



## Administrative Instruction – Instruction administrative

Ref. ICC/AI/2016/002/Cor. 1

Date: 4 March 2016

### CONSULTANTS AND INDIVIDUAL CONTRACTORS

The Registrar, with the agreement of the Presidency and the Prosecutor, pursuant to Presidential Directive ICC/PRES/G/2003/001, and for the purpose of implementing Staff Regulation 4.7, promulgates the following:

#### Section 1

#### Purpose and Scope of Application

- 1.1 This administrative instruction sets out the terms and conditions for consultants and individual contractors.
- 1.2 This administrative instruction applies to all contracts issued by the Court to consultants and individual contractors.
- 1.3 Notwithstanding section 1.2 above, this administrative instruction, except the terms and conditions set out under annex I, does not apply to a contract issued for engaging a special advisor, and his or her assistant(s).
- 1.4 This administrative instruction, including the terms and conditions set out under annex I, does not apply to a contract issued for engaging a defence counsel or a legal representative of victims, and to any other member of his or her team, except as otherwise ordered by a judicial decision of the Court.

- 1.5 Consultants and individual contractors shall not be considered, for any purposes, a staff member of the Court, and are bound by the terms and conditions set forth in this administrative instruction as applicable.

## **Section 2**

### **Definitions**

2. The following definitions apply for the purpose of the present administrative instruction:
- (a) A consultant is an individual who is a recognised authority or specialist in a specific field, engaged by the Court under a contract in an advisory or consultative capacity to the Court. A consultant must have special skills or knowledge not normally possessed by the staff of the Court and for which there is no continuing need in the Court. The functions of a consultant are result-oriented and normally involve analysing specific problems, facilitating seminars or training courses, preparing documents for conferences and meetings or writing reports on the matters within the area of expertise on which their advice or assistance is sought;
  - (b) An individual contractor is an individual engaged by the Court from time to time under a contract to provide expertise, skills or knowledge for the performance of a specific task or piece of work against the payment of an all-inclusive fee. The work assignment shall be for the provision of support services, which may involve full-time or part-time functions.
  - (c) A hiring office is the division, section or unit within the Court where the need for the services of a consultant or individual contractor has been identified.
  - (d) A special advisor is an individual engaged on a pro-bono basis (e.g. € 1,00) to provide high level expertise directly to a principal of the Court on a particular area of importance.

## **Section 3**

### **Conditions for Contracting a Consultant or Individual Contractor**

- 3.1 The services of a consultant and individual contractor may be engaged only when the following conditions are cumulatively met:

- (a) the work assignment is of a temporary nature and the assigned tasks are capable of being performed within a limited and specified period of time;
- (b) the need for the required services cannot be met from within the current staff resources of the Court due to a lack of specialised knowledge and/or expertise or capacity;
- (c) the services performed clearly relate to programmed or mandated activities in the work programme of the hiring office; and
- (d) where an individual contractor is temporarily engaged to perform duties and functions for the provision of support services, a clear strategy is in place for a long-term regular staffing solution.

3.2 Consultants and individual contractors may not be engaged:

- (a) as a means of applying a probationary period to candidates prior to offering them an appointment;
- (b) where any of the assigned tasks require representative, certifying or approving authority and/or supervisory responsibility;
- (c) to perform staff functions or that of vacant posts;
- (d) as a temporary measure, such as filling posts temporarily vacated by a staff member of the Court or on any form of absence or leave (i.e. annual, maternity/other parent leave, special leave etc.);
- (e) when recruitment of a new staff member for an existing position in an office is taking longer than usual;
- (f) to fill regular and continuing functions in an office;
- (g) as a means to reinstate a staff member to perform the same functions of his or her previous position that has been abolished; or
- (h) when a position is created on an experimental basis and the hiring office would like to determine whether the position and its functions should be regularised as a position within the office.

3.3 Consultants and individual contractors shall not be involved in decisions affecting the status, rights and entitlements of staff members.

3.4 The services to be provided by consultants or individual contractors should not duplicate work or activities already done, being done, about to be done by or attributed to other individuals, divisions, sections or units of the Court.

