

# **RULES OF THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL**

**Adopted in accordance with Article VI of the  
Statute of the Commonwealth Secretariat Arbitral Tribunal**

*First promulgated 1998, revised 1 July 2008 and 1 September 2006.*

## **CHAPTER I. Organisation**

### **Rule 1**

1. The President shall direct the work of the Tribunal and shall represent the Tribunal in its relations with the Commonwealth Secretariat and other bodies.
2. Subject to Article 1V paragraphs 5 and 6 and Article X1 paragraph 8 of the Statute of the Tribunal, no application shall be heard and adjudged by the Tribunal except under the chairmanship of the President and in the presence of two other members.
3. Any interlocutory matter arising when the Tribunal is not in session shall be dealt with by the President or in the absence of the President by the next most senior available member<sup>1</sup> of the Tribunal.
4. Internal administrative matters shall be dealt with by the Tribunal Secretary under the direction of the President.

### **Rule 2**

1. Notwithstanding the expiry of his or her term of office, a member of the Tribunal shall, in accordance with paragraph 2 of Annex C to the Statute, continue to discharge the responsibilities of a member of the Tribunal in respect of a hearing, other than the hearing of an interlocutory matter, commenced before a panel of which he or she was a member until the disposal of the matter.

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<sup>1</sup> The question as to who is the next most senior available member shall be determined in accordance with the date of appointment.

2. If, during the course of the hearing of any proceedings, a member dies or is, for any reason, unable to continue participating in the proceedings the President, or in the absence of the President the Presiding member, may, if that inability seems likely to be of short duration adjourn the proceedings; otherwise the President, or in the absence of the President the Presiding member shall, in accordance with paragraph 1 of Annex C to the Statute and with the consent of the parties order that the remaining member or members of the panel proceed with the case or failing such consent shall dissolve the panel and order a rehearing before a new panel.

### **Rule 3**

The Secretary and, where applicable the Alternate Secretary as well as any other staff provided to the Tribunal in accordance with Article V of the Statute shall, at all times in carrying out their duties be responsible only to the Tribunal and to no other body or person.

## **CHAPTER II. Sessions**

### **Rule 4**

1. The Tribunal shall meet when convened by the President.
2. Where the President has decided to constitute separate chambers under Article 1V paragraph 6 of the Statute, each chamber shall be presided over by the President or, if that is not practicable, by another member decided by the panel.
3. Notice of the convening of a session shall be given to the members of the Tribunal empanelled to hear a case at least twenty-one days in advance of the date of the opening of such a session.

## **CHAPTER III. Proceedings**

### **Rule 5**

1. Any application instituting proceedings shall be submitted to the Tribunal through the Secretary. Such application shall be divided into four sections, which shall be entitled respectively:
  - I Information concerning the personal and official status of the applicant;
  - II Pleas;
  - III Explanatory statement;
  - IV Concise chronological table of key events cross-referenced to the exhibits (Annexes/ attachments) to the pleadings, in strict date order, on which the application is based; and
  - V Annexes.
2. The information concerning the personal and official status of the applicant shall be presented in the form contained in Annex A to these Rules.
3. The pleas shall indicate all the measures and decisions which the applicant is requesting the Tribunal to order or take and shall specify:
  - (a) any preliminary or provisional measures, such as the production of documents or additional documents, which the applicant is requesting the Tribunal to order before proceeding to consider the merits, or the hearing of witnesses;
  - (b) the decisions which the applicant is contesting and whose rescission is requested under Article X, paragraph 1 of the Statute;
  - (c) the obligations which the applicant is invoking and the specific performance of which is requested under Article X, paragraph 1 of the Statute;
  - (d) the amount of compensation claimed by the applicant in the event that the Secretary-General decides, in the interest of such respondent, to pay compensation for the injury sustained in accordance with the option given under Article X, paragraph 2, of the Statute; and
  - (e) any other relief which the applicant may request in accordance with the Statute;
  - (f) any request for anonymity.
4. The explanatory statement shall set out the facts and the legal grounds on which the pleas are based. It shall specify, inter alia, the provisions of the contract of employment or of the terms of appointment, and in other cases the terms of the contract the non-observance of which is alleged.

