

# 013/023 Preparing and Conducting an International Arbitration—An Interactive Case Study (Parts I & II)

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## Faculty Biographies

### **Lorraine M. Brennan**

Lorraine M. Brennan is director of arbitration and ADR, North America at ICC International Court of Arbitration, and serves as the American advisor to the International Court of Arbitration of the International Chamber of Commerce (ICC) in Paris. Ms. Brennan advises North American attorneys and companies on all phases of ICC arbitration, including negotiation of arbitration clauses, requests for arbitration, procedural issues, and enforcement of arbitration awards.

Prior to assuming this position, Ms. Brennan served as the director of arbitration and intellectual property and legal counsel at the USCIB, the U.S. affiliate of the ICC. In this role, she assisted in formulating and implementing U.S. policy with respect to intellectual property issues and advised U.S. companies on the latest developments in the field. Before joining the USCIB, Ms. Brennan served as senior law clerk to the Honorable Irving Ben Cooper in the United States District Court for the Southern District of New York, and was a litigation associate at Milbank Tweed Hadley and McCloy. She also worked as a litigation associate at Choate Hall and Stewart.

Ms. Brennan is cochair of the International Litigation Section of the ABA, a member of the American Society of International Law, the Association of the Bar of the City of New York, the advisory board of the Institute for Transnational Arbitration, the International Bar Association, the London Court of International Arbitration, and the American Judicature Society.

Ms. Brennan received her BA from Cornell University, her JD from Suffolk University Law School, and an MA from the Fletcher School of Law and Diplomacy. She is also the recipient of a Diplôme d'Études Supérieures from the Institut Universitaire de Hautes Études Internationales in Geneva, Switzerland.

### **D. Earl McLaren**

Douglas Earl McLaren is currently with BECHTEL SAIC Company, LLC. In Washington, DC.

Prior to joining BECHTEL SAIC, he was employed with TRW and ICF Kaiser Engineers. Prior to attending law school, Mr. McLaren was a financial analyst with Exxon and a management consultant with KPMG.

Mr. McLaren is an experienced arbitrator with the International Chamber of Commerce (ICC) Court of Arbitration and the American Arbitration Association, and is a member of the London Court of International Arbitration. He is also on the panel of arbitrators for the three major domestic stock exchanges. Mr. McLaren is the immediate past chair and a member of the Steering Committee of the DC Bar, Section of International Law, and a member of the board of directors of the Washington Foreign Law Society.

Mr. McLaren holds a BS and MBA from McGill University and a JD from Harvard Law School.

**Eva M. Plaza**

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**Veta T. Richardson**

Veta T. Richardson is the executive director of the Minority Corporate Counsel Association (MCCA). MCCA's mission is to advocate for expanded hiring, retention, and promotion opportunities for minority counsel in corporate law departments and the law firms that serve them, thereby creating workplaces of inclusion where all employees contribute to their fullest potential. MCCA advances its mission through the collection and dissemination of diversity best practices, industry-leading research, and educational programs.

Ms. Richardson is one of the few bar leaders to have practiced in-house, having been corporate and securities counsel to Sunoco, Inc. for more than 10 years. She is also a former vice president of ACCA.

Ms. Richardson is a graduate of the University of Maryland Law School.

**David M. Vaughn**

David M. Vaughn is an attorney and rule of law consultant for Chemonics International, an international development consulting firm in Washington, DC. His responsibilities include providing technical legal advice on United States and World Bank development initiatives in Asia, Africa, and Eastern Europe. He also designs interactive training programs and materials for international legal professionals.

Prior to his current position, Mr. Vaughn served as deputy chief of party and rule of law advisor for the United States Agency for International Development (USAID) judicial reform program in Moscow. While in Russia, he provided technical legal assistance to the Supreme Court in a variety of substantive areas, including commercial law, civil procedure law, and issues related to international litigation and arbitration.

Mr. Vaughn has taught at Oxford University, Moscow State University, the University of Namibia, and the University of the Witwatersrand in South Africa. He has also published several articles on topics that include democratic governance, economic development, ethics, and international law. He served one year as pro bono rule of law liaison/coordinator for the ABA Central and East European Law Initiative in Almaty, Kazakhstan and currently volunteers as a big brother for the Big Brothers/Big Sisters program.

Mr. Vaughn received a BA and MA in political science from the University of Vermont and is a graduate of the American University Washington College of Law.



International Chamber  
of Commerce  
*The world business  
organization*

**Dispute Resolution Services**

*ADR Rules*

*in force as from 1 July 2001*

Of the various languages in which the ICC ADR Rules and the Guide to ICC ADR may be published, the English and French versions are the only official texts.

Published in June 2001

**International Chamber of Commerce**

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## FOREWORD

ICC has almost eight decades of experience in devising rules to govern and facilitate the conduct of international business. These include those designed to resolve the conflicts that inevitably arise in trading relations. The present ADR Rules represent ICC's most recent initiative in this field.

The ICC ADR Rules are the result of discussions between dispute resolution experts and representatives of the business community from 75 countries. Their purpose is to offer business partners a means of resolving disputes amicably, in the way best suited to their needs. A distinctive feature of the Rules is the freedom the parties are given to choose the technique they consider most conducive to settlement. Failing agreement on the method to be adopted, the fallback shall be mediation.

As an amicable method of dispute resolution, ICC ADR should be distinguished from ICC arbitration. They are two alternative means of resolving disputes, although in certain circumstances they may be complementary. For instance, it is possible for parties to provide for arbitration in the event of failure to reach an amicable settlement. Similarly, parties engaged in an ICC arbitration may turn to ICC ADR if their dispute seems to warrant a different, more consensual approach. The two services remain distinct, however, each administered by a separate secretariat based at ICC headquarters in Paris.

The ICC ADR Rules replace the 1988 ICC Rules of Optional Conciliation and join the Rules of Arbitration, the Rules for Expertise and the Docdex Rules as an important component in ICC's range of dispute resolution services.

The ICC ADR Rules, which are effective as of 1 July 2001, may be used in domestic as well as international contexts.

June 2001

## **SUGGESTED ICC ADR CLAUSES**

### **OPTIONAL ADR**

“The parties may at any time, without prejudice to any other proceedings, seek to settle any dispute arising out of or in connection with the present contract in accordance with the ICC ADR Rules.”

### **OBLIGATION TO CONSIDER ADR**

“In the event of any dispute arising out of or in connection with the present contract, the parties agree in the first instance to discuss and consider submitting the matter to settlement proceedings under the ICC ADR Rules.”

### **OBLIGATION TO SUBMIT DISPUTE TO ADR WITH AN AUTOMATIC EXPIRATION MECHANISM**

“In the event of any dispute arising out of or in connection with the present contract, the parties agree to submit the matter to settlement proceedings under the ICC ADR Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the parties may agree in writing, the parties shall have no further obligations under this paragraph.”

### **OBLIGATION TO SUBMIT DISPUTE TO ADR, FOLLOWED BY ICC ARBITRATION AS REQUIRED**

“In the event of any dispute arising out of or in connection with the present contract, the parties agree to submit the matter to settlement proceedings under the ICC ADR Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.”

*ICC ADR Rules***ADR RULES OF THE INTERNATIONAL  
CHAMBER OF COMMERCE****Preamble**

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Amicable settlement is a desirable solution for business disputes and differences. It can occur before or during the litigation or arbitration of a dispute and can often be facilitated through the aid of a third party (the "Neutral") acting in accordance with simple rules. The parties can agree to submit to such rules in their underlying contract or at any other time.

The International Chamber of Commerce ("ICC") sets out these amicable dispute resolution rules, entitled the ICC ADR Rules (the "Rules"), which permit the parties to agree upon whatever settlement technique they believe to be appropriate to help them settle their dispute. In the absence of an agreement of the parties on a settlement technique, mediation shall be the settlement technique used under the Rules. The Guide to ICC ADR, which does not form part of the Rules, provides an explanation of the Rules and of various settlement techniques which can be used pursuant to the Rules.

**Article 1  
Scope of the ICC ADR Rules**

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All business disputes, whether or not of an international character, may be referred to ADR proceedings pursuant to these Rules. The provisions of these Rules may be modified by agreement of all of the parties, subject to the approval of ICC.

**Article 2  
Commencement of the ADR Proceedings**

---

A Where there is an agreement to refer to the Rules

1

Where there is an agreement between the parties to refer their dispute to the ICC ADR Rules, any party or



*ICC ADR Rules*

parties wishing to commence ADR proceedings pursuant to the Rules shall send to ICC a written Request for ADR, which shall include:

- a) the names, addresses, telephone and facsimile numbers and e-mail addresses of the parties to the dispute and their authorized representatives, if any;
- b) a description of the dispute including, if possible, an assessment of its value;
- c) any joint designation by all of the parties of a Neutral or any agreement of all of the parties upon the qualifications of a Neutral to be appointed by ICC where no joint designation has been made;
- d) a copy of any written agreement under which the Request for ADR is made; and
- e) the registration fee of the ADR proceedings, as set out in the Appendix hereto.

