

29 September 2017

NOTE TO PARTIES AND ARBITRAL TRIBUNALS ON ICC COMPLIANCE

This Note is intended to provide parties and arbitral tribunals with information regarding administrative measures taken during proceedings administered by the International Court of Arbitration (“Court”) of the International Chamber of Commerce (“ICC”) under the ICC Rules of Arbitration in order to ensure compliance with obligations imposed on ICC by relevant regulatory authorities.

I - General Information on Applicable Sanctions Regimes

1. When managing cases as part of the Dispute Resolution Services (DRS) provided by the Court and the International Centre for ADR, ICC treats parties of all nationalities equally.
2. Sanctions regulations may be applicable to DRS activities. Relevant information on countries subject to the sanctions regimes of the United Nations (“UN”), the European Union (“EU”) and the US Office of Foreign Assets Control (“OFAC”) can be found on the following official websites:

UN: <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>

EU: http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

OFAC: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

3. In addition to general requirements under applicable ICC DRS Rules, and in order to ensure compliance with the above-mentioned international sanctions regimes, administrative measures may be taken, in particular if:
 - one of the parties in a DRS procedure is listed under a sanctions regime; and/or
 - one of the related entities, such as (i) entities or individuals directly or indirectly owning and/or controlling a party in the matter; (ii) entities or individuals directly or indirectly owned and/or controlled by a party in the matter; or (iii) entities or individuals affiliated to a party in the matter (“Related Entities”), in a DRS procedure is listed under a sanctions regime; and/or
 - the subject matter of the dispute falls within the scope of a sanctions regime; and/or
 - one of the parties or Related Entities is a citizen of a country subject to a sanctions regime; and/or
 - an arbitrator, mediator, expert or neutral is a citizen of an embargoed country.

4. Should an arbitrator, mediator, expert or neutral who is a citizen of a country subject to a US embargo be confirmed or appointed, the currency used to calculate and make the payments contemplated by the ICC DRS Rules may be the euro.

II - Practical Consequences of International Sanctions for Arbitration Proceedings

5. **Administration of arbitration proceedings.** The Court is authorized to administer arbitration proceedings subject to applicable laws.
6. **Requests for arbitration.** Even if any of the circumstances listed above apply, and subject to the applicable sanctions regulations, parties are not prevented from filing a request for arbitration under the ICC Rules of Arbitration.
7. **ICC compliance verifications.** The necessary ICC compliance verifications are made at all relevant stages of the proceedings, including, but not limited to, the request for arbitration, the answer to the request, the reply to the answer, the constitution of the arbitral tribunal, the terms of reference, the award and payments. This may result in delays at these stages of the proceedings.
8. **Information required from the parties.** Such information may include in particular:
- the identity of the parties;
 - the identity of all Related Entities in the dispute between the parties; and
 - additional information regarding ultimate beneficial ownership of the parties or Related Entities.
9. **Information required from arbitrators.** ICC may be required by its bank(s) and/or relevant regulators to provide the following information on arbitrators who are citizens of or located in an embargoed country (the list is not exhaustive):
- whether he/she is a resident or is physically located in an embargoed country;
 - whether he/she provides services in an embargoed country;
 - whether he/she provides services to parties or Related Entities situated in an embargoed country; and
 - information relating to his/her banking instructions.
10. **Currency.** In order to comply with US laws regulating the use of the US banking system, should any party to an arbitration proceeding:
- be subject to OFAC sanctions; and/or
 - be located in a country or territory subject to a US embargo; and/or
 - be organized under the laws of a country subject to a US embargo; and/or
 - hold the citizenship of a country subject to a US embargo,

no payment, including the payment of the filing fee, by any party in the matter shall be made in the US dollar currency. This applies to all ICC DRS Rules.

11. Pursuant to Article 3(4) of Appendix III to the ICC Rules of Arbitration in force as of 1 March 2017, the currency used to calculate and make the payments contemplated by the Rules might not be the US dollar and ICC might instead apply a different scale and fee arrangement in the euro currency. In such case, by way of derogation from the “Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration”, an arbitrator will not be able to request reimbursement of travel expenses or the payment of *per diem* allowances in US dollars. Furthermore, in such case, the VAT advance will not be administered in the US dollar currency.
12. **Notices to French and/or US authorities.** Should the administration of a case, including any payment, trigger a requirement to notify French and/or US authorities under international sanctions regulations, ICC will give them the necessary notice(s). Although ICC considers confidentiality to be a key principle in ICC arbitration proceedings, it may be required to comply with obligations imposed by the French and US authorities, should they request information. In such a situation, ICC will communicate the information pursuant to its obligations.
13. **Awards.** International sanctions regimes do not prevent the Court from scrutinizing draft awards. At the stage of scrutiny of a draft award, if applicable, the Court will draw the arbitral tribunal’s attention to relevant international sanctions regulations and invite the arbitral tribunal to consider whether such regulations have an impact on the draft award and whether the draft award should be amended. At the stage of notification, recognition or enforcement of any award rendered under the ICC Rules of Arbitration, if French and/or US authorities request information on the award and/or its content, and/or the communication of the award, ICC may provide such information to the relevant authorities.

Payments

14. **ICC.** As an entity incorporated under French law, ICC maintains a dialogue with French regulatory authorities. Payments made and requested by ICC may be affected by international sanctions and such payments may be made and requested only after being approved by the relevant authorities.
15. **Banks.** International sanctions have caused commercial banks to substantially revise and strengthen their compliance procedures. Under internal ICC compliance policies and procedures, ICC has decided to have recourse to the services of commercial banks located in France.
16. When completing their banking instructions, arbitrators should ensure that their bank is able to receive payments from ICC’s bank(s), taking into consideration national and international banking legislation and practices (e.g., embargo and boycott measures).
17. Under their internal policies, ICC’s bank(s) may be precluded from receiving payments from, and making payments to, the parties (and other players such as arbitrators), and to ICC itself, failing formal clearance to their satisfaction from the relevant authorities. Accordingly, ICC is not in a position to guarantee payments, unless and until such formal clearance has been obtained. Among other factors, the bank(s) will have regard to the nature of the transaction, the currency used and the scope of the activities that they are required to perform.

18. The implementation of international sanctions regulations by ICC's bank(s) may prevent or delay payments from/to the parties and to the arbitrators. Pursuant to Article 41 of the ICC Rules of Arbitration in force as of 1 March 2017, the Court and its members and ICC and its employees shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law. Should ICC's bank(s) prevent or delay payments from/to the parties or to the arbitrators under applicable international sanctions regulations, ICC cannot be held liable for such a situation and the consequences thereof.
19. Should the administration of a case or any payment trigger a requirement to notify ICC's bank(s) under international sanctions regulations, ICC will make the necessary notification(s).
20. **Banking instructions.** When paying the costs of DRS procedures, parties are required to strictly comply with the banking instructions provided by the Secretariat of the Court in a given matter.
21. **Contact information.** Parties and arbitral tribunals in ICC arbitration proceedings are invited to contact compliance@iccwbo.org if they require additional information on ICC compliance.