

2

ARTICLE 2—NOTICE OF ARBITRATION AND STATEMENT OF CLAIM

<i>I. Introduction</i>	2.01	of the claim and an indication of the	
<i>II. Textual commentary</i>	2.07	facts supporting it' (Article 2(3)(c),	
A. Party definitions and commencement of a case (Article 2(1) and (2))	2.07	(d), and (e))	2.22
B. Content requirements (Article 2(3))	2.18	4. Relief or remedy sought, amount claimed (Article 2(3)(f)), and relevance for ICDR administrative fees	2.28
1. '[D]emand that the dispute be referred to arbitration' (Article 2(3)(a))	2.18	5. Optional contents (Article 2(3)(g))	2.30
2. Names, addresses, and telephone numbers of the parties (Article 2(3)(b))	2.19	C. Administrator's acknowledgement of commencement (Article 2(4))	2.34
3. Reference to 'the arbitration clause or agreement that is invoked', 'any contract out of or in relation to which the dispute arises', and 'a description		D. Deficient claim filing fee	2.37
		E. ICDR Fee Schedules	2.40
		1. The Standard Fee Schedule	2.43
		2. The Flexible Fee Schedule	2.47
		3. Non-payment of administrative fees and abeyance	2.53

ARTICLE 2

- 1. The party initiating arbitration ("claimant") shall give written notice of arbitration to the administrator and at the same time to the party against whom a claim is being made ("respondent").*
- 2. Arbitral proceedings shall be deemed to commence on the date on which the administrator receives the notice of arbitration.*
- 3. The notice of arbitration shall contain a statement of claim including the following:*
 - (a) a demand that the dispute be referred to arbitration;*
 - (b) the names, addresses and telephone numbers of the parties;*
 - (c) a reference to the arbitration clause or agreement that is invoked;*
 - (d) a reference to any contract out of or in relation to which the dispute arises;*
 - (e) a description of the claim and an indication of the facts supporting it;*
 - (f) the relief or remedy sought and the amount claimed; and*
 - (g) may include proposals as to the means of designating and the number of arbitrators, the place of arbitration and the language(s) of the arbitration.*

4. Upon receipt of the notice of arbitration, the administrator shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

I. Introduction

- 2.01** Article 2, together with Articles 3 and 4, fall under the overall heading in the ICDR Rules of ‘Commencing the Arbitration’. Together, they set out the provisions for filing a claim or counterclaim, and the basic initial pleadings to be made in respect of the claim or counterclaim and defences thereto. Because payment of filing fees also occurs during this period, they are also dealt with within this chapter.
- 2.02** Under the ICDR Rules, the initial pleading is called a ‘notice of arbitration’. Article 2 of the ICDR Rules asks for the notice of arbitration to contain a statement of claim. In accordance with general practice in institutional international arbitration, the standard for the initial pleading set by Article 2(3) is more comprehensive than a mere notice of intent to arbitrate, the ‘demand for arbitration’ under the AAA Commercial Rules, or the notice of arbitration under Article 3 of the 1976 and 2010 UNCITRAL Arbitration Rules.
- 2.03** As it is called in Articles 3 of the 1976 and 2010 UNCITRAL Rules, the drafters of the ICDR Rules maintained the title ‘notice of arbitration’ as the title for the initial pleading. While the 1976 and 2010 UNCITRAL Rules treat the notice of arbitration and the statement of claim as two distinct pleadings and leave it to the party to elect treating its notice of arbitration as the statement of claim in case the notice of arbitration already fulfils the statement of claim’s pleading requirements,¹ the ICDR Rules require that the notice of arbitration shall already contain a statement of claim.
- 2.04** Similar to the ‘request for arbitration’ under Article 4 of the ICC Rules asking for ‘a description of the nature and circumstances of the dispute giving rise to the claim(s)’ and Article 1 of the London Court of Arbitration (LCIA) Rules requiring ‘a brief statement describing the nature and circumstances of the dispute, and specifying the claims’, the notice of arbitration under the ICDR Rules must contain a ‘description of the claim and an indication of the facts supporting it’.
- 2.05** The ICDR notice of arbitration needs to be prepared before the appointment of any of the arbitrators. Article 2 does not require the claimant to nominate its arbitrator within the notice of arbitration. Article 6(3) affords 45 days from the

¹ See Arts 3 and 18 of the 1976 UNCITRAL Arbitration Rules, and Arts 3 and 20 of the 2010 UNCITRAL Rules.

