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Rules of ICC as Appointing Authority

in UNCITRAL or Other Arbitration Proceedings

In force as from 1 January 2018

A decorative graphic at the bottom of the page consists of several overlapping, curved, blue and black shapes that create a sense of depth and movement.

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

This booklet contains a set of rules, separate and distinct from the ICC Arbitration Rules, that set forth a procedure for the provision of a number of services by the International Court of Arbitration of the International Chamber of Commerce (the “ICC Court”) in arbitral proceedings conducted under the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”) or other arbitration proceedings, whether ad hoc or administered by other arbitral institutions.

The present Rules of ICC as Appointing Authority in UNCITRAL or Other Arbitration Proceedings (the “Rules”), in force as of 1 January 2018, have been made consistent with the 2013 UNCITRAL Arbitration Rules, the 2017 ICC Arbitration Rules and the ICC Court’s long practice in acting as appointing authority.

During more than 90 years of administering arbitral proceedings, the ICC Court has acquired exceptional experience in appointing arbitrators and constituting arbitral tribunals, deciding upon challenges of arbitrators and taking decisions with regard to certain arbitration costs. While the Rules explicitly acknowledge the ICC Court’s authority to act in the above fields, they significantly expand the spectrum of services it may provide to interested parties, such as maintaining the file, assisting the parties with logistical arrangements for meetings and hearings, assisting with the notification of documents and correspondence, administering funds, proofreading draft documents and acting as repository.

The added value of the Rules is that, on the one hand, they enable the ICC Court to provide services in arbitral disputes lying beyond ICC Arbitration whenever parties so request and, on the other, they allow parties to select the specific services they wish the ICC Court to undertake, thus benefitting from a flexible framework, tailor-made solutions and the ICC Court’s vast experience in dispute resolution.

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

In force as from 1 January 2018

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

ARTICLE 1

Introductory Provisions

- 1 The Rules of ICC as Appointing Authority in UNCITRAL or Other Arbitration Proceedings (the “Rules”) shall apply when the International Chamber of Commerce or any authority within ICC (“ICC”) is empowered to act as appointing authority by agreement of the parties, designation by the Secretary-General of the Permanent Court of Arbitration, or otherwise.
- 2 Under the Rules, the function of appointing authority shall be carried out exclusively by the ICC International Court of Arbitration (the “Court”). The Court shall fulfil this role pursuant to its statutes and internal rules set forth respectively in Appendices I and II of the ICC Rules of Arbitration (the “Statutes” and “Internal Rules”), which apply *mutatis mutandis*. The Court is assisted in its work by the Secretariat of the Court (the “Secretariat”) under the direction of the Secretary General (the “Secretary General”). The President of the Court (the “President”) or, in the President’s absence or otherwise at the President’s request, one of its Vice-Presidents shall have the power to take urgent decisions on behalf of the Court, provided that any such decision is reported to the Court.
- 3 ICC’s role as appointing authority under the Rules may include the appointment of arbitrators and any service described herein.

ARTICLE 2

Definitions

In the Rules:

- (i) “UNCITRAL Arbitration Proceedings” are *ad hoc* arbitration proceedings conducted under the UNCITRAL Arbitration Rules (the “UNCITRAL Rules”);
- (ii) “Non-UNCITRAL *Ad Hoc* Arbitration Proceedings” are *ad hoc* arbitration proceedings that are not conducted under institutional rules and are not conducted under the UNCITRAL Rules;

- (iii) “Other Institutional Arbitration Proceedings” are arbitration proceedings conducted under the rules of an institution other than ICC;
- (iv) “Other Arbitration Proceedings” refers to both Non-UNCITRAL *Ad Hoc* Arbitration Proceedings and Other Institutional Arbitration Proceedings;
- (v) “Authority within ICC” includes *inter alia* the Chair and Secretary General of ICC, the President and Secretary General of the Court, and ICC National Committees and Groups;
- (vi) “Applicant” means one or more parties requesting services under the Rules and “Responding Party” means one or more parties responding to such request.

ARTICLE 3

Written Notifications or Communications; Time Limits

- 1 All notifications or communications under the Rules shall be made pursuant to the Rules.
- 2 All 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, if applicable, and one for the Secretariat.
- 3 All notifications or communications from the Secretariat 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, email, or any other means of telecommunication that provides a record of the sending thereof.
- 4 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 Article 3(3).
- 5 Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with Article 3(4). When the day following such date is an official holiday or a non-business day in the country where the

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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.