2

Where the Request for ADR is not filed jointly by all of the parties, the party or parties filing the Request shall simultaneously send the Request to the other party or parties. Such Request may include any proposal regarding the qualifications of a Neutral or any proposal of one or more Neutrals to be designated by all of the parties. Thereafter, all of the parties may jointly designate a Neutral or may agree upon the qualifications of a Neutral to be appointed by ICC. In either case, the parties shall promptly notify ICC thereof.

3

ICC shall promptly acknowledge receipt of the Request for ADR in writing to the parties.

B Where there is no agreement to refer to the Rules

1

Where there is no agreement between the parties to refer their dispute to the ICC ADR Rules, any party or parties wishing to commence ADR proceedings

*ICC ADR Rules*

pursuant to the Rules shall send to ICC a written Request for ADR, which shall include:

- a) the names, addresses, telephone and facsimile numbers and e-mail addresses of the parties to the dispute and their authorized representatives, if any;
- b) a description of the dispute including, if possible, an assessment of its value; and
- c) the registration fee of the ADR proceedings, as set out in the Appendix hereto.

The Request for ADR may also include any proposal regarding the qualifications of a Neutral or any proposal of one or more Neutrals to be designated by all of the parties.

2

ICC shall promptly inform the other party or parties in writing of the Request for ADR. Such party or parties shall be asked to inform ICC in writing, within 15 days of receipt of the Request for ADR, as to whether they agree or decline to participate in the ADR proceedings. In the former case, they may provide any proposal regarding the qualifications of a Neutral and may propose one or more Neutrals to be designated by the parties. Thereafter, all of the parties may jointly designate a Neutral or may agree upon the qualifications of a Neutral to be appointed by ICC. In either case, the parties shall promptly notify ICC thereof.

In the absence of any reply within such 15-day period, or in the case of a negative reply, the Request for ADR shall be deemed to have been declined and ADR proceedings shall not be commenced. ICC shall promptly so inform in writing the party or parties which filed the Request for ADR.

**Article 3**  
**Selection of the Neutral**

---

1

Where all of the parties have jointly designated a Neutral, ICC shall take note of that designation, and

*ICC ADR Rules*

such person, upon notifying ICC of his or her agreement to serve, shall act as the Neutral in the ADR proceedings. Where a Neutral has not been designated by all of the parties, or where the designated Neutral does not agree to serve, ICC shall promptly appoint a Neutral, either through an ICC National Committee or otherwise, and notify the parties thereof. ICC shall make all reasonable efforts to appoint a Neutral having the qualifications, if any, which have been agreed upon by all of the parties.

2

Every prospective Neutral shall promptly provide ICC with a *curriculum vitae* and a statement of independence, both duly signed and dated. The prospective Neutral shall disclose to ICC in the statement of independence any facts or circumstances which might be of such nature as to call into question his or her independence in the eyes of the parties. ICC shall provide such information to the parties in writing.

3

If any party objects to the Neutral appointed by ICC and notifies ICC and the other party or parties thereof in writing, stating the reasons for such objection, within 15 days of receipt of notification of the appointment, ICC shall promptly appoint another Neutral.

4

Upon agreement of all of the parties, the parties may designate more than one Neutral or request ICC to appoint more than one Neutral, in accordance with the provisions of these Rules. In appropriate circumstances, ICC may propose the appointment of more than one Neutral to the parties.

**Article 4**  
**Fees and Costs**

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1

The party or parties filing a Request for ADR shall include with the Request a non-refundable registration

*ICC ADR Rules*

fee, as set out in the Appendix hereto. No Request for ADR shall be processed unless accompanied by the requisite payment.

2

Following the receipt of a Request for ADR, ICC shall request the parties to pay a deposit in an amount likely to cover the administrative expenses of ICC and the fees and expenses of the Neutral for the ADR proceedings, as set out in the Appendix hereto. The ADR proceedings shall not go forward until payment of such deposit has been received by ICC.

3

In any case where ICC considers that the deposit is not likely to cover the total costs of the ADR proceedings, the amount of such deposit may be subject to readjustment. ICC may stay the ADR proceedings until the corresponding payments are made by the parties.

4

Upon termination of the ADR proceedings, ICC shall settle the total costs of the proceedings and shall, as the case may be, reimburse the parties for any excess payment or bill the parties for any balance required pursuant to these Rules.

5

All above deposits and costs shall be borne in equal shares by the parties, unless they agree otherwise in writing. However, any party shall be free to pay the unpaid balance of such deposits and costs should another party fail to pay its share.

6

A party's other expenditure shall remain the responsibility of that party.

**Article 5**  
**Conduct of the ADR Procedure**

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1

The Neutral and the parties shall promptly discuss, and

*ICC ADR Rules*

seek to reach agreement upon, the settlement technique to be used, and shall discuss the specific ADR procedure to be followed.

2

In the absence of an agreement of the parties on the settlement technique to be used, mediation shall be used.

3

The Neutral shall conduct the procedure in such manner as the Neutral sees fit. In all cases the Neutral shall be guided by the principles of fairness and impartiality and by the wishes of the parties.

4

In the absence of an agreement of the parties, the Neutral shall determine the language or languages of the proceedings and the place of any meetings to be held.

5

Each party shall cooperate in good faith with the Neutral.

**Article 6**  
**Termination of the ADR Proceedings**

---

1

ADR proceedings which have been commenced pursuant to these Rules shall terminate upon the earlier of:

- a) the signing by the parties of a settlement agreement;
- b) the notification in writing to the Neutral by one or more parties, at any time after the discussion referred to in Article 5(1) has occurred, of a decision no longer to pursue the ADR proceedings;
- c) the completion of the procedure established pursuant to Article 5 and the notification in writing thereof by the Neutral to the parties;
- d) the notification in writing by the Neutral to the

*ICC ADR Rules*

- parties that the ADR proceedings will not, in the Neutral's opinion, resolve the dispute between the parties;
- e) the expiration of any time limit set for the ADR proceedings, if not extended by all of the parties, such expiration to be notified in writing by the Neutral to the parties;
  - f) the notification in writing by ICC to the parties and the Neutral, not less than 15 days after the due date for any payment by one or more parties pursuant to these Rules, stating that such payment has not been made; or
  - g) the notification in writing by ICC to the parties stating, in the judgment of ICC, that there has been a failure to designate a Neutral or that it has not been reasonably possible to appoint a Neutral.

2

The Neutral, upon any termination of the ADR proceedings pursuant to Article 6(1), (a)-(e), shall promptly notify ICC of the termination of the ADR proceedings and shall provide ICC with a copy of any notification referred to in Article 6(1), (b)-(e). In all cases ICC shall confirm in writing the termination of the ADR proceedings to the parties and the Neutral, if a Neutral has already been designated or appointed.

**Article 7**  
**General Provisions**

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1

In the absence of any agreement of the parties to the contrary and unless prohibited by applicable law, the ADR proceedings, including their outcome, are private and confidential. Any settlement agreement between the parties shall similarly be kept confidential except that a party shall have the right to disclose it to the extent that such disclosure is required by applicable law or necessary for purposes of its implementation or enforcement.

2

Unless required to do so by applicable law and in the

*ICC ADR Rules*

absence of any agreement of the parties to the contrary, a party shall not in any manner produce as evidence in any judicial, arbitration or similar proceedings:

- a) any documents, statements or communications which are submitted by another party or by the Neutral in the ADR proceedings, unless they can be obtained independently by the party seeking to produce them in the judicial, arbitration or similar proceedings;
- b) any views expressed or suggestions made by any party within the ADR proceedings with regard to the possible settlement of the dispute;
- c) any admissions made by another party within the ADR proceedings;
- d) any views or proposals put forward by the Neutral;  
or
- e) the fact that any party had indicated within the ADR proceedings that it was ready to accept a proposal for a settlement.

3

Unless all of the parties agree otherwise in writing, a Neutral shall not act nor shall have acted in any judicial, arbitration or similar proceedings relating to the dispute which is or was the subject of the ADR proceedings, whether as a judge, as an arbitrator, as an expert or as a representative or advisor of a party.

4

The Neutral, unless required by applicable law or unless all of the parties agree otherwise in writing, shall not give testimony in any judicial, arbitration or similar proceedings concerning any aspect of the ADR proceedings.

5

Neither the Neutral, nor ICC and its employees, nor the ICC National Committees shall be liable to any person for any act or omission in connection with the ADR proceedings.

*Appendix to ICC ADR Rules***APPENDIX  
SCHEDULE OF ADR COSTS****A**

The party or parties filing a Request for ADR shall include with the Request a non-refundable registration fee of US\$ 1,500 to cover the costs of processing the Request for ADR. No Request for ADR shall be processed unless accompanied by the requisite payment.

