrary terms of the arbitration agreement.
128. The Expedited Procedure Provisions apply if:
  - a. the arbitration agreement was concluded after 1 March 2017; and
  - b. the amount in dispute does not exceed US\$ 2,000,000 if the arbitration agreement was concluded from 1 March 2017 to 31 December 2020, and US\$ 3,000,000 if the arbitration agreement was concluded on or after 1 January 2021; and
  - c. the parties have not opted out of the Expedited Procedure Provisions in the arbitration agreement or at any time thereafter. Agreements to opt out should express in specific terms the parties’ intention not to subject themselves to the Expedited Procedure Provisions. It is not sufficient, to that effect, that the parties have referred in the arbitration agreement to a three-member arbitral tribunal, or have adopted time limits that depart from those provided by the Expedited Procedure Provisions. It is recommended that parties wishing to opt out of the Expedited Procedure Provisions use the standard clauses contained in the Rules.
129. The Expedited Procedure Provisions also apply, irrespective of the date of conclusion of the arbitration agreement or the amount in dispute, if the parties have agreed to opt in. Such opt in agreements can be concluded in the arbitration agreement or by separate or subsequent agreement. It is recommended that the parties wishing to opt in to the Expedited Procedure Provisions use the standard clauses contained in the Rules.

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

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

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131. For purposes of deciding whether the Expedited Procedure Provisions apply, the amount in dispute includes all quantified claims, counterclaims, cross-claims and claims pursuant to Articles 7 and 8. Claims relating to interest and costs will not be considered to that effect.
132. Pursuant to the Rules (Articles 4(3), 5(5)(b), 7(2), 7(4), 8(2) and 8(3)), the parties shall quantify their claims and, to the maximum extent possible, provide an estimate of the value of any non-monetary claims.
133. For purposes of deciding whether the Expedited Procedure Provisions apply, the Secretariat will consider the quantifications or estimates submitted by the parties.
134. Expedited Procedure Provisions do not apply in cases involving declaratory or non-monetary claims the value of which cannot be estimated, unless it appears that such non-monetary claims merely support a monetary claim or that they do not add significantly to the complexity of the dispute.
135. If an objection is raised as to the applicability of the Expedited Procedure Provisions, the matter will be decided by the Court after giving an opportunity to the other parties to state their views.
136. Any submission by the parties with respect to the applicability of the Expedited Procedure Provisions shall be made in the Request for Arbitration and in the Answer, or within any time limit subsequently given by the Secretariat.
137. Any decision made by the Secretariat or by the Court as to the amount in dispute for purposes of deciding whether the Expedited Procedure Provisions apply does not bind the arbitral tribunal when deciding the substance of the dispute.
138. In assessing costs pursuant to Article 38(5), the arbitral tribunal may take into account whether a party has artificially inflated its claims, thereby preventing the Expedited Procedure Provisions from applying.

## **C - Scales**

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139. In all cases conducted under the Expedited Procedure Provisions, the Scales of Administrative Expenses and Arbitrator's Fees for the Expedited Procedure apply as indicated in paragraph 179 and any advance on costs will be fixed on this basis. The arbitrator's fees pursuant to these scales are 20% less than under the general scales.
140. After receipt of the Request for Arbitration on the basis of the Expedited Procedure Provisions and the amount in dispute at that stage, the Secretary General will fix the provisional advance. The provisional advance may be readjusted on the basis of the general scales if the Expedited Procedure Provisions ultimately do not apply.

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

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

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

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143. According to Article 2 of Appendix VI, the Court may appoint a sole arbitrator notwithstanding any contrary provision of the arbitration agreement.
144. By submitting to arbitration under the Rules, the parties agree that any reference of disputes to three arbitrators in their arbitration agreement is subject to the Court's discretion to appoint a sole arbitrator if the Expedited Procedure Provisions apply.
145. When the Expedited Procedure Provisions apply, the Court will normally appoint a sole arbitrator in order to ensure that the arbitration is conducted in an expeditious and cost-effective manner.
146. The Court may nevertheless appoint three arbitrators if appropriate in the circumstances. In all cases, the Court will invite the parties to comment in writing before taking any decision and shall make every effort to ensure that the award is enforceable at law.
147. If the Court decides that the Expedited Procedure Provisions no longer apply (see paragraph 130), the arbitral tribunal will normally remain in place, unless the Court finds, at the request of the parties or on its own initiative, after giving an opportunity to the parties and the arbitral tribunal to state their views, that circumstances exist which justify replacing and/or reconstituting the arbitral tribunal. If the Court decides to reconstitute the arbitral tribunal and proceed with a three-member arbitral tribunal, the Court may consider appointing the individual who was acting as sole arbitrator as president of the arbitral tribunal.

