Proposals for Amendment of the ICSID Rules — Working Paper

Propositions d’amendement des règlements du CIRDI — Document de travail

Propuesta de Enmiendas a las Reglas del CIADI — Documento de Trabajo
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SCHEDULE 1: MEMORANDUM ON FEES AND EXPENSES IN ICSID PROCEEDINGS

1. Members of Commissions, Tribunals, ad hoc Committees, Fact-Finding Committees and mediators in ICSID proceedings (referred to as “members” below) are entitled to receive an hourly fee, per diem allowance, and travel and other expense reimbursements referred to in Administrative and Financial Regulation 14(1) or Additional Facility Administrative and Financial Regulation 7(1). This memorandum explains those entitlements and how they are calculated, claimed and paid.

I. FEES

2. Members receive a fee for each hour of work performed in connection with the proceeding, including each hour spent participating in hearings, sessions and meetings.

3. When traveling for hearings, sessions or meetings held away from the member’s city of residence, the member receives a fee for each hour spent traveling, either by air or by ground, to and from the location of the hearing, session or meeting.

4. The amount of the hourly fee is USD 375 per hour.

II. PER DIEM ALLOWANCE

5. Members are entitled to receive the flat-rate per diem allowances in paragraphs five and six below for each day they spend away from their city of residence while traveling in connection with a proceeding.

6. When overnight lodging is required, the amount of the per diem allowance is USD 800 for each day. The allowance covers all personal expenses, including lodging, tax on lodging and service charges, if any, meals, gratuities, in-city transportation (taxis, other means of transportation), laundry, personal communications and internet.

7. For day trips not requiring overnight lodging, the amount of the per diem allowance is USD 200.

8. Members are entitled to claim the USD 200 per diem allowance for each of day of travel to and from the hearing, session or meeting, and for the day of return to their city of residence.

III. TRAVEL EXPENSES

9. When members are required to attend a hearing, session or meeting held away from their city of residence, they are entitled to claim reimbursement for the costs of air and ground
transportation to and from the city where the hearing, session or meeting is held. Travel must be arranged by the most direct route.

10. Members are authorized to travel at one class above economy. Reimbursement will be made based on the actual expenses incurred. Receipts and the passenger copy of the transport ticket or electronic boarding pass must be submitted with the claim for reimbursement.

11. Members may claim reimbursement for the costs of taxis to and from the points of departure and arrival, both at the city of residence and the city where the hearing, session or meeting is held. Receipts must be submitted with the claim for reimbursement.

12. If travel is undertaken in a privately-owned automobile, a “mileage allowance” will be paid at the rate of USD 0.535 per mile/USD 0.33 per km.

IV. OTHER REIMBURSABLE EXPENSES

13. Members are entitled to receive reimbursement for expenses reasonably incurred for the sole purpose of the proceeding. Such expenses may include, for example, courier costs and shredding case-related documents.

14. Claims for reimbursement of all expenses must be accompanied by receipts or other supporting documents.

V. CLAIMS AND PAYMENT

15. Claims for fees, per diem allowances and expenses should be submitted electronically to icsidpayments@worldbank.org using the Centre’s Claim for Fees and Expenses form.

16. Claims must be submitted on a quarterly basis or more frequently. Final claims must be submitted prior to the conclusion of the case.

17. A detailed breakdown of the work performed must be provided in the Claim form, and receipts or supporting documents for all expenses claimed must be attached.

18. A financial statement of the case account containing the fees and expenses of the Commission, Tribunal, ad hoc Committee, Fact-Finding Committee or mediator will be available to the parties at any time during the proceeding.

19. A detailed breakdown of each member’s fees and expenses will be included in the Report, Award or Decision on Annulment.

20. Members are encouraged to share copies of their claim forms with one another during proceedings to ensure it is conducted on a cost-effective basis.