5. The chronological table of events required to be provided under Section IV paragraph 1 of this Rule must relate to the historical events on which the Applicant relies.
6. The annexes shall contain the texts of all documents referred to in the first three sections of the application and upon which the Applicant intends to rely in support of the application. The applicant shall present the documents in accordance with the following Rules and the form of application appended to these Rules:
  - (g) each document shall be annexed in the original or, failing that, in the form of a copy bearing the words “Certified true copy”
  - (h) documents shall be accompanied by any necessary English translations; and
  - (i) unless part of the document is irrelevant to the application, each document, regardless of its nature, shall be annexed in its entirety.
7. The Applicant shall prepare five copies of the application in addition to the original. Each copy shall reproduce all sections of the original, including the annexes. However, the President may grant the applicant permission, upon request, to omit the text of an annex of unusual length from a specified number of copies of the application.
8. The Applicant shall sign the last page of the original application. In the event of the applicant’s incapacity, the required signature shall be furnished by his or her legal representative. The Applicant may instead, by means of a letter transmitted for that purpose to the Secretary, authorise his or her lawyer, or the staff member or retired staff member who is representing the applicant, to sign in his or her stead.
9. The Applicant shall file the duly signed original and the five copies of the application with the Secretary. In all cases, the filing of copies of the application shall take place within the time limits prescribed by Article II, paragraph 3 of the Statute.
10. If the formal requirements of this Rule are not fulfilled, the Secretary may call upon the applicant to make the necessary corrections in the application and the copies thereof within a period which the Secretary shall prescribe. The Secretary shall return the necessary papers to the applicant for this purpose. The Secretary may also, with the approval of the President, make the necessary corrections when the defects in the application do not affect the substance.

11. After ascertaining that the formal requirements of this Rule have been complied with, the Secretary shall transmit a copy of the application to the respondent.
12. If it appears that an application is manifestly ill-founded, the President may convene a special session of the Tribunal at which the Tribunal shall consider the application and may either adjudge that it be summarily dismissed as manifestly ill-founded, or order that it should be proceeded with in the ordinary way.

## **Rule 6**

1. Within sixty days from the date on which the application is transmitted to the respondent by the Secretary, the respondent shall prepare and file the duly signed original and five copies of an Answer with the Secretary.
2. Each copy of the Answer shall reproduce all sections of the original, including the annexes. However, the Secretary may grant the respondent permission, upon request, to omit the text of an annex of unusual length from a specified number of copies of the answer.
3. The Answer shall include pleas; an explanatory statement, and annexes as well as a chronological table of events, as required to be provided under Section IV paragraph 1 of Rule 5, in response to the Applicant's chronology. The annexes shall contain the complete texts of all documents referred to in the other sections of the answer not annexed to the application and which the Respondent intends to rely upon in support of its answer. The Annexes shall be presented in accordance with the rules established for the application in Rule 5, paragraph 5 and Annex A to these Rules.
4. The chronological table of events required to be provided under paragraph 3 of this Rule must relate to the historical events on which the Respondent relies.
5. The respondent or the duly authorized representative of the respondent shall sign the last page of the original answer.
6. After ascertaining that the formal requirements of this Rule have been complied with, the Secretary shall transmit a copy of the answer to the applicant.

## **Rule 7**

1. The Applicant shall, within thirty days of the date on which the answer is transmitted to him or her, file with the Secretary a written reply to the answer.
2. The complete text of any document referred to in the written reply and upon which the Applicant intends to rely in support of the application shall be annexed thereto in accordance with the rules established for the application in Rule 5, paragraph 5 and Annex A.
3. The written reply shall be filed in an original and five copies drawn up in accordance with the rules established for the application in Rule 5, paragraph 6. The original shall be signed in accordance with the rules established for the application in Rule 5, paragraph 7.
4. After ascertaining that the formal requirements of this Rule have been complied with, the Secretary shall transmit a copy of the written reply to the Respondent.