3.5 Consultants and individual contractors need not work at the Court's premises to carry out their assigned tasks.

*Contracting a former or retired staff member*

3.6 A former or retired staff member may be engaged as a consultant or individual contractor subject to the following provisions:

- (a) a minimum of a one-month break is applied between retirement of the retired staff member and reengagement as a consultant or individual contractor;
- (b) the former or retired staff member is not reengaged to perform the functions of the same post from which he or she separated or retired or contracted to encumber the position from which he or she separated or retired;
- (c) the former staff member did not separate from the Court or another organisation following the United Nations common system for any of the following reasons: abandonment of post, misconduct, dismissal, non-renewal or termination of appointment for unsatisfactory performance, and/or resignation in lieu of disciplinary action. If the former staff member separated for any of the above reasons, the hiring office shall be notified and such reason(s) shall be taken into consideration prior to engaging the former staff member; and
- (d) there are no other qualified and readily available candidates to perform the required functions, and the reengagement of the former or retired staff member will not adversely affect the professional opportunities of existing staff members.

3.7 Approval by the Human Resources Section ensuring that the requirements set out in section 3.6 above are met is required prior to the reengagement of a former or retired staff member as a Consultant or Individual Contractor.

3.8 The fees payable to a former staff member shall not be based on the level of remuneration that he or she held before separation, but rather on the nature and complexity of the assignment to be performed.

*Contracting a family member or spouse*

3.9 A person whose father, mother, son, daughter, sister or brother works for the Court shall not be engaged as a consultant or individual contractor.

3.10 A consultant or individual contractor may be engaged if he or she is the spouse of a staff member provided that:

- (a) the consultant or individual contractor is fully qualified for the assignment and was selected in accordance with the competitive selection process requirements without being given any preferential treatment;
- (b) the staff member is not superior or subordinate in the line of authority to his or her spouse, and there is no perceived conflict of interest; and
- (c) neither the consultant/individual contractor nor the staff member participate in any review or decision-making process that affects the status or entitlements of their spouse.

3.11 Spouses of heads of a division, section, unit or field office may not be engaged as consultants or individual contractors in the same division, section, unit or field office.

3.12 Staff members on special leave without pay remain staff members and, therefore, may not be engaged as a consultant or individual contractor.

*Terms of reference*

3.13 The hiring office is responsible for ensuring that detailed terms of reference describing the work to be performed are prepared at least three weeks before the start date of the contract and submitted in a timely manner to the Human Resources Section for processing.

3.14 The terms of reference of the contract shall include:

- (a) tangible and measurable outputs, objectives, deliverables and targets of the work assignment, as well as specific activities to achieve the required outputs, objectives, deliverables and targets;
- (b) the expected duration of the work assignment, including specific delivery dates and details as to how the work must be delivered (e.g. electronic submission, hard copy);
- (c) indicators for the evaluation of outputs (including timeliness, achievement of goals and quality of work); and
- (d) name and title of the supervisor(s).

3.15 The hiring office is responsible for providing the consultant or individual contractor with a copy of the terms of reference prior to issuing the contract.

**Section 4**  
**Selection process**

- 4.1 Hiring offices are encouraged to consider several qualified candidates for each work assignment. An announcement on the Court's eRecruitment system may be issued for a minimum of seven working days by the Human Resources Section, unless a selection has been made from a roster as described in section 4.3. In such cases, the hiring office with the assistance of the Human Resources Section is responsible for instituting competitive selection procedures. The assessment for the competitive selection procedures can take several forms, as determined by the hiring office, provided it assesses the qualifications, competencies, relevant experience and technical expertise of the candidates. A record summarising the selection process and the basis on which the successful candidate was selected shall be submitted by the hiring office to the Human Resources Section.
- 4.2 Notwithstanding section 4.1 above, a consultant or individual contractor may be engaged even though he or she was the only candidate considered, provided a documented justification is submitted to the Registrar or Prosecutor, as appropriate, for approval.
- 4.3 Rosters of consultants and individual contractors should be utilised where available, as they provide easy access to a screened pool of individuals with a relevant track record. Every division, section, unit or field office is encouraged to develop its own roster of consultants and individual contractors based on its requirements. However, candidates from a roster shall be screened by the Human Resources Section for qualifications, references and prior work experience. The Human Resources Section shall also administer these rosters through the appropriate openings in the Court's eRecruitment system and maintain them for monitoring and audit purposes.
- 4.4 In order to ensure that all required information on candidates is on file, all consultants and individual contractors, as well as former staff members and retirees, are given the opportunity to complete a profile in the Court's eRecruitment, regardless of whether they have previously submitted a curriculum vitae for consideration.
- 4.5 In the selection of the consultant or individual consultant, careful scrutiny of the terms of reference, the cost for the kind of work, as well as the qualifications, competencies, expertise and relevant experience of the suitable candidate(s) and any potential conflict of interest, should be taken into account. In addition, the widest possible geographical basis shall be considered unless the specific nature of the work assignment requires consideration of