21. Amounts paid to members do not include value added tax (VAT) or any other taxes and charges that might be applicable to members’ fees and expenses.
22. Claims are reviewed, processed and approved by the Secretariat, and payments are made by wire transfer to the bank accounts of the members.
SCHEDULE 2: ARBITRATOR DECLARATION

Case Name and No.: ____________________________

Arbitrator name: ____________________________

Arbitrator nationality(ies): ____________________________

I accept my appointment as arbitrator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Tribunal constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.

2. I am impartial and independent of the parties, and shall judge fairly, according to the applicable law.

3. I shall not accept any instruction or compensation with regard to the arbitration from any source except as provided in the ICSID [Convention/ Additional Facility Rules and Regulations].

4. I understand that I am required to disclose:
   a. my professional, business and other significant relationships, within the past five years with:
      i. the parties;
      ii. counsel for the parties;
      iii. other members of the Tribunal (presently known); and
      iv. any third-party funder disclosed pursuant to [Rule 21(2) of the Arbitration Rules/ Rule 32(2) of the (Additional Facility) Arbitration Rules].
   b. investor-State cases in which I have been involved as counsel, conciliator, arbitrator, ad hoc Committee member, Fact-Finding Committee member, mediator, or expert; and
   c. other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.

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6. I shall keep confidential all information coming to my knowledge as a result of my participation in this arbitration, as well as the contents of any Award made by the Tribunal.

7. I will not engage in any unilateral communication concerning this arbitration with a party or their counsel.

8. I have sufficient availability to perform my duties as arbitrator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable arbitration rules.

9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this arbitration.

10. I will adhere to the Memorandum of Fees and Expenses published by the Centre.

11. I attach my current curriculum vitae.

Signed [form to allow electronic signature]

Date
SCHEDULE 3: CONCILIATOR DECLARATION

Case Name and No.: [Blank]
Conciliator name: [Blank]
Conciliator nationality(ies): [Blank]

I accept my appointment as conciliator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Conciliation Commission constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.

2. I am impartial and independent of the parties, and shall act fairly according to the applicable rules.

3. I shall not accept any instruction or compensation with regard to the conciliation from any source except as provided in the ICSID [Convention/ Additional Facility Rules and Regulations].

4. I understand that I am required to disclose:
   
a. my professional, business and other significant relationships, within the past five years with:
   i. the parties;
   ii. counsel for the parties;
   iii. other members of the Commission (presently known); and
   iv. any third-party funder disclosed pursuant to [Rule 10(2) of the Conciliation Rules/ Rule 21(2) of the (Additional Facility) Conciliation Rules].
   
b. investor-State cases in which I have been involved as counsel, conciliator, arbitrator, ad hoc Committee member, Fact-Finding Committee member, mediator, or expert; and
   
c. other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

☐ A statement is attached.

☐ I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change in circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this conciliation, as well as the contents of any Report made by the Commission.

7. I will not have any unilateral communication concerning this conciliation with a party or their counsel during the conciliation except as contemplated by the Minutes of the First Session, the applicable rules or any party agreement.

8. I have sufficient availability to perform my duties as conciliator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable conciliation rules.

9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this conciliation.

10. I will adhere to the Memorandum of Fees and Expenses published by the Centre.

11. I attach my current curriculum vitae.

Signed [form to allow electronic signature]

Date
SCHEDULE 4: AD HOC COMMITTEE MEMBER DECLARATION

Case Name and No.: 

Committee member name: 

Committee member nationality(ies): 

I accept my appointment as a Committee member in this annulment proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Committee constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this proceeding.

2. I am impartial and independent of the parties, and shall judge fairly according to the applicable law.

3. I shall not accept any instruction or compensation with regard to the annulment proceeding from any source except as provided in the ICSID Convention and applicable rules.

4. I understand that I am required to disclose:

   a. my professional, business and other significant relationships, within the past five years with:
      i. the parties;
      ii. counsel for the parties;
      iii. other members of the Committee (presently known); and
      iv. any third-party funder disclosed pursuant to Rule 21(2) of the Arbitration Rules.
   b. investor-State cases in which I have been involved as counsel, conciliator, arbitrator, ad hoc Committee member, Fact-Finding Committee member, mediator, or expert; and
   c. other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.
6. I shall keep confidential all information coming to my knowledge as a result of my participation in this annulment proceeding, as well as the contents of any Decision on Annulment made by the Committee.

