



GUIDELINES ON THE USE OF A SECRETARY TO THE ARBITRAL TRIBUNAL

Effective 1 June 2014

1 Scope of Application and General Provisions

- 1.1 These Guidelines can be adopted by parties to arbitrations administered by HKIAC under the HKIAC Administered Arbitration Rules (the “**Administered Rules**”) or the UNCITRAL Arbitration Rules. Parties who wish to adopt these Guidelines in other cases may do so after consultation with HKIAC.
- 1.2 The Guidelines do not apply to the Emergency Arbitrator Procedures applicable pursuant to Article 23.1 and Schedule 4 of the 2013 HKIAC Administered Arbitration Rules (the “**2013 Administered Rules**”).
- 1.3 HKIAC may interpret the terms as well as the scope of application of these Guidelines as it considers appropriate.
- 1.4 Where a secretary is appointed by an arbitral tribunal under these Guidelines, the tribunal and 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, after consulting with the parties, appoint or remove a secretary at any stage of the arbitration. The arbitral tribunal shall select an appropriate candidate at its own discretion taking into account the circumstances of the case.
- 2.2 Prior to his or her appointment, a proposed 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**”); and (b) disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A blank form of the Declaration is attached.
- 2.3 Before appointing a secretary, an arbitral tribunal shall inform the parties of its proposal to do so. For this purpose, the arbitral tribunal shall disclose the identity of the proposed secretary and send to the parties the following documents for their comments, unless the parties agree otherwise:
 - (a) the proposed secretary’s curriculum vitae;
 - (b) the Declaration; and



- (c) a copy of these Guidelines.
- 2.4 After receiving and considering the parties' comments pursuant to paragraph 2.3, the arbitral tribunal may appoint the proposed secretary.
- 2.5 A member of the HKIAC Secretariat may be appointed as a tribunal secretary subject to confirmation regarding his or her availability, impartiality and independence in accordance with paragraph 2.2. Such Secretariat member shall not act as a case manager in the same arbitration.
- 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). The appointment of a tribunal secretary from the HKIAC Secretariat requires confirmation by HKIAC. The appointment of any other tribunal secretary does not require such confirmation.
- 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 the appointment of the secretary has been notified to the objecting party, or within 15 days after that party becomes aware or ought reasonably to have become aware of the circumstances mentioned in paragraph 2.2(b).
- 2.8 The objection shall be notified to the arbitral tribunal, the tribunal secretary, HKIAC, 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 to its decision. If the objection is sustained, the 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 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 2.7-2.9 shall apply.
- 2.11 Where two or more arbitrations are consolidated pursuant to Article 28 of the 2013 Administered Rules, the arbitral tribunal in the consolidated proceedings may, after consulting with 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 tasks assigned to him or



her. The arbitral tribunal shall, at all times, be responsible for the 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 organisational and administrative tasks including, but not limited to, the following:
- (a) transmitting documents and communications on behalf of the arbitral tribunal;
 - (b) organising and maintaining the arbitral tribunal's files and locating documents;
 - (c) organising hearings and meetings;
 - (d) attending hearings and meetings; taking notes or minutes or keeping time;
 - (e) proofreading and checking citations, dates and cross-references in procedural orders, directions, and awards, as well as correcting typographical, grammatical or calculation errors;
 - (f) preparing, collecting and transmitting the arbitral tribunal's invoices; and
 - (g) handling all other organisational and administrative matters which do not fall into the scope of responsibilities of HKIAC.
- 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; collecting case law or published commentaries on legal issues defined by the arbitral tribunal; 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 summarising 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 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 unless the parties agree otherwise.
- 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 person 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

- 4.1 The arbitral tribunal shall determine the total fees and expenses of a tribunal secretary upon consultation with the parties. Where a tribunal secretary is removed, the arbitral tribunal shall decide the amount of fees and expenses payable for the removed secretary's services (if any), having taken into account the circumstances of the case.
- 4.2 Where the fees of the arbitral tribunal are determined based on hourly rates, a tribunal secretary shall be remunerated at an hourly rate. The secretary's fees and expenses shall be charged separately and shall not form part of the arbitral tribunal's fees.
- 4.3 Where the fees of the arbitral tribunal are determined based on the amount in dispute, fees of a tribunal secretary shall form part of the arbitral tribunal's fees. Where the arbitral tribunal is composed of three arbitrators, the fees of a tribunal secretary shall in principle be shared equally among the members of the arbitral tribunal, unless the tribunal decides otherwise.
- 4.4 HKIAC may take into account a tribunal secretary's likely fees and expenses when fixing an advance on the costs of the arbitration.
- 4.5 A tribunal secretary's reasonable expenses shall be borne by the parties and reimbursed in accordance with paragraphs 4.6 to 4.9 below.
- 4.6 A tribunal secretary required to travel outside his or her usual place of residence or business for the purpose of the arbitration shall:
 - (a) be reimbursed at cost for expenses he or she reasonably incurs travelling from and returning to his or her usual place of residence or business, including *inter alia* airfares, train fares, transport to and from an airport or train station, upon receipt and verification by HKIAC of supporting invoices or receipts. The reimbursement of the cost of air travel shall be limited to flexible economy or business class fares; and



