



Nairobi Centre
for International
Arbitration

where disputes meet resolution



NCIA Tribunal Secretary Guidelines 2023

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NCIA TRIBUNAL SECRETARY GUIDELINES

April 2023

1. Scope of Application and General Provisions

- 1.1 These Guidelines can be adopted by parties to arbitrations administered by NCIA under the NCIA Arbitration Rules, 2015 and its amendments from time to time or the UNCITRAL Arbitration Rules. Parties who wish to adopt these Guidelines in other cases may do so after consultation with the NCIA.
- 1.2 The Guidelines do not apply to the Emergency Arbitrator Procedures applicable pursuant to Rule 28 and the Second Schedule of the NCIA Arbitration Rules, 2015 and its amendments from time to time.
- 1.3 NCIA may interpret the terms as well as the scope of application of these Guidelines as it considers appropriate.
- 1.4 Where a Tribunal Secretary is appointed by an Arbitral Tribunal under these Guidelines, the Tribunal and the Tribunal Secretary undertake to comply with the provisions set out below, subject to paragraph 1.5.
- 1.5 In the event of any discrepancy or inconsistency between these Guidelines and any contrary provisions of the parties' arbitration agreement or mandatory provisions of the applicable law, those provisions shall prevail.

2. Appointment and removal of a secretary

- 2.1 An arbitral tribunal may appoint or remove a tribunal secretary at any stage of the arbitration upon consultation with the parties.
- 2.2 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.

2.3 Prior to his or her appointment, a proposed Tribunal Secretary shall

- a) sign a declaration confirming his or her availability to assist the arbitral tribunal, and his or her impartiality and independence (the “Declaration”);
- b) disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. The Declaration shall be as provided in Form A of these Guidelines; and
- c) Sign an Undertaking (the “Undertaking”) to abide by the requirements of the NCIA Arbitration Rules (2015), these Guidelines and their amendments from time to time and any other terms as may be required by the NCIA. The Undertaking shall be as provided in Form B of these Guidelines.

2.4 Before appointing a Tribunal Secretary, an arbitral tribunal shall inform the parties of its proposal to do so and shall advise the parties of their right to accept or object to such proposal. For this purpose, the arbitral tribunal shall disclose the identity of the proposed secretary and send to the parties the following documents for their consideration, unless the parties agree otherwise:

- a) the proposed secretary’s curriculum vitae;
- b) the Declaration;
- c) The Undertaking; and
- d) a copy of these Guidelines.

2.5 Subject to the Parties’ concurrence or none thereof, the arbitral tribunal may appoint the proposed Tribunal Secretary.

- 2.6 The appointment of a tribunal secretary becomes effective at the time the notice of the appointment is received by all parties to the arbitration (excluding any additional parties added to the arbitration subsequently) and notified to the NCIA.
- 2.7. Once a tribunal secretary is appointed, a party who intends to raise an objection with respect to the secretary's impartiality or independence, shall send a notice of its objection within 15 days after that party becomes aware or ought reasonably to have become aware of the circumstances mentioned in paragraph 2.3(b).
- 2.8. The objection shall be notified to the arbitral tribunal, the tribunal secretary, NCIA, and all other parties. The notification shall be in writing and shall state the reasons for the objection.
- 2.9. The arbitral tribunal shall, after consulting with all the parties, promptly decide the objection. The arbitral tribunal is not required to give reasons for its decision. If the objection is sustained, the Tribunal Secretary shall be released from appointment. Pending the determination of the objection, the arbitral tribunal may continue the arbitration. The tribunal secretary shall not undertake any work in relation to the determination of the objection.
- 2.10. A tribunal secretary shall be subject to the same standards of impartiality and independence as the arbitral tribunal. Should any circumstances arise in the course of the arbitration which give rise to justifiable doubts as to the tribunal secretary's impartiality or independence, the tribunal secretary shall promptly disclose such circumstances to the parties and the arbitral tribunal. If a party raises an objection on the basis of the disclosure, the procedure set out in paragraphs 2.6-2.8 shall apply.

2.11. Where two or more arbitrations are consolidated pursuant to Rule 17 of the NCIA Arbitration Rules, 2015 and its amendments from time to time, the arbitral tribunal in the consolidated proceedings may, after concurrence of all the parties, continue the appointment of any existing tribunal secretary or appoint a new tribunal secretary.

3. Duties

3.1. A tribunal secretary shall act upon the arbitral tribunal's instructions and under its strict supervision. A tribunal secretary shall not exceed the scope of the duties assigned to him or her. The arbitral tribunal shall, at all times, be responsible for the Tribunal Secretary's conduct in connection with the arbitration.

3.2. The arbitral tribunal shall not delegate any decision-making functions to a tribunal secretary or rely on a tribunal secretary to perform any essential duties of the tribunal.

3.3. Unless the arbitral tribunal directs otherwise, a tribunal secretary may perform organizational and administrative duties including, but not limited to, the following:

- a) transmitting documents and communications on behalf of the arbitral tribunal;
- b) organizing and maintaining the arbitral tribunal's files and locating documents;
- c) organizing hearings and meetings;
- d) attending hearings and meetings;
- e) taking notes or minutes or keeping time;
- f) proofreading and checking citations, dates and cross-references in procedural orders, directions, and awards, as well as correcting typographical, grammatical or calculation errors;

- g) preparing, collecting, and transmitting the arbitral tribunal's invoices; and
- h) handling all other organizational and administrative matters which do not fall into the scope of responsibilities of the NCIA.

