

## ASA Services as Appointing Authority and Other Support Services

### ASA Regulation Implementing Article 11(4) of the ASA Articles of Association

---

#### Preamble

- A. Article 11(4) of the Articles of Association of the Swiss Arbitration Association (ASA) (the "**ASA Articles of Association**") reads as follows:

*Where the Association is invited to appoint an arbitrator, determine the place of arbitration or perform any other similar services in support of an arbitration these shall be performed by the President or, in case of conflict, by the most senior available Vice-President.*

- B. This Regulation serves to implement Article 11(4) of the ASA Articles of Association and applies whenever ASA, its President or any of its other organs have been designated as appointing authority or requested to provide other services in support of arbitration or conciliation/mediation proceedings (hereinafter the "**Support Services**").
- C. Activities such as delivering *amicus curiae* briefs or similar neutral advisory services do not fall within the scope of Article 11(4) of the ASA Articles of Association. Therefore, they are not addressed in the present Regulation.
- 

#### 1. Scope of Services

- 1.1 ASA accepts to provide services as Appointing Authority as provided under the UNCITRAL Arbitration Rules in the version in force at the date when a request for Support Services is made.
- 1.2 ASA may also provide Support Services if so requested **(i)** by a party under an arbitration agreement providing for Support Services by ASA including those of an appointing authority or, **(ii)** in the absence of such an agreement, by all parties to a dispute.
- 1.3 The Support Services provided by ASA include the following:
- Appointment, removal or replacement of an arbitrator;
  - Appointment, removal or replacement of a mediator or conciliator;
  - Determination of the place of arbitration where the parties have not agreed on the place of arbitration and where their agreement calls for such determination;
  - Review of the arrangement on the fees and expenses of arbitration tribunals and their application;
  - Appointment, removal or replacement of an expert appraiser ("*expert-arbitre*" / "*Schiedsgutachter*");
  - Assistance for the identification of potential tribunal-appointed experts (the actual appointment remaining under the sole responsibility of the arbitral tribunal).
- 1.4 ASA shall not provide advice to one party (including acting as expert).

## ASA Services as Appointing Authority and Other Support Services

### ASA Regulation Implementing Article 11(4) of the ASA Articles of Association

---

#### **2. Authority**

- 2.1 The decisions required under this Regulation shall be made by the President of ASA. If the President is conflicted or otherwise not available to make the decision expeditiously, it shall be made by the most senior available Vice-President, the order of seniority being calculated from the first election to the position; in case of simultaneous election by age.
- 2.2 If neither the President nor any of the Vice-Presidents are available to make the decision, the Executive Committee shall determine a member of the ASA Board or an Honorary President to do so.

#### **3. Procedure**

- 3.1 Before proceeding with the Support Service(s) to be performed or rendering a decision on such Support Service(s), ASA shall verify that the Parties have agreed to entrust ASA with the Support Service(s) at issue.
- 3.2 When requesting the appointment of an arbitrator by ASA, the requesting party shall send to ASA copies of the arbitration agreement and any other relevant agreements between the parties relating to the appointment of an arbitrator, of the notice of arbitration and, if it exists, of any response to the notice. For other Support Services that ASA is requested to perform, the requesting party shall send copies of the procedural acts to which the request relates.
- 3.3 All communications to and from ASA in relation to a request for Support Services shall be copied to all parties.
- 3.4 When making appointments, ASA may, but is not under an obligation to, use the list procedure described in Article 8 of the UNCITRAL Arbitration Rules 2010.
- 3.5 In all cases, ASA may require from any party and the arbitrators the information it deems necessary and it shall provide the parties and, as the case may be, the arbitrator(s) concerned, with equal opportunity to present their case on the Support Service(s) to be performed and, as the case may be, on the existence of an agreement to entrust ASA with such Support Service(s). ASA shall determine the most efficient procedures to be followed on a case-by-case basis to ensure fair and equal treatment.

#### **4. Fees**

- 4.1 ASA charges a flat fee as follows:
  - a. For the appointment of an arbitrator, mediator or conciliator: CHF 2,000 (two thousand Swiss francs);
  - b. For the removal or replacement of an arbitrator, mediator or conciliator: 3,500 (three thousand five hundred Swiss francs);
  - c. For other Support Services: fee of CHF 3,000 (three thousand Swiss francs).
- 4.2 The flat fee due in accordance with Article 4.1 above shall be paid by the party requesting the appointment when filing its request or shortly thereafter. ASA is under no obligation to perform any Support Services as long as the flat fee is not paid.

## ASA Services as Appointing Authority and Other Support Services

### ASA Regulation Implementing Article 11(4) of the ASA Articles of Association

---

- 4.3 Where, in the course of the procedure relating to Support Services, it becomes apparent that the flat fee set out in Article 4.1 above is insufficient in light of the complexity of the matter, ASA may, after having examined the file and assessed the complexity of the issues involved, request an additional fee before issuing its decision on the Support Service(s) requested.
- 4.4 In all cases, the total fees of ASA relating to Support Services shall be commensurate to the type of Support Service(s) requested and the complexity of the matter and shall not exceed CHF 15,000 (fifteen thousand Swiss francs) per Support Service.
- 4.5 With the decision on the Support Service(s), ASA will issue its final invoice for its fee; any unused portion of the payments made in accordance with this Article 4 shall be returned to the party or parties having paid it. ASA may include in its decision on the Support Service(s) an apportionment of the fee between the parties.

## 5. Decision

- 5.1 ASA may, but is under no obligation to, provide reasons for its decision.
- 5.2 Where appropriate, ASA may first issue its decision without reasons, with the reasoned decision following separately.

## 6. Exclusion of liability

Except in cases of intentional wrongdoing or gross negligence, ASA, its officers and employees and the individual(s) actually involved in the performance the Support Service(s) for ASA shall have no liability whatsoever for any action or omission in relation to the Support Services performed.

## 7. Applicable law

The relationship between the parties on the one hand and ASA, its officers and its employees and the individual(s) actually involved in the performance the Support Service(s) for ASA on the other hand are governed by Swiss law.

## 8. Date of approval and entry into force

- 8.1 The Board of ASA adopted this Regulation at its session of 5 February 2015.
- 8.2 This Regulation enters into force on 5 February 2015.

### Account details for payment of the flat fee in accordance with Article 4.1:

ASA – Swiss Arbitration Association  
UBS  
IBAN CH52 0029 2292 1056 0120 0  
Account Number 292 – 10560120.0  
BIC UBSWCHZH80A