candidates from a specific geographical region. Travel costs may be considered but shall not distort the geographical balance in the selection of a candidate.

## **Section 5**

### **Personnel Security Clearance Process**

- 5.1 A consultant or individual contractor shall be required to comply with the Court's security clearance and reference verification procedures.
- 5.2 The Human Resources Section may also verify the academic and professional credentials of the individual recommended for selection by conducting appropriate reference checks. For that purpose, the hiring office shall submit requests for engaging the services of a consultant or individual contractor to the Human Resources Section sufficiently in advance of starting dates to allow for the completion of the verification requirements.

#### *Certification of good health*

- 5.3 Before commencing work for the Court, the consultant or individual contractor shall submit a statement of good health issued by a certified medical practitioner, take full responsibility for the accuracy of that statement, and confirm that he or she has been informed of the inoculations required for the country or countries to which travel is authorised. Consultants and individual contractors shall assume all costs that may occur in relation to the statement of good health. No certificate of good health is required when the consultant or individual contractor works solely from home for less than 30 days.
- 5.4 Consultants and individual contractors who are required to travel beyond commuting distance to any duty station(s) with a hardship classification other than H and A shall also certify that their medical or health insurance covers medical evacuations and treatment.

## **Section 6**

### **Terms and Conditions of the Contract**

#### *Contract documents*

- 6.1 Consultants and individual contractors shall be engaged under individual contracts entered into by the Court directly with the individual concerned.

- 6.2 The terms and conditions of the contract (annex I) apply to all consultants and individual contractors, independent of the value of their contract. The terms and conditions may not be changed or modified.
- 6.3 Consultants and individual contractors shall not commence work or travel until the relevant contract has been duly approved, signed by both parties and returned to the Human Resources Section, together with the required documents and certifications as set out in this administrative instruction.

#### *Legal status*

- 6.4 Consultants and individual contractors serve in their individual capacity and not as representatives of a Government or of any other authority external to the Court. They are not staff members under the Court's Staff Regulations and Staff Rules.
- 6.5 Consultants shall have the status of "expert" for the purposes of the Agreement on the Privileges and Immunities of the International Criminal Court ("the APIC") and the Headquarters Agreement between the International Criminal Court and the Kingdom of the Netherlands ("the Headquarters Agreement").
- 6.6 For the purposes of the APIC and the Headquarters Agreement, individual contractors shall be recruited locally.

#### *Standards of conduct*

- 6.7 Consultants and individual contractors shall respect the impartiality and independence of the Court and shall neither seek nor accept instructions regarding the services performed under the contract from any Government or other authority external to the Court. During the period of their service for the Court, consultants and individual contractors shall refrain from any conduct that would adversely reflect on the Court and shall not engage in any activity that is incompatible with the aims and objectives of the Court.
- 6.8 Consultants and individual contractors shall exercise the utmost discretion and confidentiality in all matters relating to the performance of their functions. In particular, consultants and individual contractors shall:
- (a) consider as confidential all the information, data, plans, drawings, documents and materials, in whatever form or shape, received, acquired, produced, delivered or which

they will have access to by reason of the contract and that has not been made public by the Court;

- (b) not disclose, publish, disseminate, or use for the benefit of any person, government or entity other than the Court, any such information, data, plans, drawings, documents or materials referred to in paragraph (a), except with the prior written consent of the Court;
- (c) not use any such information, data, plans, drawings, documents or material referred to in paragraph (a) for personal gain; and
- (d) adhere to all policies, rules, procedures or instructions as provided by the Court as to the classification, use or disposal of such confidential information, data, plans, drawings, documents or materials referred to in paragraph (a).

6.9 Consultants and individual contractors shall sign a separate confidentiality and non-disclosure statement before the starting date of their engagement with the Court.

