

## **Note on guidelines for quantification of arbitration proceedings**

*Approved by the Plenary Committee of the Court in session on 20 May 2020*

### **I. Introduction**

1. Article 10.1 of the Rules reads as follows:

*“The Court will fix the amount of the advance of funds for the costs of the arbitration, including any indirect taxes that may apply to them.”*

2. It is necessary to establish the amount in dispute in the proceeding to discharge this function of setting the amount of advance of funds. The Court will follow the guidelines set out below to make this determination.

### **II. Competence to set the amount in dispute**

3. The Court invites the parties to the proceeding to agree on a proposed amount in dispute, although it is for the Court to fix that amount as stated above.

4. The body of the Court with responsibility for setting the amount in dispute will be the Secretary General, who may consult the Plenary Committee in the performance of this function if deemed appropriate.

### **III. Procedural phase to set the amount in dispute**

5. In general, the final amount in dispute in the proceeding will be set after the answer to the claim or answer to the counterclaim have been filed.

6. Without prejudice to the foregoing, the amount in dispute may subsequently be adjusted depending on the development of the proceeding. This adjustment will be appropriate in cases including but not limited to those in which the damages sought continue to increase during the course of the arbitration.

### **IV. Main criterion: relief sought**

#### **A. Introduction**

7. In general, the amount in dispute in the proceeding will be the sum of the petitions for payment made in the claim.

8. However, when the claim includes principal and subsidiary petitions, the petition with the highest value will be taken into account to set the amount in dispute in the proceeding, whether a principal or a subsidiary petition.

9. If a declaratory petition is made relating to the recognition of a right to receive a sum or any other right, the amount in dispute for that petition will be the same as if an order were being sought for the payment of that sum or satisfaction of that right.

## **B. Counterclaim and consolidation**

10. If a counterclaim is filed, it will be deemed a separate proceeding for purposes of quantification and the Court will therefore set a specific amount in dispute for that counterclaim.

11. This specific amount in dispute will not be added to the claim such that the sum of both determines the total amount in dispute in the proceeding. As such, the Court will calculate and require the corresponding advances of funds based on the amount in dispute in the claim, based on the Court's fees, and the corresponding advances of funds for the amount in dispute in the counterclaim will be separately calculated, based on those same fees.

12. The quantification rule outlined in points 10 and 11 will apply in the event of consolidation of proceedings. The claims from each consolidated proceeding will be separately quantified and the corresponding advances of funds will be independently calculated and required.

## **C. Interest**

13. In general, the Court will not take into account the interest claimed in the proceeding when setting the amount in dispute. However, in cases where the interest claimed is particularly significant in the context of the arbitration as a whole, the Court may take it into account for purposes of setting the amount in dispute in the proceeding.

14. Interest will normally be deemed to be particularly significant in the proceeding if it represents over 25% of the total amount in dispute in the claim (or counterclaim), if an aggravated interest rate in excess of the legal interest rate is being claimed, or if the issues concerning interest are especially legally complex.

15. The Court may ask the Parties to specify the date from which they are claiming the payment of interest for purposes of assessing the existence of the above circumstances. In this respect, the Parties are reminded of the provisions of Articles 28.6 and 56.2 of the Rules. For example, if a claim is filed for payment of €1 million and a counterclaim also demands the payment of €1 million, this will not result in an interpretation that there is a single proceeding

with an amount of €2 million in dispute. Rather, there will be two proceedings, each with an amount of €1 million in dispute, for which the corresponding advances of funds will be required from the Parties.

**V. Additional criteria: economic interest in dispute and complexity of proceeding**

16. In the absence of clear petitions for payment or when the Court deems it appropriate in view of the circumstances of the case, the Court may have recourse to the criterion of economic interest to quantify the proceeding.

17. In this case, the Court may require the Parties to provide the information necessary to determine the economic interest that provides the basis for the arbitration.

In this respect, the Parties are reminded of the provisions of Articles 28.6 and 56.2 of the Rules.

18. The Court may take into consideration the complexity of the proceeding when it considers that neither the main criterion (setting the amount in dispute by adding up the petitions for payment) nor the additional criterion linked to the economic interest of the arbitration lead to a reasonable quantification in view of the demands it places on the arbitrators.

19. When assessing the complexity of a proceeding, the Court may take into consideration factors including but not limited to the following: (i) the number of Parties to the arbitration; (ii) the number of petitions made; (iii) the number of briefs filed by the Parties; (iv) the number and volume of documents attached to the case file; (v) the number of procedural orders and awards issued; and (vi) the number of hours that the arbitrators have dedicated or plan to dedicate until the conclusion of the proceeding.

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