



International Chamber of Commerce

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International Court of Arbitration • Cour internationale d'arbitrage

1 August 2012

## NOTE ON THE APPOINTMENT, DUTIES AND REMUNERATION OF ADMINISTRATIVE SECRETARIES

The ICC Rules of Arbitration (“**Rules**”) are silent as to the appointment, duties and remuneration of Arbitral Tribunal administrative secretaries or other assistants (“**Administrative Secretaries**”). This Note replaces the Secretariat's previous note on the same subject. It sets out the policy and practice of the ICC International Court of Arbitration (“**Court**”) and its Secretariat regarding the engagement of Administrative Secretaries by Arbitral Tribunals. It applies with respect to any Administrative Secretary appointed on or after 1 August 2012. Any Arbitral Tribunal proposing to appoint an Administrative Secretary shall provide the parties with a copy of this Note.

### 1. Appointment

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Administrative Secretaries can provide a useful service to the parties and Arbitral Tribunals in ICC arbitration. While principally engaged to assist three-member Arbitral Tribunals, an Administrative Secretary may also assist a Sole Arbitrator. Administrative Secretaries can be appointed at any time during an arbitration.

If an Arbitral Tribunal envisages the appointment of an Administrative Secretary, it shall consider carefully whether in the circumstances of that particular case such an appointment would be appropriate.

Administrative Secretaries must satisfy the same independence and impartiality requirements as those which apply to arbitrators under the Rules. ICC staff members are not permitted to serve as Administrative Secretaries.

There is no formal process for the appointment of an Administrative Secretary. However, before any steps are made to appoint an Administrative Secretary, the Arbitral Tribunal shall inform the parties of its proposal to do so. For this purpose, the Arbitral Tribunal shall submit to the parties the proposed Administrative Secretary's *curriculum vitae*, together with a declaration of independence and impartiality, an undertaking on the part of the Administrative Secretary to act in accordance with the present Note and an undertaking on the part of the Arbitral Tribunal to ensure that this obligation on the part of the Administrative Secretary shall be met.

The Arbitral Tribunal shall make clear to the parties that they may object to such proposal and an Administrative Secretary shall not be appointed if a party has raised an objection.

### 2. Duties

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Administrative Secretaries act upon the Arbitral Tribunal's instructions and under its strict supervision. The Arbitral Tribunal shall, at all times, be responsible for the Administrative Secretary's conduct in relation to the arbitration.

An Administrative Secretary may perform organizational and administrative tasks such as:

- transmitting documents and communications on behalf of the Arbitral Tribunal;
- organizing and maintaining the Arbitral Tribunal's file and locating documents;
- organizing hearings and meetings;
- attending hearings, meetings and deliberations; taking notes or minutes or keeping time;
- conducting legal or similar research; and
- proofreading and checking citations, dates and cross-references in procedural orders and awards as well as correcting typographical, grammatical or calculation errors.

Under no circumstances may the Arbitral Tribunal delegate decision-making functions to an Administrative Secretary. Nor should the Arbitral Tribunal rely on the Administrative Secretary to perform any essential duties of an arbitrator.

The Administrative Secretary may not act, or be required to act, in such a manner as to prevent or discourage direct communications among the arbitrators, between the Arbitral Tribunal and the parties, or between the Arbitral Tribunal and the Secretariat.

A request by an Arbitral Tribunal to an Administrative Secretary to prepare written notes or memoranda shall in no circumstances release the Arbitral Tribunal from its duty personally to review the file and/or to draft any decision of the Arbitral Tribunal.

When in doubt about which tasks may be performed by an Administrative Secretary, the Arbitral Tribunal or the Administrative Secretary should contact the Secretariat.

### **3. Remuneration**

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With the exception of the Administrative Secretary's reasonable personal disbursements as detailed in this Note, the engagement of an Administrative Secretary should not pose any additional financial burden on the parties. Accordingly, the Arbitral Tribunal may not look to the parties for the reimbursement of any costs associated with an Administrative Secretary beyond the scope prescribed in this Note.

Any remuneration payable to the Administrative Secretary shall be paid by the Arbitral Tribunal out of the total funds available for the fees of all arbitrators, such that the fees of the Administrative Secretary will not increase the total costs of the arbitration.

In no circumstances should the Arbitral Tribunal seek from the parties any form of compensation for the Administrative Secretary's activity. Direct arrangements between the Arbitral Tribunal and the parties on the Administrative Secretary's fees are prohibited. Since the fees of the Arbitral Tribunal are established on an *ad valorem* basis, any compensation to be paid to the Administrative Secretary is deemed to be included in the Arbitral Tribunal's fees.

### **4. Disbursements**

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The Arbitral Tribunal may seek reimbursement from the parties of the Administrative Secretary's justified reasonable expenses for hearings and meetings.