commencement of the case by means of serving the notice of arbitration upon the other parties and the administrator before an appointment of the claimant's arbitrator is due or an agreement needs to be reached with the respondent(s) on how such appointment shall take place.²

The ICDR Rules address the consequence of a failure to comply with the pleading requirements of Article 2 in the Fee Schedule. Incomplete notices of arbitration or filings that otherwise do not meet the filing requirements contained in the ICDR Rules are subject to a US\$350 deficient claim filing fee if the filing party fails to respond to the ICDR's request to correct the deficiency. **2.06**

II. Textual commentary

A. Party definitions and commencement of a case (Article 2(1) and (2))

ARTICLE 2(1)

The party initiating arbitration ("claimant") shall give written notice of arbitration to the administrator and at the same time to the party against whom a claim is being made ("respondent").

ARTICLE 2(2)

Arbitral proceedings shall be deemed to commence on the date on which the administrator receives the notice of arbitration.

An ICDR arbitration starts with the filing of the notice of arbitration. The ICDR website contains a form in aid of the preparation of the notice of arbitration.³ However, the claimant(s) are at liberty to apply a more elaborate style and format so long as the content requirements of Article 2(3) are fulfilled. **2.07**

A preliminary issue when drafting the notice of arbitration might be in what language it should be submitted. Guidance may be taken from Article 14. Subject to the power of the tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration, Article 14 stipulates that the language shall be that of the documents containing the arbitration agreement. **2.08**

Although Article 2(1) uses the word 'party' in the singular and defines the party initiating the arbitration as the 'claimant', while the party against whom a claim is being made is defined as the 'respondent', ICDR arbitrations may involve more **2.09**

² See discussion of Art 6 at paras 6.22–6.25.

³ Available online at <<http://www.adr.org/si.asp?id=3849>>.

than one claimant and/or more than one respondent. In fact, the ICDR Rules are commonly used in multi-party arbitrations, and in the introduction to the International Dispute Resolution Procedures, it is stated that ‘[w]henever a singular term is used in the rules, such as “party”, “claimant” or “arbitrator”, that term shall include the plural if there is more than one such entity’.

- 2.10** Article 2(1) requires the party initiating arbitration to serve the notice of arbitration upon the opposing party/parties at the same time as it is served upon the ICDR administrator.
- 2.11** Making available one of the advantages of institutional arbitration over ad hoc arbitration to users of ICDR arbitration, and corresponding with other major institutional arbitration provisions such as Article 4(2) of the ICC Rules and Article 1.2 of the LCIA Rules, arbitration proceedings under the ICDR Rules are deemed to commence on the date on which the administrator receives the notice of arbitration (Article 2(2)).⁴
- 2.12** Article 2(4) provides that the ICDR will confirm receipt of the notice of arbitration. Importantly, under the ICDR Rules, commencement of the arbitration does not require successful service of the notice of arbitration upon the respondent(s). For the commencement of the arbitration, the ICDR Rules require only service of the notice of arbitration upon the ICDR.
- 2.13** Despite the unconditional presumption in Article 2(2) that the arbitration ‘shall be deemed to commence on the date on which the administrator receives the notice of arbitration’, at the same time, it is the claimant that bears the ultimate responsibility for serving the respondent and, for that matter, also for securing proper addresses for service upon the respondent. In addition to personal service, the ICDR Rules allow for the notice of arbitration to be served by airmail, air courier, fax, telex, telegram, or other written forms of electronic communication addressed to the party or its representative at its last known address, unless it is otherwise agreed by the parties or ordered by the tribunal (Article 18(1)). Since the ICDR Rules address the means of service directly, in an ICDR arbitration, the tribunal’s first procedural order does not need to address what means of service are admissible.
- 2.14** In the unsatisfactory scenario of a non-delivery of the notice of arbitration on the respondent, the claimant will have to bear the risk of proceeding with the arbitration while assuming the risk of non-enforcement.⁵ However, if the notice of arbitration was successfully served upon the ICDR’s case administrator, the arbitration has still been commenced as per Article 2(2). This presumption may be

⁴ Compare Art 3(2) of the 1976 and 2010 UNCITRAL Rules, which provides for the arbitral proceedings to commence on the date on which the notice of arbitration is received by the respondent. Commonly, the UNCITRAL Rules are used in ad hoc arbitrations administered by the Tribunal or the Tribunal’s Secretary.

⁵ See Art 23 (discussing default proceedings), para 23.01 ff below.

particularly helpful when having to toll any relevant statute of limitations or contractual limitation period while experiencing difficulties in effecting service of the notice of arbitration on the proper respondent.

