



## Arbitration Court of the Swiss Chambers' Arbitration Institution

### GUIDELINES FOR ARBITRATORS (effective 1 January 2020)

#### A. **Secretaries (Article 15(5) Swiss Rules)**

1. The arbitral tribunal<sup>1</sup> may, after consulting the parties, appoint a secretary (Article 15(5) 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 9 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 process.
7. The arbitral tribunal is prohibited from delegating any decision-making functions to the secretary, or from relying 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 10 and 11 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. Paragraphs 1-5 then apply accordingly.

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



11. The secretary's fees form part of those of the arbitral tribunal (Articles 38(a), 39, 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 40(4) 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.

**A.<sup>bis</sup> Conduct of the proceedings**

1. In accordance with Article 15(7) Swiss Rules, the arbitral tribunal shall make every effort to contribute to the efficient conduct of the proceedings and avoid unnecessary costs and delays. Absent exceptional circumstances, the Swiss Chambers' Arbitration Institution 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).
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 the final award with an indication of the expected date of completion.
3. Any undue delay in the rendering of the final award may be taken into account by the Court when fixing the costs of the arbitration under Articles 38(a), 39 and 40(4) Swiss Rules.

**B. Deposits as an advance for costs (Article 41 Swiss Rules)**

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 will not proceed with the arbitration until payment of the deposits has been made.
3. After consulting with the Court, the arbitral tribunal shall ensure that it requests any additional 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 40(4) Swiss Rules, the Secretariat may invite the arbitral tribunal to request additional deposits from the parties should it turn out that the deposits made by the parties so far do not 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.

**C. Guidelines for Accounting of Expenses (Appendix B Section 3 Swiss Rules)**

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 40(4)/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:
    - If required to travel for the purpose of the arbitration, an arbitrator or secretary shall be reimbursed for actual travel expenses he or she has incurred 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.
    - Hearing costs (rental of hearing rooms, equipment, telephone and video conferences, etc.);
    - Interpreter, court reporter, and translation services;
    - Courier; and,
    - 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.



If the arbitrator is not required to use overnight hotel accommodation, a flat-rate *per diem* allowance of CHF 300 shall be considered reasonable.

If the arbitrator is required to use overnight hotel accommodation, a flat-rate *per diem* allowance of CHF 800 shall be considered reasonable.

The arbitrator shall state the purpose of the stay (procedural hearing, main or evidence hearing, deliberations etc.) and the number of days spent for the hearing or deliberations.

Submission of receipts is not required in order to claim the *per diem* allowance.

Costs exceeding the allowance are not reimbursed, unless the parties agree otherwise.

The allowance is not subject to VAT.

- (d) All the 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 expense.
  5. No expenses or costs can be approved after a final award, decision on an application for emergency relief, termination order, or decision pursuant to Articles 35 to 37 Swiss Rules has been rendered.

**D. Fees of the arbitral tribunal (Articles 38(a), 39, 40(4); Appendix B Swiss Rules)**

1. The fees of the arbitral tribunal must be reasonable in amount, taking into account the factors 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 the approval or adjustment by the Court which approval/adjustment is binding on the arbitral tribunal (Article 40(4) Swiss Rules).
2. Each member of the arbitral tribunal is under a duty to record his/her time spent from the moment the file is transmitted (Appendix B Section 2.1 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 4.2 Swiss Rules) or (iii) when submitting a draft pursuant to Articles

40(4)/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/adjustment by the Court under Article 40(4) 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 Articles 35 to 37 Swiss Rules has been rendered.

**E. Advance payments (Appendix B Section 4.2)**

1. Prior to the rendering of the final award, part of the deposits may be released, with the Court's approval, 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 respective arbitrator exceed CHF 1000 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).

**F. Payments to replaced/former arbitrators**

1. If an arbitrator is replaced or if Article 13(2)(b) Swiss Rules applies, the newly constituted arbitral tribunal is to determine the fees and expenses of the replaced/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, 40(4) and Appendix B Swiss Rules. The replaced/former arbitrator has no entitlement to receive payment of fees and expenses or an advance on costs pursuant to Appendix B Section 4.2 Swiss Rules prior to any remaining or replacement arbitrator.

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