**B**

The administrative expenses of ICC for the ADR proceedings shall be fixed at ICC's discretion depending on the tasks carried out by ICC. Such administrative expenses shall not exceed the maximum sum of US\$ 10,000.

**C**

The fees of the Neutral shall be calculated on the basis of the time reasonably spent by the Neutral in the ADR proceedings, at an hourly rate fixed for such proceedings by ICC in consultation with the Neutral and the parties. Such hourly rate shall be reasonable in amount and shall be determined in light of the complexity of the dispute and any other relevant circumstances. The amount of reasonable expenses of the Neutral shall be fixed by ICC.

**D**

Amounts paid to the Neutral do not include any possible value added taxes (VAT) or other taxes or charges and imposts applicable to the Neutral's fees. Parties are required to pay any such taxes or charges; however, the recovery of any such taxes or charges is a matter solely between the Neutral and the parties.





International Chamber  
of Commerce  
*The world business  
organization*

# International Court of Arbitration

## *Rules of Arbitration*

*in force as from 1 January 1998*

# Rules of Arbitration

*in force as from 1 January 1998*

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## FOREWORD

During the last quarter of the twentieth century, international commercial arbitration has gained worldwide acceptance as the normal means of resolving international commercial disputes. National laws on arbitration have been modernized on all continents. International treaties on arbitration have been signed or adhered to with impressive success. Arbitration has become part of the curriculum of large numbers of law schools. With the gradual removal of political and trade barriers and the rapid globalization of the world economy, new challenges have been created for arbitration institutions in response to the growing demand of parties for certainty and predictability, greater rapidity and flexibility as well as neutrality and efficacy in the resolution of international disputes. There has been a substantial increase not only in the number of cases, their complexity, the amounts in dispute and the diversity of the parties, but also in the demands made on the process by the parties.

Since the International Court of Arbitration was established in 1923, ICC arbitration has been constantly nourished by the experience gathered by the ICC International Court of Arbitration in the course of administering some ten thousand international arbitration cases, now involving each year parties and arbitrators from over 100 countries and from a diversity of legal, economic, cultural and linguistic backgrounds.

The present ICC Rules of Arbitration, in effect as of 1 January 1998, constitute the first major revision of the Rules in more than 20 years, following an intensive, worldwide consultation process. The changes made are designed to reduce delays and ambiguities and to fill certain gaps, taking into account the evolution of arbitration practice. The basic features of the ICC arbitration system have not been altered, however, notably its universality and flexibility, as well as the central role played by the ICC Court in the administration of arbitral cases.

Every ICC arbitration is conducted by an arbitral tribunal with responsibility for examining the merits of the case and rendering a final award. Each year, ICC arbitrations are held in some 40 countries, in several languages and with arbitrators of some 60 different nationalities. The work of those arbitral tribunals is monitored by the ICC Court, which meets at least three (and often four) times a month all year round. Currently composed of some 65 members from over 55 countries, the Court organizes and supervises arbitrations held under the ICC Rules of Arbitration. The Court must remain constantly alert to changes in the law and the practice of arbitration in all parts of the world and must adapt its working methods to the evolving needs of parties and arbitrators. For the day-to-day management of cases in several languages, the ICC Court is supported by a Secretariat based at the headquarters of the International Chamber of Commerce, in Paris.

Although the ICC Rules of Arbitration have been especially designed for arbitrations in an international context, they may also be used for non-international cases.

The first prints of the 1998 ICC Rules (November 1997 & May 1998) contained certain typographical errors which have been corrected here. Also, one correction was brought to Article 8(4) which resolves a discrepancy between the French and English versions (which are both official). The words "by the Court" at the end of the first sentence of Article 8(4) have been deleted in view of the fact that arbitrators may also be confirmed by the Secretary General under Article 9(2). The same correction was brought to Article 2(2) of Appendix II.

## STANDARD ICC ARBITRATION CLAUSE

The ICC recommends that all parties wishing to make reference to ICC arbitration in their contracts use the following standard clause.

Parties are reminded that it may be desirable for them to stipulate in the arbitration clause itself the law governing the contract, the number of arbitrators and the place and language of the arbitration. The parties' free choice of the law governing the contract and of the place and language of the arbitration is not limited by the ICC Rules of Arbitration.

Attention is called to the fact that the laws of certain countries require that parties to contracts expressly accept arbitration clauses, sometimes in a precise and particular manner.

### English

“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”

### French

“Tous différends découlant du présent contrat ou en relation avec celui-ci seront tranchés définitivement suivant le Règlement d'arbitrage de la Chambre de commerce internationale par un ou plusieurs arbitres nommés conformément à ce Règlement.”

### Arabic

جميع الخلافات التي تنشأ عن هذا العقد أو التي لها علاقة به يتم حسمها نهائياً وفقاً لنظام التحكيم لغرفة التجارة الدولية بواسطة حكم أو عدة حكام يتم تعيينهم طبقاً لذلك النظام.

### Bulgarian

“Всички спорове, които призтичат от този договор или имат връзка с него ще бъдат разрешени окончателно, съобразно Правилника за арбитраж на Международната търговска камара от един или повече арбитри, според този Правилник.”

### Chinese

所有产生于或与本合同有关的争议均应按照国际商会仲裁规则由依该规则指定的一名或数名仲裁员终审解决。

### Dutch

“Alle geschillen, die uit of met betrekking tot deze overeenkomst mochten ontstaan, zullen definitief worden beslecht overeenkomstig het Arbitragereglement van de ICC door één of meerdere arbiters benoemd overeenkomstig dit Reglement.”

### German

“Alle aus oder in Zusammenhang mit dem gegenwärtigen Vertrag sich ergebenden Streitigkeiten werden nach der Schiedsgerichtsordnung der Internationalen Handelskammer von einem oder mehreren gemäß dieser Ordnung ernannten Schiedsrichtern endgültig entschieden.”

### Greek

“Όλες οι διαφωές που προκύπτουν από την παρούσα σύμβαση ή έχουν σχέση με αυτήν θα επιλύονται οριστικώς βάσει του Κανονισμού Διαιτησίας του Διεθνούς Εμπορικού Επιμελητηρίου από έναν ή περισσότερους διαιτητές που θα ορίζονται συμφώνως προς αυτόν τον Κανονισμό.”

### Hungarian

“A jelen szerződésből eredő vagy azzal összefüggésben keletkező minden vitát a Nemzetközi Kereskedelmi Kamara Választottbírószági Szabályzatának megfelelően kell véglegesen rendezni az említett szabályzat szerint kijelölt egy vagy több választottbíró útján.”

### Italian

“Tutte le controversie derivanti dal presente contratto o in relazione con lo stesso saranno risolte in via definitiva secondo il Regolamento d'arbitrato della Camera di Commercio Internazionale, da uno o più arbitri nominati in conformità di detto Regolamento.”

**Japanese**

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この契約から又はそれに関連して生じるすべての紛争は、国際商業会議所の仲裁規則のもとで、同規則に従って選定される一人又は複数の仲裁人により、終局的に解決されるものとする。

**Polish**

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“Wszelkie spory wynikające z niniejszego kontraktu lub w związku z nim będą rozstrzygane ostatecznie stosownie do regulaminu arbitrażowego Międzynarodowej Izby Handlowej przez jednego lub więcej arbitrów wyznaczonych zgodnie z tym regulaminem.”

**Russian**

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“Любые споры, возникающие из настоящего контракта или в связи с ним, подлежат окончательному урегулированию в соответствии с Арбитражным Регламентом Международной Торговой Палаты, одним или несколькими арбитрами, назначенными в соответствии с этим Регламентом”.

**Spanish**

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“Todas las desavenencias que deriven de este contrato o que guarden relación con éste serán resueltas definitivamente de acuerdo con el Reglamento de Arbitraje de la Cámara de Comercio Internacional por uno ó más árbitros nombrados conforme a este Reglamento.”

**Turkish**

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“İşbu sözleşmeden doğacak veya bu sözleşmeyle ilgili bütün anlaşmazlıklar Milletlerarası Ticaret Odası Tahkim Kuralları uygulanarak, bu kurallar dairesinde tayin edilen bir veya birden fazla hakem tarafından kesin olarak karara bağlanacaktır.”

**Vietnamese**

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“Mọi tranh chấp phát sinh từ hợp đồng này hoặc có liên quan đến nó sẽ được giải quyết dứt điểm theo Quy tắc trọng tài của Phòng Thương mại Quốc tế bởi một hoặc nhiều trọng tài viên được chỉ định theo đúng Quy tắc này.”

**RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE****INTRODUCTORY PROVISIONS****Article 1****International Court of Arbitration**

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1

The International Court of Arbitration (the "Court") of the International Chamber of Commerce (the "ICC") is the arbitration body attached to the ICC. The statutes of the Court are set forth in Appendix I. Members of the Court are appointed by the Council of the ICC. The function of the Court is to provide for the settlement by arbitration of business disputes of an international character in accordance with the Rules of Arbitration of the International Chamber of Commerce (the "Rules"). If so empowered by an arbitration agreement, the Court shall also provide for the settlement by arbitration in accordance with these Rules of business disputes not of an international character.