- (b) be paid a *per diem* allowance of HK \$4,500, where he or she is required to use overnight accommodation, or of HK \$500, where he or she is not required to use overnight accommodation. The expenses covered by the *per diem* allowance include the following items, which will not be reimbursed at cost:
 - (i) hotel accommodation (if applicable);
 - (ii) meals and beverages;
 - (iii) laundry, dry cleaning, ironing and other housekeeping services;
 - (iv) inner-city transport (excluding travel to and from an airport or train station);
 - (v) communication costs (telephone calls, faxes, internet, post etc); and
 - (vi) gratuities.

A secretary is not required to submit receipts or invoices in order to claim the *per diem* allowance. Evidence of travel for the purpose of the arbitration is sufficient.

- 4.7 A tribunal secretary not required to travel outside his or her usual place of residence or business for the purpose of the arbitration shall be reimbursed at cost for expenses he or she reasonably incurs:
- (a) on inner-city transport travelling from and returning to his or her usual place of residence or business; and
 - (b) purchasing meals and beverages;
- upon receipt and verification by HKIAC of supporting invoices or receipts.
- 4.8 A tribunal secretary may be reimbursed at cost for any photocopying charges upon receipt and verification by HKIAC of supporting invoices or receipts.
- 4.9 Any expenses reasonably incurred and not covered in paragraphs 4.6 to 4.8 above may be reimbursed at cost upon receipt and verification by HKIAC of supporting invoices or receipts.
- 4.10 Payments to a tribunal secretary shall generally be made at the same time payments are made to the arbitral tribunal. Such payments shall generally be made by HKIAC from funds deposited by the parties at the instruction of the arbitral tribunal.
- 4.11 Payments to a tribunal secretary shall be made in Hong Kong Dollars unless the arbitral tribunal directs otherwise.
- 4.12 The parties are jointly and severally liable for the fees and expenses of a tribunal secretary.



Case No: _____

**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 hereby declare that I **decline** to serve as tribunal secretary in the subject case. (If you wish to state the reasons for checking this box, please do so using a separate sheet.)

ACCEPTANCE:

- I hereby declare that I **accept** to serve as tribunal secretary under the Hong Kong International Arbitration Centre's Guidelines on the Use of a Secretary to the Arbitral Tribunal (the **Guidelines**) in the above-referenced case. In so declaring, I confirm that I have familiarised myself with the requirements of the Guidelines and that I am available to serve as a tribunal secretary. I undertake to comply with all provisions of the Guidelines. In particular, I confirm that my schedule is such that I will be able to devote sufficient time to deal with the above-referenced case in the ordinary course of its development and to assist the arbitral tribunal to conduct the arbitral proceedings in a timely and cost-effective manner.

IMPARTIALITY AND INDEPENDENCE

(If you accept to serve as tribunal secretary, please also check one of the following boxes. The choice of which box to check will be determined based on whether any past or present relationship, direct or indirect, with any of the parties or their counsel, whether financial, professional or of another kind and whether the nature of any such relationship is such that disclosure is called for pursuant to the criteria set out below. Any doubt should be resolved in favour of disclosure.)

- I am **impartial and independent** with respect to each of the parties and intend to remain so; to the best of my knowledge, there are no facts or circumstances, past or present, which need be disclosed because they are likely to give rise to justifiable doubts as to my impartiality or independence.

OR

- I am **impartial and independent** with respect to each of the parties and intend to remain so; **however**, in consideration of paragraph 2.2(b) of the Guidelines, I call your attention to the following facts and circumstances which I hereafter disclose because they might be of such a nature as to give rise to justifiable doubts as to my impartiality or independence. (Please use a separate sheet.)

Signature: _____ Date: _____