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

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148. In conducting the arbitration under the Expedited Procedure Provisions, the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.
149. Under the Expedited Procedure Provisions, the arbitral tribunal has discretion to adopt such procedural measures it considers appropriate to conduct the arbitration in accordance with the time limits established therein. In particular, after giving an opportunity to the parties to state their views, the arbitral tribunal may: (1) decide the case on documents only, with no hearing and no examination of witnesses, (2) decide not to allow requests for the production of documents and/or (3) limit the number, scope and length of submissions.



## **G - Award**

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150. The final award shall be made within six months from the date of the case management conference. The Court expects arbitral tribunals acting under the Expedited Procedure Provisions to conduct the procedure in such a way as to comply with this deadline, with no need for extensions. If an extension nonetheless is needed, the arbitral tribunal shall submit a reasoned application to the Court.
151. Any award under the Expedited Procedure Provisions must be reasoned. In such arbitrations, it is particularly appropriate to keep the factual and/or procedural sections of the award to what the arbitral tribunal considers necessary for the understanding of the award, and state the reasons of the award in as concise a fashion as possible.

## **IX - Efficiency in the Submission of Draft Awards to the Court**

### **A - General Practice**

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152. The Court expects arbitral tribunals to render awards within six months from the establishment of the Terms of Reference, or within the time limit fixed by the Court for this purpose (Article 31(1)).
153. While the Court has the power to extend such time limits, sole arbitrators are expected to submit draft awards within two months, and three-member arbitral tribunals within three months after the last substantive hearing on matters to be decided in the award, or the filing of the last written submissions concerning such matters (excluding cost submissions), whichever is later (Article 27).
154. 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.
155. Where the draft award is submitted after the time referred to in paragraph 153, 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.
156. In deciding on the above, the Court may also take into account any delays incurred in the submission of one or more partial awards.



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

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157. Under the Expedited Procedure Provisions, the arbitral tribunal must render the final award in six months from the case management conference, with extensions to be granted only in limited and justified circumstances.
158. The Court considers that compliance with such time limit is of the essence under the Expedited Procedure Provisions.
159. In order to effectively comply with such time limit, an arbitral tribunal acting under the Expedited Procedure Provisions is expected to submit its draft award within five months from the case management conference.
160. 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.
161. Where the draft award is submitted after the time referred to in paragraph 159, the Court may lower the fees as set out below, unless it is satisfied that the delay is attributable to factors beyond the arbitrators' control or to exceptional circumstances, and without prejudice to any other measures that it may take, such as replacing one or more of the arbitrators:
- If the draft award is submitted for scrutiny up to 7 months after the case management conference, the fees that the Court would otherwise fix are reduced by 5% to 10%.
  - If the draft award is submitted for scrutiny up to 10 months after the case management conference, the fees that the Court would otherwise fix are reduced by 10% to 20%.
  - If the draft award is submitted for scrutiny more than 10 months after the case management conference, the fees that the Court would otherwise fix are reduced by 20% or more.

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

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

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

### **B - Scrutiny Process**

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163. 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 more likely to be enforceable. Before a draft award is submitted to the Court for scrutiny, it is reviewed first by the Counsel of the team in charge of the arbitration that has followed the proceedings, and then by the Secretary General, the Deputy Secretary General or the Managing Counsel. For certain arbitrations, generally those involving state parties or dissenting opinions, a Court member will draft a report with recommendations on the draft award.

164. All draft awards are scrutinised in Committees, composed of three Court members (Article 4 of Appendix I), in Special Committees (Article 5 of Appendix I) or in Single-member Committees (Article 6 of Appendix I). Draft awards scrutinised during a Special Committee include, but are not limited to, arbitrations involving (i) a state or a state entity, (ii) dissenting opinions by one or more arbitrators and/or (iii) matters in which a Committee Session was unable to reach a unanimous decision or otherwise makes a referral to the Special Committee.

## C - Information to the Parties

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165. Upon receipt of a draft award, the Secretariat informs the parties and the arbitral tribunal that the draft will be scrutinised at one of the Court's next Sessions.
166. 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.
167. Once a draft award is approved subject to comments, the Secretariat will request the arbitral tribunal to indicate the time needed to finalise the draft award and, to the extent possible, inform the parties of the estimated time of notification of the award. The arbitral tribunal must finalise the award as expeditiously as possible.

