



Australian Centre for International Commercial Arbitration

Appointment of Arbitrators Rules 2016

These Appointment Rules are effective on and from 1 July 2016 and apply to ad hoc appointments, appointments made under the UNCITRAL Arbitration Rules and the appointment of arbitrators under the *International Arbitration Act 1974* (Cth). The Appointment Rules do not apply to appointments made under the ACICA Arbitration Rules or ACICA Expedited Arbitration Rules.

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PART A. Interpretation and Application

1. Interpretation

1.1 These Rules shall be referred to as the ACICA Appointment of Arbitrators Rules 2016.

1.2 In these Rules, unless the context otherwise requires,

ACICA means the Australian Centre for International Commercial Arbitration;

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

ACICA Executive means the current office-bearers of ACICA;

Advisory Board means the Appointment Advisory Board established under Part C;

Appointment Application means the ACICA Form A together with all requisite additional documents required to be attached to Form A;

Appointment Committee means the ACICA Arbitrator Appointment Committee whose Terms of Reference are set out in Schedule 2;

Form A means the ACICA Form A - Application for the Appointment of an Arbitrator (available from the ACICA website [www.acica.org .au](http://www.acica.org.au));

Appointment Rules means these ACICA Appointment of Arbitrators Rules 2016; 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

These Appointment Rules apply to the appointment of arbitrators under,

ad hoc agreements;

International Arbitration Act 1974 (Cth), s 18(1)-(2);

UNCITRAL Model Law, arts 11(3)(a)-(b) and 11(4)(a)-(c);

UNCITRAL Arbitration Rules 1976, arts 6-7; and

UNCITRAL Arbitration Rules 2010, arts 8-10.

These Appointment Rules do not apply to the appointment of arbitrators under the ACICA Arbitration Rules or the ACICA Expedited Arbitration Rules.

PART B. ACICA Arbitrator Appointment Committee

3. Role of the Appointment Committee

- 3.1 The principal role of the Appointment Committee is to nominate an arbitrator or arbitrators in individual cases for consideration and approval by the ACICA Executive when ACICA is called upon to appoint an arbitrator or arbitrators in the circumstances outlined above in rule 2.
- 3.2 The role of the Appointment Committee is not limited to the function set out in subrule 3.1, but also extends to the matters set out in the Appointment Committee's Terms of Reference contained in Schedule 2.

PART C. Appointment Advisory Board

4. Constitution of the Appointment Advisory Board

- 4.1 The ACICA Executive shall establish an Appointment Advisory Board (Advisory Board) comprising one member nominated by each of the persons or organisations referred to in subrule 4.2 (if they wish to make a nomination), none of whom may be appointed as arbitrators by ACICA during his or her term of office.
- 4.2 The ACICA Executive shall invite the following to nominate one person each to be a member of the Advisory Board:
- (a) The Chief Justice of Australia
 - (b) The Attorney-General of the Commonwealth of Australia
 - (c) The Chief Justice of the Federal Court of Australia
 - (d) The President of the Australian Bar Association
 - (e) The President of the Law Council of Australia
 - (f) The Institute of Arbitrators and Mediators Australia
 - (g) The Chartered Institute of Arbitrators Australian Branch
 - (h) The Australian Industry Group
 - (i) The Minerals Council of Australia
 - (j) The Australian Maritime and Transport Arbitration Commission
- 4.3 The ACICA Executive shall appoint persons nominated under subrule 4.2 to the Advisory Board, for a term not exceeding 3 years.
- 4.4 The ACICA Executive may re-appoint a person to the Advisory Board, but not until 2 years have expired since that person was last a member of it.
- 4.5 Where there is a vacancy for any reason on the Advisory Board, the ACICA Executive may fill the vacancy by inviting a further nomination from the person or organisation that made the nomination under subrule 4.2 of the Advisory Board member who retires. Failing a nomination by that organisation or person, the ACICA Executive may invite another nomination by one of the other bodies listed in subrule rule 4.2. The Advisory Board may continue to function while there is a vacancy as long as it has at least 6 members.

PART D. Procedure for Appointment of Arbitrators

5. Application for Appointment of Arbitrators

- 5.1 Any party seeking the appointment of an arbitrator or arbitrators shall serve on ACICA a completed Form A (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 are true and accurate. All attachments required by Form A 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 good service. 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.
- 5.2 The party seeking the appointment of the arbitrator shall serve a copy of the completed Form A together with all requisite attachments (collectively, Appointment Application) on the other party or parties at their last known address and shall lodge with ACICA documentary verification of service. For the purposes of this subrule, registered post or courier delivery shall constitute good service.
- 5.3 A party that submits an Appointment Application that does not comply with the requirements contained in these Appointment Rules and the details needed on Form A, may be asked to resubmit the Appointment Application.

