

## **GUIDELINES FOR QUANTIFYING ARBITRAL PROCEEDINGS**

*Approved by the Plenary on April 21<sup>st</sup>, 2020*

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### **I. Introduction**

1. Pursuant to article 10.1 of the Rules of the Court:

*“The Court shall be responsible for fixing the amount of the proceeding taking into consideration the claims filed in each proceeding, their economic interest and their complexity. The Court will set the amount of the advance on costs for the arbitration, including any applicable taxes.”*

2. In order to fix the amount, the Court shall follow the guidelines explained below:

### **II. Competence to fix the amount**

3. The Court invites parties to reach an agreement on the proposal of the amount of the arbitration proceeding although it is ultimately responsible, pursuant to article 10.1 of the Rules.
4. The Secretary General shall be the competent authority to fix the amount, who, in carrying its duties, shall consult the President if needed.

### **III. Timeframe for fixing the amount**

5. As a general rule, the final amount of the proceeding shall be fixed after the statement of defense or the statement of counterclaim have been filed.
6. Without prejudice to the foregoing, the amount may be adjusted at a later stage depending on the evolution of the proceeding. For example, this adjustment will be carry out in cases of claiming damages which keep growing in the course of the proceeding.

### **IV. Main criterion: Claims Requested**

#### **A. Introduction**

7. In general, the amount of the proceeding will be the result from adding the claims indicated in the statement of claim.
8. Nevertheless, when the statement of claim includes main and alternative claims, the amount will be fixed at highest claim, either main or alternative.
9. In case of submitting a claim related to the acknowledgement of the right of payment or any other right, the amount of this claim will be the same as if requested the payment of this amount.

## **B. Counterclaims and consolidation**

10. If the defendant presents a counterclaim, it will be regarded as a separate proceeding, and accordingly, the Court will set a specific amount for this counterclaim.
11. This specific amount will be not added to the one of the statement of claim so that the sum of both will result in the total amount of the proceeding. Thus, the amount of the statement of claim will give rise to the request of the corresponding provisions of funds, in accordance with the Court's fee. The amount of the counterclaim will give rise to a separate calculation and claim for their corresponding provisions of funds, in accordance with the same Court's fees<sup>1</sup>.
12. In case of consolidation of proceedings, the quantification rule explained in points 10 and 11 shall be applied, that is to say, the claims submitted in each consolidated proceeding will be quantified separately and they will give rise, independently, to the request of the corresponding provisions of funds.

## **C. Interests**

13. As a general rule, interests claimed in the proceedings will be taken into account by the Court when fixing the amount of the arbitration. Therefore, the amount accrued by way of interest shall be added to the rest of the claims.
14. For the purposes of quantifying the interest accrued, the Court shall take into account, as *dies a quo*, the date from which the interest is claimed and, as *dies ad quem*, the date on which the statement of claim or defence to the claim and counterclaim, as the case may be, is filed.
15. In the event that the date from which interest is claimed is not clear or has not been stated in the corresponding pleadings, the Court may request the Parties to specify it. In this regard, the Parties are reminded of the provisions of Articles 21(5) and 41(5) of the Rules of Procedure.

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

16. In the absence of clear claims for payment, or, if appropriate according to the circumstances of the case, the Court may use the economic interest criterion referred in Article 10.1 of the Rules to quantify the proceeding.
17. In such case, the Court may request the Parties to provide the information necessary for the determination of the economic interest underlying the arbitration. In this respect, the Parties are reminded of the provisions of Articles 20.5 and 40.5 of the Rules.

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<sup>1</sup> For instance, if a claim for the payment of 1 million euros and a counterclaim for the payment of 1 million euros are filed, for the purposes of determining the amount, it will not be considered that there is a single proceeding for 2 million euros, but two proceedings, each for 1 million euros, and for which the corresponding provisions of funds will be claimed from the Parties.

18. The Court may take into account the complexity of the procedure when it considers that neither the main criterion - the determination of the amount by aggregating the claims for payment - nor the additional criterion linked to the economic interest of the arbitration leads to a reasonable quantification, taking into account the demands it places on the arbitrators.
19. When assessing the complexity of a proceeding, the Court may take into consideration, among others, the following factors: (i) the number of Parties to the arbitration; (ii) the number of claims submitted; (iii) the number and length of submissions made by the Parties; (iv) the number and volume of documents submitted to the file; (v) the number and extent of procedural orders and awards issued; (vi) another technical difficulties of the proceeding; and (vii) the number of hours devoted by the arbitrators or the number of hours expected to devote until the termination of the proceeding.

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