



## Tribunal Secretary Service

A Panel of Tribunal Secretaries is available at the MARC. Any arbitrator involved in a arbitration administered by MARC or in an ad hoc arbitration may avail of this service by sending a written request to the MARC. Upon receiving the request and upon settlement of advance costs, MARC will endeavor to designate a suitable Tribunal Secretary to assist the tribunal as soon as practicable.

A written request shall be sent to MARC at the address, facsimile number or email address below:

MCCI Arbitration and Mediation Center (MARC)  
6, Adolphe de Plevitz Street, Port Louis

Telephone: + 230 208 48 30

Fax: + 230 208 00 76

Email: [akhemraz@mcci.org](mailto:akhemraz@mcci.org)

The request should, to the extent possible, contain the following information:

1. the identity and contact details of all parties and the arbitral tribunal in the arbitration;
2. a copy of the arbitration agreement(s);
3. a summary of the case (including the current stage of the arbitration), and an indication of the amount in dispute;
4. the applicable method of determining the fees and expenses of the arbitral tribunal in case of an hoc arbitration; and
5. any terms of appointment of a tribunal secretary that have already been agreed by the parties.

MARC has adopted Guidelines on the Use of a Secretary to the Arbitral Tribunal (Guidelines), which took effect on 1 August 2016. The Guidelines can be adopted by parties to arbitrations administered by MARC or in other cases, and contain guidance on the appointment, challenge, duties and remuneration of tribunal secretaries.

To view the MARC Guidelines on Use of Secretary to Arbitral Tribunal, scroll down.

The appointment of a MARC Secretariat member as tribunal secretary in an arbitration administered by MARC shall be governed by the Guidelines, unless the parties agree otherwise. For MARC administered arbitrations, a Secretariat member shall not act as a tribunal secretary and case manager in the same case.

Where the arbitral tribunal's fees are determined on an hourly basis e.g. in ad hoc arbitrations not administered by MARC, MARC will charge a rate of Rs 3000 + VAT per hour for its tribunal secretary services. This rate may be reviewed from time to time by the MARC Permanent Secretariat.

Where the arbitral tribunal's fees are determined based on the amount in dispute as in arbitrations administered by the MARC, the fees for MARC's tribunal secretary service will be paid out of the tribunal's fees at the level of 10% of the Tribunal's fees, unless otherwise agreed between the Arbitral Tribunal and the parties, and subject to the relevant written agreement to this effect being sent to the MARC together with the request.

Fees for the tribunal secretary service must be fully settled upfront by the parties or the arbitral tribunal as applicable, within 10 days of the request. For MARC administered arbitrations, the fees will be computed on the basis of the amount in dispute. The rate applied by MARC will be 10% of the Arbitrator's fees. For ad hoc arbitrations, fees will be computed on an estimate of the number of hours for which the service will be required specified in the request for the service.

For both types of arbitration, fees are paid directly to the MARC, which will then pay the tribunal secretary, minus an MCCI administrative charge not exceeding 15% of the fees payable to the Tribunal Secretary + VAT.

## **Application Information**

### **Eligibility Criteria for joining the MARC Panel of Tribunal Secretary**

Applicants for membership on the MARC Panel of Tribunal Secretaries should meet most of the following requirements:

#### **Education and Training**

- a. Law Practitioner with a minimum of 5 years of professional experience.
- b. Professional with a legal background (LLB or LLM) and with a minimum of 5 years of professional experience.
- c. Experience or training in arbitration

#### **Commitment to ADR Process**

- a. Willingness to devote time and effort when selected to serve
- b. Willingness to participate in continuing education programs
- c. Willingness to assist the arbitral tribunal efficiently

#### **Personal Letter**

Submit a letter explaining why you should be admitted to the MARC Panel of Tribunal Secretaries.

#### **Curriculum Vitae**

Submit a copy of your current Curriculum Vitae. Please be sure that your experience, if any, in dispute resolution is adequately detailed.

## How to apply

Application letters should be sent to the following address:

MARC Permanent Secretariat  
MCCI Arbitration and Mediation Center  
6, Adolphe de Plevitz Street  
Port Louis  
Mauritius  
Email: akhemraz@mcci.org

Once the MARC Permanent Secretariat has received a complete set of the initial required documentation, a confirmation e-mail will be sent acknowledging receipt.

Upon the completion of the review all applicants will be notified of the MARC's determination.

In case an application has been rejected, a query may be sent to the MARC Permanent Secretariat, although the latter does not commit itself to explanations.

The term of appointment on the MARC Panel is for a renewable period of 4 years.

Upon being designated to act as Tribunal Secretary for any particular, the MARC Permanent Secretariat will ask approved candidates to complete a sign a **TRIBUNAL SECRETARY'S DECLARATION OF ACCEPTANCE AND STATEMENT OF AVAILABILITY, IMPARTIALITY AND INDEPENDENCE** , which would incorporate the **Guidelines on terms and conditions of appointment as tribunal secretary through the MARC.**

## **GUIDELINES ON THE USE OF A SECRETARY TO THE ARBITRAL TRIBUNAL**

**Effective 1 August 2016**

### **1 Scope of Application and General Provisions**

1.1 These Guidelines can be adopted by parties to arbitrations administered by MARC under the MARC Arbitration Rules. Parties who wish to adopt these Guidelines in other cases may do so after consultation with MARC.

1.2 MARC 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 MARC 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 MARC Secretariat or from the MARC Panel of Tribunal Secretaries requires confirmation by MARC. 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, MARC, 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.

### **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 MARC.

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 For ad hoc arbitrations, Where the arbitral tribunal's fees are determined on an hourly basis eg. in ad hoc arbitrations not administered by MARC, MARC will charge a rate of Rs 3000 + VAT per hour for its tribunal secretary services. This rate may be reviewed from time to time by the MARC Permanent Secretariat

4.2 For arbitrations administered by MARC, the total fees and expenses of a tribunal secretary shall amount to 10% of the fees of the arbitral tribunal, except if otherwise decided between the arbitrator and 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.

4.3. Depending on whether the case is an ad hoc case or a case administered by MARC, MARC will compute the advance costs based on the request made by the arbitral tribunal, which request must specify as the case may be, the number of hours for which the services of the Tribunal Secretary will be required.

4.4 The parties are jointly and severally liable for the fees and expenses of a tribunal secretary. MARC will invoice each party accordingly and collect payments upfront. The Tribunal Secretary will not be bound to provide the services sought if the related advance costs have not been paid by the parties. Payments will then be made directly by MARC to the Tribunal Secretary at the agreed fee minus an administrative fee payable to the MCCI and not exceeding 15% of the amount paid.

4.5 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 MARC from funds deposited by the parties at the instruction of the arbitral tribunal.

4.6. Fees detailed at section 4.1 and section 4.2 are deemed to include additional miscellaneous expenses which may be incurred by the Tribunal Secretary in relation to the case on which he or she

has been appointed to serve (inland transport costs, photocopies) unless otherwise agreed between the Tribunal Secretary and the Arbitral Tribunal.

4.7. However, in no circumstances must the Fees detailed at section 4.1 and section 4.2 be deemed to include transport and accommodation costs overseas. Such expenses shall be borne jointly and severally by the Arbitral Tribunal and shall be as per agreed by the parties, the arbitral tribunal and the tribunal secretary..

4.7 Payments to a tribunal secretary shall be made in MRU unless the arbitral tribunal directs otherwise.

4.7 The parties are jointly and severally liable for the fees and expenses of a tribunal secretary.

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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 MCCI Arbitration and Mediation Center'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: \_\_\_\_\_