## D - Timing of Scrutiny

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168. Any draft award submitted to a three-member Committee will be scrutinised within three to four weeks of receipt by the Secretariat. Awards submitted to a Special Committee (which are typically held once a month on the last Thursday of the month) will be scrutinised within five or six weeks, depending on when the draft is submitted, or earlier if a Special Committee can be scheduled to expedite scrutiny.
169. If the Expedited Procedure Provisions apply, any draft award submitted to the Court will be scrutinised as soon as possible, and in any event no later than two to three weeks of receipt by the Secretariat. The Court may decide, in exceptional circumstances, that any award made under the Expedited Procedure Provisions will be scrutinised by a Committee consisting of one member of the Court (Article 4(6) of Appendix II).
170. If the scrutiny process is delayed, other than by circumstances that are beyond the Court's control, the Court's administrative expenses will be reduced by up to 20%, depending on the length of the delay.
171. For purposes of assessing whether the draft was submitted timely, the Court considers the first submission of the draft award to the Court for approval, irrespective of whether that draft of the award is approved.

## XI - ICC Award Checklist

172. The [ICC Award Checklist](#) is intended to provide arbitrators with guidance for the drafting of 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' work. It may not be published or used for any purpose other than the conduct of ICC arbitrations. The Checklist is not exhaustive of issues that may be raised by the Court under Article 34.

## XII - Treaty-based Arbitrations

173. In view of the specific nature of treaty-based arbitration, for the sake of transparency and subject to any considerations of confidentiality, prospective arbitrators should provide a *curriculum vitae* including a complete list of the treaty-based cases in which they participated as arbitrator, expert, or counsel.
174. The parties may agree to adopt the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, either in full or in part, or to be guided by the same in adopting similar rules. In such case, the Secretariat may act as the repository of published information.
175. In treaty-based cases, Articles 13(6) (requirement of nationality, see paragraph 45), and 29(6)(c) (non-availability of the Emergency Arbitrator provisions, see paragraph 71(c)), apply.
176. In treaty-based cases, the President, and/or Vice-Presidents of the Court and Court members with experience in treaty-based arbitration, will scrutinise the draft award.
177. In derogation from section IV(C) (see paragraph 58), and unless a party objects, a treaty-based award will be published within six months from its notification.

## XIII - Submissions by *Amici Curiae* and non-disputing parties

178. Pursuant to Article 25(3), the arbitral tribunal may, after consulting the parties, adopt measures to allow oral or written submissions by *amici curiae* and non-disputing parties.

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

### A - Scales

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

### B - Advance on Fees

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

### C - Allocation among Arbitral Tribunal Members

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181. In arbitrations conducted by a three-member arbitral tribunal, arbitrators may agree on the fee allocation for each arbitrator and inform the Secretariat as early as possible in the proceedings of their agreement. 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, although the Court may decide upon a different allocation based on the circumstances. Unless otherwise agreed, the same allocation applies to any advances on fees granted by the Court.

## D - Fixing of Fees

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182. The Court fixes arbitrators' fees. Separate fee arrangements between the parties and arbitrators are not permitted.
183. The Court normally fixes arbitrators' fees within the limits specified by the scales or, in exceptional circumstances, in an amount that is higher or lower than that resulting from those limits. An exceptionally high amount in dispute may be considered as such a circumstance in deciding whether to fix the arbitrators' fees below the limits specified in the scales.
184. Pursuant to Article 2 of Appendix III, when fixing the arbitrators' fees, the Court takes into consideration the diligence and efficiency of the arbitrator, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of any draft award. To this end, the Secretariat will request from the arbitrators the information specified in paragraph 87.
185. The Court may fix the arbitrators' fees below the average, including at the minimum under the scales, where the amount in dispute is high or very high, or towards the maximum where the amount in dispute is low or very low. The amount of the advance on costs is not an indication of the final amount of the arbitrators' fees.
186. As a matter of guidance only, the Court may proceed as follows when fixing the fees of the arbitrators or granting advances on fees when the advance on costs has been fixed on the basis of the average fee:
- |    |  |                                    |
|----|--|------------------------------------|
| a. | Case Management Conference<br>(in Expedited Procedure cases) | 35% of minimum fee                 |
| b. | Terms of Reference established                               | 50% of minimum fee                 |
| c. | A partial award issued / major hearing                       | Minimum fee                        |
| d. | Multiple partial awards                                      | Between 50% of average and average |
| e. | Final award issued   | Average fee                        |
187. 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 IX(A).