7. I will not engage in any unilateral communication concerning this case with a party or their counsel.

8. I have sufficient availability to perform my duties as a Committee member in an expeditious and cost-effective manner and in accordance with the time limits in the applicable arbitration rules.

9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this annulment proceeding.

10. I will adhere to the Memorandum of Fees and Expenses published by the Centre.

11. I attach my current curriculum vitae.

Signed [form to allow electronic signature]

Date
SCHEDULE 5: FACT-FINDING COMMITTEE MEMBER DECLARATION

Case Name and No.: 

Committee member name: 

Committee member nationality(ies): 

I accept my appointment as a Committee member in this fact-finding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the Committee constituted by the International Centre for Settlement of Investment Disputes (“the Centre”) in this fact-finding.

2. I am impartial and independent of the parties, and shall discharge my mandate fairly.

3. I shall not accept any instruction or compensation with regard to the fact-finding from any source except as provided in the ICSID Additional Facility Rules and applicable rules.

4. I understand that I am required to disclose:

   a. my professional, business and other significant relationships, within the past five years with:
      i. the parties;
      ii. counsel for the parties;
      iii. other members of the Committee (presently known); and

   b. other circumstances that might reasonably cause my independence or impartiality to be questioned.

   [Select one]:

   - A statement is attached.
   - I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change of circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.

6. I shall keep confidential all information coming to my knowledge as a result of my participation in this fact-finding, as well as the contents of any Report made by the Committee.

7. I will not engage in any unilateral communication concerning this fact-finding with a party or their counsel.
8. I have sufficient availability to perform my duties as a Committee member in an expeditious and cost-effective manner.

9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this fact-finding.

10. I will adhere to the Memorandum of Fees and Expenses published by the Centre.

11. I attach my current curriculum vitae.
SCHEDULE 6: MEDIATOR DECLARATION

Case Name and No.: ______

Mediator name: ______

Mediator nationality(ies): ______

I accept my appointment as mediator in this proceeding and make the following declarations:

1. To the best of my knowledge, there is no reason why I should not serve on the mediation proceeding by the International Centre for Settlement of Investment Disputes ("the Centre") in this proceeding.

2. I am impartial and independent of the parties, and shall act fairly according to the applicable rules.

3. I shall not accept any instruction or compensation with regard to the mediation from any source except as provided in the ICSID Additional Facility Rules and applicable rules.

4. I understand that I am required to disclose:
   a. my professional, business and other significant relationships, within the past five years with:
      i. the parties;
      ii. counsel for the parties;
      iii. other co-mediator, if any.
   b. investor-State cases in which I have been involved as counsel, conciliator, arbitrator, ad hoc Committee member, Fact-Finding Committee member, mediator, or expert; and
   c. other circumstances that might reasonably cause my independence or impartiality to be questioned.

[Select one]:

- A statement is attached.
- I have no such disclosures to make and attach no statement.

5. I acknowledge that I have a continuing obligation to disclose any change in circumstances which might cause my independence or impartiality to be questioned, and will promptly notify the Secretary-General of any such circumstances.

6. I shall keep confidential all information coming to my knowledge as a result of my participation in this mediation, as well as the contents of any Notice of Termination made by the mediator.
7. I will not have any unilateral communication concerning this mediation with a party or their counsel during the mediation except as contemplated by the Protocol, the applicable rules or any party agreement.

8. I have sufficient availability to perform my duties as mediator in an expeditious and cost-effective manner and in accordance with the time limits in the applicable mediation rules.

9. I confirm that I will not accept new commitments that would conflict with or interfere with my capacity to perform my duties in this mediation.

10. I will adhere to the Memorandum of Fees and Expenses published by the Centre.

11. I attach my current curriculum vitae.

Signed [form to allow electronic signature]

Date