2

The Court does not itself settle disputes. It has the function of ensuring the application of these Rules. It draws up its own Internal Rules (Appendix II).

3

The Chairman of the Court, or, in the Chairman's absence or otherwise at his request, one of its Vice-Chairmen shall have the power to take urgent decisions on behalf of the Court, provided that any such decision is reported to the Court at its next session.

4

As provided for in its Internal Rules, the Court may delegate to one or more committees composed of its members the power to take certain decisions, provided that any such decision is reported to the Court at its next session.

5

The Secretariat of the Court (the "Secretariat") under the direction of its Secretary General (the "Secretary General") shall have its seat at the headquarters of the ICC.

**Article 2****Definitions**

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In these Rules:

- (i) "Arbitral Tribunal" includes one or more arbitrators.
- (ii) "Claimant" includes one or more claimants and "Respondent" includes one or more respondents.
- (iii) "Award" includes, inter alia, an interim, partial or final Award.

**Article 3****Written Notifications or Communications; Time Limits**

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1

All pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat. A copy of any communication from the Arbitral Tribunal to the parties shall be sent to the Secretariat.

2

All notifications or communications from the Secretariat and the Arbitral Tribunal shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by the other party. Such notification or communication may be made by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.



3

A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with the preceding paragraph.

4

Periods of time specified in, or fixed under the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with the preceding paragraph. When the day next following such date is an official holiday, or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day.

## COMMENCING THE ARBITRATION

### Article 4

#### Request for Arbitration

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1

A party wishing to have recourse to arbitration under these Rules shall submit its Request for Arbitration (the "Request") to the Secretariat, which shall notify the Claimant and Respondent of the receipt of the Request and the date of such receipt.

2

The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitral proceedings.

3

The Request shall, inter alia, contain the following information:

- a) the name in full, description and address of each of the parties;
- b) a description of the nature and circumstances of the dispute giving rise to the claims;
- c) a statement of the relief sought, including, to the extent possible, an indication of any amount(s) claimed;
- d) the relevant agreements and, in particular, the arbitration agreement;
- e) all relevant particulars concerning the number of arbitrators and their choice in accordance with the provisions of Articles 8, 9 and 10, and any nomination of an arbitrator required thereby; and
- f) any comments as to the place of arbitration, the applicable rules of law and the language of the arbitration.

4

Together with the Request, the Claimant shall submit the number of copies thereof required by Article 3(1) and shall make the advance payment on administrative expenses required by Appendix III ("Arbitration Costs and Fees") in force on the date the Request is submitted. In the event that the Claimant fails to comply with either of these requirements, the Secretariat may fix a time limit within which the Claimant must comply, failing which the file shall be closed without prejudice to the right of the Claimant to submit the same claims at a later date in another Request.

5

The Secretariat shall send a copy of the Request and the documents annexed thereto to the Respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required advance payment.

6

When a party submits a Request in connection with a legal relationship in respect of which arbitration proceedings between the same parties are already pending under these Rules, the Court may, at the request of a party, decide to include the claims contained in the Request in the pending proceedings provided that the Terms of Reference have not been signed or approved by the Court. Once the Terms of Reference have been signed or approved by the Court, claims may only be included in the pending proceedings subject to the provisions of Article 19.

## **Article 5**

### **Answer to the Request; Counterclaims**

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1

Within 30 days from the receipt of the Request from the Secretariat, the Respondent shall file an Answer (the "Answer") which shall, inter alia, contain the following information:

- a) its name in full, description and address;
- b) its comments as to the nature and circumstances of the dispute giving rise to the claim(s);
- c) its response to the relief sought;
- d) any comments concerning the number of arbitrators and their choice in light of the Claimant's proposals and in accordance with the provisions of Articles 8, 9 and 10, and any nomination of an arbitrator required thereby; and
- e) any comments as to the place of arbitration, the applicable rules of law and the language of the arbitration.

2

The Secretariat may grant the Respondent an extension of the time for filing the Answer, provided the application for such an extension contains the Respondent's comments concerning the number of arbitrators and their choice, and, where required by Articles 8, 9 and 10, the nomination of an arbitrator. If the Respondent fails to do so, the Court shall proceed in accordance with these Rules.

3

The Answer shall be supplied to the Secretariat in the number of copies specified by Article 3(1).

4

A copy of the Answer and the documents annexed thereto shall be communicated by the Secretariat to the Claimant.

5

Any counterclaim(s) made by the Respondent shall be filed with its Answer and shall provide:

- a) a description of the nature and circumstances of the dispute giving rise to the counterclaim(s); and
- b) a statement of the relief sought, including, to the extent possible, an indication of any amount(s) counterclaimed.

6

The Claimant shall file a Reply to any counterclaim within 30 days from the date of receipt of the counterclaim(s) communicated by the Secretariat. The Secretariat may grant the Claimant an extension of time for filing the Reply.

## **Article 6**

### **Effect of the Arbitration Agreement**

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1

Where the parties have agreed to submit to arbitration under the Rules, they shall be deemed to have submitted ipso facto to the Rules in effect on the date of commencement of the arbitration proceedings unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.

2

If the Respondent does not file an Answer, as provided by Article 5, or if any party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, the Court may decide, without prejudice to the admissibility or merits of the plea or pleas, that the arbitration shall proceed if it is prima facie satisfied that an arbitration agreement under the Rules may exist. In such a case, any decision as to the jurisdiction of the Arbitral Tribunal shall be taken by the Arbitral Tribunal itself. If the Court is not so satisfied, the parties shall be notified that the arbitration cannot proceed. In such a case, any party retains the right to ask any court having jurisdiction whether or not there is a binding arbitration agreement.

3

If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure.

4

Unless otherwise agreed, the Arbitral Tribunal shall not cease to have jurisdiction by reason of any claim that the contract is null and void or allegation that it is non-existent provided that the Arbitral Tribunal upholds the validity of the arbitration agreement. The Arbitral Tribunal shall continue to have jurisdiction to determine the respective rights of the parties and to adjudicate their claims and pleas even though the contract itself may be non-existent or null and void.

## THE ARBITRAL TRIBUNAL

### Article 7

#### General Provisions

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1

Every arbitrator must be and remain independent of the parties involved in the arbitration.

2

Before appointment or confirmation, a prospective arbitrator shall sign 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. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.

3

An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature which may arise during the arbitration.

4

The decisions of the Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final and the reasons for such decisions shall not be communicated.

5

By accepting to serve, every arbitrator undertakes to carry out his responsibilities in accordance with these Rules.

6

Insofar as the parties have not provided otherwise, the Arbitral Tribunal shall be constituted in accordance with the provisions of Articles 8, 9 and 10.

### Article 8

#### Number of Arbitrators

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1

The disputes shall be decided by a sole arbitrator or by three arbitrators.

2

Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. In such case, the Claimant shall nominate an arbitrator within a period of 15 days from the receipt of the notification of the decision of the Court, and the Respondent shall nominate an arbitrator within a period of 15 days from the receipt of the notification of the nomination made by the Claimant.

3

Where the parties have agreed that the dispute shall be settled by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation. If the parties fail to nominate a sole arbitrator within 30 days from the date when the Claimant's Request for Arbitration has been received by the other party, or within such additional time as may be allowed by the Secretariat, the sole arbitrator shall be appointed by the Court.

4

Where the dispute is to be referred to three arbitrators, each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation. If a party fails to nominate an arbitrator, the appointment shall be made by the Court. The third arbitrator, who will act as chairman of the Arbitral Tribunal, shall be appointed by the Court, unless the parties have agreed upon another procedure for such appointment, in which case the nomination will be subject to confirmation pursuant to Article 9. Should such procedure not result in a nomination within the time limit fixed by the parties or the Court, the third arbitrator shall be appointed by the Court.

## **Article 9**

### **Appointment and Confirmation of the Arbitrators**

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1

In confirming or appointing arbitrators, the Court shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with these Rules. The same shall apply where the Secretary General confirms arbitrators pursuant to Article 9(2).

2

The Secretary General may confirm as co-arbitrators, sole arbitrators and chairmen of Arbitral Tribunals persons nominated by the parties or pursuant to their particular agreements, provided they have filed a statement of independence without qualification or a qualified statement of independence has not given rise to objections. Such confirmation shall be reported to the Court at its next session. If the Secretary General considers that a co-arbitrator, sole arbitrator or chairman of an Arbitral Tribunal should not be confirmed, the matter shall be submitted to the Court.

3

Where the Court is to appoint a sole arbitrator or the chairman of an Arbitral Tribunal, it shall make the appointment upon a proposal of a National Committee of the ICC that it considers to be appropriate. If the Court does not accept the proposal made, or if the National Committee fails to make the proposal requested within the time limit fixed by the Court, the Court may repeat its request or may request a proposal from another National Committee that it considers to be appropriate.

