

Protocol for decisions on applications for consolidation and joinder and challenges to arbitrators under the ACICA Rules 2016

Effective on and from 1 May 2017

PART A. Interpretation and Application

1. Interpretation

1.1 In this document, unless the context otherwise requires,

ACICA means the Australian Centre for International Commercial Arbitration Ltd;

ACICA Board means the ACICA Board of Directors under the ACICA Constitution;

ACICA Executive means the current office-bearers of ACICA;

Council means the ACICA Council established by ACICA in April 2016;

Expedited Rules means the ACICA Expedited Arbitration Rules in effect on and from 1 January 2016;

Protocol means the ACICA Protocol for decisions on applications for consolidation and joinder and challenges to arbitrators under the ACICA Rules 2016;

Rules means the ACICA Arbitration Rules in effect on and from 1 January 2016.

2. Confidentiality of the Process

2.1 Processes undertaken in accordance with this Protocol and all matters relating thereto are confidential to ACICA and may not be disclosed beyond the ACICA Executive, ACICA Board, ACICA Secretariat and members of the Council.

2.2 For the avoidance of doubt, Council members are subject to the same level of confidentiality as the parties, the arbitral tribunal and ACICA under the Rules and Expedited Rules.

PART B. ACICA Council

3. Constitution of the ACICA Council

- 3.1 The ACICA Executive has established the Council comprising senior international arbitration practitioners with significant expertise in international commercial arbitration.
- 3.2 The term of office of a member of the Council appointed by the ACICA Executive is 3 years, which may be renewed.
- 3.3 The principal roles of the Council are to assist ACICA to:
- (a) decide applications for consolidation of arbitrations under Article 14 of the Rules in circumstances where it is not clear that the parties have agreed to the consolidation;
 - (b) decide applications for joinder received by ACICA before the date on which the Arbitral Tribunal is confirmed, under Article 15.8 of the Rules; and
 - (c) decide challenges to arbitrators if the challenge is not agreed to and the challenged arbitrator does not resign, under Article 18.4 of the Rules and Article 10.4 of the Expedited Rules.
- 3.4 This Protocol outlines the process that will be undertaken by Council members in fulfilling these roles.
- 3.5 During their term of office, a member of the Council may not assist with the making of a decision in relation to an arbitration in circumstances where (a) he or she acts, has acted, or has been approached to act, as arbitrator, (b) he or she is, has been, or has been approached to be, involved as counsel or in any other capacity or (c) would otherwise give rise to a conflict of interest.
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PART C. Procedure for Decisions

4. List of Council Members

- 4.1 ACICA will generate a list of the members of the Council to establish the order in which members will be contacted when a decision is required to be made. Members will be contacted on rotation as applications and challenges are received.
- 4.2 In the event that a member of the Council is unable to fulfil the requested role at the relevant time (whether due to his or her involvement in the matter in question or for another reason) he or she will so inform ACICA and ACICA will refer the application or challenge to the next member on the list.
- 4.3 The identity of Council members allocated to a particular matter for decision will remain anonymous and will not be revealed to the parties, counsel, arbitrator(s) or any other person outside ACICA.

5. Applications for Consolidation

- 5.1 An application for consolidation (along with any supporting documents) received by ACICA pursuant to Article 14 of the Rules will be forwarded by ACICA to 3 members of the Council for the making of a recommendation, unless exceptional circumstances exist (such as the urgency of a matter), in which case a recommendation may be sought from a sole Council member, at ACICA's discretion.
- 5.2 A recommendation on the application for consolidation must be made by the Council member(s) in accordance with the provisions of Article 14.1 and 14.2 of the Rules.
- 5.3 In the event that the member(s) of the Council considering the application form the view that further information is required from the parties, they will so inform ACICA in order that a request can be made by ACICA to the parties.
- 5.4 A recommendation on the application for consolidation will be made by simple majority within 10 days of the member(s) of Council receiving the application, unless exceptional circumstances exist (which require time to be extended) and will be provided to ACICA with a brief summary of the reasons for the recommendation (for ACICA's reference only).
- 5.5 For the purposes of Article 48.1 of the Rules, the ACICA Board has delegated final decision making authority with regard to applications for consolidation to the ACICA Executive.
- 5.6 The ACICA Executive shall consider, but is not bound by, the recommendation of the relevant Council member(s) before issuing its decision to the parties.