6.10 Consultants and individual contractors shall conduct themselves with the highest ethical principles and standards of conduct and in a manner that at all times protects the interest of the Court. Although the consultants and individual contractors are not staff members of the Court, they shall be required to uphold the standards of conduct described in the Staff Rules, Staff Regulations, Code of Conduct of Staff Members and any relevant issuances related to expected standards of conduct.

#### *Duration of contract*

6.11 The duration of the contract shall be directly linked to the terms of reference as set out in the consultant or individual contractor's contract, taking into account the requirements set out in section 3.1 above.

6.12 In order to limit the repeated use of the same consultant, either to perform different tasks within the workplan or a series of tasks within the same project, no consultant, shall provide services for more than 24 months in a 36-month period, whether continuous or not, and irrespective of the cumulative months of actual work.

6.13 The services of an individual contractor shall be limited to six or, in special circumstances, nine work-months in any period of 12 consecutive months, irrespective of the cumulative months of actual work, except for individual contractors engaged to perform language functions on a unit-cost basis.

6.14 Sections 6.12 and 6.13 above shall not apply to consultants and individual contractors whose services are required pursuant to a judicial decision of the Court.

*Work permits and related authorisations*

6.15 Consultants or individual contractors are responsible for securing any necessary travel documents and visas, and for any associated costs arising therefrom. The Court may assist in obtaining the necessary visas for Consultants and covering associated costs where travel is required for carrying out the work assignment as set out under section 6.30 below.

*Remuneration*

6.16 As a general principle, the fees payable to a consultant or individual contractor shall be the minimum amount necessary to obtain the services required by the Court.

6.17 The Human Resources Section shall determine the expected fee levels pursuant to the terms of reference submitted by the hiring office, which shall be guided by applicable market rates for the type, complexity, timeframe, quality and volume of services required. Amounts paid in connection with travel undertaken by the consultant in accordance with sections 6.30 and 6.31 below shall not be taken into account for remuneration purposes.

6.18 The Human Resources Section shall keep records of how the fee level was determined.

*Leave*

6.19 Consultants and individual contractors shall not be entitled to any paid leave, including annual leave, sick leave, emergency leave, special leave or official holidays. The fees of consultants and individual contractors, other than those paid on the basis of a lump sum, shall be prorated for any period of absence.

*Payment*

6.20 In general, fee advances for consultants and individual contractors shall not be granted. However, a maximum of 30 per cent of the total contract value may be authorised by the Human Resources Section in cases where advance purchases, for example for supplies or travel, may be necessary.

6.21 In cases where the payment of fees is made in instalments, the final instalment may not be less than 10 per cent of the total value of the contract and will be payable only upon satisfactory completion of the services and deliverables and the hiring manager's certification thereof. The payment of instalments should be directly linked with satisfactory deliverables at specific time intervals, as certified by the hiring manager.

6.22 The payment of fees is subject to the satisfactory completion of services and deliverables and the Court's certification to that effect, at the appropriate milestones (see sects. 6.33 to 6.36).

#### *Taxes on income*

6.23 The fees of consultants and individual contractors are expressed in gross amounts. Consultants and individual contractors are responsible for determining their tax liabilities and for the payment of any taxes and/or duties, in accordance with applicable laws. The Court shall not reimburse consultants or individual contractors for any taxes, duty or other contribution payable by the consultants or individual contractors on payments made under the contract.

6.24 The Court does not issue statements of earnings to consultants and individual contractors for the purposes of tax liabilities.

#### *Pro-bono contracts*

6.25 Other than special advisors, individuals with specific expertise who volunteer their services to the Court, such as pro-bono lawyers, academics or other individuals who receive payment for their services from an external organisation, may be granted a contract for no fee (e.g. € 1,00) subject to clearance by the Chief of Human Resources Section on a case-by-case basis. Where appropriate, they will be paid travel expenses, including daily subsistence allowance, in accordance with sections 6.30 and 6.31 below.

#### *Life and health insurance*

6.26 The Court does not provide or arrange health insurance coverage for consultants and individual contractors, and consultants and individual contractors are not eligible to participate in the health insurance schemes provided by the Court for its staff members. Consultants and individual contractors are responsible for arranging and assuming all costs related to health and other forms of insurance and attaining any required inoculations and medical treatment.

