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Costos y pagos

Hay tres aspectos en el pago del depósito de costos de ICC, o "anticipo de costos", como se denomina en las Reglas de arbitraje de ICC:

- **Una tarifa de presentación no reembolsable** de US \$ 5,000, que paga el reclamante cuando presenta una "Solicitud de arbitraje"; esta es una condición de la Secretaría que notifica la "Solicitud" al (los) demandado (s). Cualquier parte que presente una solicitud para unirse a una parte adicional conforme al Artículo 7 también debe pagar una tarifa no reembolsable de US \$ 5,000.
- **Un anticipo provisional** fijado por el Secretario General luego de recibir la "Solicitud", que deberá ser pagada por el Demandante. El avance provisional está destinado a cubrir los costos del arbitraje hasta que se completen los "Términos de Referencia" o hasta la conferencia de administración de casos cuando se apliquen las Disposiciones de Procedimiento Acelerado. Normalmente, la Corte y la Secretaría esperarán a que se pague este anticipo provisional antes de tomar medidas importantes hacia la constitución del Tribunal Arbitral.
- **El anticipo de costas** fijado por el Tribunal. Por lo general, esto se resuelve poco después de que se presente la "Respuesta" o cualquier otra contrademanda, es decir, tan pronto como el Tribunal tenga información suficiente para solucionarlo. Normalmente se solicita a las partes que paguen el anticipo de los costos en partes iguales en el momento en que la Secretaría transfiera el expediente del caso al Tribunal Arbitral. Tenga en cuenta que los pagos ya realizados por el reclamante (es decir, la tarifa de presentación no reembolsable y el anticipo provisional) se acreditan a la parte del anticipo en los costos de los reclamantes. En los arbitrajes con más de

dos partes, el Tribunal tiene discreción para exigir que el pago del anticipo de los costos se asigne de manera adecuada.

La Corte fijará los costos reales del arbitraje (es decir, los gastos administrativos de la CPI y los honorarios de los árbitros) al final del caso. Esos costos, así como los gastos reembolsables de los árbitros, se pagarán a partir del anticipo de los costos. Si queda algo de dinero, se reembolsará a las partes.

Los costos administrativos de ICC y los honorarios de los árbitros se fijan de acuerdo con una escala de costos basada en el valor monetario de las reclamaciones. Este sistema ofrece previsibilidad para las partes que pueden estimar el rango de costos tan pronto como se conozca el valor de las reclamaciones. ICC proporciona una **calculadora de costos (<https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/cost-calculator/>)** para este propósito. Cuando sea necesario, el Tribunal tiene la discreción de fijar los costos a un monto mayor o menor que el generado por las escalas de costos.

Al final de un arbitraje, las partes pueden hacer reclamaciones de costos con respecto a los costos que se pagarán con el anticipo de los costos (es decir, los honorarios y costos de los árbitros y los gastos administrativos de la CPI) y con respecto a otros costos razonables en que hayan incurrido. (por ejemplo, costos legales y costos de expertos). El tribunal arbitral puede entonces otorgar costos a favor o en contra de una o más partes.

Costo del arbitraje en detalle (artículos 37 y 38).

Los árbitros pueden tomar decisiones en cuanto a los costos, excepto los que fijará el Tribunal y ordenar el pago de los mismos en cualquier momento durante el procedimiento.

Al hacerlo, pueden tener en cuenta las circunstancias que consideren apropiadas, incluida la conducta de las partes a lo largo del arbitraje.

Los costos del arbitraje incluyen los honorarios y gastos de los árbitros y los costos administrativos de la Corte Penal Internacional fijados por el Tribunal de conformidad con las escalas de costos vigentes, así como los honorarios y gastos de los expertos designados por el Tribunal de Arbitraje y los recursos legales razonables y otros Costes incurridos por las partes para el arbitraje.

Una vez que el Tribunal fijó los honorarios y gastos de los árbitros y los costos administrativos de la CPI al final del procedimiento, el Tribunal Arbitral fija los costos del arbitraje en el Laudo y decide cuál de las partes los asumirá o en qué proporción correrán a cargo de las partes.

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:

NATIXIS
30 avenue Pierre Mendes France
75013 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 and the case reference number if already assigned.

Parties may alternatively pay by check made out to: International Chamber of Commerce.

For Arbitration cases administered by our regional office in New York (SICANA Inc.):

Beneficiary (Account holder):

SICANA INC.
140 East 45th Street
Suite 14c
New York, NY 10017, USA

Bank of Beneficiary:

JPMorgan Chase Bank, N.A.
270 Park Avenue
New York, NY 10017, USA

Account no. : 700879393

ABA # – 021000021

Swift # – CHASUS33

The payment must originate from the party to the case. Please indicate on the transfer the full name of the party and the case reference number if already assigned.

Parties may alternatively pay by check made out to “SICANA Inc”.

La ICC está obligada a operar de conformidad con las regulaciones de sanciones aplicables, como las impuestas por las Naciones Unidas, la Unión Europea y la Oficina de Control de Activos Extranjeros. Si las partes tienen dudas razonables de que un régimen de sanciones es aplicable a su solicitud, deben informar al ICC con anticipación antes de presentar cualquier solicitud de este tipo y antes de pagar la tarifa de presentación correspondiente. En tal caso, póngase en contacto con **compliance@iccwbo.org** (**<mailto:compliance@iccwbo.org>**) .

La Corte Internacional de Arbitraje® de ICC y el Centro Internacional para **Políticas y Procedimientos de Cumplimiento de ADR se pueden encontrar aquí** (**<https://iccwbo.org/publication/note-parties-arbitral-tribunals-icc-compliance/>**) .