6. Applications for Joinder

- 6.1 An application for joinder (including the Request for Joinder, Answer to Request for Joinder and any comments received from parties on the Request) received by ACICA pursuant to Article 15 of the Rules in the circumstances outlined in Article 15.8, will be forwarded by ACICA to 3 members of the Council for the making of a recommendation, unless exceptional circumstances exist (such as the urgency of a matter), in which case a recommendation may be sought from a sole Council member, at ACICA's discretion.
- 6.2 A recommendation on the joinder application must be made by the Council member(s) in accordance with the provisions of Article 15.8 of the Rules.
- 6.3 In the event that the member(s) of the Council considering the application form the view that further information is required from the parties, they will so inform ACICA in order that a request can be made by ACICA to the parties.
- 6.4 A recommendation on the application for joinder will be made by simple majority within 10 days of the member(s) of Council receiving the application, unless exceptional circumstances exist (which require time to be extended) and will be

provided to ACICA with a brief summary of the reasons for the recommendation (for ACICA's reference only).

6.5 For the purposes of Article 48.1 of the Rules, the ACICA Board has delegated final decision making authority with regard to applications for joinder to the ACICA Executive.

6.6 The ACICA Executive shall consider, but is not bound by, the recommendation of the relevant Council member(s) before issuing its decision to the parties.

7. **Challenge to Arbitrator**

7.1 A notification of challenge to an arbitrator (along with any comments received from the parties and arbitrator) received by ACICA pursuant to:

- (a) Article 18 of the Rules in the circumstances outlined in Article 18.4; or
- (b) Article 10 of the Expedited Rules in the circumstances outlined in Article 10.4,

will be forwarded by ACICA to 3 members of the Council for the making of a recommendation, unless exceptional circumstances exist (such as the urgency of a matter), in which case a recommendation may be sought from a sole Council member, at ACICA's discretion.

7.2 A recommendation on the challenge application must be made by the Council member(s) in accordance with the provisions of Article 17 of the Rules or Article 9 of the Expedited Rules as applicable.

7.3 In the event that the member(s) of the Council considering the challenge form the view that further information is required from the parties or the arbitrator, they will so inform ACICA in order that a request can be made by ACICA to the parties.

7.4 A recommendation on the challenge will be made within 10 days of the member(s) of Council receiving the notification, unless exceptional circumstances exist (which require time to be extended) and will be provided to ACICA with a brief summary of reasons for the recommendation (for ACICA's reference only).

7.5 For the purposes of Article 48.1 of the Rules and Article 38.1 of the Expedited Rules, the ACICA Board has delegated final decision making authority with regard to arbitrator challenges to the ACICA Executive.

7.6 The ACICA Executive shall consider, but is not bound by, the decision of the relevant Council member(s) before issuing its decision to the parties.

8. Decisions are final and binding

- 8.1 In accordance with Article 48. 2 of the Rules and Article 38.2 of the Expedited Rules, decisions issued by ACICA shall be conclusive and binding on the parties. ACICA shall not be required to give reasons for such decisions.

PART D. Revocation or Amendment to Procedure

9. ACICA Board

- 9.1 The Executive may at any time through the Secretary General, refer to the ACICA Board a proposal to revoke or amend this Protocol, but such revocation or amendment shall not take effect unless and until approved by the ACICA Board. The ACICA Board reserves the right to amend or revoke this Protocol on its own initiative and in any manner it deems appropriate.

This Protocol was approved by the ACICA Board by resolution dated 10 April 2017.