4

Where the Court considers that the circumstances so demand, it may choose the sole arbitrator or the chairman of the Arbitral Tribunal from a country where there is no National Committee, provided that neither of the parties objects within the time limit fixed by the Court.

5

The sole arbitrator or the chairman of the Arbitral Tribunal shall be of a nationality other than those of the parties. However, in suitable circumstances and provided that neither of the parties objects within the time limit fixed by the Court, the sole arbitrator or the chairman of the Arbitral Tribunal may be chosen from a country of which any of the parties is a national.

6

Where the Court is to appoint an arbitrator on behalf of a party which has failed to nominate one, it shall make the appointment upon a proposal of the National Committee of the country of which that party is a national. If the Court does not accept the proposal made, or if the National Committee fails to make the proposal requested within the time limit fixed by the Court, or if the country of which the said party is a national has no National Committee, the Court shall be at liberty to choose any person whom it regards as suitable. The Secretariat shall inform the National Committee, if one exists, of the country of which such person is a national.

## **Article 10**

### **Multiple Parties**

---

1

Where there are multiple parties, whether as Claimant or as Respondent, and where the dispute is to be referred to three arbitrators, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 9.

2

In the absence of such a joint nomination and where all parties are unable to agree to a method for the constitution of the Arbitral Tribunal, the Court may appoint each member of the Arbitral Tribunal and shall designate one of them to act as chairman. In such case, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 9 when it considers this appropriate.

## **Article 11**

### **Challenge of Arbitrators**

---

1

A challenge of an arbitrator, whether for an alleged lack of independence or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.

2

For a challenge to be admissible, it must be sent by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

3

The Court shall decide on the admissibility, and, at the same time, if necessary, on the merits of a challenge 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.

## **Article 12**

### **Replacement of Arbitrators**

---

1

An arbitrator shall be replaced upon his death, upon the acceptance by the Court of the arbitrator's resignation, upon acceptance by the Court of a challenge or upon the request of all the parties.

2

An arbitrator shall also be replaced on the Court's own initiative when it decides that he is prevented de jure or de facto from fulfilling his functions, or that he is not fulfilling his functions in accordance with the Rules or within the prescribed time limits.

3

When, on the basis of information that has come to its attention, the Court considers applying Article 12(2), it shall decide on the matter after the arbitrator concerned, the parties and any other members of the Arbitral Tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

4

When an arbitrator is to be replaced, the Court has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted Arbitral Tribunal.

5

Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the Court pursuant to Articles 12(1) and 12(2), the Court may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such determination, the Court shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.

## THE ARBITRAL PROCEEDINGS

### Article 13

#### Transmission of the File to the Arbitral Tribunal

---

The Secretariat shall transmit the file to the Arbitral Tribunal as soon as it has been constituted, provided the advance on costs requested by the Secretariat at this stage has been paid.

### Article 14

#### Place of the Arbitration

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1

The place of the arbitration shall be fixed by the Court unless agreed upon by the parties.

2

The Arbitral Tribunal may, after consultation with the parties, conduct hearings and meetings at any location it considers appropriate unless otherwise agreed by the parties.

3

The Arbitral Tribunal may deliberate at any location it considers appropriate.

### Article 15

#### Rules Governing the Proceedings

---

1

The proceedings before the Arbitral Tribunal shall be governed by these Rules, and, where these Rules are silent, by any rules which the parties or, failing them, the Arbitral Tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a national law to be applied to the arbitration.

2

In all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

### Article 16

#### Language of the Arbitration

---

In the absence of an agreement by the parties, the Arbitral Tribunal shall determine the language or languages of the arbitration, due regard being given to all relevant circumstances, including the language of the contract.

**Article 17****Applicable Rules of Law**

---

1

The parties shall be free to agree upon the rules of law to be applied by the Arbitral Tribunal to the merits of the dispute. In the absence of any such agreement, the Arbitral Tribunal shall apply the rules of law which it determines to be appropriate.

2

In all cases the Arbitral Tribunal shall take account of the provisions of the contract and the relevant trade usages.

3

The Arbitral Tribunal shall assume the powers of an amiable compositeur or decide ex aequo et bono only if the parties have agreed to give it such powers.

**Article 18****Terms of Reference; Procedural Timetable**

---

1

As soon as it has received the file from the Secretariat, the Arbitral Tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars:

- a) the full names and descriptions of the parties;
- b) the addresses of the parties to which notifications and communications arising in the course of the arbitration may be made;
- c) a summary of the parties' respective claims and of the relief sought by each party, with an indication to the extent possible of the amounts claimed or counterclaimed;
- d) unless the Arbitral Tribunal considers it inappropriate, a list of issues to be determined;
- e) the full names, descriptions and addresses of the arbitrators;
- f) the place of the arbitration; and
- g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the Arbitral Tribunal to act as amiable compositeur or to decide ex aequo et bono.

2

The Terms of Reference shall be signed by the parties and the Arbitral Tribunal. Within two months of the date on which the file has been transmitted to it, the Arbitral Tribunal shall transmit to the Court the Terms of Reference signed by it and by the parties. The Court may extend this time limit pursuant to a reasoned request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.

3

If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Court for approval. When the Terms of Reference are signed in accordance with Article 18(2) or approved by the Court, the arbitration shall proceed.

4

When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal, after having consulted the parties, shall establish in a separate document a provisional timetable that it intends to follow for the conduct of the arbitration and shall communicate it to the Court and the parties. Any subsequent modifications of the provisional timetable shall be communicated to the Court and the parties.

**Article 19**  
**New Claims**

---

After the Terms of Reference have been signed or approved by the Court, no party shall make new claims or counterclaims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the Arbitral Tribunal, which shall consider the nature of such new claims or counterclaims, the stage of the arbitration and other relevant circumstances.

**Article 20**  
**Establishing the Facts of the Case**

---

1

The Arbitral Tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.

2

After studying the written submissions of the parties and all documents relied upon, the Arbitral Tribunal shall hear the parties together in person if any of them so requests or, failing such a request, it may of its own motion decide to hear them.

3

The Arbitral Tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties, or in their absence provided they have been duly summoned.

4

The Arbitral Tribunal, after having consulted the parties, may appoint one or more experts, define their terms of reference and receive their reports. At the request of a party, the parties shall be given the opportunity to question at a hearing any such expert appointed by the Tribunal.

5

At any time during the proceedings, the Arbitral Tribunal may summon any party to provide additional evidence.

6

The Arbitral Tribunal may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.

7

The Arbitral Tribunal may take measures for protecting trade secrets and confidential information.

**Article 21**  
**Hearings**

---

1

When a hearing is to be held, the Arbitral Tribunal, giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it.

2

If any of the parties, although duly summoned, fails to appear without valid excuse, the Arbitral Tribunal shall have the power to proceed with the hearing.

3

The Arbitral Tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the Arbitral Tribunal and the parties, persons not involved in the proceedings shall not be admitted.

4

The parties may appear in person or through duly authorized representatives. In addition, they may be assisted by advisers.



**Article 22**  
**Closing of the Proceedings**

---

1

When it is satisfied that the parties have had a reasonable opportunity to present their cases, the Arbitral Tribunal shall declare the proceedings closed. Thereafter, no further submission or argument may be made, or evidence produced, unless requested or authorized by the Arbitral Tribunal.

2

When the Arbitral Tribunal has declared the proceedings closed, it shall indicate to the Secretariat an approximate date by which the draft Award will be submitted to the Court for approval pursuant to Article 27. Any postponement of that date shall be communicated to the Secretariat by the Arbitral Tribunal.

**Article 23**  
**Conservatory and Interim Measures**

---

1

Unless the parties have otherwise agreed, as soon as the file has been transmitted to it, the Arbitral Tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate. The Arbitral Tribunal may make the granting of any such measure subject to appropriate security being furnished by the requesting party. Any such measure shall take the form of an order, giving reasons, or of an Award, as the Arbitral Tribunal considers appropriate.

2

Before the file is transmitted to the Arbitral Tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an Arbitral Tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the Arbitral Tribunal. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the Arbitral Tribunal thereof.

## AWARDS

**Article 24**  
**Time Limit for the Award**

---

1

The time limit within which the Arbitral Tribunal must render its final Award is six months. Such time limit shall start to run from the date of the last signature by the Arbitral Tribunal or of the parties of the Terms of Reference, or, in the case of application of Article 18(3), the date of the notification to the Arbitral Tribunal by the Secretariat of the approval of the Terms of Reference by the Court.

2

The Court may extend this time limit pursuant to a reasoned request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.

**Article 25**  
**Making of the Award**

---

1

When the Arbitral Tribunal is composed of more than one arbitrator, an Award is given by a majority decision. If there be no majority, the Award shall be made by the chairman of the Arbitral Tribunal alone.

2

The Award shall state the reasons upon which it is based.