6. Appointment Fees

- 6.1 An appointment fee is payable to ACICA where a request for the appointment of an arbitrator is made under these Appointment Rules.
- 6.2 An Appointment Application must be accompanied by payment of the appropriate appointment fee in the amount as specified in Schedule 3 of these Appointment Rules. The fees specified in Schedule 3 are exclusive of any GST which may apply.
- 6.3 The appointment fee is not refundable.
- 6.4 Reference in these Appointment Rules to “AUD”, “dollars” or “\$” is to Australian currency.

7. Nomination of Suitable Persons by Appointment Committee

- 7.1 As promptly as possible upon receipt of an Appointment Application and any submissions received from the Respondent/s in respect of the Application within 10 days of the Respondent/s being served, the Appointment Committee shall nominate a suitable person or persons (where more than one arbitrator is to be appointed) for appointment pursuant to these Appointment Rules, having regard to:
- (a) the nature of the dispute;
 - (b) the language of arbitration;
 - (c) the availability of the potential arbitrator;
 - (d) the identity of the parties;
 - (e) the independence and impartiality of the potential arbitrator;

- (f) any stipulation in the relevant arbitration agreement (including any qualifications required by the arbitrator);
- (g) any suggestions and comments made by the parties;
- (h) in the case of a sole or presiding arbitrator, the advisability of appointing an arbitrator of a nationality other than that of any of the parties; and
- (i) any other matters that the Appointment Committee consider appropriate in the circumstances.

7.2 The Appointment Committee, or the Secretary-General of ACICA on its behalf, may contact a prospective nominee to ascertain whether that person is a suitable candidate for consideration for appointment.

7.3 Any work undertaken by the Appointment Committee to recommend a prospective nominee remains confidential to ACICA.

8. **Advisory Board to be Consulted**

8.1 After the Appointment Committee has nominated a suitable person or persons (if more than one arbitrator is to be appointed) in accordance with rule 7 above, ACICA must notify all members of the Advisory Board of the nomination(s). ACICA must seek the advice of at least three (3) available members of the Advisory Board on the suitability of the proposed nominee(s) to act as arbitrator(s) before the Appointment Application and the name(s) of the nominee(s) are submitted to the ACICA Executive.

8.2 The members of the Advisory Board shall be given at least 48 hours to provide their views or advice before the Appointment Application and the name(s) of the nominee are submitted to the ACICA Executive.

8.3 Any advice given by any member of the Advisory Board remains confidential to ACICA.

9. **Appointment to be made by ACICA Executive**

9.1 Before making an appointment of an arbitrator, ACICA shall allow the other party or parties to serve on ACICA any information they consider relevant to the Appointment Application, including reasons why no arbitrator should be appointed. Where no such information is served on ACICA within 10 days of the party being served under subrule 5.2, ACICA may proceed with the Appointment Application.

9.2 After the Advisory Board has been consulted under rule 8 above, the ACICA Executive shall consider, but is not bound by, the advice of the Advisory Board. The ACICA Executive shall decide to,