## **Rule 8**

1. The Respondent shall, within thirty days of the date on which the reply is transmitted to the respondent, file with the Secretary a written Rejoinder.
2. The complete text of any document referred to in the written Rejoinder and upon which the Respondent intends to rely in support of its Rejoinder shall be annexed thereto in accordance with the rules established for the application in Rule 5, paragraph 5 and Annex A.
3. The written Rejoinder shall be filed in an original and five copies drawn up in accordance with the rules established for the answer in Rule 6, paragraph 2. The original Rejoinder shall be signed on the last page by the representative of the respondent.
4. After ascertaining that the formal requirements of this Rule have been complied with, the Secretary shall transmit a copy of the written Rejoinder to the Applicant.
5. Without prejudice to Rule 10, the written proceedings shall be closed after the Rejoinder has been filed.

**Rule 9**  
**Preliminary Rulings, Interim and Interlocutory Measures**

1. A party requesting a preliminary ruling on any matter, or seeking an interim measure including:
  - (i) whether the Tribunal has jurisdiction to receive an application;
  - (ii) a request for an interim injunction;
  - (iii) a request for the production of documents; or
  - (iv) a request for an oral hearing

shall make such request or application separately as soon as possible before the close of pleadings stating the reasons for the request.
2. The request shall include as attachments all the documents relied upon in support of the request in original or certified true copy.

**Rule 10**

1. In exceptional cases, the President may, on his or her own initiative, or at the request of either party, call upon the parties to submit additional written statements or additional documents within a period which the President shall fix. The additional documents shall be furnished in the original or in properly authenticated form and shall be accompanied by five copies and by any necessary English translations.
2. Each written statement and additional documents shall be communicated by the Secretary, on receipt to the other parties, unless at the request of one of the parties and with the consent of the other party, the Tribunal decides otherwise. The personal files communicated to the Tribunal shall be made available to the applicant by the Secretary in accordance with instructions issued by the Tribunal.
3. In order to complete the documentation of the case prior to its being placed on the list, the President may obtain any necessary information from any party, witnesses or experts. The President may designate a member of the Tribunal or any other disinterested person to record oral statements. Any such statement shall be made under declaration and provided to the parties in accordance with paragraph 2 above.

### **Rule 11**

1. When the President considers the documentation of a case to be sufficiently complete, the President shall instruct the Secretary to place the case on the list for consideration or for hearing and to transmit the dossier of the case to the members designated to decide it. The Secretary shall inform the parties as soon as the case is listed. No additional statements or documents may be filed after the case has been included in the list.
2. As soon as the date for consideration or hearing of the case has been fixed, the Secretary shall notify the parties of the date.
3. Any application for the adjournment of a case shall be decided by the President, or, when the Tribunal is in session, by the Tribunal.

### **Rule 12**

1. The Secretary shall be responsible for transmitting all documents and making all notifications required in connection with proceedings before the Tribunal.
2. The Secretary shall create for each case a dossier which shall record actions taken in connection with the preparation of the case for trial, the dates thereof, and the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office.

### **Rule 13**

1. A staff member may present his or her case before the tribunal in person, including where oral proceedings are allowed pursuant to Rule 14 paragraph 1. The Applicant may alternatively, in accordance with Rule 5 paragraph 7, designate a staff member or retired staff member of the Secretariat to represent him or her, or may be represented by a lawyer authorised to practise in any country which is a member of the Commonwealth.
2. The Secretariat or other international or intergovernmental Commonwealth body or organisation which is a party to proceedings pursuant to Article II paragraph 2 of the Statute shall be represented either by one of its officials



or retired officials designated for that purpose or by a lawyer authorised to practise in any country which is a member of the Commonwealth.

### **Rule 14**

#### **Oral Proceedings**

1. Oral proceedings shall be held if the Tribunal members hearing a case so decide or if either party so requests and the Tribunal so agrees. The oral proceedings may include the presentation and examination of witnesses or experts, and each party shall have the right of oral argument and of comment on the evidence given.
2. In sufficient time before the opening of the oral proceedings, each party shall inform the Secretary and, through the Secretary, the other parties, of the names and description of the witnesses and experts whom he or she desires to be heard, indicating the points to which the evidence is to refer.
3. The Tribunal shall decide on any application for the hearing of witnesses or experts and shall determine the sequence of oral proceedings. Where appropriate, the Tribunal may decide that witnesses shall reply in writing to the questions of the parties. The parties shall, however, retain the right to comment on any such written reply.