In addition to the tolling of the statute of limitations, the commencement date establishes the date from which deadlines flow for the filing of a responsive pleading (Article 3(1) and 3(2)), for responding to a claimant's proposal for the appointment of arbitrators and the method of their selection (Article 6(3)), and for the venue and language of the arbitration (Article 3(3)). **2.15**

The commencement date will also be used to calculate any available refund of the initial filing fee if the claimant had elected the Standard Fee Schedule over the Flexible Fee Schedule.⁶ The refund schedule on filing fees is available for the Standard Fee Schedule only. No refunds are available under the Flexible Fee Schedule. **2.16**

For cases with claims of up to US\$75,000, a minimum filing fee of US\$350 will not be refunded. For all other cases, a minimum fee of US\$600 will not be refunded. Subject to the US\$350/\$600 minimum filing fee requirements, refunds will be calculated as follows: **2.17**

- 100 per cent of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing;
- 50 per cent of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing;
- 25 per cent of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing; and
- no refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three-arbitrator panel). No refunds will be granted on cases in which an award is issued.

B. Content requirements (Article 2(3))

ARTICLE 2(3)

3. *The notice of arbitration shall contain a statement of claim including the following:*

- (a) a demand that the dispute be referred to arbitration;*
- (b) the names, addresses and telephone numbers of the parties;*
- (c) a reference to the arbitration clause or agreement that is invoked;*
- (d) a reference to any contract out of or in relation to which the dispute arises;*
- (e) a description of the claim and an indication of the facts supporting it;*

⁶ See para 2.40 ff.

- (f) *the relief or remedy sought and the amount claimed; and*
- (g) *may include proposals as to the means of designating and the number of arbitrators,*
- (h) *the place of arbitration and the language(s) of the arbitration.*

1. ‘[D]emand that the dispute be referred to arbitration’ (Article 2(3)(a))

2.18 The key word of Article 2(3)(a) is ‘arbitration’. While the development of modern-day dispute resolution has led to a multitude of sophisticated procedures to end a dispute—including, but not limited to, mediation under the ICDR International Dispute Resolution Procedures—an ICDR arbitration is only started if the parties’ will can unequivocally be determined for the dispute to be submitted to ICDR arbitration. A mere request for a decision or resolution will arguably not suffice to initiate arbitration under the ICDR Rules. In order to fulfil the pleading requirements of Article 2(3)(a), the claimant must unequivocally announce its election that the dispute be referred to arbitration.

2. Names, addresses, and telephone numbers of the parties (Article 2(3)(b))

2.19 Article 2(3)(b) secures proper identification of the party (or parties) against whom the claimant(s) wish(es) to proceed. In most cases, the information stated for the respondent on the agreement containing the arbitration agreement may suffice.

2.20 For natural persons, it is essential to state both first and last name(s), as well as the postal address and telephone number of the party/parties. Where known, inclusion of distinguishing information such as the date of birth or US social security number may assist the identification of the party.

2.21 In case of legal persons, in addition to the name and resident office, the legal nature of the party should not be omitted. If available, a commercial register excerpt or a certificate of good standing might be added.

3. Reference to ‘the arbitration clause or agreement that is invoked’, ‘any contract out of or in relation to which the dispute arises’, and ‘a description of the claim and an indication of the facts supporting it’ (Article 2(3)(c), (d), and (e))

2.22 As the notice of arbitration represents the first opportunity to advocate the claimant’s case and to educate the arbitrators about it, the art of persuasion knows no boundaries in articulating ‘a description of the claim and an indication of the facts supporting it’.⁷ In the absence of strict pleading requirements, the ICDR Rules encourage presentation of a claim in narrative style. Although Article 2(3)(c) and (d) requires a mere ‘reference’ to the arbitration clause or agreement and the

⁷ See generally RD Bishop, *The Art of Advocacy in International Arbitration* (Juris Publishing, Huntington, 2004) 445.

contract out of or in relation to which the dispute arises, attaching these documents as complete copies has become common practice and explaining them may further the claimant's cause.