6.27 The responsibility of the Court is limited solely to the payment of compensation for service-incurred death, injury or illness in accordance with section 6.28.

*Compensation for service-incurred illness, injury or death*

6.28 Consultants and individual contractors, or their dependants as appropriate, who are authorised to travel at the expense of the Court or who are required under their contract to perform services in an office of the Court shall, in the event of illness, injury or death attributable to the performance of official duties on behalf of the Court, be entitled to compensation equivalent to that provided under the United Nations' Appendix D to the Staff Rules (ST/SGB/Staff Rules/Appendix D/Rev.1 and Amend.1; see annex I, art. 5).

*Pension*

6.29 Consultants and individual contractors are not entitled to participate in the United Nations Joint Staff Pension Fund.

*Travel*

6.30 If the Court determines that the consultant or individual contractor needs to travel in order to perform his or her assignment, that travel shall be specified in the contract and provided for by the Court. When travel is authorised for consultants and individual contractors, economy class shall be the standard of accommodation for air travel in all cases and irrespective of the duration of the journey, unless determined otherwise by the Registrar or Prosecutor, where appropriate, taking into account the circumstances of the traveller (such as for health reasons) and the interests of the Court.

6.31 Consultants and individual contractors authorised to travel shall receive a daily subsistence allowance that shall comprise the total contribution of the Court towards such expenses as meals, lodging, gratuities, local transportation and other such payments made for services rendered. The payment of the daily subsistence allowance shall be made on the same basis as for staff members, except where otherwise expressly provided, and in accordance with a schedule of rates established from time to time by the International Civil Service Commission.

### *Training*

6.32 Consultants and individual contractors shall not receive training at any additional expense of the Court.

### *Evaluation of work assignment*

6.33 An evaluation of the work assignment shall be conducted at the time of completion of assignment on a designated form and recorded in the rosters maintained by the Human Resources Section for consideration of future contracts.

6.34 The evaluation of the work assignment shall measure the achievement of goals, the quality and timeliness of work, services and deliverables, as stipulated in the terms of reference. If the work assignment is evaluated as less than fully satisfactory, no further contract shall be issued to the consultant or individual contractor, and payments may be reduced or withheld entirely. In cases where a work assignment is evaluated as less than fully satisfactory, the consultant or individual contractor shall be allowed to submit a written response to be placed on the file, upon his or her request.

6.35 A hiring office requesting the services of a consultant or individual contractor shall verify the evaluation of the previous work assignment on file of that proposed consultant or individual contractor for future engagement or the extension or renewal of his or her contract.

6.36 The Registrar or the Prosecutor, as appropriate, and upon consulting with Human Resources Section, shall take a final decision on whether further contracts should be issued in the case of an unsatisfactory evaluation of work assignment by the direct supervisor of the hiring office.

### *Termination of the contract*

6.37 A contract may be terminated by the Court, or by the consultant or individual contractor, in accordance with the Terms and Conditions of the Contract (see annex I, art. 13).

6.38 Unsatisfactory or incomplete work assignment or failure to conform to the standards of conduct set out in the present instruction shall lead to termination of service for cause, without notice, at the initiative of the Court.

**Section 7**  
**Responsibilities of Hiring Offices**

- 7.1 Where the services of a consultant or individual contractor are required, the hiring office shall be responsible for:
- (a) ensuring that the services to be rendered and the deliverables to be provided fulfil the conditions of the definition for either a consultant or an individual contractor set out in section 2 above;
  - (b) evaluating the work assignment under the terms set out in this administrative instruction; and
  - (c) ensuring that decisions on selection, and on all other matters of substance relating to consultants and individual contractors and to their work assignment, are taken in accordance with the provisions of this administrative instruction. Any exceptions to or deviations from the provisions of the present instruction shall require the prior approval of the Registrar or Prosecutor, as appropriate.
- 7.2 The Human Resources Section shall provide policy guidance, and monitor compliance by hiring offices with all the terms, conditions and requirements of this administrative instruction.

**Section 8**  
**Review of this administrative instruction**

- 8.1 This administrative instruction shall be reviewed one year after its date of issuance.

**Section 9**  
**Final provisions**

- 9.1 This administrative instruction shall enter into force on 1 April 2016.

  
Herman von Hebel  
Registrar