



Australian Centre for International Commercial Arbitration

Ad Hoc Appointment Rules 2023

These Ad Hoc Appointment Rules are effective on and from 1 June 2023 and apply to ad hoc appointments of arbitrators, mediators, expert determiners whether made under the UNCITRAL Arbitration Rules or otherwise.

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PART A. Interpretation and Application

1. Interpretation

1.1. These Rules shall be referred to as the ACICA Ad Hoc Appointment Rules 2023.

1.2. In these Rules, unless the context otherwise requires,

ACICA means the Australian Centre for International Commercial Arbitration;

ACICA Executive means the current office-bearers of ACICA;

Ad Hoc Appointment Rules means these ACICA Ad Hoc Appointment Rules 2023;

Form A1 means the ACICA Form A1 - Application for the Appointment of a Third Party Neutral (available from the ACICA website [www.acica.org .au](http://www.acica.org.au));

Third Party Neutral means an arbitrator, mediator, expert determiner or any other third party neutral that ACICA is approached to appoint; and

UNCITRAL Model Law refers to the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, 1985, with amendments as adopted in 2006.

2. Application

2.1. These Ad Hoc Appointment Rules apply to the appointment of Third Party Neutrals under:

- (a) Ad hoc agreements;
- (b) UNCITRAL Arbitration Rules 1976, arts 6-7; and
- (c) UNCITRAL Arbitration Rules 2010, 2013 and 2021, arts 8-10;

2.2. These Ad Hoc Appointment Rules do not apply to the appointment of Third Party Neutrals under the ACICA Arbitration Rules, the ACICA Expedited Arbitration Rules, the ACICA Mediation Rules, or to statutory appointments under the *International Commercial Arbitration Act 1974* (Cth) or the UNCITRAL Model Law.

2.3. Where the parties have agreed that ACICA, one of its office bearers, or the ACICA Secretary-General, shall make an appointment or that ACICA act as the appointing authority, they shall be deemed to have submitted to the Ad Hoc Appointment Rules.

2.4. When requested to make an appointment or act as appointing authority under the Ad Hoc Appointment Rules, ACICA shall proceed if it is satisfied that an agreement empowering it to do so may exist.

2.5. ACICA retains the discretion not to provide services requested.

2.6. ACICA may decline to appoint a Third Party Neutral where there is a disagreement between the parties as to whether that Third Party Neutral has been duly appointed.

PART B. Procedure for Appointment of a Third Party Neutral

3. Application for Appointment of a Third Party Neutral

- 3.1. Any party seeking the appointment of a Third Party Neutral(s) shall deliver to ACICA a completed Form A1 (available from the ACICA website: www.acica.org.au). The document shall be signed by the party or by a person authorised to sign on his, her or its behalf certifying that the details contained in the Form A1 are true and accurate. All attachments required by Form A1 shall be attached to the form. For the purposes of this subrule, registered post, courier delivery, or delivery by electronic means (as specified by ACICA on the ACICA website) to ACICA shall constitute delivery. The document and its attachments shall be deemed to have been received on the day that it is delivered to ACICA. Documents transmitted by electronic means are deemed to have been received on the day that they reach ACICA.
- 3.2. The party seeking the appointment of the Third Party Neutral shall deliver a copy of the completed Form A1 together with all requisite attachments (collectively, Ad Hoc Appointment Application) on the other party or parties at their last known address and shall lodge with ACICA documentary verification of delivery. For the purposes of this subrule, registered post or courier delivery, or delivery by electronic means that provides a record of delivery shall constitute delivery.
- 3.3. Before making an appointment of a Third Party Neutral, ACICA shall allow the other party or parties (Respondent/s) to submit to ACICA any information they consider relevant to the Ad Hoc Appointment Application, including reasons why no Third Party Neutral should be appointed. Where no such information is submitted to ACICA within 10 days of the Respondent/s receipt of the Ad Hoc Appointment Application under subrule 3.2, ACICA may proceed with the Ad Hoc Appointment Application.
- 3.4. A party that submits an Ad Hoc Appointment Application that does not comply with the requirements contained in these Ad Hoc Appointment Rules and the details needed on Form A1, may be asked to resubmit the Ad Hoc Appointment Application.

4. Request Fees

- 4.1. A request fee is payable to ACICA where a request for the appointment of a Third Party Neutral is made under these Ad Hoc Appointment Rules.
- 4.2. An Ad Hoc Appointment Application must be accompanied by payment of the appropriate request fee in the amount as specified in the Schedule of Fees for Appointment Only Matters available on the ACICA website.
- 4.3. The request fee is not refundable.
- 4.4. ACICA also charges administrative fees based on the time spent by the ACICA Secretariat in connection with the engagement. The relevant rates are set out in the Schedule of Fees for Appointment Only Matters available on the ACICA website.

