



Australian Centre for International Commercial Arbitration (ACICA)

## ACICA's function as the Default Arbitrator Appointing Authority under the *International Arbitration Act 1974 (Cth)*

### Appointment of Arbitrators Rules 2011

#### ACICA

The Australian Centre for International Commercial Arbitration (ACICA) is Australia's only international arbitral institution. It is a not-for-profit company established in 1985. ACICA's mission is to educate, promote and encourage the use of international commercial arbitration as a means of dispute resolution within Australia and the Asia Pacific Region.

ACICA provides a range of administrative and other services to assist international arbitrations conducted within Australia and the region. For example, parties to an international arbitration may seek ACICA's assistance to determine the number of arbitrators to be appointed, to hold the arbitrators' fees in trust, to decide upon any challenges made to arbitrators and to appoint arbitrators when the parties cannot agree on a candidate.

ACICA is governed by a Board that is comprised of some of Australia's leading international arbitration practitioners. ACICA has five categories of membership. The first is corporate membership, which includes many of Australia's leading commercial law firms. The second is Fellow membership, made up of senior practitioners and arbitrators from within Australia and around the world. The third and fourth membership categories are Associates (persons practising in or interested in arbitration from Australia and overseas) and Special Members who are persons who have rendered special service to ACICA in the form of contributions to ACICA activities and education. The fifth membership category comprises general members who are all appointed by the ACICA Board and include representative members nominated from time to time by a number of specific people and bodies including the Attorney-General for the Commonwealth, the NSW Attorney-General, the Law Council of Australia, the Australian Bar Association, IAMA and the Chartered Institute of Arbitrators.

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ACICA has been prescribed—under Section 18(1) and (2) of the *International Arbitration Act 1974 (Cth)* (the **Act**) — as the authority competent to perform the arbitrator appointment functions under the Act.

## **Summary of ACICA Appointment of Arbitrators Rules**

The ACICA Appointment of Arbitrators Rules 2011 (the **Appointment Rules**), adopted by ACICA on 2 March 2011, establish a streamlined process through which a party can apply to have an arbitrator appointed to a dispute seated in Australia. The following is a summary of the appointment procedure. A flowchart of the appointment process appears at the end of the summary. ACICA has ensured that the process can happen efficiently and that a nomination can be made without delay.

### **Step 1 – Party submits application form**

A party completes an application form available on the ACICA website and sends it to ACICA and the other parties to the arbitration in accordance with a prescribed procedure along with all relevant documents and payment of the prescribed fee (the **Appointment Application**). Any other party to the proceedings has at least 10 days before any appointment is made to serve any information on ACICA which it considers relevant, including reasons why no appointment should be made, or why no person or class of persons should be appointed. The costs payable to ACICA for the appointment is AUD \$1000 per arbitrator (inclusive of GST).

### **Step 2 – The matter is considered by the Appointment Committee**

ACICA has established an Appointment Committee, made up of ACICA's President, ACICA's Secretary-General (ex officio) and up to six members of ACICA's Board as well as an independent member. This Appointment Committee operates under a terms of reference set out in Schedule 2 to the Appointment Rules. Membership of the Committee is for a one year term which is renewable. The Committee has a Chairperson and meetings are organised to conduct Committee business. Minutes and records of the meetings are kept, though the meetings and work of the Appointment Committee are confidential and may not be disclosed except for the purposes of the Appointment Rules. The Secretary-General of ACICA and his or her staff provide administrative and secretarial assistance to the Appointment Committee.

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.

The Appointment Committee receives the Appointment Application that has been submitted and considers the request.

### **Step 3 - The Appointment Committee recommends a nominee**

The Appointment Committee recommends a nominee to be appointed, having regard to a range of factors including the nature of the dispute, the availability of an arbitrator, the independence and impartiality of an arbitrator, the identity of the parties and any suggestions made by the parties.

The nominee is chosen from an arbitrator pool which ACICA has established and maintains, made up of its own panel of Fellows as well as other arbitrators from Australia and around the world with relevant experience and expertise. This will be regularly updated and added to.

ACICA has ensured that selecting an appropriate arbitrator will involve choosing from a large pool of candidates, including as mentioned from outside the Australian jurisdiction. ACICA will use the in-depth knowledge the Appointment Committee members have of the arbitration community within and beyond Australia's borders. Consideration is given in each instance to a candidate's availability, expertise, experience, reputation, qualifications, location and language skills as well as any other matters considered relevant by ACICA or highlighted by parties in their Appointment Application(s).

#### **Step 4 - Appointment Advisory Board is consulted**

The Appointment Advisory Board is made up of independent nominees of the Federal Attorney-General, the Chief Justice of Australia, the Chief Justice of the Federal Court, the President of the Australian Bar Association, the President of the Law Council of Australia, the Institute of Arbitrators and Mediators Australia, the Chartered Institute of Arbitrators Australia Branch and a number of industry bodies (namely the Australian Industry Group, the Minerals Council of Australia and the Australian Maritime and Transport Arbitration Commission).

All members of the Advisory Board are notified of the Appointment Committee's nomination and have the opportunity within a specified time of the nomination to give advice to ACICA on the nominee's suitability. At least three (3) available members of the Advisory Board must advise on the nominee before the Appointment Application and the name of the nominee are submitted to the ACICA Executive. Any advice given by any member of the Advisory Board is given and used solely for the purposes of a specific application under the Appointment Rules and remains confidential to ACICA.

#### **Step 5 - ACICA Executive decides whether to make an appointment and whether to appoint the nominee**

The ACICA Executive (comprised of ACICA's office-bearers – President, 3 Vice-Presidents and Treasurer) decides whether to appoint the nominee, taking into consideration the non-binding advice given by the Advisory Board.

In circumstances where the ACICA Executive declines to appoint the nominee, the Appointment Committee will, if appropriate, be asked to nominate a new candidate and the process will repeat in accordance with the Appointment Rules until a nominee is appointed. The ACICA Executive may also decline to make an appointment if it is not satisfied that an arbitrator should be appointed. When the ACICA Executive decides to make an appointment or declines to make an appointment, it shall notify the parties. In the case of an appointment, it shall issue an Appointment Certificate.

March 2011

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## Flowchart of ACICA Arbitrator Appointment Procedure under the Appointment of Arbitrators Rules 2011