ARTICLE 4

The Application

- 1 When requesting ICC to act under the Rules, a party shall submit an application (the “Application”) to the Secretariat at any of its offices pursuant to the Internal Rules. The Secretariat shall notify the other party or parties, and any arbitrators, if applicable, of the receipt of the Application and the date of such receipt.
- 2 The date on which the Application is received by the Secretariat shall, for all purposes, be deemed to be the date on which ICC is requested to act under the Rules.
- 3 The Application shall contain the following information:
 - a) the name in full, description, address and other contact details of each of the parties;
 - b) the name in full, description, address and other contact details of any person representing any of the parties, if known;
 - c) the name in full, description, address and other contact details of any arbitrator, if applicable;
 - d) the notice of arbitration and any response to the notice of arbitration, as referred to respectively in Articles 3 and 4 of the UNCITRAL Rules, in UNCITRAL Arbitration Proceedings; or any equivalent document in Other Arbitration Proceedings;
 - e) any relevant agreements and, in particular, the arbitration agreement(s);

- f) any applicable time limits;
 - g) all relevant particulars and any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration;
 - h) a description of the services requested;
 - i) in the event of a challenge of an arbitrator, the reasons or basis for the challenge;
 - j) any request for fixed costs for multiple services pursuant to the Appendix to the Rules (the "Appendix"), if applicable; and
 - k) any other information that the Applicant deems appropriate.
- 4 Together with the Application, the Applicant shall:
- a) submit the number of copies thereof required by Article 3(2); and
 - b) make payment of the filing fee required by Article 12 and the Appendix in force on the date the Application is submitted.

In the event that the Applicant fails to comply with either of these requirements, the Secretariat may fix a time limit within which the Applicant must comply, failing which the file shall be closed without prejudice to the Applicant's right to submit the same request at a later date in another Application.

- 5 The Secretariat shall transmit a copy of the Application and the documents annexed thereto to the Responding Party and, if applicable, any arbitrator, once the Secretariat has sufficient copies of the Application and the required filing fee. Taking into account any applicable time limits, the Secretariat shall grant the Responding Party and, if applicable, any arbitrator a reasonable opportunity to respond.
- 6 At any time, the Court may request additional information from the parties or, if applicable, the arbitrator(s).

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ARTICLE 5

Effect of the Parties' Agreement

- 1 When the parties have agreed that ICC shall act as appointing authority, they shall be deemed to have submitted to the Rules, unless they have expressly agreed to submit to the version thereof in force on the date of their agreement.
- 2 The provisions of the UNCITRAL Rules referred to in the Rules are those of the UNCITRAL Rules as modified in 2010, with new article 1, paragraph 4, as adopted in 2013. The Rules shall apply, *mutatis mutandis*, to other versions of the UNCITRAL Rules.
- 3 When requested to act as appointing authority or provide services under the Rules, the Court shall proceed if it is satisfied that an agreement empowering it to do so may exist.
- 4 The Court retains discretion not to provide services requested.
- 5 The Court may decline to appoint an arbitrator where there is a disagreement between the parties as to whether that arbitrator has already been duly appointed.

ARTICLE 6

UNCITRAL Arbitration Proceedings

- 1 Under the UNCITRAL Rules, the Court may provide one or more of the following services, as requested:
 - a) appoint a sole arbitrator pursuant to Articles 7(2) or 8 of the UNCITRAL Rules;
 - b) appoint one or more arbitrators pursuant to Article 9(2) of the UNCITRAL Rules, if several arbitrators are to be appointed;
 - c) appoint the presiding arbitrator pursuant to Article 9(3) of the UNCITRAL Rules;
 - d) constitute the arbitral tribunal pursuant to Article 10(3) of the UNCITRAL Rules;
 - e) decide on a challenge of an arbitrator pursuant to Article 13(4) of the UNCITRAL Rules;
 - f) appoint a substitute arbitrator pursuant to Article 14(2) of the UNCITRAL Rules;

