

Rules of ICC as Appointing Authority in UNCITRAL or Other Ad Hoc Arbitration Proceedings

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FOREWORD

One of the key steps in any arbitration is the constitution of the arbitral tribunal. Whilst this gives the parties the opportunity to designate arbitrators of their choice, especial care is required to ensure the independence and competence of the persons chosen, particularly in international proceedings. For this reason, parties may prefer to leave the task to a specialized institution, such as ICC.

During more than eighty years of administering international arbitrations, ICC has acquired exceptional experience in appointing arbitrators. In addition, it enjoys the support of a worldwide network of national committees able to identify arbitrators with appropriate qualifications of many different nationalities and from various spheres of activity.

The present rules supersede the rules *ICC as Appointing Authority under the UNCITRAL Arbitration Rules*, which have been in force for some twenty years and applied only to cases conducted under the UNCITRAL Arbitration Rules. The scope of the new rules extends also to *ad hoc* proceedings not conducted under the UNCITRAL Arbitration Rules. In both cases, in addition to making appointments, the ICC International Court of Arbitration may be given other powers, including the power to decide upon challenges of arbitrators, whether or not appointed by ICC.

RULES OF ICC AS APPOINTING AUTHORITY IN UNCITRAL OR OTHER *AD HOC* ARBITRATION PROCEEDINGS

Article 1

ICC as Appointing Authority in UNCITRAL or Other *Ad Hoc* Arbitration Proceedings

1

If so empowered by an arbitration clause, a subsequent agreement of the parties, a designation by the Secretary-General of the Permanent Court of Arbitration in The Hague, or otherwise, the International Chamber of Commerce ('ICC') shall act as appointing authority in accordance with the parties' agreement and/or the UNCITRAL Arbitration Rules.

2

The present Rules shall also apply where an authority within ICC¹ is requested to act as appointing authority in accordance with the parties' agreement or is designated by the Secretary-General of the Permanent Court of Arbitration in The Hague. References to ICC in these Rules include such other authorities.

3

Where ICC is empowered or requested to act as appointing authority under Articles 1(1) or 1(2), the function shall be carried out by the ICC International Court of Arbitration (the 'Court'). To fulfil this role, the Court shall create a special committee (the 'Special Committee') consisting of the Chairman of the Court and two other members of the Court. The Chairman may designate a Vice-Chairman of the Court to replace him at a meeting of the Special Committee. Unless otherwise provided, the Special Committee shall carry out the functions of the Court under these Rules. The Special Committee's decisions shall be taken unanimously. In the event that a unanimous decision cannot be reached, the matter shall be referred to the Court sitting as a special plenary session (the 'Special Plenary Session'). When making decisions upon challenges pursuant to these Rules, the Court shall do so at a Special Plenary Session.

Article 2

Request for ICC to Act as Appointing Authority

1

In cases referred to in Article 1 of these Rules, a party wishing ICC to act as appointing authority shall submit a request (the 'Request') to the Secretariat of the Court (the 'Secretariat'), which shall notify the other party or parties of the receipt of the Request and the date of such receipt.

2

The Request shall contain all the information that the requesting party deems appropriate to allow the Court to make the requested appointment.

3

The Request and all documents annexed thereto shall be supplied in a sufficient number of copies to provide one for each party and one for the Secretariat. When submitting its Request, the requesting party shall make

the payment required by Article 6 of these Rules. Should the requesting party fail to comply with either of these requirements, the Secretariat may set a time limit for compliance. Failing compliance within the time limit, the file shall be closed without prejudice to the right of the requesting party to resubmit its Request at a later date.

Article 3

The Court Acting as Appointing Authority under the UNCITRAL Arbitration Rules

1

When acting as the appointing authority for the purpose of appointing a sole or presiding (third) arbitrator pursuant to Articles 6(2) and 7(3) of the UNCITRAL Arbitration Rules, the Court shall follow the list-procedure set forth in Article 6(3) of the UNCITRAL Arbitration Rules, unless all parties agree that the list-procedure should not be used or the Court determines in its discretion that the use of the list-procedure is not appropriate for the case.

