

**PHILIPPINE DISPUTE RESOLUTION CENTER, INC.**

**GUIDELINES ON TRIBUNAL SECRETARIES**

**1. Scope**

- 1.1 These Guidelines shall apply to the appointment, duties, and compensation of a tribunal secretary (“Tribunal Secretary”) in PDRCI administered arbitrations under the PDRCI Arbitration Rules (“Rules”).
- 1.2 PDRCI may interpret the terms as well as the scope of application of these Guidelines as it considers appropriate.
- 1.3 In the event of any discrepancy or inconsistency between these Guidelines and the parties’ arbitration agreement or mandatory provisions of applicable law, the agreement of the parties and provisions of law shall prevail.

**2. General Principles**

- 2.1 The arbitral tribunal or its presiding arbitrator may appoint one or more Tribunal Secretaries to assist in organizational and administrative matters, where it considers that such appointment will promote the effective and efficient settlement of the dispute. The arbitral tribunal shall not delegate any part of their decision-making functions to the Tribunal Secretary or rely on the Tribunal Secretary to perform any essential duties of the arbitral tribunal.
- 2.2 The Tribunal Secretary shall act under the direction and close supervision of the arbitral tribunal. The arbitral tribunal shall be responsible for the Tribunal Secretary’s conduct in connection with the arbitration.
- 2.3 A Tribunal Secretary shall not be appointed or act as File Counsel in the same arbitration.
- 2.4 The Tribunal Secretary shall serve for the duration of the arbitration, unless earlier retired or replaced by the arbitral tribunal or its presiding arbitrator.
- 2.5 The particulars of the appointment of the Tribunal Secretary may be included in the procedural order or in the Terms of Reference referred to in Articles 29 and 33 of the PDRCI Rules.
- 2.6 The Tribunal Secretary shall not be liable to any party for any act or omission in connection with the arbitration, except to the extent that such a limitation of liability is prohibited by applicable law.
- 2.7 The Tribunal Secretary shall not and may not be compelled to disclose confidential information obtained during the arbitration, and no party shall

seek to make the Tribunal Secretary a party or witness in any judicial or other proceedings relating to the arbitration.

### 3. Appointment and Removal

- 3.1 An arbitral tribunal may appoint, retire, or replace a Tribunal Secretary at any stage of the arbitration after consultation with the parties.
- 3.2 The Tribunal Secretary shall be appointed from a list of qualified individuals recommended by the Secretary General. In making the recommendation, the Secretary General shall consult with the arbitral tribunal or its presiding arbitrator.
- 3.3 The Tribunal Secretary shall be subject to Article 17 of the PDRCI Rules on Disclosure. Prior to appointment, a proposed Tribunal Secretary shall (a) sign a declaration confirming their availability to assist the arbitral tribunal, their impartiality, and independence; and (b) disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence.
- 3.4 The arbitral tribunal shall select an appropriate Tribunal Secretary at its discretion. Prior to an appointment, the arbitral tribunal shall disclose the identity of the proposed Tribunal Secretary and provide the parties with the following:
  - (a) the candidate's curriculum vitae;
  - (b) the candidate's declaration of independence and impartiality;
  - (c) if relevant, any disclosure of the candidate;
  - (d) the candidate's terms of appointment and compensation; and
  - (e) a copy of these Guidelines.
- 3.5 Upon the request of the arbitral tribunal, the Secretary General may appoint a member of the PDRCI Secretariat as Tribunal Secretary, who shall thereafter not be involved in the administration of the arbitration on behalf of PDRCI.
- 3.6 Any objections to the proposed appointment of a Tribunal Secretary shall be finally decided by the arbitral tribunal.
- 3.7 The appointment of a Tribunal Secretary becomes effective upon notice by the arbitral tribunal to the parties of the acceptance of the appointment.
- 3.8 A Tribunal Secretary is under a continuing obligation to disclose to the arbitral tribunal and the parties any circumstances likely to give rise to justifiable doubts about their independence and impartiality.
- 3.9 Article 18 (**Challenge of Arbitrator**) and Article 19 (**Notice of Challenge**) of the PDRCI Rules shall apply to a Tribunal Secretary. If a party makes a challenge on the basis of the disclosure, the procedure set out in these Articles

18 and 19 shall apply. **The resolution of the challenge by the arbitral tribunal or its presiding arbitrator shall be final.**

3.10 Where two or more arbitrations are consolidated pursuant to Article 10 of the PDRCI Rules, or an additional party is joined to an arbitration pursuant to Article 7 of the of the PDRCI Rules, the arbitral tribunal may continue the appointment of an existing Tribunal Secretary or appoint a new Tribunal Secretary, after consultation with all parties.