## E - Replacement

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

## F - Administrative Expenses

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189. The Court normally fixes the ICC administrative expenses in accordance with the scale. In exceptional circumstances, the Court may fix them in an amount that is higher or lower than that resulting from the application of such scale, provided that they do not normally exceed the maximum amount of the scale.
190. As a matter of guidance only, when fixing the ICC administrative expenses, the Court may proceed as follows:

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

191. 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, or additional advances to cover Article 36 applications.

## **G - Declaration to French Tax Authorities**

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192. Depending on the applicable law, ICC may be 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.

## **XV - Decisions as to the Costs of the Arbitration**

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

194. In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 38(5)). Further information on this topic may be found in the ICC Commission Report [Decisions on Costs in International Arbitration](#).

195. If the parties withdraw their claims or the arbitration terminates before the rendering of a final award, the Court fixes 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, the arbitral tribunal shall decide such matters (Article 38(6)). If the arbitral tribunal has not been constituted at the time of the withdrawal, any party may request the Court to proceed with the constitution of the arbitral tribunal so that it may make decisions as to costs.

## **XVI - Signature of Terms of Reference and Awards – Notification of Awards**

196. Subject to any applicable mandatory law requirements, and unless the parties agree otherwise, (1) the Terms of Reference may be signed by each party and member of the arbitral tribunal in counterparts, and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 by email or any other means of telecommunication that provides a record of the sending thereof. An original of the signed Terms of Reference must be provided to the Secretariat.

197. Awards signed and dated by the arbitral tribunal are sent to the Secretariat for notification to the parties (Article 35(1)). The award must be signed and dated on or after the date of the Court Session at which the draft award was approved. The date of the award is the date on which the last arbitrator signed.

198. Unless the parties have agreed to electronic notification of the award (see paragraph 199), the arbitral tribunal must provide the Secretariat with the required number of originals (unbound) requested by the Secretariat. The arbitral tribunal must also provide the Secretariat with a PDF of the signed original by email. The Secretariat will send a courtesy copy of the PDF of the award to the parties by email ahead of the notification of originals. The sending of a courtesy copy by email does not trigger any of the time limits under the ICC Rules of Arbitration.
199. Subject to any applicable mandatory law requirements, the parties may agree that (1) any award may be signed by the members of the arbitral tribunal in counterparts, and/or (2) such counterparts may be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means of telecommunication that provides a record of the sending thereof, pursuant to Article 35.
200. Paragraphs 197 to 199 apply *mutatis mutandis* to additional awards, *addenda* and decisions.

## **XVII - Correction and Interpretation of Awards**

201. If the arbitral tribunal decides to correct the award on its own initiative, pursuant to Article 36(1), it should inform the parties and the Secretariat of its intention to do so and grant a time limit to the parties to comment in writing. The arbitral tribunal should submit the draft *addendum* to the Court for scrutiny within 30 days of the date of the award.
202. Upon receipt of an Article 36(2) application, the Secretariat will assess whether, based on the circumstances of the case, including whether the application appears to fall within the scope of Article 36(2) to request the Court to fix an advance to cover additional fees and expenses of the arbitral tribunal and additional ICC administrative expenses (Article 2(10) of Appendix III). The arbitral tribunal should not address an application until the application is transmitted to the arbitral tribunal by the Secretariat.
203. Even if the Court has not asked for an additional advance upon filing of the application, it can nevertheless take a decision on costs at the time of the scrutiny and make the notification of the *addendum* or the decision contingent upon the payment by one or both parties of the costs so fixed by the Court.
204. Upon receipt of the application from the Secretariat, the arbitral tribunal should grant the other parties a short time limit, normally not exceeding 30 days, for comments. The arbitral tribunal may however grant a shorter time limit to the parties depending on the circumstances of the case, after consideration of all relevant circumstances.
205. Parties should be mindful of the limited scope of Article 36(2), which does not allow to revise or vary determinations that have been finally made in the award.
206. The arbitral tribunal shall submit its draft determination to the Court for scrutiny no later than 30 days following the expiration of the time limit granted for comments. Should the arbitral tribunal require an extension of such time limit, it should inform the Secretariat.
207. The arbitral tribunal's determination can take one of four forms:



- a. **Addendum:** if the arbitral tribunal decides to correct or interpret the award. An Addendum constitutes part of the award.
- b. **Decision:** if the arbitral tribunal decides that the award does not need to be corrected or interpreted and does not take a decision on costs. A Decision does not constitute part of the award.
- c. **Addendum and Decision:** if there are two or more applications and the arbitral tribunal decides to correct or interpret the award on the basis of one or more, but not all applications.
- d. **Decision and addendum on costs:** if the arbitral tribunal decides that the award does not need to be corrected or interpreted, but takes a decision on costs related to the application. An addendum on costs constitutes part of the award.