### **Rule 15**

1. The Tribunal may examine the witnesses and experts. The parties, their representatives or lawyers may, under the control of the presiding member, put questions to the witnesses and experts.
2. Each witness shall make the following declaration before giving evidence:

“I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth”.

Each expert shall make the following declaration before making a statement:

“I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief”.

3. The Tribunal may exclude evidence which it considers irrelevant, frivolous, or lacking in probative value. The Tribunal may also limit the oral testimony where it considers the written documentation adequate.

### **Rule 16**

#### **Production of Documents**

1. The Tribunal may at any stage of the proceedings order the production of documents or of such other evidence which it considers may be useful for the purposes of its judgment and may arrange for any measures of inquiry as may be necessary. The President may extend the time limits for pleadings to take account of such an order.
2. The Applicant may request the Tribunal to order the production of documents or other evidence which has been requested but to which he or she has been denied access.
3. The request shall contain a statement of the Applicant's reasons supporting the request accompanied by any relevant documents. The Commonwealth Secretariat or Respondent body concerned shall be given an opportunity to present its views on the matter to the Tribunal.
4. The Tribunal may reject the request if it finds that the documents or other evidence requested are irrelevant or insufficiently relevant to the issues, or that compliance with the request would be unduly burdensome. For the purposes of deciding on the request, the Tribunal may examine the documents requested first in private.

### **Rule 17**

1. In determining an application for revision or review under Article X1 of the Statute, the Review Board may affirm or rescind in whole or in part the judgment of the panel which heard the application.
2. Where the Review Board affirms or rescinds the judgment in whole or in part, the Review Board may substitute its own determination and make or refuse to make an order granting any of the remedies provided under Article X of the Statute.

3. Where the Review Board rescinds the judgment as a whole, it may order a re-hearing before a differently constituted panel comprising only members who did not sit on the initial panel.

## **CHAPTER IV. Remand of a Case**

### **Rule 18**

1. If, in the course of the deliberations, the Tribunal finds that the case should be remanded in order that the required procedure may be instituted or corrected under Article X, paragraph 2 of the Statute, it shall notify the parties accordingly.
2. The Tribunal shall decide on the substance of the case if, on the expiry of the time limit of two working days reckoned from the date of the notification under paragraph 1 above, no request for a remand has been made by the Secretary-General or the Head of a body or organization which is a party to proceedings pursuant to Article II paragraph 2 of the Statute.

## **CHAPTER V. Intervention**

### **Rule 19**

1. Any person to whom the Tribunal is open under Article II of the Statute may apply to intervene in a case at any stage thereof on the ground that he or she has a right which may be affected by the judgment to be given by the tribunal. Such person shall for that purpose draw up and file an application in the form of Annex B for the intervention in accordance with the conditions laid down in this Rule.
2. The rules regarding the preparation and submission of applications specified in Rules 5 through 13 above shall apply, with any necessary changes, to the application for intervention.
3. After ascertaining that the formal requirements of this Rule have been complied with, the Secretary shall transmit a copy of the application for intervention to the Applicant and to the Respondent. The President shall decide which documents, if any, relating to the proceedings are to be transmitted to the intervenor by the Secretary.

4. The Tribunal shall rule on the admissibility of every application for intervention submitted under this Rule.

### **Rule 20**

The Secretary-General may, on giving previous notice to the President of the Tribunal, intervene at any stage, if he considers the administration may be affected by the judgment to be given by the Tribunal.

### **Rule 21**

When it appears that a person may have an interest in intervening in a case under Rules 18 or 19, the President, or the Tribunal when in session, may instruct the Secretary to transmit to such a person a copy of the application submitted in the case.

## **CHAPTER VI. Miscellaneous Provisions**

### **Rule 22**

1. The Tribunal may permit any person or entity with a substantial interest in the outcome of a case to participate as a friend-of-the-court. It may also permit the duly authorized representatives of the relevant Staff Association so to participate.
2. The Tribunal shall indicate the terms on which it will permit participation under this Rule.