3

The Award shall be deemed to be made at the place of the arbitration and on the date stated therein.

## **Article 26**

### **Award by Consent**

---

If the parties reach a settlement after the file has been transmitted to the Arbitral Tribunal in accordance with Article 13, the settlement shall be recorded in the form of an Award made by consent of the parties if so requested by the parties and if the Arbitral Tribunal agrees to do so.

## **Article 27**

### **Scrutiny of the Award by the Court**

---

Before signing any Award, the Arbitral Tribunal shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the Award and, without affecting the Arbitral Tribunal's liberty of decision, may also draw its attention to points of substance. No Award shall be rendered by the Arbitral Tribunal until it has been approved by the Court as to its form.

## **Article 28**

### **Notification, Deposit and Enforceability of the Award**

---

1

Once an Award has been made, the Secretariat shall notify to the parties the text signed by the Arbitral Tribunal, provided always that the costs of the arbitration have been fully paid to the ICC by the parties or by one of them.

2

Additional copies certified true by the Secretary General shall be made available on request and at any time to the parties, but to no one else.

3

By virtue of the notification made in accordance with Paragraph 1 of this Article, the parties waive any other form of notification or deposit on the part of the Arbitral Tribunal.

4

An original of each Award made in accordance with the present Rules shall be deposited with the Secretariat.

5

The Arbitral Tribunal and the Secretariat shall assist the parties in complying with whatever further formalities may be necessary.

6

Every Award shall be binding on the parties. By submitting the dispute to arbitration under these Rules, the parties undertake to carry out any Award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

## **Article 29**

### **Correction and Interpretation of the Award**

---

1

On its own initiative, the Arbitral Tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an Award, provided such correction is submitted for approval to the Court within 30 days of the date of such Award.

2

Any application of a party for the correction of an error of the kind referred to in Article 29(1), or for the interpretation of an Award, must be made to the Secretariat within 30 days of the receipt of the Award by such party, in a number of copies as stated in Article 3(1). After transmittal of the application to the Arbitral Tribunal, it shall grant the other party a short time limit, normally not exceeding 30 days, from the receipt of the application by that party to submit any comments thereon. If the Arbitral Tribunal decides to correct or interpret the Award, it shall submit its decision in draft form to the Court not later than 30 days following the expiration of the time limit for the receipt of any comments from the other party or within such other period as the Court may decide.

3

The decision to correct or to interpret the Award shall take the form of an addendum and shall constitute part of the Award. The provisions of Articles 25, 27 and 28 shall apply mutatis mutandis.

## COSTS

### Article 30

#### Advance to Cover the Costs of the Arbitration

---

1

After receipt of the Request, the Secretary General may request the Claimant to pay a provisional advance in an amount intended to cover the costs of arbitration until the Terms of Reference have been drawn up.

2

As soon as practicable, the Court shall fix the advance on costs in an amount likely to cover the fees and expenses of the arbitrators and the ICC administrative costs for the claims and counterclaims which have been referred to it by the parties. This amount may be subject to readjustment at any time during the arbitration. Where, apart from the claims, counterclaims are submitted, the Court may fix separate advances on costs for the claims and the counterclaims.

3

The advance on costs fixed by the Court shall be payable in equal shares by the Claimant and the Respondent. Any provisional advance paid on the basis of Article 30(1) will be considered as a partial payment thereof. However, any party shall be free to pay the whole of the advance on costs in respect of the principal claim or the counterclaim should the other party fail to pay its share. When the Court has set separate advances on costs in accordance with Article 30(2), each of the parties shall pay the advance on costs corresponding to its claims.

4

When a request for an advance on costs has not been complied with, and after consultation with the Arbitral Tribunal, the Secretary General may direct the Arbitral Tribunal to suspend its work and set a time limit, which must be not less than 15 days, on the expiry of which the relevant claims, or counterclaims, shall be considered as withdrawn. Should the party in question wish to object to this measure it must make a request within the aforementioned period for the matter to be decided by the Court. Such party shall not be prevented on the ground of such withdrawal from reintroducing the same claims or counterclaims at a later date in another proceeding.

5

If one of the parties claims a right to a set-off with regard to either claims or counterclaims, such set-off shall be taken into account in determining the advance to cover the costs of arbitration in the same way as a separate claim insofar as it may require the Arbitral Tribunal to consider additional matters.

### Article 31

#### Decision as to the Costs of the Arbitration

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1

The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force at the time of the commencement of the arbitral proceedings, as well as the fees and expenses of any experts appointed by the Arbitral Tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.

2

The Court may fix the fees of the arbitrators at a figure higher or lower than that which would result from the application of the relevant scale should this be deemed necessary due to the exceptional circumstances of the case. Decisions on costs other than those fixed by the Court may be taken by the Arbitral Tribunal at any time during the proceedings.

3

The final Award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

## MISCELLANEOUS

### **Article 32** **Modified Time Limits**

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1

The parties may agree to shorten the various time limits set out in these Rules. Any such agreement entered into subsequent to the constitution of an Arbitral Tribunal shall become effective only upon the approval of the Arbitral Tribunal.

2

The Court, on its own initiative, may extend any time limit which has been modified pursuant to Article 32(1) if it decides that it is necessary to do so in order that the Arbitral Tribunal or the Court may fulfil their responsibilities in accordance with these Rules.

### **Article 33** **Waiver**

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A party which proceeds with the arbitration without raising its objection to a failure to comply with any provision of these Rules, or of any other rules applicable to the proceedings, any direction given by the Arbitral Tribunal, or any requirement under the arbitration agreement relating to the constitution of the Arbitral Tribunal, or to the conduct of the proceedings, shall be deemed to have waived its right to object.

### **Article 34** **Exclusion of Liability**

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Neither the arbitrators, nor the Court and its members, nor the ICC and its employees, nor the ICC National Committees shall be liable to any person for any act or omission in connection with the arbitration.

### **Article 35** **General Rule**

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In all matters not expressly provided for in these Rules, the Court and the Arbitral Tribunal shall act in the spirit of these Rules and shall make every effort to make sure that the Award is enforceable at law.

**APPENDIX I**  
**STATUTES OF THE INTERNATIONAL**  
**COURT OF ARBITRATION OF THE ICC**

**Article 1**  
**Function**

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1

The function of the International Court of Arbitration of the International Chamber of Commerce (the “Court”) is to ensure the application of the Rules of Arbitration and the Rules of Conciliation of the International Chamber of Commerce, and it has all the necessary powers for that purpose.

2

As an autonomous body, it carries out these functions in complete independence from the ICC and its organs.

3

Its members are independent from the ICC National Committees.

**Article 2**  
**Composition of the Court**

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The Court shall consist of a Chairman, Vice-Chairmen, and members and alternate members (collectively designated as members). In its work it is assisted by its Secretariat (Secretariat of the Court).

**Article 3**  
**Appointment**

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1

The Chairman is elected by the ICC Council upon recommendation of the Executive Board of the ICC.

2

The ICC Council appoints the Vice-Chairmen of the Court from among the members of the Court or otherwise.

3

Its members are appointed by the ICC Council on the proposal of National Committees, one member for each Committee.

4

On the proposal of the Chairman of the Court, the Council may appoint alternate members.

5

The term of office of all members is three years. If a member is no longer in a position to exercise his functions, his successor is appointed by the Council for the remainder of the term.

**Article 4**  
**Plenary Session of the Court**

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The Plenary Sessions of the Court are presided over by the Chairman, or, in his absence, by one of the Vice-Chairmen designated by him. The deliberations shall be valid when at least six members are present. Decisions are taken by a majority vote, the Chairman having a casting vote in the event of a tie.

**Article 5**  
**Committees**

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The Court may set up one or more Committees and establish the functions and organization of such Committees.

**Article 6**  
**Confidentiality**

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The work of the Court is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity. The Court lays down the rules regarding the persons who can attend the meetings of the Court and its Committees and who are entitled to have access to the materials submitted to the Court and its Secretariat.

**Article 7**  
**Modification of the Rules of Arbitration**

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Any proposal of the Court for a modification of the Rules is laid before the Commission on International Arbitration before submission to the Executive Board and the Council of the ICC for approval.

**APPENDIX II**  
**INTERNAL RULES OF THE INTERNATIONAL**  
**COURT OF ARBITRATION OF THE ICC**

**Article 1****Confidential Character of the Work of the International Court of Arbitration**

---

1

The sessions of the Court, whether plenary or those of a Committee of the Court, are open only to its members and to the Secretariat.

2

However, in exceptional circumstances, the Chairman of the Court may invite other persons to attend. Such persons must respect the confidential nature of the work of the Court.

3

The documents submitted to the Court, or drawn up by it in the course of its proceedings, are communicated only to the members of the Court and to the Secretariat and to persons authorized by the Chairman to attend Court sessions.

