

# Swiss Arbitration Centre

## Guidelines for Arbitrators

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## **SECRETARIES (ARTICLE 16(3) SWISS RULES)**

### **Article 1**

1. The arbitral tribunal<sup>1</sup> may, after consulting the parties, appoint a secretary (Article 16(3) Swiss Rules). The arbitral tribunal shall ensure that any secretary meets the same requirements of independence and impartiality as imposed upon the arbitrators under Article 12 Swiss Rules.

2. If the arbitral tribunal intends to appoint a secretary, it should address this with the parties as early as possible in the proceedings. Before the arbitral tribunal appoints a secretary, the arbitral tribunal shall submit to the parties the proposed secretary's *curriculum vitae* and a declaration of independence and impartiality disclosing any circumstances likely to give rise to justifiable doubts as to the secretary's impartiality or independence.

3. The arbitral tribunal shall make clear to the parties that they may object to its proposal for appointment of a secretary and clarify that a secretary shall not be appointed if a party raises an objection.

4. When proposing the appointment of a secretary, the arbitral tribunal shall also inform the parties of the proposed tasks to be carried out by the secretary.

5. As with the appointment of the secretary, the arbitral tribunal shall make clear to the parties that they may object to the proposed tasks of the secretary, and that the secretary may not carry out such tasks if a party has raised an objection.

6. The secretary acts upon the arbitral tribunal's instructions and under its supervision. The arbitral tribunal shall be responsible for the secretary's conduct in relation to the arbitration proceedings.

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

8. The arbitral tribunal may remove the secretary at its discretion.

9. Articles 12 and 13 Swiss Rules on challenge of arbitrators apply to secretaries.

10. If the secretary is removed, the arbitral tribunal may replace the secretary with another individual, in accordance with this Section 1.

11. The secretary's fees form part of those of the arbitral tribunal (Articles 38(a), 39, and Appendix B Section 6 Swiss Rules) and shall not be considered as expenses of the arbitral tribunal or costs of other assistance required by the arbitral tribunal (Article 38(b+c) Swiss Rules). Thus, when requesting deposits as an advance for the costs under Article 41 Swiss Rules and when determining the amount of the arbitral tribunal's fees under Articles 38 and 39(5) Swiss Rules, the arbitral tribunal shall be careful to ensure that the appointment of a secretary does not increase the overall fees payable by the parties.

12. The secretary's reasonable expenses shall be reimbursed in accordance with the Guidelines for Accounting of Expenses set out in Section 4 below.

## **CONDUCT OF THE ARBITRATION PROCEEDINGS**

### **Article 2**

1. In accordance with Article 16(1) Swiss Rules, the arbitral tribunal shall make every effort to contribute to the efficient conduct of the arbitration proceedings and avoid unnecessary costs and delays. Absent exceptional circumstances, the Swiss Arbitration Centre expects the arbitral tribunal to render its final award within 3 months after the filing of the last submission on the merits in the proceedings (e.g. post-hearing briefs or closing arguments, excluding submissions on costs).

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1. The wording "arbitral tribunal" also applies when appropriate to the sole arbitrator or the emergency arbitrator.

2. Within 10 days of the last submission on the merits, the arbitral tribunal shall inform the Secretariat of the date by which it expects to render its final award. The arbitral tribunal shall furthermore promptly inform the Secretariat of any exceptional circumstances that would warrant a longer period of time for the rendering of any award with an indication of the expected date of completion.

3. Any undue delay in the rendering of an award may be taken into account by the Court in accordance with Article 39(1) when reviewing the determination on costs pursuant to Article 39(5) Swiss Rules.

## **DEPOSITS AS AN ADVANCE FOR COSTS (ARTICLE 41 SWISS RULES)**

### **Article 3**

1. Under Article 41 Swiss Rules, the arbitral tribunal, once constituted, and after consulting with the Court, is responsible for requesting deposits for the advance costs.

