

## **MARC Practice Note on Arbitral Tribunal's Fees, Expenses, Terms and Conditions Based on Appendix 3 and the Sum in Dispute**

Effective 21 May 2018

### **1 Scope of Application and Interpretation**

1.1 This Practice Note applies to arbitrations in which the arbitral tribunal's fees and expenses are to be determined in accordance with Article 10.1(b) and Appendix 3 of the MARC Arbitration Rules in force on 21 May 2018 (the "Rules"), unless otherwise agreed by the parties.

1.2 This Practice Note does not apply to the Emergency Arbitrator Procedures applicable pursuant to Article 23.1 and Appendix 4 of the Rules.

1.3 MARC may interpret the terms as well as the scope of application of this Practice Note as it considers appropriate.

### **2 Declaration of Acceptance and Statement of Impartiality and Independence**

Before confirmation of his or her appointment, a prospective arbitrator shall sign a declaration confirming his or her availability to decide the dispute and his or her impartiality and independence, and disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence (the "Declaration") in accordance with Article 11.4 of the Rules. A blank form of the Declaration can be requested from the MARC Secretariat.

### **3 Payments to Arbitral Tribunal**

3.1 Payments to the arbitral tribunal may be made during or at the conclusion of the arbitration at the request of an arbitrator. MARC will consider the request taking into account the circumstances of the case.

3.2 Payments to the arbitral tribunal shall generally be made by MARC from funds deposited by the parties in accordance with Article 39 of the Rules and paragraph 7 below. If insufficient funds are held at the time a payment is required, the invoice for the payment may be submitted to the parties for settlement by them directly.

3.3 An arbitrator may submit a request for payment to MARC indicating the work undertaken and the time spent to date in connection with the arbitration.

3.4 Following receipt of an arbitrator's request for payment pursuant to paragraph 3.1 and 3.3, MARC shall circulate the request to the parties and, where applicable, the other members of the arbitral tribunal, before any such payment is made.

3.5 In assessing a request for an interim payment, MARC may have regard to the following as guidance to determine the appropriate amount of payment.

Stage of the arbitration	Percentage of fees
Issuing of an interim, interlocutory, partial award or decision on substantive issues, including jurisdiction and interim measures	Up to 20%
Completion of a substantive hearing	Up to 50%

3.6 The percentages referred to in paragraph 1.1 shall be applied to the maximum amount payable to an arbitrator in accordance with paragraph 6 of Appendix 3 of the Rules.

3.7 Paragraph 1.1 shall not apply to the Expedited Procedure under Article 20 of the Rules, unless MARC determines otherwise.

#### 4 Arbitral Tribunal's Fees

4.1 MARC will fix the fees of the arbitral tribunal in conformity with Appendix 3 and Article 10.4 of the Rules following receipt of the Respondent's Answer to the Notice of Arbitration. MARC may subsequently adjust the arbitral tribunal's fees which, in accordance with Articles 10.4(c), 39.3, 26.12 or 27.8 or in other exceptional circumstances, may exceed the amounts calculated in accordance with the table at paragraph 6 of Appendix 3.

4.2 When calculating the fees of the arbitral tribunal in cases where the amount in dispute is not quantified, MARC shall take into account the factors referred to in Article 10.4(a) of the Rules, save for the amount in dispute.

4.3 Where an arbitrator is replaced in accordance with Articles 13 of the Rules, MARC will determine the fees payable to the replaced arbitrator (if any), having taken into account the circumstances of the case including the factors identified at paragraph 5 of Appendix 3 of the Rules.

4.5 Where an arbitration is settled or terminated in accordance with Article 34 of the Rules, MARC will determine the fees payable to the arbitral tribunal (if any), having taken into account the circumstances of the case including the factors identified at Article 10.4(a) of the Rules.

#### 5 Arbitral Tribunal's Expenses

5.1 The arbitral tribunal's reasonable expenses shall be borne by the parties and reimbursed in accordance with paragraphs 5.2 to 5.5 below.