A well-pled notice of arbitration containing a statement of claim may deal with a description of the contractual/legal situation underlying the dispute and provide a historical account of the events leading up to the dispute. It may also deal with the anticipated opposition arguments, while not losing focus on the claimant's own arguments. **2.23**

While the ICDR Rules require only an 'indication' of the supporting facts, at this early stage, a claimant may even produce any document on which it wishes to rely in support of its claims with the notice of arbitration. Of course, a well-thought-out plan for winning a case cannot be conceived without understanding the facts and the applicable law from the beginning, but the notice of arbitration is only the starting point for articulating a theory of the case. Inherent in the facts are the equities of the case: the human sense of fairness or unfairness when examining the parties' acts or omissions; the wrongs that were committed by one party against another; and the injury that was suffered by one or more parties as a result. **2.24**

Persuasiveness and overall case management might be well served by the inclusion of causes of action and legal argument in support thereof. However, the notice of arbitration under Article 2(3) requires only 'a description of the claim'. The inclusion of a full presentation of all causes of action and an account of all plausible legal arguments in support thereof are optional. **2.25**

Notwithstanding the tribunal's powers under Article 16(3) to 'direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case', the ICDR Rules do not provide for motions for judgment on the pleadings or to dismiss for a failure to state a case in the notice of arbitration.⁸ **2.26**

At least in case of the place of arbitration being located within the USA, respondents have introduced a similar motion in ICDR arbitrations by means of a 'request for award'. However, such requests have been entertained by tribunals only at later stages of the arbitration after the claimant has had an opportunity to present its case, as required under Article 16. Most often, this will have required the claimant to submit witness statements deemed direct testimony of the claimant's witness(es).⁹ **2.27**

⁸ Compare Rules 12(6), 12(c) and 56 of the Federal Rules of Civil Procedure in the US federal legal system.

⁹ See Memorandum and Order of 9 December 2009, *Matthew v Papua New Guinea*, Case No 09 Civ 3851 (LTS) (SDNY, 2009) (discussing an arbitrator's treatment of a request for award as a 'directed verdict in a non-jury case for failure to prove one essential element of the claim').

4. Relief or remedy sought, amount claimed (Article 2(3)(f)), and relevance for ICDR administrative fees

- 2.28** Beyond the relief or remedy sought (payment of money, specific performance, permanent injunction, declaratory judgment), Article 2(3)(f) requires the claimant to state the amount claimed. The amount stated by the claimant will be used primarily by the administrator to determine the initial fee, payable in full when the notice of arbitration is filed. The fees payable by the claimant are based on the amount of the claim and are subject to increase if the amount of a claim is modified after the initial filing date. Fees are also subject to decrease if the amount of a claim is modified before the first hearing. The ICDR administrative practice therefore discourages a claimant from asserting overblown estimates of recoverable damages.
- 2.29** Claimants sometimes request a bifurcation of the proceedings for the arbitral tribunal to rule upon liability in principle before turning to quantification. This may be a sensible procedure in case it is (extremely) difficult and costly to go through the exercise of quantification of the amount claimed. In such cases, as well as other cases in which the amount claimed is unknown, parties are requested to state a range of claims or will be subject to the highest possible filing fee—currently US\$65,000 under the Standard Fee Schedule. In case the claimant opted for the Flexible Fee Schedule, the maximum fee of US\$65,000 will be imposed once the proceed fee is payable. The initial filing fee under the Flexible Fee Schedule for non-quantified claims amounts to US\$4,500.

5. Optional contents (Article 2(3)(g))

- 2.30** At the claimant's discretion, the notice of arbitration may include proposals as to the means of designating and the number of arbitrators, the place of arbitration, and the language(s) of the arbitration.
- 2.31** In well-drafted arbitration clauses, these items will have been included and the parties will have agreed upon them in writing already. If not already agreed upon in writing, the claimant may set out its preferences on all of these items as late as within the notice of arbitration in the hope that the respondent accepts one or another of the suggestions.
- 2.32** Even in cases in which the parties have already agreed upon these items in the arbitration agreement, the circumstances of the case may merit an attempt to change the agreements reached in light of possibly different economic interests and factual scenarios at the time that the dispute arose as compared to when the business relationship was initiated. In such a case, it might be preferable to entertain party correspondence prior to the preparation of the notice of arbitration. However, if the claimant wants to ensure *ipso facto* that the tribunal be informed about the parties' discussions at a later stage, the notice of arbitration may be the most appropriate instrument to do so.