208. All decisions and *addenda* must state the reasons upon which they are based. They must also include operative conclusions ("dispositif") or a finding either rejecting or granting the application as the case may be. For further guidance about what should be included in a draft decision or *addendum*, see the [ICC Checklist on Correction and Interpretation of Arbitral Awards](#). The Court will scrutinise all draft decisions and *addenda*. Upon approval by the Court, the arbitral tribunal shall sign the decision or *addendum* and send it to the Secretariat for notification to the parties as per paragraphs 197 to 199.

209. In all cases, the arbitral tribunal must first ensure that mandatory rules of law at the place of arbitration do not exclude the correction or interpretation of an award by the arbitral tribunal.

## XVIII - Additional Awards

210. Pursuant to Article 36(3), a party may apply for an additional award as to claims which the arbitral tribunal has omitted to decide. A claim that the arbitral tribunal has omitted to decide is a claim that was made in the arbitration and that the arbitral tribunal, based on the parties' submissions, should have decided in the award.

211. Any application for an additional award must be made to the Secretariat within 30 days of the receipt of the award by the applicant party. After the receipt of an application for an additional award, the arbitral tribunal must grant an opportunity to the other parties to comment on the application. Because there may be objections as to the admissibility of the application or the need to make submissions, granting a time-limit to the other parties is required in all cases.

212. Because an application for an additional award refers to claims that were made in the arbitration and that the arbitral tribunal omitted to decide, it is expected that the parties will have already made submissions on said claims in the arbitration, and there should be no need for lengthy additional submissions. Accordingly, Article 36(3) provides that the other parties should be granted a short time-limit, normally not exceeding 30 days, to comment on the application. The arbitral tribunal may however decide, upon consideration of all relevant circumstances, to grant a shorter or longer time-limit to the parties. Similarly, although assessing an application for an additional award would normally not require the taking of additional evidence, the arbitral tribunal may decide to allow the production of additional evidence as appropriate.

213. Paragraphs 197 to 199, 202 and 203 apply *mutatis mutandis*.

214. Where the relevant national law or court practice provide specific circumstances in which an arbitral tribunal may render certain decisions other than corrections or interpretation regarding an award which has already been approved and notified or additional awards, such situations will be treated in the spirit of the Rules and this Note.



## XIX - International Sanctions Regulations

215. International sanctions regulations may apply to an arbitration. Parties and arbitrators must consult the [Note to Parties and Arbitral Tribunals on ICC Compliance](#).

## XX - Administrative Secretaries

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

### A - Appointment

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218. If an arbitral tribunal envisages the appointment of an administrative secretary, it must consider carefully whether in the circumstances of that particular arbitration, such an appointment would be appropriate.
219. 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.
220. There is no formal process for the appointment of an administrative secretary. However, before any steps are taken to appoint an administrative secretary, the arbitral tribunal must inform the parties of its intention to do so. For this purpose, the arbitral tribunal must 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 are met.
221. The arbitral tribunal must make clear to the parties that they may object to such proposal and that an administrative secretary shall not be appointed if a party has raised such an objection.

### B - Duties

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222. Administrative secretaries act upon the arbitral tribunal’s instructions and under its strict and continuous supervision. At all times, the arbitral tribunal is responsible for the administrative secretary’s conduct during the arbitration.
223. Under no circumstances may the arbitral tribunal delegate its decision-making functions to an administrative secretary or rely on an administrative secretary to perform on its behalf any of the essential duties of an arbitrator. Likewise, the tasks entrusted to an administrative secretary, such as the preparation of written notes or memoranda, will not release the arbitral tribunal from its duty to personally review the file and/or draft itself any arbitral tribunal’s decision.
224. An administrative secretary may, consistently with the above, 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 and liaising with the parties in that respect;
- drafting correspondence to the parties and sending it on behalf of the arbitral tribunal;
- preparing for the arbitral tribunal's review drafts of procedural orders as well as factual portions of an award, such as the summary of the proceedings, the chronology of facts, and the summary of the parties' positions, provided that such procedural orders and portions of the award are subsequently reviewed by the arbitral tribunal itself;
- 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.

