

1 March 2021

NOTE ON THE FUNCTIONING OF THE BRAZILIAN OFFICE OF THE SECRETARIAT OF THE COURT (“SCIAB NOTE”)

This SCIAB Note is intended to provide parties and arbitral tribunals with information regarding the functioning of the Brazilian office of the Secretariat of the Court of the International Court of Arbitration (“Court”) of the International Chamber of Commerce (“ICC”) under the ICC Rules of Arbitration.

I - General Information

1. The Secretariat of the International Court of Arbitration of the International Chamber of Commerce (“Secretariat”) has an office in the City of São Paulo – SP, Brazil (“São Paulo Office of the ICC” or “SCIAB”), pursuant to Article 5(3) of the ICC Arbitration Rules (“Rules”).
2. An arbitration shall be administered by the São Paulo Office of the ICC when it is appropriate in light of the circumstances of the case and **(i)** all parties are of Brazilian nationality; or **(ii)** the parties have expressly agreed to it, subject to the Secretary General’s approval, or **(iii)** the Secretary General so decides at his discretion. The three situations are hereafter referred to as “Brazilian Arbitrations”.
3. The SCIAB Note is intended to clarify specific aspects related to the administration of Brazilian Arbitrations under the Rules. For all matters not dealt with in this note or to complement this note, the parties shall refer to the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration (“Note”).

II - Filing fee, provisional advance and advance on costs

4. Unless decided otherwise by the Secretariat, the filing fee, provisional advance and advance on costs for arbitrations administered by the São Paulo office of the ICC will be fixed in Brazilian Reais (“Reais”) in accordance with the ICC scale in Reais.
5. The São Paulo Office of the ICC will act as depositary of the amounts anticipated in relation to provisional advance and advance on costs related to the arbitration, which unless decided otherwise by the Secretariat, shall be deposited on a bank account in Brazil.

6. In the same letter in which the Secretariat acknowledges the receipt of the Request, the Secretariat will send a Payment Request of BRL 19 000 (net amount of taxes) (2021 Scale) to Claimant related to the filing fee (Article 1 of Appendix III of the Rules). This Payment Request will indicate the banking instructions for payments in Reais in a bank account in Brazil. Such payment is non-refundable and shall be credited to the Claimant's portion of the advance on costs.
7. Arbitrations that may fall within the scope of paragraph 2 above should refrain from making any payment to the ICC until instructed by the Secretariat to do so.
8. The provisional advance fixed by the Secretary General according to Article 37(1) of the Rules shall normally not exceed the amount obtained by adding together roughly about 50% of the ICC administrative expenses, 50% of the minimum of the fees (as set out in the scale hereinafter), which vary according to 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 or the holding of the case management conference. If the amount in dispute 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 upon the transmission of the file to the arbitral tribunal.
9. The advance on costs fixed by the Court according to Articles 37(2) or 37(4) of the Rules comprises only the fees of the arbitrator or arbitrators, any arbitration-related expenses of the arbitrator and the ICC administrative expenses.
10. The provisional advance and advance on costs shall be considered as an advance and not a payment for accounting and tax purpose.

III - Emergency Arbitrator Proceedings

11. Pursuant to Article 29 of the Rules and Appendix V, a party that needs urgent interim measures ("Emergency Measures") which cannot await the constitution of an arbitral tribunal may make an application to the Secretariat. Whenever the case falls under paragraph 2 (i) or (ii) above, the following shall apply.
12. Pursuant to Article 7 of Appendix V of the Rules, the Applicant must pay an amount of BRL 150 000 (net amount of taxes) (2021 Scale) regarding the costs of the Emergency Arbitrator proceedings. This amount includes BRL 37 500 (net amount of taxes) (2021 Scale) for ICC administrative expenses and BRL 112 500 (net amount of taxes) (2021 Scale) for the emergency arbitrator's fees and expenses. Moreover, this amount has to be paid in Reais, on a bank account in Brazil, which will be informed to the parties upon the filing of the application.
13. The Applicant shall inform the Secretariat as soon as possible and preferably before submitting the Application, for confirmation of the banking instructions for payment of the Emergency Arbitrator's proceeding costs. If the Application precedes the Request for Arbitration, parties should send an email to: emergencyarbitrator@iccwbo.org. If the Application is related to an ongoing arbitration, parties should contact the ICC case management team to which the arbitration has been assigned.

IV - Expedited Procedure Provisions - EPP

14. Pursuant to Article 1(2) of Appendix VI of the Rules, the amount referred to in Article 30(2), subparagraph a) of the Rules for Expedited Procedures administered by the São Paulo Office of the ICC is:
- a) BRL 6 400 000 (i.e., US\$ 2,000,000) if the arbitration agreement under the Rules was concluded on or after 1 March 2017 and before 1 January 2021; or
 - b) BRL 9 600 000 (i.e., US\$ 3,000,000) if the arbitration agreement under the Rules was concluded on or after 1 January 2021.