5. Conflict Clearance by ACICA Executive

- 5.1. Prior to any consultation between the ACICA Secretariat and the ACICA Executive in relation to a particular appointment application, the ACICA Secretariat shall provide the members of the ACICA Executive with the identity of the parties and their representatives and a brief description of the dispute and request that each member of the ACICA Executive confirm whether or not they are conflicted from acting in relation to the appointment application.
- 5.2. Should any member of the ACICA Executive disclose a conflict, that member will be excluded from any correspondence, communication or discussion related to the relevant application. References to the involvement of the ACICA Executive in the Ad Hoc Appointment Rules is a reference to those

members of the ACICA Executive who have not disclosed any conflict in relation to the relevant appointment application.

6. Identification of Suitable Candidates

- 6.1. Unless ACICA exercises its discretion not to provide the services requested pursuant to subrule 2.5, as promptly as possible upon receipt of an Ad Hoc Appointment Application and any submissions received from the Respondent/s in accordance with subrule 3.3, the ACICA Executive shall identify suitable candidates for appointment pursuant to these Ad Hoc Appointment Rules, having regard to:
- (d) the nature of the dispute;
 - (e) the language of dispute;
 - (f) the availability of the potential Third Party Neutral;
 - (g) the identity of the parties;
 - (h) the independence and impartiality of the potential Third Party Neutral;
 - (i) any stipulation in the relevant dispute resolution clause (including any qualifications required of the potential Third Party Neutral);
 - (j) diversity and issues of equal representation, such as gender, age, geography, culture, ethnicity, and professional background of the potential Third Party Neutral;
 - (k) any suggestions and comments made by the parties;
 - (l) in the case of a sole or presiding Third Party Neutral, the advisability of appointing a Third Party Neutral of a nationality other than that of any of the parties; and
 - (m) any other matters that the ACICA Executive consider appropriate in the circumstances.
- 6.2. All correspondence between the members of the ACICA Executive in relation to the Ad Hoc Appointment Application shall be copied to the ACICA Secretariat (secretariat@acica.org.au).
- 6.3. Before appointment, a potential Third Party Neutral shall sign a statement of availability, impartiality and independence and return the same to ACICA. The potential Third Party Neutral shall disclose in writing to ACICA any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A Third Party Neutral, once appointed, and throughout the proceedings shall without delay disclose in writing such circumstances to the parties unless he or she has already informed them of these circumstances. A copy of any disclosure provided to a party by an appointed Third Party Neutral shall be sent to ACICA.
- 6.4. Any work undertaken by the ACICA Executive to recommend a prospective nominee remains confidential to ACICA.

7. Appointment to be made by ACICA Executive

- 7.1. Unless the parties have agreed to a procedure whereby they have expressly nominated a particular Office-Bearer (eg. the President) of ACICA or the ACICA Secretary-General to make an appointment, in which case Rule 8 applies, the ACICA Executive will determine the candidate to be appointed.
- 7.2. When the ACICA Executive decides to make an appointment, the ACICA Secretariat shall notify the parties of that appointment.

8. Appointments by ACICA Office-Bearer or Secretary-General

- 8.1. If the parties have expressly nominated a particular Office-Bearer (eg. the President) of ACICA or the ACICA Secretary-General to make an appointment, that Office-Bearer or the ACICA Secretary-General, as applicable, will consider the candidates identified by the ACICA Executive and shall:
 - (a) determine which of the suitable candidates to appoint, and make that appointment; or
 - (b) decline to appoint any of the candidates.
- 8.2. When the Office-Bearer or ACICA Secretary-General makes an appointment, the ACICA Secretariat shall notify the parties on behalf of the relevant Office-Bearer or the ACICA Secretary-General, as applicable, of the appointment.
- 8.3. Where the Office-Bearer or the ACICA Secretary-General declines to appoint any of the candidates identified under subrule 6.1, the ACICA Executive shall identify different candidates and these Ad Hoc Appointment Rules shall apply to those new candidates.
- 8.4. Should the Office-Bearer nominated by the parties to make an appointment disclose a conflict under Rule 5, an alternative Office-Bearer will be nominated by the ACICA Executive to make the appointment in their stead.

9. Decisions Made by the ACICA Executive

- 9.1. Decisions made by the ACICA Executive (including any Office-Bearer) or the ACICA Secretary-General with respect to all matters relating to the appointment shall be conclusive and binding upon the parties. ACICA shall not be required to give reasons for such decisions.
- 9.2. To the extent permitted by the applicable law, the parties shall be taken to have waived any right of appeal or review in respect of any such decisions made by ACICA to any State court or other judicial authority.
- 9.3. Neither ACICA nor its members, officers, servants or agents shall be liable for making any decision or taking any action under these Ad Hoc Appointment Rules, including where any such decision and/or action occurs after the Third Party Neutral has made any final determination, the parties agree on a settlement of the dispute, or the proceedings have terminated.

These Ad Hoc Appointment Rules were approved by the ACICA Board by resolution dated 29 May 2023.