225. The administrative secretary may not act, or be required to act, in such a manner as to prevent or discourage direct communications between the arbitrators, between the arbitral tribunal and the parties, or between the arbitral tribunal and the Secretariat.

226. When in doubt about which tasks may be performed by an administrative secretary, the arbitral tribunal or the administrative secretary should consult the Secretariat.

## C - Disbursements

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227. The arbitral tribunal may seek reimbursement from the parties of the administrative secretary's justified reasonable expenses disbursed for hearings and meetings.

## D - Remuneration

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228. With the exception of the administrative secretary's justified reasonable expenses, the engagement of an administrative secretary should not pose any additional financial burden on the parties.

229. The arbitral tribunal must pay any remuneration due to the administrative secretary out of the total fees paid to all arbitrators, such that the fees of the administrative secretary will not increase the total costs of the arbitration.

230. The arbitral tribunal may not seek from the parties any form of remuneration for the administrative secretary's activity. Direct arrangements between the arbitral tribunal and the parties on the administrative secretary's fees are strictly prohibited. Because the fees of the arbitral tribunal are established on an *ad valorem* basis, any remuneration to be paid to the administrative secretary is deemed to be included in the arbitral tribunal's fees.

## XXI - Arbitrator's Expenses

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

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231. The Secretariat will reimburse expenses upon receipt of a request. Expense reimbursement claims must be supported by original receipts, in order for the Secretariat to carry out its accounting responsibilities and, from time to time, to provide the parties with comprehensive statements of expenses incurred by arbitrators.

## B - When to Submit a Request for Expenses

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232. 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.
233. 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.
234. In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, all requests for the reimbursement of expenses and/or the payment of *per diem* allowances must be submitted within the time limit granted by the Secretariat. Requests for the reimbursement of expenses and/or the payment of *per diem* allowances submitted after the Court has fixed the costs of arbitration will not be taken into account by the Court and will not be paid.

## C - Travel Expenses

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235. 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 236 to 238.
236. 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.
237. 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.
238. Except for expenses claimed pursuant to paragraph 237(d), travel expenses will, where possible, be reimbursed in the currency in which they were incurred. An arbitrator may alternatively request reimbursement in US dollars provided that the request is accompanied by a statement of the US dollar amount and evidence of the exchange rate (for example, a printout from [www.oanda.com](http://www.oanda.com)). The date for the currency conversion should be the date on which the expense was incurred.

## D - Per Diem Allowance

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239. In addition to travel expenses, an arbitrator will be paid a flat-rate *per diem* allowance 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.
240. If the arbitrator is not required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 400.
241. If the arbitrator is required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 1,200.
242. 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 the total cost of, *inter alia*:
- Accommodation
  - Meals
  - Laundry/ironing/dry cleaning and other housekeeping or similar services
  - Inner-city transport
  - Telephone calls, faxes, emails and other means of communication
  - Gratuities
243. 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.
244. Because the *per diem* allowance is deemed to cover all personal living expenses incurred by an arbitrator while outside his or her usual place of business on ICC arbitration business, the Secretariat will not reimburse expenses over and above the applicable *per diem* allowance under any circumstances.

## E - General Office Expenses and Courier Charges

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

## F - Advance Payments on Expenses

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246. An arbitrator may request an advance payment of travel expenses and/or the applicable *per diem* allowance. 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.

## XXII - Administrative Services

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

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247. ICC may provide 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.
248. 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 arbitral tribunal members, or sole arbitrator) and makes the payments from the account at the request of the arbitrator.
249. ICC acts as depositary of funds related to:
- a. VAT, taxes, charges and imposts applicable to arbitrators' fees
  - b. Experts
  - c. Escrow accounts
250. This service is available to arbitrators and parties from any country.
251. The deposit accounts are administered solely in US dollars or in Euros, unless otherwise decided.
252. The deposit accounts do not yield interest for the parties or the arbitrators.

#### ***Step 1: Request for a Deposit Account***

Any arbitrator wishing to use this service must 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.

#### ***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.

**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.

As a general rule, payments in ICC arbitration cases must originate directly from parties to the case. ICC will accept payments made by duly mandated representatives, provided that the legal relationship between the third-party payer and the party in the case is evidenced. Should the legal document not be considered as satisfactory by ICC's banks pursuant to their legal obligations under French law, the payment received by ICC may be cancelled and the lack of relevant information reported to the relevant regulatory authorities. The party making the payment must pay all bank charges and/or taxes applicable to the payment of the advance on costs. However, bank transfers made within the European Economic Area (EEA) are subject to shared banking fees.