3.4. Unless the parties agree or the arbitral tribunal directs otherwise, a tribunal secretary may provide the following assistance to the arbitral tribunal, provided that the arbitral tribunal ensures that the secretary does not perform any decision-making function or otherwise influence the arbitral tribunal's decisions in any manner:

- a) conducting legal or similar research i.e., collecting case law or published commentaries on legal issues defined by the arbitral tribunal, and checking on legal authorities cited by the parties to ensure that they are the latest authorities on the subject matter of the parties' submissions;
- b) researching discrete questions relating to factual evidence and witness testimony;
- c) preparing summaries from case law and publications as well as producing memoranda summarizing the parties' respective submissions and evidence;
- d) locating and assembling relevant factual materials from the records as instructed by the arbitral tribunal;
- e) attending the arbitral tribunal's deliberations and taking notes; and
- f) preparing drafts of non-substantive letters for the arbitral tribunal and non-substantive parts of the tribunal's orders, decisions and awards (such as procedural histories and chronologies of events).

- 3.5. A tribunal secretary shall not have any ex parte communication with any party and shall not act in a manner that may prevent communication between the parties and the tribunal unless the arbitral tribunal directs otherwise.
- 3.6. A request by the arbitral tribunal to a tribunal secretary to prepare notes, memoranda or drafts shall in no circumstances release the arbitral tribunal from its duty personally to review the relevant files and materials, and to draft any substantive parts of its orders, decisions, and awards.
- 3.7. A tribunal secretary is under an obligation to maintain the confidentiality of the arbitration and any decisions made by the arbitral tribunal.
- 3.8. A tribunal secretary shall not be liable for any act or omission in connection with the arbitration, save where such act was done or omitted to be done dishonestly. A tribunal secretary shall not be under any obligation to make statements to any persons about any matter concerning the arbitration, nor shall a party seek to make the secretary a party or witness in any legal or other proceedings arising out of the arbitration.

4. Remuneration- Cost and Expenses

- 4.1. The Tribunal Secretary's fees and expenses shall be determined in accordance with the NCIA Arbitration Rules, 2015, and its amendments from time to time.
- 4.2. NCIA shall, in consultation with the arbitral tribunal take into account the likely fees and expenses of the tribunal secretary when requesting from the Parties a deposit for an advance on costs.
- 4.3. 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.

- 4.4. 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 NCIA from funds deposited by the parties on instruction from the arbitral tribunal.
- 4.5. A tribunal secretary should provide a record of their time spent on tasks in a matter and evidence all expenses with receipts. The fees and expenses of a tribunal secretary shall be determined by the Centre in accordance with the NCIA Arbitration Rules, 2015, and its amendments from time to time, and any controversies or disputes with respect to the tribunal secretary's fees or expenses shall be determined by the NCIA. The decision of the NCIA shall be final.

FORM A

FORM A

TRIBUNAL SECRETARY'S DECLARATION OF ACCEPTANCE AND STATEMENT OF AVAILABILITY, IMPARTIALITY, AND INDEPENDENCE.

(Please check the relevant box or boxes)

I, the undersigned,

Last Name: _____

First Name: _____

NON-ACCEPTANCE: I declare that I decline to serve as tribunal secretary in the above-referenced case.¹

ACCEPTANCE ²:

Acceptance without Disclosure

I declare that I accept to serve as tribunal secretary under NCIA's Tribunal Secretary Guidelines (the "Guidelines") in the above-referenced case. I am impartial and independent with respect to each of the parties and any third parties relevant for present purposes and intend to remain so. To the best of my knowledge, there are no facts or circumstances, past or present, which need to be disclosed because they are likely to give rise to justifiable doubts as to my impartiality or independence. I also acknowledge an ongoing duty incumbent on me throughout the arbitration, to disclose, without delay, any circumstances likely to give rise to justifiable doubts as to my impartiality or independence.

Acceptance with Disclosure

I declare that I accept to serve as tribunal secretary under the Guidelines in the above-referenced case. I am impartial and independent with respect to each of the parties and any third parties relevant for present purposes and

intend to remain so. However, in consideration of paragraph 2.2(b) of the Guidelines, I wish to disclose the following facts and circumstances on the attached sheet because they might be of such a nature as to give rise to justifiable doubts as to my impartiality or independence. I also acknowledge an ongoing duty incumbent on me throughout the arbitration, to disclose, without delay, any new circumstances likely to give rise to justifiable doubts as to my impartiality or independence.

Declaration of Availability

I confirm that I have familiarized myself with the requirements of the Guidelines and that I am available to serve in accordance with those requirements. In particular, I confirm that my schedule is such that I will be able to devote sufficient time to assist the arbitral tribunal in accordance with the Guidelines.

Fees and Method of Determining Tribunal Secretary’s Fees

I agree to be bound by the fees and method of determining the tribunal secretary’s fees specified in the NCIA Arbitration Rules, 2015, and its amendments from time to time and the Guidelines.

Signature: _____

Date: _____

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1. If you wish to state the reasons for checking this box, please do so using a separate sheet.
 2. If you accept to serve as tribunal secretary, please check one of the following boxes. The choice of which box to check will be determined based on whether any circumstance or relationship—past or present, direct or indirect—with any of the parties or their counsel, third parties including any related entities or other representatives, whether financial, professional or of another kind, and whether the nature of any such circumstance or relationship is such that disclosure is called for pursuant to the criteria set out in paragraph 2.2(b) of the Guidelines. Please note that soft law instruments issued by any institution or body other than NCIA may not be identical to the disclosure standards under the Guidelines, and that any doubt should be resolved in favour of disclosure.





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