Any proposed qualification that the arbitrator(s) should have—such as the nationality, residence, profession, legal training, language proficiencies, or any other qualification—will aid the administrator in the appointment should the administrator be called upon to do so in accordance with Article 6. The ICDR Rules do not require the party initiating arbitration to nominate its arbitrator at the time of filing the notice of arbitration, nor do the Rules contain any requirement that the claimant has to nominate its arbitrator before the respondent. Article 6 allows the parties to designate the arbitrator(s) within 45 days after the commencement of the case. **2.33**

C. Administrator’s acknowledgement of commencement (Article 2(4))

ARTICLE 2(4)

Upon receipt of the notice of arbitration, the administrator shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

Upon receipt of the notice of arbitration, the administrator acknowledges the commencement of the arbitration and starts communicating with all parties by means of commencement letter. **2.34**

It is the ICDR standard administrative practice to notify the parties of their responsible case manager and supervisor as early as within the commencement letter. At this time, the ICDR distributes its checklist for conflicts and encloses an arbitration information sheet, which provides basic information about the ICDR arbitration process. The commencement letter may also set forth initial case management dates, such as the time of the administrative conference call. Moreover, the administrator invites the respondent to file its written statement of defence and any counterclaim in accordance with Article 3. **2.35**

As part of the ICDR’s administrative service, the ICDR maintains an AAA WebFile for each case. With the commencement letter, the ICDR invites the parties to take advantage of the AAA’s WebFile. It allows the parties to perform a variety of case-related activities online, including: the filing of additional claims;¹⁰ the completion of the checklist for conflicts form; viewing invoices and submitting payments; sharing and managing documents; striking and ranking the lists of neutrals; and reviewing the case status, hearing dates, and times. Cases filed in hard-copy format are posted electronically, and can then be viewed and managed online as well. **2.36**

¹⁰ See Art 4.

D. Deficient claim filing fee

- 2.37** The ICDR’s administrative practice of requiring a complete notice of arbitration for the commencement of the case under Article 2 is underlined by the possibility of a deficient claim filing fee if the filing party fails to respond to the ICDR’s request to correct the deficiency.
- 2.38** The vitality of the ICDR’s proactive case management approach is not only documented by the ICDR’s attempt to secure institutional jurisdiction in cases in which a notice of arbitration has been filed, but fails to reference the AAA or ICDR in the underlying arbitration agreement.¹¹ Incomplete Notices of Arbitration or filings that otherwise do not meet the filing requirements contained in the ICDR Rules are also subject to a US\$350 retainer of the initial filing fee.
- 2.39** As stated in the Fee Schedule:
- Parties that file demands for arbitration that are incomplete or otherwise do not meet the filing requirements contained in these Rules shall also be charged the amount specified below [US\$350] for deficient filings if they fail or are unable to respond to the ICDR’s request to correct the deficiency.

E. ICDR Fee Schedules

- 2.40** Effective 1 June 2010, the ICDR introduced two administrative fee options: the Standard Fee Schedule and the Flexible Fee Schedule. Arbitrator compensation is not included in either one of them. Pursuant to Article 31, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the final award.
- 2.41** The Standard Fee Schedule consists of a two-payment schedule: the initial filing fee and the final fee. The Flexible Fee Schedule consists of a three-payment schedule: the initial filing fee, the proceed fee, and the final fee.
- 2.42** The Standard Fee Schedule offers lower overall administrative fees if the case will proceed to a hearing. The Flexible Fee Schedule offers lower initial filing fees and is preferable in cases in which the arbitration can be settled before the final hearing on the merits. Depending on the amount in dispute, the total administrative fees under the Flexible Fee Schedule for cases that proceed to a hearing may be higher by approximately 12–19 per cent.

¹¹ See Art 1 at para 1.33.

II. Textual commentary

1. The Standard Fee Schedule

The ICDR's Standard Fee Schedule is set out in a table in the end of the International Dispute Resolution Procedures,¹² and restated here: **2.43**

Amount of Claim	Initial Filing Fee	Final Fee
Above \$0 to \$10,000	\$775	\$200
Above \$10,000 to \$75,000	\$975	\$300
Above \$75,000 to \$150,000	\$1,850	\$750
Above \$150,000 to \$300,000	\$2,800	\$1,250
Above \$300,000 to \$500,000	\$4,350	\$1,750
Above \$500,000 to \$1,000,000	\$6,200	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,200	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,200	\$4,000
Above \$10,000,000	Base fee of \$12,800 plus .01% of the amount of claim above \$10,000,000 Fee Capped at \$65,000	\$6,000
Nonmonetary Claims ¹	\$3,350	\$1,250
Consent Award ²		
Deficient Claim Filing ³	\$350	
Additional Services ⁴		

¹ This fee is applicable only when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee (see fee range for claims above \$10,000,000).

² The ICDR may assist the parties with the appointment of an arbitrator for the sole purpose of having their Consent Award signed.