**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.

**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.

**Step 6: Balance of Account**

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

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

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

253. Payments made by ICC to arbitrators do not include Value Added Tax (VAT) or other taxes or charges and imposts of the same nature that may be applicable to the arbitrator's fees (Article 2(13) of Appendix III). Parties have a duty to pay such VAT or similar taxes or charges due pursuant to applicable law. The recovery of any such charges or taxes is a matter solely between the arbitrator and the parties. Such parties' duty does not include the payment of any



other taxes, charges and imposts that may be applied to the arbitrator's fees, such as, but not limited to, income or company tax, professional license fees, charges or retentions applied by the arbitrator's bar association, pension or social security regime, as well as banking charges and commissions. In case of doubt, arbitrators should consult the Secretariat.

254. Arbitrators subject to VAT may request in writing 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.
255. This service is completely 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.
256. 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 must inform the Secretariat of the breakdown of this advance arbitrator-by-arbitrator.
257. 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.
258. ICC acts exclusively as depositary and is not in a position to advise arbitrators on tax law issues.
259. The arbitrator determines the amount of VAT on his or her fees according to the rules that apply at the place where he or she is taxable.
260. Arbitrators may use the [Cost Calculator](#) on the ICC website to estimate the amount of the fees that may be payable. Such amounts, however, are only indicative of the fees that they may ultimately receive, which may be in a higher or lesser amount. Arbitrators should also be mindful 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) which is referred to in this Note is given merely as a guide and may be varied by the Court.
261. 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.
262. 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.

### **XXIII - VAT payable on ICC Administrative Expenses**

263. ICC administrative expenses do not include French Value-Added Tax ("VAT"; Article 2(14) of Appendix III). As of 1 January 2021 and to the extent that VAT is applicable, ICC administrative expenses will be subject to VAT. Accordingly, ICC administrative expenses may be increased by the corresponding amount at the prevailing rate as further set out in the [Explanatory Note](#)



[on VAT Applicable on ICC Administrative Expenses](#). The applicable rate under French tax law is currently 20%. The Secretariat's requests for payment of the advance on costs will result in the issuance of invoices that will cover all amounts requested (i.e. amounts to cover ICC administrative expenses alongside the advance on arbitrators' fees and expenses).

264. The basic scheme under the Rules with respect to ICC administrative expenses is that the parties are required to pay them (alongside the arbitrators' fees and expenses) through advance payments on costs requested by the Secretariat (see section VII(A)). Where applicable, VAT will be charged on the requested advance payments corresponding to the ICC administrative expenses. Indicatively, VAT will be charged and invoiced on:
- a. The filing fee (Article 4(4)(a) of the Rules and Article 1(1) of Appendix III).
  - b. The portion of requested payments corresponding to ICC administrative expenses of:
    - (i) Advances on costs (Article 37 of the Rules and Article 1 of Appendix III);
    - (ii) Additional advances on costs (Article 36(5) of the Rules and Article 2(11) of Appendix III); and
    - (iii) Costs of the Emergency Arbitrator Proceedings (Article 7(1) of Appendix V).
  - c. Any abeyance fee (Article 2(7) of Appendix III).

ICC will not charge VAT on the portion of the advance on costs corresponding to the arbitrators' fees and expenses. The invoicing and collection of VAT due by the parties to the arbitrators, where applicable, is a matter solely between the arbitrators and the parties (see paragraph 253).

## XXIV - Assistance with the Conduct of the Arbitration

### A - Conduct of the Arbitration

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265. The Secretariat may assist parties and arbitral tribunals with the conduct of the arbitration, in particular:
- a. **Deposit of documents:** the Secretariat may in certain circumstances act as depository of documents.
  - b. **Conference calls:** the Secretariat may assist arbitral tribunals in organising conference calls with the parties and, when required, participate in such calls.
  - c. **Administrative secretaries:** the Secretariat may assist arbitral tribunals in identifying administrative secretaries for appointment pursuant to section XX.
  - 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 55, 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 XXVI).
  - g. **ICC Commercial Crime Services:** the Secretariat may assist parties and arbitral tribunals in liaising with ICC Commercial Crime Services (for more information visit: [www.icc-ccs.org](http://www.icc-ccs.org)).