- g) decide whether to authorise the other arbitrators to proceed without appointing a substitute arbitrator pursuant to Article 14(2) of the UNCITRAL Rules;
 - h) review the arbitral tribunal's proposal on fees and expenses, and if necessary make the necessary adjustments thereto, pursuant to Article 41(2) and (3) of the UNCITRAL Rules;
 - i) review the arbitral tribunal's determination of its fees and expenses pursuant to Article 41(4)(b) of the UNCITRAL Rules;
 - j) provide the arbitral tribunal, on a consultative basis, with any comments on the appropriate amounts of any deposits or supplementary deposits pursuant to Article 43(3) of the UNCITRAL Rules;
 - k) perform any other services on which the parties may have agreed, including administrative services as described in Article 8 of the Rules;
 - l) act as repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration by agreement of the parties pursuant to Article 1(2)(a) thereof; and
 - m) publish on its website or otherwise make available to the public information or documents related to the parties' arbitration when subject to transparency rules or regulations.
- 2 When appointing a sole or presiding (third) arbitrator pursuant to Articles 7(2) and 9(3) of the UNCITRAL Rules, the Court shall follow the list-procedure set forth in Article 8(2) of the UNCITRAL Rules, unless all parties agree that the list-procedure should not be used or the Court determines in its discretion that the use of the list-procedure is not appropriate.
- 3 When following the list-procedure, the Court shall prepare a list of at least three candidates, which shall be communicated to the parties by the Secretariat. Within 15 days of receiving this list, each party may return the list to the Secretariat after deleting the name or names to which it objects and numbering the remaining names on the list in the order of its

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preference. After expiration of the aforementioned 15-day time limit, the Court shall appoint the sole or presiding arbitrator from among the names approved on the list returned to the Secretariat and in accordance with the order of preference indicated by the parties. If for any reason the appointment cannot be made according to this procedure, the Court may exercise its discretion in appointing the sole or presiding arbitrator.

- 4 In accordance with Article 6(7) of the UNCITRAL Rules, when making the appointment the Court shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.
- 5 When appointing an arbitrator pursuant to Article 9(2) of the UNCITRAL Rules, the Court may exercise its discretion in making the appointment.
- 6 In the event of any failure to constitute the arbitral tribunal under Article 10 of the UNCITRAL Rules, the Court shall, at the request of any party, constitute the arbitral tribunal, and may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.
- 7 The Court will take decisions on challenges submitted by any party under Article 13(4) of the UNCITRAL Rules 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 the arbitrators before being submitted to the Court.
- 8 At the request of any party and after the Secretariat has afforded an opportunity for the parties and members of the arbitral tribunal to comment in writing within a suitable period of time, the Court may decide, pursuant to Article 14(2) of the UNCITRAL Rules, to either (i) appoint a substitute arbitrator, or (ii) after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award. When

appointing a substitute arbitrator under Article 14(2) of the UNCITRAL Rules, the Court shall follow the procedure set forth therein.

- 9 Pursuant to Article 41(3) of the UNCITRAL Rules, within 15 days after being informed by the arbitral tribunal as to how the arbitral tribunal proposes to determine its fees and expenses, including the rates it intends to apply, any party may refer that proposal to the Court. If the Court finds that the proposal of the arbitral tribunal is inconsistent with Article 41(1) of the UNCITRAL Rules, the Court shall make any necessary adjustments thereto within 45 days of receiving such referral. The Court's determination shall be binding upon the arbitral tribunal.
- 10 Pursuant to Article 41(4)(b) of the UNCITRAL Rules, within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer such determination to the Court for review. If the Court finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustments thereto) under Article 41(3) of the UNCITRAL Rules or is otherwise manifestly excessive, the Court shall, within 45 days of receiving such referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in Article 41(1) of the UNCITRAL Rules. Any adjustments made by the Court shall be binding upon the arbitral tribunal.
- 11 At the request of any party and pursuant to Article 43(3) of the UNCITRAL Rules, the Court may, on a consultative basis, provide the arbitral tribunal with any comments it deems appropriate concerning the amount of any deposits or supplementary deposits to be made under Article 43 of the UNCITRAL Rules.

