



ILSCA Tribunal Secretary Rules

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Tribunal secretaries play a crucial role in large and complex arbitrations by providing administrative and other assistance to the Arbitral Tribunal. Recognizing the widespread use of the services of the tribunal secretaries and their role in ensuring the efficacy of arbitral proceedings, ILSCA provides such services and has framed ILSCA Tribunal Secretary Rules regulating the appointment, duties and remuneration of tribunal secretaries ensuring transparency in their working. Tribunal secretaries are appointed to assist Arbitral Tribunals in conducting arbitral proceedings in accordance with ILSCA (Institutional Arbitration) Rules (for the sake of brevity referred to as “ILSCA (IA) Rules”).

Under no circumstances may an Arbitral Tribunal delegate its decision-making function to a tribunal secretary. All tasks carried out by a tribunal secretary shall be carried out on behalf of, and under the supervision of Arbitral Tribunal which shall retain its responsibility to ensure that all tasks are performed to the standard required by the ILSCA (IA) Rules and ILSCA Tribunal Secretary Rules. Their role includes communications with the parties, organizing and attending meetings and hearings, taking notes or minutes of meetings, keeping time, providing research assistance to the Arbitral Tribunal and so on. If an Arbitral Tribunal envisages the appointment of tribunal secretary, it must consider carefully whether in the circumstances of that particular arbitration, such an appointment would be appropriate.

Rule 1: Scope of Application and General Provisions

1.1 In all arbitrations where a tribunal secretary from ILSCA Panel of Tribunal Secretaries has been appointed, the Arbitral Tribunal along with the parties shall adopt these Rules and shall undertake to comply with these Rules.

1.2 In the event of any disparity or inconsistency between the provisions of these Rules and the mandatory provisions of the applicable law or ILSCA (IA) Rules, the latter shall prevail.

Rule 2: Definitions

2.1 ‘**Appointing Authority**’ shall mean the authority appointed by the Advisory Body of ILSCA under Rule 8.1 of the ILSCA (IA) Rules.

2.2 ‘**Tribunal secretary**’ is a person appointed to assist the Arbitral Tribunal and perform organizational and administrative tasks during the arbitral process.

2.3 **'ILSCA Panel of Tribunal Secretaries'** means the Panel of tribunal secretaries maintained by the ILSCA on the approval of Advisory Body of ILSCA;

The words used in these Rules but not defined hereunder, shall have the same meaning as defined in the ILSCA (IA) Rules unless the context otherwise requires.

Rule 3: Eligibility for empanelment to ILSCA Panel of Tribunal Secretaries

3.1 A person becomes eligible to be empaneled to ILSCA Panel of Tribunal Secretaries on completion of the tribunal secretary training program conducted by ILSCA, subject to the approval by Advisory Body of ILSCA.

3.2 The Appointing Authority, ILSCA shall be responsible for conducting such training programs, certification by ILSCA and all allied matters connected thereto.

Rule 4: Procedure for appointment of tribunal secretary

4.1 Any arbitrator involved in an arbitration administered according to ILSCA (IA) Rules or in an ad hoc arbitration, where the parties approach ILSCA for administrative services, may avail of the services of tribunal secretary.

4.2 Any time during the arbitral proceedings the Arbitral Tribunal may send a request in writing to the Appointing Authority, ILSCA accordingly.

4.3 The request for services of tribunal secretary made by the Arbitral Tribunal (as per annexure 2) shall be forwarded by the Appointing Authority, ILSCA to the parties to the specific arbitral proceedings.

4.4 The request for services of tribunal secretary should, to the extent possible, contain the following information:

- a. the names and contact details of all the parties in the arbitration;
- b. a summary of the case (including the current stage of the arbitration), and an indication amount involved in the Claim and Counterclaim, if any;
- c. a copy of the arbitration agreement(s);
- d. any terms of appointment of a tribunal secretary that are agreed by the parties, if any.