5.2 An arbitrator required to travel outside his or her usual place of residence or business for the purpose of an arbitration under the Rules shall:

(a) be reimbursed at cost for expenses he or she reasonably incurs travelling from and returning to his or her usual place of residence or business, including inter alia airfares, train fares, transport to and from an airport or train station, upon receipt and verification by MARC of supporting invoices or receipts. The reimbursement of the cost of air travel shall be limited to flexible economy or business class fares; and

(b) be paid a per diem allowance of MUR 15,000, where he or she is required to use overnight accommodation, or of MUR 6,500, where he or she is not required to use overnight accommodation. The expenses covered by the per diem allowance include the following items which will not be reimbursed at cost:

- (i) hotel accommodation (if applicable);
- (ii) meals and beverages;
- (iii) laundry, dry cleaning, ironing and other housekeeping services;
- (iv) inner-city transport (excluding travel to and from an airport or train station);
- (v) communication costs (telephone calls, faxes, internet, post etc); and
- (vi) gratuities.

An arbitrator is not required to submit receipts or invoices in order to claim the per diem allowance. Evidence of travel for the purpose of the arbitration is sufficient.

5.3 An arbitrator not required to travel outside his or her usual place of residence or business for the purpose of an arbitration under the Rules shall be reimbursed at cost for expenses he or she reasonably incurs:

- (a) on inner-city transport travelling from and returning to his or her usual place of residence or business; and
- (b) purchasing meals and beverages;

upon receipt and verification by MARC of supporting invoices or receipts.

5.4 An arbitrator may be reimbursed at cost for any photocopying charges upon receipt and verification by MARC of supporting invoices or receipts.

5.5 Any expenses reasonably incurred and not covered in paragraphs 5.2 to 5.4 above may be reimbursed at cost upon receipt and verification by MARC of supporting invoices or receipts.

5.6 Where an arbitrator is replaced pursuant to Articles 13 of the Rules, MARC shall determine the expenses payable to the replaced arbitrator (if any) in accordance with paragraph 5 of Appendix 3 of the Rules and paragraphs 5.2 to 5.5 above.

5.7 The expenses of the arbitral tribunal determined in accordance with this paragraph 5 shall not be included in the determination of an arbitral tribunal's fees in accordance with paragraph 4 above.

## 6 Fees and Expenses of Secretary to Arbitral Tribunal

6.1 Where the arbitral tribunal appoints a secretary pursuant to Article 15.5 of the Rules, fees of such secretary shall be determined as per the MARC Guidelines on Appointment of Tribunal Secretaries.

6.2 A secretary's reasonable expenses shall be borne by the parties and reimbursed in accordance with paragraphs 5.2 to 5.5 above, mutatis mutandis, save where the secretary is required to travel outside his or her usual place of residence or business for the purpose of an arbitration under the Rules, in which case he or she will be paid a per diem allowance of MUR 10,000 if overnight accommodation is required, or MUR 5,000 if no overnight accommodation is required.

## 7 Deposits for Costs

7.1 Pursuant to Article 39.1 of the Rules, within 15 days from receipt of the Notice of Arbitration by the Respondent MARC will request from each party to the arbitration an initial deposit as an advance for the costs referred to in Article 32.1, paragraphs (a), (b), (c) and (f) of the Rules.

7.2 MARC may request further deposits from each party within 15 days from receipt of a counterclaim or set-off defence.

7.3 MARC may subsequently request the parties to make supplementary deposits pursuant to Article 39.3 of the Rules.

7.4 Where two or more arbitrations have been consolidated in accordance with Article 27 of the Rules, further deposits may be requested from each party in the consolidated proceedings within 15 days from the date of the decision to consolidate.

7.5 If the deposits required in accordance with paragraphs 7.1 to 7.4 are not paid in full to MARC within 30 days after the receipt of the request, MARC shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claim or counterclaim as the tribunal considers fit.

7.6 If the circumstances of the case so justify, MARC may amend the time limits provided for in paragraphs 7.1; 7.2; 7.4 and 7.5 above.

## 8 Administrative Support

MARC provides offers facilities for holding hearings and meetings at its premises. For further information please consult the Facilities & Services section of MARC's website or contact [marc@mcci.org](mailto:marc@mcci.org)