2

When following the list-procedure, the Court shall prepare a list of at least three candidates which shall be communicated to the parties by the Secretariat. Within 15 days of receiving this list, each party may return the list to the Secretariat after deleting the name or names to which it objects and numbering the remaining names on the list in the order of its preference. After expiration of the aforementioned 15-day time limit, the Court shall appoint the sole or presiding arbitrator from among the names approved on the list returned to the Secretariat and in accordance with the order of preference indicated by the parties. If for any reason the appointment cannot be made according to this procedure, the Court may exercise its discretion in appointing the sole or presiding arbitrator.

3

In accordance with Article 6(4) of the UNCITRAL Arbitration Rules, when making the appointment, the Court shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than that of the parties.

4

When appointing an arbitrator on behalf of a party in default under Article 7 of the UNCITRAL Arbitration Rules, the Court may exercise its discretion in making the appointment.

5

When making decisions upon challenges submitted by any party under Article 12 of the UNCITRAL Arbitration Rules, the Court will do so at a Special Plenary Session after the Secretariat has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators, before being submitted to the Court.

6

When appointing a substitute arbitrator under Articles 12(2) and 13 of the UNCITRAL Arbitration Rules, the Court shall follow the procedure set forth in the preceding paragraphs.

7

At the request of any party and pursuant to Article 39(4) of the UNCITRAL Arbitration Rules, the Court may, on a consultative basis, provide a statement concerning the fees of the arbitrators, taking into account the ICC Scale of Arbitrator's Fees for cases conducted under the ICC Rules of Arbitration.

8

At the request of any party and pursuant to Article 41(3) of the UNCITRAL Arbitration Rules, the Court may, on a consultative basis, give the arbitral tribunal any comments it deems appropriate concerning the amount of any deposit or supplementary deposit to be made under Article 41 of the UNCITRAL Arbitration Rules.

Article 4

The Court Acting as Appointing Authority in *Ad Hoc*, Non-UNCITRAL Arbitration Proceedings

1

Where the parties have agreed or where an applicable text provides that ICC shall act as appointing authority in *ad hoc*, non-UNCITRAL (hereafter, non-UNCITRAL) arbitral proceedings, the Court, exercising its discretion within the limits fixed by the parties in their agreement(s), or the limits contained in the applicable text, shall appoint an arbitrator independent of the parties involved in the arbitration.

2

The parties to non-UNCITRAL arbitral proceedings may agree that the Court, as appointing authority, shall have the power to decide upon a challenge made by any of the parties against any member of the arbitral tribunal. A challenge shall be made by submitting to the Secretariat a written statement specifying the facts and circumstances on which the challenge is based.

3

The Court shall decide on the challenge at a Special Plenary Session after the Secretariat has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators, before being submitted to the Court.

Article 5

General Provisions

1

When requested to act under these Rules, the Court shall proceed if it is satisfied that an agreement authorizing it to act as appointing authority may exist.

2

If so empowered by an arbitration clause, a subsequent agreement of the parties, or otherwise, the Court shall consider providing services, besides those specifically indicated in these Rules, in accordance with the parties' agreement.

3

Before appointment in cases provided for under Articles 3 and 4 of these Rules, a prospective arbitrator shall sign a declaration of acceptance and a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties.

4

The reasons for the decisions taken by the Court under these Rules shall not be communicated.

5

Neither the Court and its members, nor the International Chamber of Commerce and its employees shall be liable to any person for any act or omission in connection with the activities performed under these Rules.

Article 6

ICC Costs for Services Rendered as Appointing Authority

1

Each Request submitted to the Secretariat must be accompanied by payment to ICC of a non-refundable sum, the amount of which shall be determined according to the Appendix to these Rules.

2

For services provided pursuant to Article 5(2) of these Rules, the Court may fix administrative expenses commensurate with these services, which shall be paid by the requesting party or parties.

APPENDIX

ICC COSTS FOR SERVICES RENDERED AS APPOINTING AUTHORITY

Article 1

The non-refundable amount referred to in Article 6(1) of these Rules is US\$ 2,500. The non-refundable amount is payable by the party or parties submitting the Request. No Request shall be processed unless accompanied by the requisite payment.

Article 2

The administrative expenses of ICC for the services rendered pursuant to Article 5(2) of these Rules shall be fixed at ICC's discretion depending on the tasks carried out by ICC. Such administrative expenses shall be commensurate with said services and shall not exceed the maximum sum of US\$ 10,000.

¹ Such as the Chairman or Secretary General of ICC or the Chairman or Secretary General of the ICC International Court of Arbitration.