V - Arbitrators' fees and expenses

15. As indicated in paragraph 4 above, the advance on costs of the arbitration for Brazilian Arbitrations will be fixed in Reais in accordance with the ICC scale in Reais. In this sense, the arbitrators' fees and expenses shall be paid in Reais and are subject to fluctuation of the exchange rate of the Real at the moment of payment, in case the arbitrator is domiciled in a foreign country.
16. In cases in which an arbitrator requests that the payment of his or her fees be made at a personal account, the parties shall be responsible to bear the respective social security charges, as well as any other costs involved.
17. Costs and taxes (*i.e.*, ISS, PIS/COFINS, IOF) related to payments (arbitrators' fees and expenses) of an arbitrator who is domiciled in a foreign country, will be considered as expenses of the arbitration for the purpose of fixing the advance on costs and the costs of the arbitration.
18. If an arbitrator domiciled in Brazil requests that his or her fees be paid on a foreign account, said arbitrator will bear all costs and taxes (*i.e.*, ISS, PIS/COFINS, IOF) related to his/her payments and expenses.
19. Arbitrators render services directly to the parties. In this regard, arbitrators shall be responsible to issue invoices to the parties regarding the services rendered in the arbitration (arbitrators' fees), in the amount of their fees, as per SCIAB's instructions.
20. In cases where arbitrators (arbitration service providers) are established in a municipality other than the one in which the parties (service takers) are established, and if the latter municipality requires the registration of providers from other municipalities in order to avoid withholding the ISS by the parties, the arbitrators shall register with the Departments of Finance of the municipalities (CPOM) in which the parties are located prior to the issuance of the invoice for the services provided. In this sense, after the confirmation/appointment of the arbitrator, SCIAB will request the arbitrator the information regarding such registration (CPOM), assuming that the lack of such registration may lead to the retention of ISS by the borrowers of the services located there.
21. Should any of the parties nominate an arbitrator who is domiciled in a foreign country, the parties grant to SCIAB a special mandate to represent them before any and all Financial Institution for the purposes of closing foreign exchange and remittance of arbitration fees to the arbitrators residing abroad.

VI - ICC administrative expenses

22. SCIAB shall be responsible to issue invoices to the parties regarding the services effectively rendered for the administration of the arbitration (ICC administrative expenses), according to the guidance and stages provided in paragraph 190 of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration.
23. ICC administrative expenses do not include taxes, imposts or any other charges of a similar nature. They may be increased by the amount of taxes, imposts or any charges of a similar nature at the prevailing rate. Parties have a duty to pay any such charges pursuant to invoices issued by SCIAB.

VII - *Per diem* allowance

24. The *per diem* that will be paid to the arbitrators acting in arbitrations administered by the São Paulo office of the ICC are the following:
 - a) If the arbitrator is not required to use overnight hotel accommodation, the flat-rate *per diem* allowance is BRL 1 280; or
 - b) If the arbitrator is required to use overnight hotel accommodation, the flat-rate *per diem* allowance is BRL 3 840.
25. The arbitrators' fees shall be paid in Reais and are subject to fluctuation of the exchange rate of the Real at the moment of the payment, in case of the arbitrator is domiciled in a foreign country.
26. The general aspects of section XX.D of the Note apply to the *per diem* that will be paid to the arbitrators acting in arbitrations administered by the São Paulo office of the ICC.

VIII - Arbitration involving Brazilian public entities

27. In arbitrations involving Brazilian public entities administered by any of the offices of the ICC, it is the party considered a public entity that shall ensure the publicity of the proceedings in accordance with article 2, § 3o, of Law 9.307 of 1996. The parties may, however, agree that the Secretariat undertakes special procedures in respect to the publicity of the arbitration.
28. Any procedural acts, submissions and documents which are confidential by law shall not be subject to publicity, as well as any other act or document which the arbitral tribunal determines to be confidential.
29. The Secretariat shall only provide information about an arbitration or grant access to any documents related to an arbitration to a third party if the parties so agree or if the Secretariat is requested to do so by the arbitral tribunal.
30. In all cases, hearings shall be private to the parties and their representatives, arbitrators, witnesses, experts and expert assistants, translators, employees of the Secretariat, Hearing Centre and other persons authorized by the arbitral tribunal.

31. In arbitrations involving Brazilian public entities, the costs related to hearings and case management conferences may be included in the advance on costs.
32. In arbitrations involving Brazilian public entities, all invoices regarding arbitrators' fees and ICC administrative fees shall be issued to the private party(ies), with the observation that they are connected to a specific arbitration which involves as party a Brazilian public entity.

IX - Hearing Centre

33. ICC has negotiated with CNI the possibility for the parties of ICC arbitration cases to rent state of the art hearing rooms for both large and small groups. The rates of the rooms are not included in the advance on costs and should be paid separately by the parties. For any query related to the hearing centre, the parties are invited to contact hearingcentre@cni.org.br or visit the Hearing Centre website: <http://hearingcentreicc.cni.com.br/>
34. To face the challenges of the social distancing caused by the pandemic, the Hearing Centre also offers two video conference platforms (ZOOM and TEAMS) to allow virtual hearings and meetings. Further, to overcome this situation, the use of the hearing rooms, ZOOM and TEAMS platform, as well as audio and video support, is currently being provided free of charge (while the pandemic persists), by prior scheduling through the e-mail: hearingcentre@cni.com.br.

X - SCIAB contact information

35. São Paulo Office of the ICC or SCIAB

Rua Surubim, 504 – 12º andar – Cidade Monções São Paulo, SP - 04571-050 - Brazil
Tel: +55 11 3040 8830 / +55 11 3040 8837
Mobile: + 55 11 94447 5429
Email: ica10@iccwbo.org

XI - Other provisions

36. The contents regarding tax matter indicated in this SCIAB Note are subject to Brazilian tax law and are provided for information purposes only, not representing a tax orientation. They may be modified at any moment and without prior notice in accordance with any changes introduced to Brazilian tax law. Parties are solely responsible for their own fiscal treatment of tax and imposts, as well as for accounting purposes.

XII - Scales in Brazilian Reais

37. The scales in Reais are exclusively applicable to the Brazilian Arbitrations, cases administered by the São Paulo Office of the ICC (as indicated at paragraph 2 above).
38. The 2017 scales in Reais is applicable to pending cases and the 2021 scales is applicable to cases filed as of 1 March 2021 ([Costs Calculator](#)).