#### 4. Duties

4.1 A Tribunal Secretary shall act upon the instructions of the arbitral tribunal or presiding arbitrator and shall be under their direction and close supervision. A Tribunal Secretary shall not exceed the scope of the tasks assigned to them. The arbitral tribunal shall, at all times, be responsible for the Tribunal Secretary's conduct in connection with the arbitration.

4.2 Unless otherwise directed by the arbitral tribunal, a Tribunal Secretary may perform organizational and administrative tasks, such as:

- (a) Transmitting documents and communications on behalf of the arbitral tribunal;
- (b) Organizing meetings and hearings of the arbitral tribunal;
- (c) Handling and organizing files, communications, submissions, and evidence on behalf of the arbitral tribunal;
- (d) Attending hearings and meetings of the arbitral tribunal, taking notes or minutes, or keeping time; and
- (e) Proofreading and checking citations, dates and cross-references in procedural orders, directions, and awards, as well as correcting typographical, grammatical or computation errors.

4.3 After consultation with the parties, the arbitral tribunal may instruct the Tribunal Secretary to provide the following assistance, provided that the arbitral tribunal ensures that the Tribunal Secretary does not perform any decision-making functions or otherwise influence the arbitral tribunal's decisions in any manner:

- (a) doing legal or similar research, collecting case law or published commentaries on legal issues defined by the arbitral tribunal, or verifying the accuracy of legal authorities cited by the parties;
- (b) researching specific questions relating to factual evidence and witness testimony;

- (c) preparing summaries from case law and publications as well as from memoranda summarizing the parties' submissions and evidence;
  - (d) locating and assembling relevant factual materials from the record;
  - (e) attending the arbitral tribunal's deliberations and taking notes, but without participating in the discussions of the merits of the case; or
  - (f) preparing for the arbitral tribunal's review drafts of communications, procedural orders, and factual portions of an award, such as the summary of the proceedings, the chronology of facts, and the summary of the parties' positions, provided that such communications, procedural orders, and portions of the award are subsequently reviewed by the arbitral tribunal.
- 4.4 The Tribunal Secretary shall be bound by the same duties of confidentiality and privacy as the arbitral tribunal.
- 4.5 When in doubt about which tasks may be performed by a Tribunal Secretary, the arbitral tribunal or the Tribunal Secretary shall consult the PDRCI Secretariat, through the File Counsel, if any.

## **5. Compensation**

- 5.1 The arbitral tribunal shall agree with the Tribunal Secretary on their fees and reasonable expenses. The fees of the Tribunal Secretary shall not be less than the equivalent of PhP1,500.00 per hour actually devoted to the arbitration. In no case shall the compensation of the Tribunal Secretaries exceed thirty (30%) percent of the net fees received by the sole or presiding arbitrator, unless a higher amount is agreed.
- 5.2 A Tribunal Secretary's fees shall form part of the arbitral tribunal's fees, such that the fees of the Tribunal Secretary shall not increase the total costs of the arbitration.
- 5.3 Where the arbitral tribunal is composed of three arbitrators, the Tribunal Secretary's fees shall in principle be shared among the members of the tribunal in the same proportion as arbitrator's fees are shared among them, unless the tribunal decides otherwise.
- 5.4 Each of the arbitrators are jointly and severally liable for the fees and expenses of the Tribunal Secretaries.
- 5.5 Payments to a Tribunal Secretary shall generally be made at the same time payments are made to the arbitral tribunal. Such payments shall be made by PDRCI, at the instruction of the arbitral tribunal, from funds deposited by the parties.
- 5.6 A Tribunal Secretary shall provide a record of their time spent on tasks in a matter.

- 5.7 The Tribunal Secretary's reasonable expenses in connection with the performance of their duties shall be supported with receipts and shall be reimbursed by the arbitral tribunal at cost, unless otherwise agreed.
- 5.8 The Secretary General shall resolve, upon request of the arbitral tribunal or the Tribunal Secretary, any matter raised in connection with the compensation of the Tribunal Secretary. The Secretary General's decision on the matter shall be final.