2. The request for deposits shall be made promptly after the transmission of the file to the arbitral tribunal, and the arbitral tribunal may wish to inform the parties that it may not proceed with the arbitration if payment of the deposits is not made within the time limits set in accordance with Article 41(4) Swiss Rules.

3. After consulting with the Court, the arbitral tribunal shall ensure that it requests any supplementary deposits as soon as it becomes aware of circumstances that so justify.

4. When requesting a deposit or supplementary deposit of costs under Article 41 Swiss Rules, the arbitral tribunal shall ensure at all times that such deposit or supplementary deposit includes any Administrative Costs referred to in Article 38(f) Swiss Rules (cf. also Appendix B Section 6 Swiss Rules).

5. Before the Court's review of the determination of costs pursuant to Article 39(5) Swiss Rules, the Secretariat may invite the arbitral tribunal to request additional deposits from the parties if it should turn out that the deposits made by the parties so far do not sufficiently cover the costs referred to in Articles 38(a) to (c) Swiss Rules and/or the Administrative Costs referred to in Article 38(f) Swiss Rules.

## **GUIDELINES FOR ACCOUNTING OF EXPENSES (APPENDIX B SECTION 3 SWISS RULES)**

### **Article 4**

1. The arbitrators may recover from the parties such expenses as are reasonably incurred in connection with the arbitration (Article 39(1) Swiss Rules).

2. Arbitrators' expenses are deemed reasonable if they comply with the following guidelines.

3. When submitting a draft pursuant to Articles 39(5)/43(9) Swiss Rules for the purpose of approval or adjustment by the Court of the determination on costs, the following guidelines apply regarding the cost items listed in Article 38(b), (c) and (g) Swiss Rules:

- (a) The following **actual costs** shall only be reimbursable **against receipts** or other proper substantiation if receipts are unavailable:
- i. If required to travel for the purpose of the arbitration, an arbitrator or secretary shall be reimbursed for actual travel expenses that he or she has incurred by travelling from and returning to his or her usual place of business as indicated on the *curriculum vitae* submitted at the beginning of the arbitration proceedings. The following travel expenses shall be considered reasonable:
    - Air travel: the applicable standard economy or business class airfare, as appropriate in the circumstances.
    - Rail travel: the applicable first class train fare.
    - Transport to and from the airport or train station: the applicable standard taxi fare.
    - Travel by private car: a flat rate of CHF 0.80 per kilometer, plus all necessary parking and toll charges incurred.

- ii. Hearing costs (rental of hearing rooms, equipment, telephone and video conferences, etc.);
  - iii. Interpreter, court reporter, and translation services;
  - iv. Courier; and
  - v. Fees and expenses of any expert appointed by the arbitral tribunal.
- (b) General **office expenses and overhead** such as fax, postage, telephone and clerical assistance incurred in the ordinary course of business by an arbitrator or secretary in connection with the arbitration proceedings are not reimbursable.
- (c) In addition to travel expenses, a member of the arbitral tribunal is entitled to a **flat-rate per diem allowance** deemed to cover all personal living expenses (hotel, meals, inter-city taxi fares) for every day that he or she is required to spend outside of his or her usual place of business as indicated on the curriculum vitae submitted at the beginning of the arbitration.
- i. If the arbitrator is not required to use overnight hotel accommodation, a flat-rate *per diem* allowance of CHF 300 shall be considered reasonable.
  - ii. If the arbitrator is required to use overnight hotel accommodation, a flat rate *per diem* allowance of CHF 800 shall be considered reasonable.
  - iii. The arbitrator shall state the purpose of the stay (procedural hearing, main or evidentiary hearing, deliberations etc.) and the number of days and nights spent for the hearing or deliberations.
  - iv. Submission of receipts is not required in order to claim the *per diem* allowance.
  - v. Costs exceeding the allowance are not reimbursed, unless the parties agree otherwise.
  - vi. The allowance is not subject to VAT.
- (d) All reasonable expenses of the secretary shall be reimbursed upon submission of receipts together with an explanation of the reasons for the expenses incurred.
- (e) All other costs are at the arbitral tribunal's own expense.