## B - Hearings and Meetings

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

## C - Sealed Offer(s)

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267. The Secretariat may assist parties to put information relating to certain unaccepted settlement offers, and related communication (commonly referred to as “Sealed Offer(s)”), before an arbitral tribunal. The Secretariat may also assist with any counter-offer(s) made as Sealed Offer(s) by the offeree.
268. The arbitral tribunal should consider consulting the parties at an early stage (e.g. at the first case management conference pursuant to Article 24) and inviting them to agree on a procedure for the possible use of Sealed Offer(s) in the arbitration. Absent initiative by the arbitral tribunal in this respect, any party is free to raise this issue.
269. The Secretariat will keep any such communication regarding Sealed Offer(s) confidential from the arbitral tribunal until all issues of liability and quantum have been resolved.
270. To obtain the Secretariat’s assistance, the following procedure should be followed:
- a. At any point after the Secretariat has transmitted the Request for Arbitration to the respondent(s), any party to the arbitration may send to the Secretariat a copy of an offer of settlement previously made to any other party in the arbitration, but not accepted, that is marked “without prejudice save as to costs”. The offer should be submitted to the Secretariat in a sealed envelope marked “without prejudice save as to costs”. An accompanying letter should request the Secretariat to treat the sealed envelope as confidential and not to transmit it to the arbitral tribunal until the latter has resolved all issues of liability and quantum and is ready to consider the allocation of costs. The original recipient of the offer should be copied on all communications to the Secretariat related to the Sealed Offer(s).

- b. Following receipt of correspondence pursuant to paragraph (a), the Secretariat will inform:
  - (i) the sending party (copying the other party) that the sealed envelope will be held in confidence, and
  - (ii) the original recipient of the offer (copying the other party) of the circumstances in which the sealed envelope may be submitted to the arbitral tribunal and solicit any comments.
- c. Further correspondence arising from the original offer (including, for example, any counter-offers) which is sent by a party to the Secretariat in a sealed envelope marked “without prejudice save as to costs” will be held by the Secretariat on the same basis as the original offer.
- d. At an appropriate stage in the proceedings, the Secretariat will write to the arbitral tribunal to inform it that the Secretariat is holding correspondence exchanged between the parties that is potentially relevant to its determination of costs under Article 38. The Secretariat will request the arbitral tribunal to: (i) inform the Secretariat in writing whether it accepts to receive the Sealed Offer(s); and in such case to (ii) inform the Secretariat in writing once it has completed its deliberations on all liability and quantum issues and is ready to apportion costs.
- e. If the arbitral tribunal accepts to receive the Sealed Offer(s), it should refrain from closing the proceedings pursuant to Article 27 to the extent necessary to allow the parties to make further submissions on costs.
- f. Once the arbitral tribunal has informed the Secretariat that it is ready to apportion costs under Article 38, the Secretariat will send to the arbitral tribunal all the correspondence marked “without prejudice save as to costs” held by the Secretariat. Once the arbitral tribunal has received this information, it shall open the sealed envelopes and provide copies of any documents contained therein to the parties.
- g. The arbitral tribunal will decide whether any further procedural steps are necessary or whether it can proceed to allocate costs pursuant to Article 38. For the avoidance of doubt, the arbitral tribunal retains discretion to decide what weight, if any, should be given to correspondence marked “without prejudice save as to costs” and received from the Secretariat.
- h. Once the arbitral tribunal has completed its deliberations on costs, it will add its decision as to the allocation of costs to the draft final award, which will be submitted to the ICC Court for scrutiny pursuant to Article 34.

## XXV - Post-Award Services

271. In accordance with Article 35, the Secretariat shall assist the parties in complying with whatever formalities may be necessary, in particular:
  - 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.
272. As some post-award services take time and preparation, parties should allow sufficient time when requesting such assistance from the Secretariat.

## XXVI - International Centre for ADR

### A - ICC Mediation Rules

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273. 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. The appointment of a mediator by the Centre made at the joint request of all the parties in an ongoing ICC arbitration is provided free of charge.
274. Where appropriate, arbitrators may wish to remind the parties about the ICC Mediation Rules.
275. Further information is available from the Centre at +33 1 49 53 29 03 or [adr@iccwbo.org](mailto:adr@iccwbo.org).

### B - ICC Expert Rules

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276. 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\$ 5,000.
277. Likewise, if the arbitral tribunal requires the assistance of an expert, the Centre can, upon request, propose experts. This service is provided free of charge to arbitrators.
278. Further information is available from the Centre at +33 1 49 53 29 03 or [adr@iccwbo.org](mailto:adr@iccwbo.org).

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

279. 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.