³ The Deficient Claim Filing Fee shall not be charged in cases filed by a consumer in an arbitration governed by the Supplementary Procedures for the Resolution of Consumer-Related Disputes, or in cases filed by an Employee who is submitting their dispute to arbitration pursuant to an employer promulgated plan.

⁴ The ICDR may assess additional fees where procedures or services outside the Rules sections are required under the parties' agreement or by stipulation.

In cases with three or more arbitrators constituting the tribunal, the Standard Fee Schedule further provides 'minimum fees for any case having three or more arbitrators are [US]\$2,800 for the filing fee, plus a [US]\$1,250 Case Service Fee'. **2.44**

The initial filing fee is payable in full when a claim, counterclaim, or additional claim is filed. The final fee will be incurred for all cases that proceed to their first hearing. This fee is payable at the time that the first hearing is scheduled. **2.45**

The final fee can be refunded at the conclusion of the case if no hearings have occurred and if the ICDR's case administrator was notified of the conclusion of the case at least 24 hours before the time of the scheduled hearing. **2.46**

¹² See Appendix 1.

2. The Flexible Fee Schedule

2.47 Under the Flexible Fee Schedule set out in a table in the end of the International Dispute Resolution Procedures, the ICDR administrative fees are billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Proceed Fee	Final Fee
Above \$0 to \$10,000	\$400	475	\$200
Above \$10,000 to \$75,000	\$625	\$500	\$300
Above \$75,000 to \$150,000	\$850	\$1250	\$750
Above \$150,000 to \$300,000	\$1,000	\$2125	\$1,250
Above \$300,000 to \$500,000	\$1,500	\$3,400	\$1,750
Above \$500,000 to \$1,000,000	\$2,500	\$4,500	\$2,500
Above \$1,000,000 to \$5,000,000	\$2,500	\$6,700	\$3,250
Above \$5,000,000 to \$10,000,000	\$3,500	\$8,200	\$4,000
Above \$10,000,000	\$4,500	\$10,300 plus .01% of claim amount over \$10,000,000 up to \$65,000	\$6,000
Nonmonetary ¹	\$2,000	\$2,000	\$1,250
Consent Award ²			
Deficient Claim Filing Fee	\$350		
Additional Services ³			

¹ This fee is applicable only when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee (see fee range for claims above \$10,000,000).

² The ICDR may assist the parties with the appointment of an arbitrator for the sole purpose of having their Consent Award signed.

³ The ICDR reserves the right to assess additional administrative fees for services performed by the ICDR beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.

2.48 Under the Flexible Fee Schedule, both the initial filing fee and the proceed fee are non-refundable either in whole or in part. No refund schedule is available for the Flexible Fee Schedule.

2.49 The initial filing fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. The initial filing fee is intended to cover the ICDR's costs in handling the commencement of the arbitration and notifying parties, as well as establishing the due date for filing of the statement of defence under Article 3, which may include a counterclaim.

2.50 In order to proceed with the further administration of the arbitration, the appointment of the arbitrator(s) and the presentation of the claim(s) or counterclaim(s) to the tribunal, the appropriate proceed fee must be paid within 90 days of the filing of the notice of arbitration. A party's obligation to pay the proceed fee remains in effect regardless of any agreement of the parties to stay, postpone, or otherwise

modify the arbitration proceedings. Unless the parties agree upon an abeyance of the case, the ICDR will administratively close the file if the proceed fee is not paid and notify all parties thereof.

The ICDR imposes the third fee under the Flexible Fee Schedule—the final fee— **2.51** for all claims and/or counterclaims that proceed to their first hearing. This fee is payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred and the administrator has been notified of a cancellation at least 24 hours before the time of the scheduled hearing.

The Flexible Fee Schedule's minimum fees for any case having three or more **2.52** arbitrators are: US\$1,000 for the initial filing fee; US\$2,125 for the proceed fee; and US\$1,250 for the final fee.

3. Non-payment of administrative fees and abeyance

In case of non-payment of administrative fees in full or in part, the ICDR will **2.53** inform the parties so that one of them may advance the required payment.

Should none of the parties make an advance, the ICDR or, if already appointed, the **2.54** tribunal may order the suspension or termination of the proceedings.

Parties may also agree to hold in abeyance a case on an annual basis under either of **2.55** the Flexible or Standard Fee Schedules. The ICDR's annual abeyance fee is US\$300. If a party refuses to pay the assessed fee, the other party/parties may pay the entire fee on behalf of all parties; otherwise, the matter will be administratively closed.

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