4. An emergency arbitrator requested by one or more parties to incur substantial expenses (such as for travel and accommodation, use of video conferencing facilities, retaining of expert advice or other assistance) may request the Applicant of the emergency relief proceedings and/or the party/parties requesting the expense to be incurred to directly pay the requested service provider (airline, travel agent, hotel, [video] conference service provider). Failing such payment the emergency arbitrator is not under an obligation to incur the requested expenses.

5. No expenses or costs of assistance can be approved after a final award, decision on an application for emergency relief, termination order, or decision pursuant to Article 37 Swiss Rules has been rendered.

## **FEES OF THE ARBITRAL TRIBUNAL (ARTICLES 38(A), 39, AND APPENDIX B SWISS RULES)**

### **Article 5**

1. The fees of the arbitral tribunal must be reasonable in amount, taking into account the criteria listed in Article 39(1) Swiss Rules including the time spent. The determination of its fees by the arbitral tribunal itself (Article 38(a) Swiss Rules) is subject to approval or adjustment by the Court, and any such approval or adjustment is binding on the arbitral tribunal (Article 39(5) Swiss Rules).

2. Each member of the arbitral tribunal is under a duty to record his or her time spent from the moment the file is transmitted (Appendix B Section 2.5 Swiss Rules) and to report such time when the arbitral tribunal is either (i) consulting with the Court with regard to a request for (supplementary) deposits (Article 41(1+3) Swiss Rules), (ii) requesting an advance payment of fees (Appendix B Section 4.4 Swiss Rules) or (iii) when submitting a draft pursuant to Articles 39(5)/43(9) Swiss Rules for the purpose of approval or adjustment by the Court of its fees.

3. Fee arrangements agreed between the parties and the arbitral tribunal remain subject to the binding approval or adjustment by the Court under Article 39(5) Swiss Rules. Separate fee arrangements between the parties and the

arbitral tribunal resulting in payment of fees beyond those approved or adjusted by the Court are contrary to the Swiss Rules.

4. No fees can be approved after a final award, decision on an application for emergency relief, termination order, or decision pursuant to Article 37 Swiss Rules has been rendered.

#### **ADVANCE PAYMENTS (APPENDIX B SECTION 4.4)**

##### **Article 6**

1. Prior to the rendering of the final award, part of the deposits may be released, with the approval of the Court, to an arbitrator as an advance on compensation for expenses or for costs of assistance (Article 38(b+c) Swiss Rules), if the accrued unpaid expenses and/or costs of the arbitrator exceed CHF 1,000 or the equivalent amount in another currency.

2. In principle, advance payments of fees (Article 38(a) Swiss Rules) are only approved by the Court once significant steps in the arbitration have been achieved. However, the Court may also consider other relevant circumstances justifying the release of parts of the deposits, including but not limited to the time passed since the constitution of the arbitral tribunal. As a rule, such payments shall not exceed 50% of the deposits paid by the parties, unless particular circumstances justify departing from this principle.

3. As a rule, no advance payments on fees, costs or expenses are approved in Expedited Procedures (Article 42 Swiss Rules) or emergency relief proceedings (Article 43 Swiss Rules).

#### **PAYMENTS TO REPLACED OR FORMER ARBITRATORS**

##### **Article 7**

If an arbitrator is replaced or if Article 15(2)(b) Swiss Rules applies, the newly constituted arbitral tribunal is to determine the fees and expenses of the replaced or former arbitrator in a future award or termination order in which it determines its own fees and expenses in accordance with Articles 38(a-c), 39, and Appendix B Swiss Rules. The replaced or former arbitrator has no entitlement to receive payment of fees and expenses or an advance on costs pursuant to Appendix B Section 4.4 Swiss Rules prior to any remaining or replacement arbitrator.