- 4.5 A tribunal secretary is appointed only with the consent of the parties.
- 4.6 The Appointing Authority prior to an appointment of tribunal secretary shall inform the parties about the proposed tribunal secretary and disclose his identity.
- 4.7 The Appointing Authority shall forward the following documents to the parties and request their opinion about the proposed tribunal secretary;
- (a) The curriculum vitae of the proposed tribunal secretary;
 - (b) A copy of these rules.
- 4.8 The Arbitral Tribunal in consultation with the Appointing Authority, ILSCA and with the consent of the parties, shall select an appropriate candidate as a tribunal secretary from the ILSCA Panel of Tribunal Secretaries considering the circumstances of the case and if ;
- a. the parties have agreed upon the tasks that may be carried out by the tribunal secretary as per these Rules;
 - b. the parties have agreed upon settlement of tribunal secretary's fees as per these Rules;
 - c. the written declaration by the proposed tribunal secretary referred to in Rule 6 has been provided to the parties; and
 - d. the parties have agreed to the particular person to act as a tribunal secretary in their case.
- 4.9 On being appointed the Appointing Authority shall communicate the tribunal secretary and the parties as to his appointment. A tribunal secretary's appointment is effective from the date of receipt of notice of his appointment.
- 4.10 The addition of parties subsequently to the arbitration does not affect the appointment of tribunal secretary.
- 4.11 When two or more arbitrations are consolidated the Arbitral Tribunal in the consolidated proceedings may, after consulting the Appointing Authority, ILSCA and the parties, continue the appointment of any existing tribunal secretary or appoint a new tribunal secretary.

Rule 5: Tribunal Secretary's Declaration and acceptance of appointment

- 5.1 Within six (6) days of receipt of tribunal secretary's appointment, the tribunal secretary shall sign and forward the copy of Declaration of Acceptance, Availability, Impartiality and Independence (Annexure 1) to the Appointing Authority, ILSCA and the Arbitral Tribunal.
- 5.2 The Declaration of Acceptance, Availability, Impartiality and Independence shall contain statements as to;
- I. Existence of any circumstances currently known to the proposed tribunal secretary which are likely to give rise in the mind of any party to any justifiable doubts as to his impartiality or independence and, if so, specifying in full such circumstances in the declaration; and
 - II. whether the proposed tribunal secretary is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the tasks to be performed by the him. The tribunal secretary shall furnish promptly such written declaration to the Arbitral Tribunal and to the Appointing Authority, ILSCA.
- 5.3 Upon receipt of tribunal secretary's Declaration of Acceptance, Availability, Impartiality and Independence, the Appointing Authority shall send the said Declaration to all the parties and Arbitral Tribunal.
- 5.4 A tribunal secretary shall have continuing duty to disclose to the Arbitral Tribunal, Appointing Authority and the parties, any circumstances which may give rise to justifiable doubts as to his impartiality or independence until the arbitration is finally concluded.

Rule 6: Challenge to appointment of Tribunal Secretary

- 6.1 A tribunal secretary shall be subject to the same standard of impartiality and independence as that of the Arbitral Tribunal.
- 6.2 A party may challenge the appointment of the tribunal secretary, for reasons of which it becomes aware after the appointment has been made. Upon receiving the copy of the tribunal secretary's Statement of Acceptance, Availability, Impartiality and Independence,

sent by the Appointing Authority, any of the parties to the arbitral proceedings can challenge the appointment of the tribunal secretary within fifteen (15) days of receipt of such statement.

- 6.2.1 The notice of challenge shall be sent to the Arbitral Tribunal, the Appointing Authority, the tribunal secretary, and all other parties. The notice shall be in writing.
- 6.4 The tribunal secretary whose appointment is challenged may withdraw from his office and communicate his withdrawal to the Arbitral Tribunal, Appointing Authority, ILSCA and to the parties.
- 6.5 The Arbitral Tribunal shall decide the challenge in consultation with the Appointing Authority, ILSCA and the objecting party and all other parties to the arbitration.
- 6.6 The decision of the Arbitral Tribunal regarding the challenge shall be final. If the Arbitral Tribunal decides that the challenge is successful, the tribunal secretary shall be removed from appointment. During the pendency of challenge procedure, the Arbitral Tribunal shall continue with the arbitral proceedings.
- 6.7 The tribunal secretary shall not undertake any work in relation to the determination of challenge.