4

The Chairman or the Secretary General of the Court may authorize researchers undertaking work of a scientific nature on international trade law to acquaint themselves with awards and other documents of general interest, with the exception of memoranda, notes, statements and documents remitted by the parties within the framework of arbitration proceedings.

5

Such authorization shall not be given unless the beneficiary has undertaken to respect the confidential character of the documents made available and to refrain from any publication in their respect without having previously submitted the text for approval to the Secretary General of the Court.

6

The Secretariat will in each case submitted to arbitration under the Rules retain in the archives of the Court all awards, terms of reference, and decisions of the Court as well as copies of the pertinent correspondence of the Secretariat.

7

Any documents, communications or correspondence submitted by the parties or the arbitrators may be destroyed unless a party or an arbitrator requests in writing within a period fixed by the Secretariat the return of such documents. All related costs and expenses for the return of those documents shall be paid by such party or arbitrator.

**Article 2****Participation of Members of the International Court of Arbitration in ICC Arbitration**

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1

The Chairman and the members of the Secretariat of the Court may not act as arbitrators or as counsel in cases submitted to ICC arbitration.

2

The Court shall not appoint Vice-Chairmen or members of the Court as arbitrators. They may, however, be proposed for such duties by one or more of the parties, or, pursuant to any other procedure agreed upon by the parties, subject to confirmation.

3

When the Chairman, a Vice-Chairman or a member of the Court or of the Secretariat is involved in any capacity whatsoever in proceedings pending before the Court, such person must inform the Secretary General of the Court upon becoming aware of such involvement.

4

Such person must refrain from participating in the discussions or in the decisions of the Court concerning the proceedings and must be absent from the courtroom whenever the matter is considered.

5

Such person will not receive any material documentation or information pertaining to such proceedings.

### **Article 3**

#### **Relations between the Members of the Court and the ICC National Committees**

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1

By virtue of their capacity, the members of the Court are independent of the ICC National Committees which proposed them for appointment by the ICC Council.

2

Furthermore, they must regard as confidential, vis-à-vis the said National Committees, any information concerning individual cases with which they have become acquainted in their capacity as members of the Court, except when they have been requested by the Chairman of the Court or by its Secretary General to communicate specific information to their respective National Committee.

### **Article 4**

#### **Committee of the Court**

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1

In accordance with the provisions of Article 1 (4) of the Rules and Article 5 of its Statutes (Appendix I), the Court hereby establishes a Committee of the Court.

2

The members of the Committee consist of a Chairman and at least two other members. The Chairman of the Court acts as the Chairman of the Committee. If absent, the Chairman may designate a Vice-Chairman of the Court or, in exceptional circumstances, another member of the Court as Chairman of the Committee.

3

The other two members of the Committee are appointed by the Court from among the Vice-Chairmen or the other members of the Court. At each Plenary Session the Court appoints the members who are to attend the meetings of the Committee to be held before the next Plenary Session.

4

The Committee meets when convened by its Chairman. Two members constitute a quorum.

5

- (a) The Court shall determine the decisions that may be taken by the Committee.
- (b) The decisions of the Committee are taken unanimously.
- (c) When the Committee cannot reach a decision or deems it preferable to abstain, it transfers the case to the next Plenary Session, making any suggestions it deems appropriate.
- (d) The Committee's decisions are brought to the notice of the Court at its next Plenary Session.

### **Article 5**

#### **Court Secretariat**

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1

In case of absence, the Secretary General may delegate to the General Counsel and Deputy Secretary General the authority to confirm arbitrators, to certify true copies of awards and to request the payment of a provisional advance, respectively provided for in Articles 9(2), 28(2) and 30(1) of the Rules.



2

The Secretariat may, with the approval of the Court, issue notes and other documents for the information of the parties and the arbitrators, or as necessary for the proper conduct of the arbitral proceedings.

**Article 6**  
**Scrutiny of Arbitral Awards**

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When the Court scrutinizes draft awards in accordance with Article 27 of the Rules, it considers, to the extent practicable, the requirements of mandatory law at the place of arbitration.

**APPENDIX III  
ARBITRATION COSTS AND FEES**

**Article 1  
Advance on Costs**

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1

Each request to commence an arbitration pursuant to the Rules must be accompanied by an advance payment of US \$ 2 500 on the administrative expenses. Such payment is nonrefundable, and shall be credited to the Claimant's portion of the advance on costs.

2

The provisional advance fixed by the Secretary General according to Article 30(1) of the Rules shall normally not exceed the amount obtained by adding together the administrative expenses, the minimum of the fees (as set out in the scale hereinafter) based upon the amount of the claim and the expected reimbursable expenses of the Arbitral Tribunal incurred with respect to the drafting of the Terms of Reference. If such amount is not quantified, the provisional advance shall be fixed at the discretion of the Secretary General. Payment by the Claimant shall be credited to its share of the advance on costs fixed by the Court.

3

In general, after the Terms of Reference have been signed or approved by the Court and the provisional timetable has been established, the Arbitral Tribunal shall, in accordance with Article 30(4) of the Rules, proceed only with respect to those claims or counterclaims in regard to which the whole of the advance on costs has been paid.

4

The advance on costs fixed by the Court according to Article 30(2) of the Rules comprises the fees of the arbitrator or arbitrators (hereinafter referred to as "arbitrator"), any arbitration-related expenses of the arbitrator and the administrative expenses.

5

Each party shall pay in cash its share of the total advance on costs. However, if its share exceeds an amount fixed from time to time by the Court, a party may post a bank guarantee for this additional amount.

6

A party that has already paid in full its share of the advance on costs fixed by the Court may, in accordance with Article 30(3) of the Rules, pay the unpaid portion of the advance owed by the defaulting party by posting a bank guarantee.

7

When the Court has fixed separate advances on costs pursuant to Article 30(2) of the Rules, the Secretariat shall invite each party to pay the amount of the advance corresponding to its respective claims.

8

When, as a result of the fixing of separate advances on costs, the separate advance fixed for the claim of either party exceeds one-half of such global advance as was previously fixed (in respect of the same claims and counterclaims that are the object of separate advances), a bank guarantee may be posted to cover any such excess amount. In the event that the amount of the separate advance is subsequently increased, at least one-half of the increase shall be paid in cash.

9

The Secretariat shall establish the terms governing all bank guarantees which the parties may post pursuant to the above provisions.

10

As provided in Article 30(2) of the Rules, the advance on costs may be subject to readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of arbitration proceedings.

11

Before any expertise ordered by the Arbitral Tribunal can be commenced, the parties, or one of them, shall pay an advance on costs fixed by the Arbitral Tribunal sufficient to cover the expected fees and expenses of the expert as determined by the Arbitral Tribunal. The Arbitral Tribunal shall be responsible for ensuring the payment by the parties of such fees and expenses.

## **Article 2**

### **Costs and Fees**

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1

Subject to Article 31(2) of the Rules, the Court shall fix the fees of the arbitrator in accordance with the scale hereinafter set out, or, where the sum in dispute is not stated, at its discretion.

2

In setting the arbitrator's fees, the Court shall take into consideration the diligence of the arbitrator, the time spent, the rapidity of the proceedings, and the complexity of the dispute so as to arrive at a figure within the limits specified, or, in exceptional circumstances (Article 31(2) of the Rules), at a figure higher or lower than those limits.

3

When a case is submitted to more than one arbitrator, the Court, at its discretion, shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of one arbitrator.

4

The arbitrator's fees and expenses shall be fixed exclusively by the Court as required by the Rules. Separate fee arrangements between the parties and the arbitrator are contrary to the Rules.

5

The Court shall fix the administrative expenses of each arbitration in accordance with the scale hereinafter set out, or, where the sum in dispute is not stated, at its discretion. In exceptional circumstances, the Court may fix the administrative expenses at a lower or higher figure than that which would result from the application of such scale, provided that such expenses shall normally not exceed the maximum amount of the scale. Further, the Court may require the payment of administrative expenses in addition to those provided in the scale of administrative expenses as a condition to holding an arbitration in abeyance at the request of the parties or of one of them with the acquiescence of the other.

6

If an arbitration terminates before the rendering of a final Award, the Court shall fix the costs of the arbitration at its discretion, taking into account the stage attained by the arbitral proceedings and any other relevant circumstances.

7

In the case of an application under Article 29(2) of the Rules, the Court may fix an advance to cover additional fees and expenses of the Arbitral Tribunal and may subordinate the transmission of such application to the Arbitral Tribunal to the prior cash payment in full to the ICC of such advance. The Court shall fix at its discretion any possible fees of the arbitrator when approving the decision of the Arbitral Tribunal.

8

When an arbitration is preceded by attempted conciliation, one-half of the administrative expenses paid for such conciliation shall be credited to the administrative expenses of the arbitration.

9

Amounts paid to the arbitrator do not include any possible value-added taxes (VAT) or other taxes or charges and imposts applicable to the arbitrator's fees. Parties are expected to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.

