**ICC Arbitration Payments**

There are three aspects to the payment of the ICC costs deposit, or “advance on costs,” as it is called under the ICC Arbitration Rules:

•A non-refundable filing fee of US$5,000, which is paid by the Claimant when it files a “Request for Arbitration;” This is a condition of the Secretariat that notifies the “Request” to the respondent(s). A US$5,000 non-refundable fee is also due from any party that files a request to join an additional party under Article 7.

•A provisional advance fixed by the Secretary General upon or soon after receipt of the “Request,” which is to be paid by Claimant. The provisional advance is intended to cover the costs of arbitration until the “Terms of Reference” are completed or until the case management conference when the Expedited Procedure Provisions apply. Normally, the Court and Secretariat will wait for this provisional advance to be paid before taking significant steps towards the constitution of the Arbitral Tribunal.

•The advance on costs fixed by the Court. Usually, this is fixed soon after the “Answer” or any counterclaims are filed—that is as soon as the Court has sufficient information to fix it. The parties are normally requested to pay the advance on costs in equal shares at the time the Secretariat transfers the case file to the Arbitral Tribunal. Note that the payments already made by the Claimant (i.e., the non-refundable filing fee and the provisional advance) are credited towards Claimants’ share of the advance on costs. In arbitrations with more than two parties, the Court has discretion to require that the payment of the advance on costs is allocated appropriately.

The Court will fix the actual costs of the arbitration (i.e., ICC administrative expenses and arbitrators’ fees) at the end of the case. Those costs, as well as the arbitrators’ reimbursable expenses, will then be paid from the advance on costs. If there is any money left over, it will be reimbursed to the parties.

ICC’s administrative costs and the arbitrators’ fees are fixed according to a scale of costs based on the monetary value of the claims. This system offers predictability for the parties who can estimate the range of costs as soon as the value of the claims is known. ICC provides a costs calculator for this purpose. Where necessary, the Court has discretion to fix the costs at an amount higher or lower than that which is generated by the costs scales.

At the end of an arbitration, parties may make costs claims in respect of the costs to be paid out of the advance on costs (i.e., arbitrators’ fees and expenses and ICC administrative expenses) and in respect of reasonable other costs they may have incurred (e.g., legal costs and expert costs). The arbitral tribunal can then award costs in favour of or against one or more parties.

Cost of arbitration in detail (Articles 37 and 38)

The arbitrators may take decisions as to costs except for those to be fixed by the Court and order payment thereof at any time during the proceedings.

In doing so, they may take into account such circumstance as they consider appropriate, including the parties’ conduct throughout the arbitration.

The costs of the arbitration include the fees and expenses of the arbitrators and ICC administrative costs fixed by the Courtin accordance with the costs scales in force, 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.

Once the arbitrators’ fees and expenses and ICC administrative costs have been fixed by the Court at the end of the proceedings, the Arbitral Tribunal fixes the costs of the arbitration in the Award and decides which of the parties shall bear them or in what proportion they shall be borne by the parties.

If the arbitration terminates before it reaches the stage of a final award, the Court will fix the fees and expenses of the arbitrators and ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the Arbitral Tribunal. In case the Arbitral Tribunal is not yet constituted at the time of the withdrawal, any party may request the Court to proceed with the constitution of the Arbitral Tribunal so that it may make decisions as to costs.

•Arbitrators’ fees

The arbitrators’ fees are managed by the Court and fixed on the basis of the relevant scale found in Appendix III. The Court will take into consideration whether the procedure is expedited or not, the diligence of the arbitrators, time spent, rapidity of the proceedings and complexity of the dispute. Based on the amount in dispute, the scale provides a minimum and a maximum for one arbitrator.

The fees are multiplied by the number of arbitrators. In exceptional circumstances, 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. Where the sum in dispute is not stated, the Court fixes the arbitrators’ fees at its discretion.

Amounts paid to arbitrators do not include any possible value added tax (VAT) or other taxes or charges and imposts applicable to the arbitrator’s fees. Parties have a duty to pay any such taxes or charges. However, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.