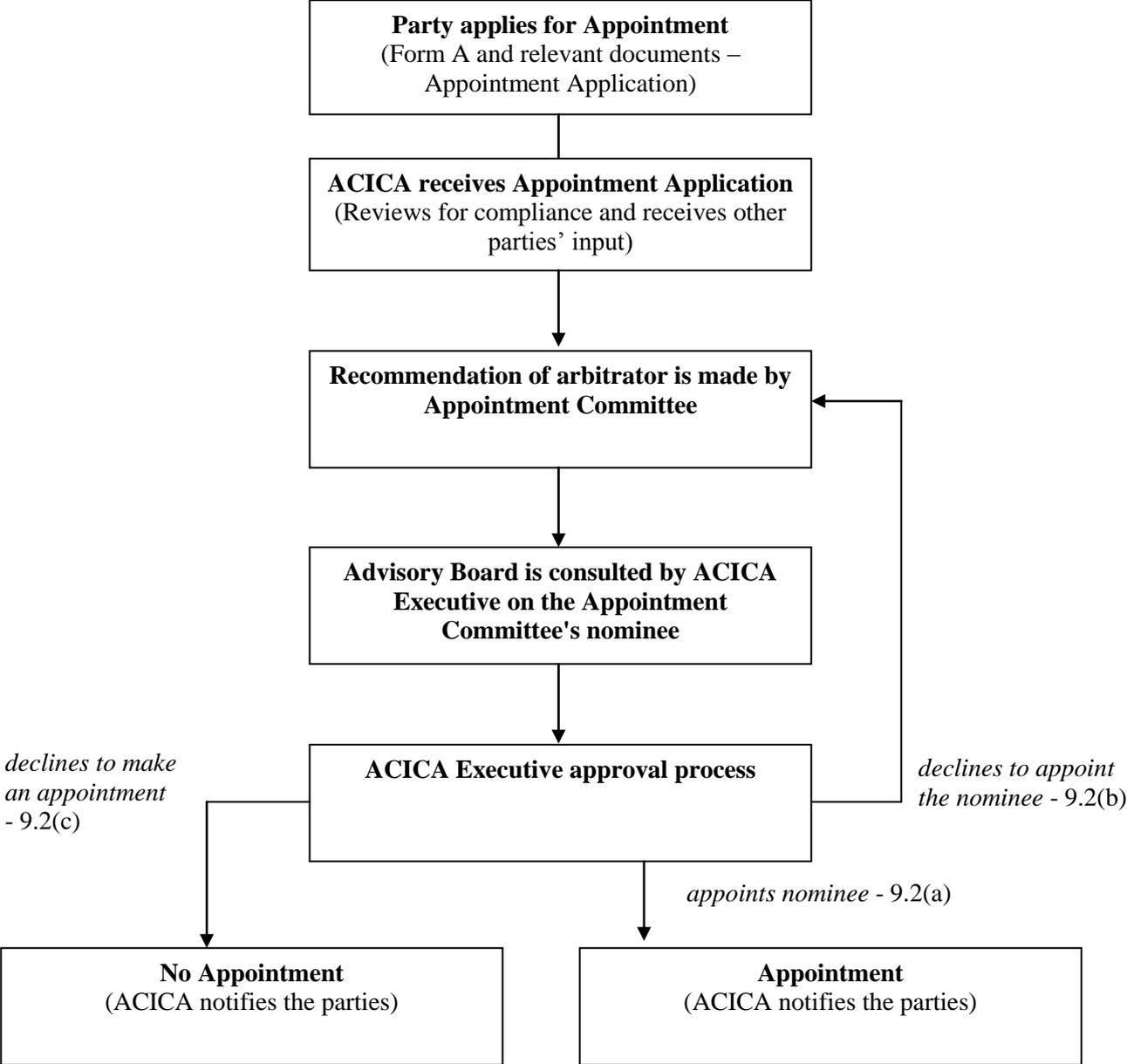
- (a) appoint the nominated person or persons; or
- (b) decline to appoint the nominated person or persons; or
- (c) decline to make an appointment if the ACICA Executive is not satisfied that an arbitrator should be appointed.

9.3 When the ACICA Executive decides to make an appointment or declines to make an appointment, it, or the Secretariat of ACICA on its behalf, shall notify the parties.

- 9.4 Where the ACICA Executive rejects the Appointment Committee's nomination(s) under subrule 9.2(b), the Appointment Committee shall be asked to nominate a different person or persons (where more than one arbitrator is to be appointed) and these Appointment Rules shall apply to that new nomination.
- 9.5 Decisions made by the ACICA Executive 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.

These Appointment of Arbitrators Rules were approved by the ACICA Board by resolution dated 2 March 2011 and updated by resolution dated 6 June 2016.

Schedule 1. Flowchart of Appointment Procedure



Schedule 2. ACICA Arbitrator Appointment Committee Terms of Reference

1. Aims of the Appointment Committee

1.1 The aims of the Appointment Committee are:

- (a) to advise the ACICA Executive and the ACICA Board where appropriate in respect of the matters and procedures in the discharge and performance of functions by ACICA—whether under these Appointment Rules, the *International Arbitration Act 1974* (Cth), the *International Arbitration Regulations 2011* (Cth), or any other applicable rules, procedures, laws or otherwise—in relation to the appointment of arbitrators; and
- (b) to nominate arbitrators in individual cases for consideration by the ACICA Executive, when ACICA is called to make an appointment to which the Appointment Rules apply.