Rule 7: Tribunal Secretary's Duties

- 7.1 An Arbitral Tribunal may obtain organizational and administrative assistance from the tribunal secretary during the arbitral process once the tribunal secretary has been appointed.
- 7.2 A tribunal secretary appointed by the Arbitral Tribunal shall not act beyond the Arbitral Tribunal's instruction or exceed the scope of authority assigned to him. The Arbitral Tribunal shall have strict and complete supervision of the tribunal secretary and shall at times be responsible for the conduct of the tribunal secretary in connection with the arbitration.
- 7.3 Under no circumstances the Arbitral Tribunal shall delegate its decision-making function to a tribunal secretary. The tribunal secretary shall not be relied to perform any essential duty or mandate of the Arbitral Tribunal.

- 7.4 All tasks carried out by a tribunal secretary shall be carried out on behalf of, and under the supervision of, the Arbitral Tribunal which shall retain its responsibility to ensure that all tasks are performed as per the standard required by the ILSCA (IA) Rules and ILSCA Tribunal Secretary Rules.
- 7.5 Unless the Arbitral Tribunal directs otherwise, a tribunal secretary may perform organizational and administrative tasks including, but not limited to, the following:
- a. transmitting documents and communications on behalf of the Arbitral Tribunal;
 - b. organizing and maintaining the Arbitral Tribunal's files and locating documents;
 - c. organizing 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;
 - g. creating and maintaining a procedural calendar for the arbitration;
 - h. provide technological assistance for the Arbitral Tribunal;
 - i. conducting legal or similar research like collecting case law or published commentaries on legal issues framed 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.
- 7.6 A tribunal secretary shall maintain confidentiality of the arbitration and decisions made by the Arbitral Tribunal.
- 7.7 A tribunal secretary shall not be liable for any act or omission done in connection with the arbitral proceedings, unless where such act was done or omitted to be done dishonestly or intentionally.
- 7.8 Neither the Arbitral Tribunal nor a party shall seek to make the tribunal secretary a party or witness in any legal or other proceedings arising out of the arbitral proceedings.

Rule 8: Tribunal Secretary's Fees

- 8.1 For arbitrations administered according to ILSCA (IA) Rules, the fees of a tribunal secretary shall be 10% of the total fees of the Arbitral Tribunal.

- 8.2 The parties are jointly and severally liable for the fees and expenses of a tribunal secretary.
- 8.3 Any fees charged by, or expenses viz. travel, lodging and boarding etc. incurred by the tribunal secretary, to be reimbursed by the parties, shall form a part of cost of the arbitration determined by Appointing Authority, ILSCA.
- Payments to the tribunal secretary shall be made at the same time when payments are made to the Arbitral Tribunal. Such payments shall be made by ILSCA from funds deposited by the parties. All payments to a tribunal secretary shall be made in Indian Rupees.
- Payments to the tribunal secretary shall be made after deducting an administrative fee for the purposes of appointment of tribunal secretary payable to ILSCA which shall not exceed 15% of the tribunal secretary's fee.
- 8.4 Where the parties have agreed that the tribunal secretary shall be entitled to have expenses reimbursed, the tribunal secretary may recover such expenses as are reasonably incurred in connection with the arbitration, and as are reasonable in amount, provided that claims for expenses should be supported by invoices or receipts.
- 8.5 The tribunal secretary will not be bound to provide the services sought if the agreed fees have not been paid by the parties.

Rule 9: Removal of Tribunal Secretaries

- 9.1 The Arbitral Tribunal in consultation with the Appointing Authority, ILSCA may remove the tribunal secretary at any time during the arbitral proceedings for any reason they may deem fit.
- 9.2 The decision by the Arbitral Tribunal about the removal of the tribunal secretary shall be intimated by the Appointing Authority to the tribunal secretary and the parties within 5 days of such decision.
- 9.3 The tribunal secretary may withdraw his appointment at any time during the arbitral proceedings with the consent of the Arbitral Tribunal.
- 9.4 The tribunal secretary shall send notice of his withdrawal to the Arbitral Tribunal, the parties and the Appointing Authority. The Arbitral Tribunal in consultation with the Appointing Authority, ILSCA shall confirm his withdrawal within five (5) days of receiving the notice and shall inform the tribunal secretary and parties accordingly.

