

November 17th, 2011

# INSTITUTIONAL ROLE IN COSTS CONTROL

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*The world business organization*

# AT THE OUTSET OF ARBITRATION (1)

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- Setting of the advances on *ad valorem* basis: predictability
  - The parties can check the costs calculator online
- 2012 Rules: the requirement of claims being quantified and indication of an estimate of other claims' monetary value (Article 4(3)(d), Article 5(5)(b))

# AT THE OUTSET OF ARBITRATION (2)

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- *Prima facie* jurisdictional review by the ICC Court
  - Streamlining the procedure: 2012 Rules, Article 6(3)
  - *Prima facie* decisions: 2012 Rules, Article 6(4)

# AT THE OUTSET OF ARBITRATION (3)

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- The Secretariat: explaining financial consequences of having a Sole Arbitrator and 3-member Arbitral Tribunal
- The Court: the considerations for deciding in favour of submitting the case to a Sole Arbitrator or a 3-member Arbitral Tribunal
- The Court: appointment of Sole Arbitrators/Chairmen geographically close to the place of arbitration/the parties and meeting the requirements set by the parties
- The Secretariat/the Court: prior to the appointment, clarification with the nominees of billing address
- Control of availability of arbitrators
- Considerations of the constitution of the Arbitral Tribunals for related

# DURING THE PROCEEDINGS (1)

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- The Court: establishment of the advance on costs likely to cover
  - (1) ICC expenses,
  - (2) arbitrators' fees
  - (3) arbitrators' expenses
    - No expert/witness expenses, limited coverage of expenses for renting the hearing rooms etc
- Procedure for payment of advances: 2012 Rules, Article 36
- 2012: the possibility of payment of advance in installments, should the Court consider the request as justified: 2012 Rules, Appendix III, Article 1(6)

## DURING THE PROCEEDINGS (2)

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- The Secretariat: control over expenses
  - Note on arbitrators' expenses
  - The question of the costs of the administrative secretary
  - Discouraging unreasonable expenses
- The Court: adjustment of the advance, when necessary
  - Whose initiative:
    - On its own motion
    - Upon the request by the Arbitral Tribunal
  - Reasons:
    - Higher institutional expenses
    - In order to ensure the adequate remuneration of the Arbitral Tribunal at the end of the case
    - In order to cover the Arbitral Tribunal's expenses

# AT THE END OF THE PROCEEDINGS

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- No reconsiderations of the advance on costs at late stage of proceedings
- Fixing of the costs of arbitration upon approval of the Award/withdrawal of claims
  - May be used as a tool of punishment of inefficient arbitrators, 2012 Rules, Article 37(2), App. III, Article 2(2)
- Special advance on costs in cases of requests for correction/interpretation of awards, 2012 Rules, Article 35(4)

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