### **Rule 23** **Anonymity**

1. An Applicant may request in his or her application that his or her name not be made public by the Tribunal
2. The Commonwealth Secretariat or the Respondent organisation concerned may request in its answer that the name of any of its employees not be

made public by the Tribunal. An intervenor may request anonymity in his or her application for intervention.

3. The parties shall be given an opportunity to present their views to the Tribunal in response to a request for anonymity.
4. The Tribunal ~~shall~~ may grant a request for anonymity where good cause has been shown for protecting the privacy of an individual.

## **Rule 24**

### **Judgments**

A judgment of the Tribunal shall be signed by the members of the panel that heard the case and by the Tribunal Secretary.

## **Rule 25**

1. Where the Tribunal has held oral proceedings it may decide, if it considers it appropriate to do so, that its judgment shall be delivered at an open sitting by a member of the panel that heard the application
2. The Secretary shall arrange for the copies of the judgments of the Tribunal to be delivered to the parties and to be made available to others in conformity with the provisions of Article X11 of the Statute.

## **Rule 26**

1. The Tribunal, or when the Tribunal is not in session the President after appropriate consultation where practicable with the members of the Tribunal and in the interest of fairness and justice, may in dealing with a matter presently before it:
  - (i) modify the application of these Rules, including any time limits;
  - (ii) deal with any matter not expressly provided for in the present Rules.
2. These Rules shall apply, with any necessary modifications, to Applicants referred to in Article 11.5(d)(v) and (vi) and to applications arising under Article X11.3 of the Statute.

## **Rule 27**

The present Rules shall apply to applications submitted after 1 September 2016 however arising, and may apply to applications before that date if both the applicant and the respondent agree and so inform the Tribunal.

## **ANNEX A**

(For application by a staff member of the Commonwealth Secretariat or a staff member of another body or organization under Article 11 paragraph 2 of the Statute).

### **I. Form of first section of application drawn up in accordance with Rule 5**

Information concerning the personal and official status of the applicant.

1. Name of respondent.
2. Applicant:
  - a. name and first names;
  - b. date and place of birth;
  - c. marital status;
  - d. nationality; and
  - e. address for purposes of the proceedings.
3. Name and address of lawyer or staff member or retired staff member representing the applicant before the Tribunal.
4. Official status of applicant:
  - i. date of employment;
  - ii. title and level at time of decision contested; and
  - iii. type of applicant's appointment.
5. If the applicant was not a staff member at the time of the contested decision, state:
  - a. the name, first names, nationality and official status of the staff member whose rights are relied on; and
  - b. the relationship of the applicant to the said staff member which entitles the former to come before the Tribunal.
6. Date of the decision contested.
7. Description of remedies exhausted within the Commonwealth Secretariat.

### **II. Requirements regarding annexes**

1. Each document shall constitute a separate annex and shall be numbered with an Arabic numeral. The word “ANNEX”, followed by the number of the document, shall appear at the top of the first page;
2. The annexed documents shall be preceded by a table of contents indicating the number, title, nature, date and, where appropriate, symbol of each annex; and
3. The words “see annex”, followed by the appropriate number, shall appear in parentheses after each reference to an annexed document in the other sections of the application.
4. Wherever possible, Annexes should be numbered and attached in chronological order of the events to which they relate.



## **ANNEX B**

Form of first section of application for intervention drawn up in accordance with Rule 18.

Information concerning the personal and official status of the intervenor.

1. Case in which intervention is sought.
2. Intervenor:
  - (a) name and first names;
  - (b) date and place of birth;
  - (c) marital status;
  - (d) nationality; and
  - (e) address for purposes of the proceedings.
3. Name and address of lawyer or staff member or retired staff member representing the intervenor before the Tribunal.
4. Official status of intervenor:
  - (a) date of employment;
  - (b) title and level; and
  - (c) type of intervenor's appointment.
5. If the intervenor was not a staff member at the time of the contested decision, state:
  - (a) the name, first names, nationality and official status of the staff member whose rights are relied on; and
  - (b) the title under which the intervenor claims he or she is entitled to the rights of the said staff member or entitled to intervene.

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