9.5 Where a tribunal secretary is removed or withdraws from his appointment, the Arbitral Tribunal in consultation with the Appointing Authority, ILSCA 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.

Annexure I : Tribunal Secretary's Declaration

I, the undersigned, Name:

Contact Details:

Address:

Phone:

Email:

Prior Experience as a tribunal secretary:

Currently appointed as a tribunal secretary in Arbitrations (nos.):

I declare that I accept to serve as tribunal secretary under the ILSCA (IA) Rules and ILSCA Tribunal Secretary Rules to the Arbitral Tribunal in the present case bearing number_____ between_____ parties. In so declaring, I confirm that I have familiarized myself with the requirements of the Rules and that I am available to serve as a tribunal secretary. I undertake to comply with all provisions of the ILSCA (IA) Rules and ILSCA Tribunal Secretary Rules.

I confirm that I will be able to devote sufficient time to deal with the present 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.

INDEPENDENCE and IMPARTIALITY

(Tick one box and provide details below and/or, if necessary, on a separate sheet)

Nothing to disclose: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my impartiality or independence in the opinion of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality or independence.

Acceptance with disclosure: I am impartial and independent and intend to remain so.

However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my impartiality or independence in the opinion of any of the parties or that could give rise to reasonable doubts as to my impartiality or independence, I draw attention to the matters below and/or on the attached sheet.

Signature: _____ **Date:** _____

Annexure II - Request for services of Tribunal Secretary

To,
The Appointing Authority, ILSCA

With reference to the arbitral proceeding between _____ v. _____ (Case No. _____ of _____), the Arbitral Tribunal has considered that in the discharge of its duties it would be greatly assisted by the appointment of a secretary to the Arbitral Tribunal. The Arbitral Tribunal requests for the appointment of the tribunal secretary at an early stage of the arbitral proceedings considering its nature.

The Arbitral Tribunal proposes to appoint the following person as a Tribunal Secretary;

Name_____

Organization_____

Address (for Official Communication) _____

Mob No_____

e-mail_____

Along with the request the following documents are attached;

- The names and contact details of all the parties in the arbitration;
- A summary of the case (including the current stage of the arbitration), and an indication amount involved in the Claim and Counterclaim, if any;
- A copy of the arbitration agreement(s);
- Any terms of appointment of a tribunal secretary that are agreed by the parties, if any;
- Proposed tribunal secretary's curriculum vitae is attached.

Initial enquiries made about Mr./Ms._____, indicate that there is no conflict of interest, and that he/she would be independent and impartial. The tribunal secretary shall be bound by the ILSCA Tribunal Secretary Rules if appointed. If the appointment is confirmed, Mr./Ms._____ will be asked to make a declaration as per Annexure 1 and the appointment will be conditional upon satisfactory completion of such declaration.

The appointment can be initiated with the consent of the parties. To that effect I/we request the Appointing Authority, ILSCA to seek the consent of the parties or their counsels to the appointment of proposed person as tribunal secretary.

Thanking you,

Members of Arbitral Tribunal

Date_____.

Annexure III - Tribunal Secretary's Appointment

The Arbitral Tribunal in consultation with the Appointing Authority, ILSCA and with the consent of the parties, appoints Mr./Ms. _____ as the tribunal secretary.

The Arbitral Tribunal has proposed the appointment of the tribunal secretary in its request for appointment dated _____. The parties have consented to the appointment.

The secretary's contact details are as follows:

Name_____

Organization_____

Address (for Official Communication) _____

Mobile_____

E-mail_____

The tribunal secretary confirms his/her availability to accept an appointment as tribunal secretary in this arbitration. Within six (6) days of receipt of tribunal secretary's appointment, the tribunal secretary shall sign and forward the copy of Declaration of Acceptance, Availability, Impartiality and Independence (Annexure 1) to the Appointing Authority, ILSCA and the Arbitral Tribunal.

The tribunal secretary shall be bound by ILSCA Tribunal Secretary Rule and ILSCA (IA) Rules.

Appointing Authority, ILSCA

Date_____