2. Constitution of the Appointment Committee

2.1 The Appointment Committee is established as a committee of the Australian Centre for International Commercial Arbitration (ACICA) and these Terms of Reference are subject to the ACICA Constitution.

2.2 The Appointment Committee shall comprise of no more than nine (9) persons, composed of the following:

- (a) President of the ACICA Board;
- (b) No more than six (6) other members of the ACICA Board who are appointed by the ACICA Board to the Appointment Committee;
- (c) An independent member (who is not a member of the ACICA Board) who is appointed to the Appointment Committee by the ACICA Board; and
- (d) The Secretary-General of ACICA, as an ex officio member.

2.3 The ACICA Board shall have the power to fill a casual vacancy on the Appointment Committee due to the termination of office of a member appointed by the ACICA Board.

2.4 The Appointment Committee shall have a Chairperson. The Chairperson shall be appointed by the ACICA Board. The Chairperson shall be a member of the ACICA Board and shall be one of the members of the ACICA Board who are appointed to the Appointment Committee in accordance with paragraph 2.2(b).

2.5 The term of office of a member appointed by the ACICA Board, including the Chairperson, shall be 1 year, which may be renewed.

2.6 During their term of office, a member of the Appointment Committee shall not accept any appointment by the ACICA Board, or otherwise by ACICA, as an arbitrator in any arbitration, unless he or she is nominated by a party for appointment and there is no objection from the other party or parties.

3. Appointment Committee Meetings

3.1 The quorum at Appointment Committee meetings shall be three (3).

- 3.2 Any matter coming before the Appointment Committee which requires a vote shall be decided by a simple majority of those Appointment Committee members present and voting. Each member of the Appointment Committee shall be entitled to one vote on all matters requiring a vote at Appointment Committee meetings, save that the Chairperson of a meeting shall have the casting vote in the event of a tie.
- 3.3 The Chairperson or any one (1) member of the Appointment Committee may call for a meeting of the Appointment Committee. Members of the Appointment Committee shall be entitled to at least 24 hours' written notice of any Appointment Committee meeting, which notice may be subject to waiver by agreement of the Appointment Committee Members. Notice can be given by email.
- 3.4 The Chairperson shall preside over all meetings of the Appointment Committee at which the Chairperson is present and, in the absence of the Chairperson, the members of the Appointment Committee present shall elect from amongst themselves a person to chair the meeting.
- 3.5 The Chairperson of the Appointment Committee shall report to the ACICA Board from time to time on the activities of the Appointment Committee.
- 3.6 An Appointment Committee member shall be deemed to be present at a meeting of the Appointment Committee if he or she participates by telephone or other electronic means and all Appointment Committee members are able to hear each other.
- 3.7 Other than as provided for in these Terms of Reference, the Appointment Committee shall organise its meetings as it sees fit from time to time. The meetings and work of the Appointment Committee are confidential and may not be disclosed except for the purposes of these rules.
- 3.8 The Secretary-General of ACICA and his or her staff shall render administrative and secretarial assistance to the Appointment Committee.
- 3.9 The Secretary-General of ACICA, or in his or her absence, a member of the Appointment Committee, shall compile and maintain minutes and records of the Appointment Committee meetings.
- 3.10 In the event of any discrepancy between the ACICA Constitution and these Terms of Reference or any amendments, the ACICA Constitution shall prevail.
- 3.11 The Appointment Committee may at any time through the Secretary-General of ACICA, refer to the ACICA Board a proposal to revoke or amend these Terms of Reference, but such revocation or amendment shall not take effect unless and until approved by the ACICA Board. The ACICA Board reserves the right to revoke or amend these Terms of Reference on its own initiative at any time and in any manner it deems appropriate.
- 3.12 Any decision of the Appointment Committee is confidential and may only be disclosed as required by these rules.

Schedule 3. Fee Appointment Schedule

Number of Arbitrators	Appointment Fees
1 Arbitrator	AUD \$1,000
2 Arbitrators	AUD \$2,000
3 Arbitrators	AUD \$3,000

All fee amounts set out in this Schedule exclude GST (to the extent that it is payable). ACICA may gross up any payment for a taxable supply under its Rules on account of GST. ACICA reserves the right to recover GST from a party at a later date if the GST treatment of a supply is subsequently determined to be incorrect.

Any bank charges incurred on any transfer of funds by a party to ACICA shall be borne exclusively by the party transferring the funds.