

HOW TO...

Understand the role of the tribunal secretary

Dr Amel Makhlouf MCI Arb dispels misconceptions around the support role

The professionalisation of arbitrators and the growing complexity of international arbitration have led to a rise in the appointment

of tribunal secretaries. Yet, their appointment remains a matter of controversy which reflects a misconception of their mission.

A tribunal secretary may be described as a player in the arbitral proceeding who is not a member of the arbitral tribunal, but who supports the latter at all stages.

A tribunal secretary can be appointed at any time during an arbitration to assist a three-member arbitral tribunal or a sole arbitrator. Such an appointment – subject to parties' approval and that of co-arbitrators, if any – usually requires disclosing the identity, qualifications, expertise and missions conferred upon the tribunal secretary. Besides, the secretary must satisfy the same requirements of impartiality and independence as an arbitrator.

Upon the tribunal's directions and under its strict supervision, the secretary performs several duties such as managing the tribunal's file, conducting legal research, drafting and reviewing procedural documents, drafting parts of an award, organising procedural meetings and evidentiary hearings, and attending the tribunal's deliberations.

Exchanges between the tribunal and its secretary are confidential.



The increasing use of tribunal secretaries reflects a practical need for administrative support in international arbitration. The appointment of a tribunal secretary would reduce the cost and duration of arbitral decision-making – currently a serious issue – and substantially enhance the quality of the proceeding, up to the rendering of the award, if applied and managed properly.

The appointment of tribunal secretaries benefits all parties. To reduce or eliminate all possible doubts as to their legitimacy, some arbitral institutions, such as the HKIAC and the ICC, define the role and duties performed by secretaries.

For instance, the 2018 HKIAC Rules provide in article 13.4 that “the arbitral tribunal may, after consulting with the parties,

appoint a secretary”. The role of the secretary is further clarified in the *Guidelines on the Use of a Secretary to the Arbitral Tribunal*, effective from June 2014, which may be adopted by parties to arbitration proceedings administered by HKIAC under the HKIAC Rules or the UNCITRAL Arbitration Rules.

While the 2017 ICC Arbitration Rules are silent on the secretary's role, the *Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration*, dated 1 January 2019 (and previous editions), defines the role of a secretary in section XIX and provides practical guidance in terms of appointment, duties, disbursements and remuneration.

No doubt, further regulation of tribunal secretaries based on a uniform standard developed by the arbitration community would enhance transparency and strengthen the legitimacy of the arbitral proceeding.



ABOUT THE AUTHOR

Dr Amel Makhlouf MCI Arb is a French-qualified lawyer specialising in international arbitration. She has been appointed as tribunal secretary to proceedings in Europe, Asia and the Arab World and Middle East. Dr Makhlouf is also a lecturer at the Sorbonne Law School in Paris and Research Associate at SOAS, University of London. During her time at CI Arb (2019), she was key in organising a series of joint events with the Sorbonne Law School.

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Appointment of a tribunal secretary reduces the cost of arbitral decision-making