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ARTICLE 7

Non-UNCITRAL *Ad Hoc* Arbitration Proceedings

- 1 In Non-UNCITRAL *Ad Hoc* Arbitration Proceedings, the Court may provide one or more of the following services, as requested:
 - a) appoint a sole arbitrator;
 - b) appoint one or more arbitrators, if several arbitrators are to be appointed;
 - c) appoint the presiding arbitrator;
 - d) constitute the arbitral tribunal;
 - e) decide on challenges of arbitrators;
 - f) appoint substitute arbitrators;
 - g) review the arbitral tribunal's proposal on fees and expenses;
 - h) provide the arbitral tribunal, on a consultative basis, with any comments on the appropriate amounts of any deposits or supplementary deposits;
 - i) act as repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration by agreement of the parties pursuant to Article 1(2)(a) thereof;
 - j) publish on its website or otherwise make available to the public information or documents related to the parties' arbitration when subject to transparency rules or regulations; and
 - k) perform any other services on which the parties may have agreed, including administrative services as described in Article 8 of the Rules.
- 2 In providing services under this Article, the Court shall exercise its discretion, taking into account the parties' agreement and any applicable rules.
- 3 The Court shall decide on any 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 reasonable period of time. Such comments shall be communicated to the parties and the arbitrators before being submitted to the Court.

ARTICLE 8

Administrative Services Provided in UNCITRAL and Non-UNCITRAL *Ad Hoc* Arbitration Proceedings

- 1 The Court may provide one or more of the following services, as requested:
 - a) maintain the file;
 - b) assist with logistical arrangements for meetings and hearings;
 - c) assist with notification of documents and correspondence;
 - d) administer funds related to arbitrators and administrative secretaries;
 - e) administer funds related, inter alia, to experts, hearings, and escrow accounts;
 - f) proofread draft documents of the arbitral tribunal for typographical, grammatical and similar errors; and
 - g) perform any other services on which the parties may have agreed.
- 2 In providing services under this Article, the Court shall exercise its discretion, taking into account the parties' agreement and any applicable rules.

ARTICLE 9

Other Institutional Arbitration Proceedings

- 1 In Other Institutional Arbitration Proceedings, if permitted by the applicable rules, the Court may provide one or more of the following services, as requested:
 - a) appoint a sole arbitrator;
 - b) appoint one or more arbitrators, if several arbitrators are to be appointed;
 - c) appoint the presiding arbitrator;
 - d) appoint substitute arbitrators; and
 - e) perform any other services on which the parties may have agreed.
- 2 In providing services under this Article, the Court shall exercise its discretion, taking into account the parties' agreement and any applicable rules.

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ARTICLE 10

Statement of Acceptance, Availability, Impartiality and Independence

Before appointment, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence, including any necessary disclosures, in accordance with and as may be required by any applicable rules. Unless otherwise provided in any applicable rules, the prospective arbitrator shall disclose 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, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality.

ARTICLE 11

Reasons

At the request of one or more parties, the Court may communicate the reasons for (i) a decision on the challenge of an arbitrator, and (ii) a decision on the replacement of an arbitrator. Any request for the communication of reasons must be made in advance of the decision for which reasons are sought.

ARTICLE 12

Costs

- 1 Each Application shall be accompanied by a non-refundable filing fee as set forth in the Appendix.
- 2 After the receipt of the Application, the Secretary General shall fix an advance on costs pursuant to the Appendix. Any advance on costs may be subject to readjustment. No services will be provided until the advance on costs has been paid.
- 3 If services are requested by one party, the advance on costs shall be fully payable by such party, unless otherwise agreed. If services are requested by more than one party, the advance on costs shall be payable in equal shares, unless otherwise agreed.

- 4 In all cases, any party shall be free to pay any other party's share of any advance of costs, should such other party fail to pay its share. When a request for an advance on costs has not been complied with, the Secretary General may fix a time limit within which the Applicant or the parties, as the case may be, must comply, failing which the file shall be closed without prejudice to any party's right to submit the same request at a later date in another Application.
- 5 The Court shall fix the costs once the services requested have been provided.
- 6 In the event a request for services is withdrawn before those services have been provided, the Court may, when fixing the costs, reimburse any unused amount advanced by the Applicant or the parties, as the case may be.

ARTICLE 13

Limitation of Liability

The arbitrators, any person appointed by the arbitral tribunal, the Court and its members, ICC and its employees, and the ICC National Committees and Groups and their employees and representatives shall not be liable to any person for any act or omission in connection with services provided under the Rules, except to the extent such limitation of liability is prohibited by applicable law.