**Article 3****Appointments of Arbitrators**

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1

A registration fee normally not exceeding US \$ 2 500 is payable by the requesting party in respect of each request made to the ICC to appoint an arbitrator for any arbitration not conducted under the Rules. No request for appointment of an arbitrator will be considered unless accompanied by the said fee, which is not recoverable and becomes the property of the ICC.

2

The said fee shall cover any additional services rendered by the ICC regarding the appointment, such as decisions on a challenge of an arbitrator and the appointment of a substitute arbitrator.

**Article 4****Scales of Administrative Expenses and Arbitrator's Fees**

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1

The Scales of Administrative Expenses and Arbitrator's Fees set forth below shall be effective as of 1 January 1998 in respect of all arbitrations commenced on or after such date, irrespective of the version of the Rules applying to such arbitrations.

2

To calculate the administrative expenses and the arbitrator's fees, the amounts calculated for each successive slice of the sum in dispute must be added together, except that where the sum in dispute is over US \$ 80 million, a flat amount of US \$ 75 800 shall constitute the entirety of the administrative expenses.

**A. ADMINISTRATIVE EXPENSES**

Sum in dispute (in US Dollars)		Administrative expenses <sup>(*)</sup>		
up to	50 000		\$ 2 500	
from	50 001	to	100 000	3.50%
from	100 001	to	500 000	1.70%
from	500 001	to	1 000 000	1.15%
from	1 000 001	to	2 000 000	0.60%
from	2 000 001	to	5 000 000	0.20%
from	5 000 001	to	10 000 000	0.10%
from	10 000 001	to	50 000 000	0.06%
from	50 000 001	to	80 000 000	0.06%
over	80 000 000		\$ 75 800	

*(\*) For illustrative purposes only, the table on the following page indicates the resulting administrative expenses in US \$ when the proper calculations have been made.*

**B. ARBITRATOR'S FEES**

Sum in dispute (in US Dollars)		Fees <sup>(**)</sup>			
		minimum	maximum		
up to	50 000	\$ 2500	17.00%		
from	50 001	to	100 000	2.00%	11.00%
from	100 001	to	500 000	1.00%	5.50%
from	500 001	to	1 000 000	0.75%	3.50%
from	1 000 001	to	2 000 000	0.50%	2.50%
from	2 000 001	to	5 000 000	0.25%	1.00%
from	5 000 001	to	10 000 000	0.10%	0.55%
from	10 000 001	to	50 000 000	0.05%	0.17%
from	50 000 001	to	80 000 000	0.03%	0.12%
from	80 000 001	to	100 000 000	0.02%	0.10%
over	100 000 000			0.01%	0.05%

*(\*\*) For illustrative purposes only, the table on the following page indicates the resulting range of fees when the proper calculations have been made.*

SUM IN DISPUTE (in us Dollars)		A. ADMINISTRATIVE EXPENSES(*) (in US Dollars)			B. ARBITRATOR'S FEES(**) (in US Dollars)						
					Minimum			Maximum			
up to	50 000	2500			2500	17.00% of amount in dispute					
from	50 001 to 100 000	2 500	+3.50% of amt. over	50 000	2 500	+2.00% of amt. over	50 000	8 500	+11.00% of amt. over	50 000	
from	100 001 to 500 000	4 250	+1.70% of amt. over	100 000	3 500	+1.00% of amt. over	100 000	14 000	+5.50% of amt. over	100 000	
from	500 001 to 1 000 000	11 050	+1.15% of amt. over	500 000	7 500	+0.75% of amt. over	500 000	36 000	+3.50% of amt. over	500 000	
from	1 000 001 to 2 000 000	16 800	+0.60% of amt. over	1 000 000	11 250	+0.50% of amt. over	1 000 000	53 500	+2.50% of amt. over	1 000 000	
from	2 000 001 to 5 000 000	22 800	+0.20% of amt. over	2 000 000	16 250	+0.25% of amt. over	2 000 000	78 500	+1.00% of amt. over	2 000 000	
from	5 000 001 to 10 000 000	28 800	+0.10% of amt. over	5 000 000	23 750	+0.10% of amt. over	5 000 000	108 500	+0.55% of amt. over	5 000 000	
from	10 000 001 to 50 000 000	33 800	+0.06% of amt. over	10 000 000	28 750	+0.05% of amt. over	10 000 000	136 000	+0.17% of amt. over	10 000 000	
from	50 000 001 to 80 000 000	57 800	+0.06% of amt. over	50 000 000	48 750	+0.03% of amt. over	50 000 000	204 000	+0.12% of amt. over	50 000 000	
from	80 000 001 to 100 000 000	75 800			57 750	+0.02% of amt. over	80 000 000	240 000	+0.10% of amt. over	80 000 000	
over	100 000 000	75 800			61 750	+0.01% of amt. over	100 000 000	260 000	+0.05% of amt. over	100 000 000	

(\*)(\*\*) See preceding page

## **AMERICAN CORPORATE COUNSEL ASSOCIATION**

### **Preparing and Conducting an International Commercial Arbitration**

The case is based on fictional characters and entities and is designed to focus on the procedural aspects of an international arbitration and not on the merits of the dispute.

#### **STATEMENT OF FACTS**

Maxima is a major multi-national designer, manufacturer and distributor of electronic equipment, headquartered in New York City, with offices and facilities located mainly in Asia. Maxima joint ventures with local companies in the countries where it operates to assemble internet servers ("Servers"), and manufacture Server components. The Corporation sources materials from various Asian producers and assembles the Servers in Malaysia. Maxima has entered into various output agreements with other major manufacturers/ retail-distributors of Servers.

Venus manufactures components for Servers and is based and owns facilities in Malaysia. A dispute has arisen between Maxima and Venus, one of Maxima's primary overseas partners, in connection with a joint venture ("JV") agreement to manufacture components for Maxima's Servers. A new factory for the manufacture of Server components is being built by Contractor under a turnkey construction agreement between Contractor and Venus, the manager of this JV. This dispute arose partially as a result of delays in construction of this new factory which has created a shortage of Server components for Maxima's own use and for sale to other manufacturers/retail-distributors of Servers.

Maxima wants to compel Venus to continue production of Server components from its other facilities in order to satisfy its demand for Server components while the dispute is being resolved in arbitration. In addition, the factory has been repeatedly cited for violation of local child-labor laws, and the Government of Malaysia has levied several penalties against the JV, and its individual partners, for their failure to implement adequate safety procedures at their facility.

The factory was not completed on time due in part to the utilization of innovative though unproven construction techniques employed by Contractor. Maxima is also pursuing an independent arbitration action against Contractor, but does not have a written contractual agreement with Contractor except through the JV. Contractor intends to file a counter-claim against Maxima in the event that Venus successfully joins Contractor in its arbitration dispute with Maxima.

#### **Arbitral and Judicial Proceedings**

Venus has sought to join Subcon, a sub-component manufacturer and supplier to Venus, as a co-respondent against Maxima, or at a minimum, require them to provide evidence in the arbitration between Maxima and Venus. Subcon is not a party to the JV agreement between Maxima and Venus and has no direct relationship with Maxima.

Maxima filed a complaint with the International Chamber of Commerce (“ ICC”) in Paris naming Venus as Respondent. Maxima is now proceeding to amend its complaints to include Contractor. Simultaneously, Contractor filed an action in local court to enjoin any arbitral proceedings against them by Maxima alleging that they (Contractor) have no agreement to arbitrate with Maxima. Contractor has filed a cross-claim in arbitration against Venus for monies owed from the construction of the manufacturing facility.

The parties are currently considering the nomination of arbitrators. Venus has nominated a Malaysian as its party-appointed arbitrator who is proposing a Swiss lawyer as Chair of the tribunal. Maxima nominated an American as its party-appointed arbitrator who is proposing a British citizen as Chair. Jamaica is not a signatory to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

## **SELECTED CONTRACT PROVISIONS**

### **Maxima and Venus**

*Governing Law* - This contract shall be construed in accordance with New York law.

*Settlement of Disputes* – All disputes arising in connection with this Contract shall be resolved by final and binding arbitration according to the Arbitration Rules of the International Chamber of Commerce. Hearings shall be conducted in Jamaica. Each party shall appoint an arbitrator who is not a national of their own country and both arbitrators shall select the presiding arbitrator who shall not be a national of the country of either party. All arbitrators shall be independent of the parties.

*Confidentiality* – This Agreement requires the parties to share technical information of a confidential nature. Accordingly, each party shall protect the know-how, patents, trademarks, intellectual property of the other.

### **Venus and Contractor**

*Governing Law* - This contract shall be construed in accordance with the laws of Malaysia.

*Joinder of Parties* – At the request of Venus, Contractor agrees to join in any arbitration proceedings related to the construction of the factory for Server components in which Venus is also party.

*Settlement of Disputes* – All disputes arising in connection with this Contract shall be resolved by final and binding arbitration according to the Arbitration Rules of the International Chamber of Commerce. All arbitrators shall be independent of the parties.