•Arbitrators’ expenses

The arbitrators’ expenses or disbursements are also managed by the Court and include such expenses as for travel, accommodation, meals, courier charges and facilities for hearings.

•ICC administrative expenses

The “administrative expenses,” also referred to as “administrative costs,” represent the fee charged by ICC for administering a case. The US$5,000 payment that accompanies the ‘Request’ is an advance on administrative expenses and not refundable.

The Court fixes the administrative expenses on the basis of the scales set out in Appendix III, or, where the sum in dispute is not stated, at its discretion. The Court may fix the administrative expenses at a lower or higher figure than that which would result from the application of the scales. This is provided that expenses shall not exceed the maximum amount of the scale (i.e., US$150,000).

Any ICC administrative expenses may be subject to value added tax (VAT) or charges of a similar nature at the prevailing rate.

•Fees and expenses for expert(s)

In those cases where an expertise is ordered by the Arbitral Tribunal, the latter fixes the fees and expenses of the expert(s) and is responsible for the management and payment of such fees and expenses by the parties. The costs of an expertise are not covered by the advance on costs fixed by Court—although the Secretariat may administer the accounts as a service to the Arbitral Tribunal.

•Legal costs

The cost of legal representation and the other costs incurred by the parties for the arbitration are not covered by the advance on costs required by ICC. They are included in the costs of the arbitration as fixed by the Arbitral Tribunal in the Award.

Advances on costs

The ICC advance on costs system is designed to ensure that an arbitration may proceed as soon as the relevant fees and expenses of the arbitrators and the institution are covered.

The advances do not cover legal costs or the fees and expenses of any expert. Payment is staggered as follows:

•Advance on administrative expenses (filing fee)

A first advance on administrative expenses of US$5,000 is payable by the Claimant with the Request for Arbitration. The amount is non-refundable.

•Provisional advance

After a review of the “Request,” the Secretary General typically requires the Claimant to pay a provisional advance in an amount intended to cover the costs of the arbitration until the “Terms of Reference” have been drawn up. Usually, this advance shall not exceed the amount obtained by adding together:

•the administrative expenses resulting from the scale; the minimum on the scale of arbitrators’ fees; and

•the expected reimbursable expenses of the Arbitral Tribunal incurred with respect to the drawing of the “Terms of Reference” or the Case Management Conference when Expedited Procedure Provisions apply.

These calculations are made on the basis of the Claimant’s claim only. Current practice indicates that the provisional advance is usually in the range of 25-35% of the advance as calculated for the entire arbitration.

•Advance on costs

As soon as practicable, the Court, taking account of all claims and counter-claims, fixes the advance on costs payable in equal shares by Claimant and respondent (the amount of the provisional advance that has already been paid, which includes the initial US$ 5,000, is credited to the Claimant’s share).

In certain circumstances, the Court may fix separate advances in respect of a principal claim and a counter-claim. The advance fixed by the Court is calculated for the entire arbitration and can be revised at any stage of the procedure.

If the Claimant or the respondent pays its share of the advance on costs and the other refuses to pay, the former will be invited to pay on behalf of the latter.

Payment details

Below are the banking instructions for ICC Dispute Resolution Services and apply as of 12 June 2015.

For ICC Dispute resolution cases, including Arbitration, Mediation, Expert, Dispute Board and DOCDEX, administered by the Global Headquarters in Paris or by our offices in Hong Kong, Singapore (SICAS) or Abu Dhabi:

Beneficiary (Account holder):

International Chamber of Commerce 33-43 avenue du President Wilson 75116 Paris, France

Bank of Beneficiary:NATIXIS30 avenue Pierre Mendes France75013 Paris, France

Account number: 27828830000 IBAN: FR76 3000 7999 9927 8288 3000 012

Swift Code (BIC): NATXFRPP

The payment must originate from the party to the case. Please indicate on the transfer the full name of the party.

**For information**

**Shanil Fernando. AAL, MBA, MSiArb**

**ICC Director / Secretary**

**Email** [**shanil.fdo@yahoo.com**](mailto:shanil.fdo@yahoo.com)

**Tel 772724403**