ARTICLE 14

General Rule

In all matters not expressly provided for in the Rules, the Court shall act in the spirit of the Rules.

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APPENDIX - COSTS FOR SERVICES

ARTICLE 1

Filing Fee

Each Application must be accompanied by a filing fee of US\$ 5,000. Such payment is not refundable and shall be credited to the total amount charged for all services provided by ICC under the Rules.

ARTICLE 2

Costs for Services

There are two alternative methods of pricing for services provided under the Rules:

- a) First, for any of the specific services identified in Article 3 of this Appendix, the fixed cost for each such service shall be as indicated in Article 3, and the cost for any other services shall be determined by ICC depending on the work carried out by ICC in providing those services.
- b) Alternatively, the parties may pay a single fixed fee for multiple services provided in connection with an arbitration proceeding, as foreseen in Article 4 of this Appendix, and the cost for any other services shall be determined by ICC depending on the work carried out by ICC in providing those services.

ARTICLE 3

Fixed Costs for Specific Services

- 1 The ICC costs for the specific services listed herein are as follows:

US\$ 5,000 to 10,000	Appointment of one arbitrator under Article 6(1)(a), (b), (c), (d) or (f), Article 7(1)(a), (b), (c), (d) or (f), or Article 9(1)(a), (b), (c) or (d).
US\$ 5,000 to 15,000	Decision on the challenge of one arbitrator under Article 6(1)(e) or Article 7(1)(e), or a decision pursuant to Article 6(1)(g).
US\$ 3,000 to 6,000	Communication of reasons for decisions under Article 11.
US\$ 5,000	Services under Article 6(1)(h) or (j), or Article 7(1)(g) or (h).
US\$ 5,000	Services under Article 6(1)(l) or (m), or Article 7(1)(i) or (j).

- 2 Any amounts paid under Article 3(1) may be credited towards the fixed fee for multiple services provided for in Article 4.

ARTICLE 4

Fixed Cost for Multiple Services

Parties requesting more than one service may opt for a fixed amount of costs of US\$ 90,000 to US\$ 150,000. This amount fixed by the Court subject to the advance on costs fixed by the Secretary General, may include all or some of the following services, according to the parties' request:

- a) appointment of one or more arbitrators under Article 6(1)(a), (b), (c), (d) and (f), or under Article 7(1)(a), (b), (c), (d) and (f);
- b) decisions on challenges of one or more arbitrators under Article 6(1)(e) and Article 7(1)(e), or decisions pursuant to Article 6(1)(g);
- c) communication of reasons for decisions under Article 11;
- d) provision of services under Article 6(1)(h) and (j) or under Article 7(1)(g) and (h);

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- e) provision of services under Article 6(1)(l) and (m) or under Article 7(1)(i) and (j);
- f) maintenance of the file under Article 8(1)(a);
- g) assistance with logistical arrangements for meetings and hearings under Article 8(1)(b);
- h) assistance with notification of documents and correspondence under Article 8(1)(c); and
- i) administration of funds, exclusive of banking charges, related to arbitrators and administrative secretaries under Article 8(1)(d).

ARTICLE 5

Currency, VAT, Interest and Scope

- 1 All costs fixed by the Court pursuant to this Appendix are payable in US\$ except where prohibited by law or decided otherwise by the Court, in which case ICC may apply a different scale and fee arrangement in another currency.
- 2 The amounts paid as advances on costs do not yield interest for the parties or the arbitrator(s).
- 3 Any ICC costs may be subject to value added tax (VAT) or charges of a similar nature at the prevailing rate.
- 4 The provisions on costs for services set forth above shall be effective as of 1 January 2018 in respect of all services requested on or after such date, irrespective of which version of the Rules is applicable.

SUGGESTED WORDING

It is recommended that parties wishing to select ICC as appointing authority insert the following wording in their arbitration agreement:

The International Chamber of Commerce (“ICC”) shall act as appointing authority in accordance with the Rules of ICC as Appointing Authority in UNCITRAL or Other Arbitration Proceedings.

When considering the selection of ICC to act as appointing authority in other institutional arbitration proceedings in accordance with Article 9 of the above-mentioned Rules, parties are advised to consult both ICC and the other institution to ensure that such selection is compatible with the rules and internal policies of both institutions.

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