

ACICA GUIDELINE ON THE USE OF TRIBUNAL SECRETARIES

Recognising the widespread use of tribunal secretaries and the useful role that tribunal secretaries can play in ensuring the efficacy of arbitral proceedings, ACICA has produced this guideline to encourage transparency with respect to the appointment, duties and remuneration of tribunal secretaries.

Scope

1. This guideline shall apply, on and from 1 January 2017, to tribunal secretary appointments made in ACICA administered arbitrations, whether conducted under the ACICA Arbitration Rules (with the exception that the guideline will not apply to the Emergency Arbitrator Provisions under Schedule 1 to the ACICA Arbitration Rules), ACICA Expedited Arbitration Rules or UNCITRAL Arbitration Rules.
2. This guideline may also be adopted by parties in any arbitration, upon consultation with ACICA.

Appointment and removal

3. An arbitral tribunal may appoint or remove a tribunal secretary at any stage of the arbitration upon consultation with the parties. Prior to proposing the appointment of a tribunal secretary, the arbitral tribunal will carefully consider whether the appointment is appropriate in the circumstances of the particular case.
4. The arbitral tribunal shall select an appropriate candidate at its discretion. Prior to an appointment, the arbitral tribunal shall circulate the following to the parties and to ACICA:
 - a) proposed candidate's name and CV;
 - b) candidate's signed declaration of independence and impartiality;
 - c) if relevant, any disclosure regarding the candidate's independence and impartiality;
 - d) the candidate's terms of appointment and hourly rates; and
 - e) a copy of this guideline.
5. The arbitral tribunal shall only proceed with the appointment of the proposed secretary upon the agreement of the parties. Throughout the course of the arbitration, any changes to tribunal secretary arrangements or terms of appointment may only be made with the agreement of the parties.
6. Where two or more arbitrations are consolidated (whether under Article 14 of the ACICA Arbitration Rules 2016 or otherwise), or a third party is joined to an arbitration (whether under Article 15 of the ACICA Arbitration Rules 2016 or otherwise), the arbitral tribunal may continue the appointment of an existing tribunal secretary or appoint a new tribunal secretary, upon consultation with all parties.

7. A tribunal secretary is under a continuing obligation to disclose any circumstances that are likely to give rise to justifiable doubts about her or his independence and impartiality. A tribunal secretary's continuing appointment may be challenged on independence and impartiality grounds, with the applicable standard being the same standard as applies to the arbitral tribunal. The procedure for challenge shall be in accordance with the procedure for the challenge of an arbitrator, as set out in the ACICA Arbitration Rules or UNCITRAL Arbitration Rules (as relevant) then in force, but modified as necessary to reflect the different context.
8. If for any reason a substitute tribunal secretary needs to be appointed, the procedure in this guideline applies.
9. A tribunal secretary is entitled to the same level of immunity that is afforded to a member of the tribunal.

Duties

10. The tribunal secretary shall at all times act under the direction and close supervision of the arbitral tribunal. The arbitral tribunal shall at all times be responsible for the secretary's conduct in connection with the arbitration.
11. Unless the parties otherwise agree, the tribunal secretary may:
 - a) provide administrative assistance;
 - b) summarise and/or research factual and legal issues in the record; and
 - c) prepare drafts of procedural orders and non-substantive parts of awards.
12. The tribunal secretary must not perform any decision-making functions.
13. A tribunal secretary is subject to the same degree of confidentiality as that required of the parties and the tribunal under the ACICA Arbitration Rules or otherwise.

Remuneration – costs and expenses

14. The arbitral tribunal shall determine the fees and expenses of the tribunal secretary after consultation with the parties. The arbitral tribunal shall determine any controversies or disputes with respect to the tribunal secretary's fees or expenses at its sole discretion.
15. If the arbitral tribunal is compensated on the basis of hourly rates, the tribunal secretary shall be compensated on the basis of an hourly rate. The tribunal secretary's fees shall be charged separately and paid by the parties in addition to the tribunal's fees.
16. ACICA may, in consultation with the arbitral tribunal take into account the likely fees and expenses of the tribunal secretary when requesting a deposit for an advance on costs.
17. If the arbitral tribunal's compensation is based on the amount in dispute, a tribunal secretary's fees shall form part of the tribunal's fees. Where the arbitral tribunal is composed of three arbitrators, the tribunal secretary fees shall be shared equally amongst the members of the tribunal unless they decide otherwise.

18. In all instances, the tribunal secretary's reasonable expenses in connection with their role shall be reimbursed by the parties at cost, unless otherwise agreed.
19. Payments to a tribunal secretary shall be made at the same time that payments are made to the tribunal, unless otherwise agreed. Payments may be made by ACICA from funds deposited by the parties on instruction from the arbitral tribunal.
20. A tribunal secretary should provide a record of their time spent on tasks in a matter and evidence all expenses with receipts.

1 January 2017