



A PRESENTATION DELIVERED TO THE LAGOS MULTI-DOOR COURTHOUSE ON
31ST March 2010

THE EFFECTIVE REGISTRAR

INTRODUCTION

With increasing attention being given to alternative dispute resolution in different jurisdictions, the continued focus on this concept by the Lagos State Government is timely. Traditionally, the speedy resolution of disputes has been said to be the main advantage of the arbitration process. In this regard, the role and functions of Registrars cannot be overemphasized.

In arbitration, reference to Registrars may include the provision of infrastructure and oversight services of the arbitral proceedings by an Institution, such as the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Singapore International Arbitration Commission (SIAC), India Council of Arbitration (ICA), etc. In these Institutions the services of a Registrar go beyond the administration of the arbitration reference to include powers to accept or reject an application for arbitration by the Institution, approval of the arbitrators who may be nominated by the parties, scrutiny and approval of the draft award before it is issued, extension of time limits, review of set fees and costs of the arbitration, etc.

In the alternative, reference may be to the Registrar of the arbitration proceedings whose services are required by the Tribunal and the parties for the smooth running of the reference. This service which may be provided by an Institution or an individual is the focus of this paper.

THE REGISTRAR IN ARBITRATION PROCEEDINGS

Arbitration is a dispute resolution mechanism which is private and held pursuant to an agreement between two or more parties who agree to be bound by the decision of the arbitrator after a fair hearing, such decision being enforceable at law.

Speed, privacy and cost are some of the main advantages arbitration is said to have over litigation.

A Tribunal must not only be impartial and independent but must be seen to be so. As such a Tribunal in a reference has to manage the reference in such a manner as to ensure that neither party has any reason to doubt his impartiality. He must never discuss or in any way exchange any communication relating to the reference with either party in the absence of the other.

Though it is not essential to appoint a Registrar in arbitration proceedings, depending on the nature of the reference, it is more convenient for the Tribunal and the parties to have the services of a Registrar. A documents only arbitration for instance would not need a Registrar. On the other hand, a complex arbitration involving a full hearing which is likely to generate a lot of documentation would no doubt benefit from the services of a Registrar.

The presence of a Registrar is therefore helpful for the smooth running of an arbitration reference.

APPOINTMENT

A Registrar may be appointed by the Tribunal subject to the consent of the parties. In institutional arbitrations however, the appointing and/or administering institution usually provides registry services. In such circumstances the Institution is the Registrar and would usually nominate one of its members to provide the service as is the case with the Chartered Institute of Arbitrators (CI Arb) or a member of staff as is the case in the Permanent Court of Arbitration (PCA) and the other Institutions referred to earlier.

FEES

The Registrar's fees form part of the administrative expenses of the reference. Most institutions have fixed fees based on hourly or daily rates for the services of a registrar, e.g. CI Arb, LCIA. In some other institutions such as the ICC and SIAC, the administrative expenses are based on the claim. In ad hoc arbitrations, the administrative expenses which include the Registrar's fees are determined by the Tribunal with the consent of the parties.

DUTIES AND RESPONSIBILITIES OF A REGISTRAR

Are there any formal requirements to qualify as a Registrar?

Unlike the services of a Company Secretary which by law can only be provided by an individual or organization qualified to do so, there are no formal requirements for a Registrar. Anyone can provide the services of a Registrar.

It is however clear from the duties of a Registrar that good organizational skills are required to effectively carry out these duties.

The scope of the services of a Registrar is usually determined by the Tribunal or the institute if the reference is administered by an institution. The duties of a Registrar may include the following:

- Channel of communication: The Registrar plays a key role in ensuring:-
 - that the orders of the Tribunal are properly communicated to the parties;

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- that all oral and written communication between parties are effectively and efficiently transmitted;
 - that all processes arising from the reference are circulated timeously.
- Ensures safe custody of the documents: The Registrar is responsible:
 - for maintaining a record of filings and correspondences; and,
 - for the safe custody of all the documents in the reference.
 - Financial Administration: The Registrar, where required to do so:-
 - holds the parties' deposits towards administrative expenses
 - makes disbursements with the approval of the Tribunal; and,
 - renders periodic accounts and a final account at the end of the reference.
 - Logistical support for meetings and hearings: It is the responsibility of the Registrar to:-
 - make all arrangements as to transportation, travel arrangements, hotel reservations, etc;
 - ensure the availability and preparedness of meeting venues and hearing rooms, e.g. availability of a Bible and a Quran for swearing the witnesses; and
 - ensure all support services are available e.g. catering, recording facilities, transcription services, etc.
 - General Secretarial Support: The Registrar should:-
 - prepare the agenda for proceedings (which must be approved by the Arbitrator);
 - always have an Attendance sheet to be filled by the parties and their representatives;
 - maintain good records of proceedings (minutes or transcriptions);
 - review transcribed records to ensure accuracy; and,
 - carry out any tasks requested by the Tribunal or the parties as it relates to the reference.
 - Confidentiality of the information:
 - Considering the private nature of arbitration, it cannot be over emphasized how important it is for the Registrar to take all reasonable measures in ensuring the confidentiality of the information made available during the reference.

ATTRIBUTES OF A GOOD REGISTRAR

The smooth running of an arbitration reference will, to some extent, depend on the efficacy of the Registrar. Though there are no formal requirements of a Registrar, due to the onerous responsibilities attached to the duties of a Registrar, the following are some attributes necessary for the effective and efficient provision of this service. A good Registrar should:

- maintain a comprehensive directory of the Arbitrators, parties and their representatives. This should contain the names, addresses, telephone numbers, email address, etc;
- ensure that minutes and transcriptions are ready and circulated with as minimal delay as possible
- ensure that minutes and transcriptions are accurate;
- assist in the smooth running of the process by sending out reminders to parties to comply with the directions of the Tribunal, e.g. reminders to file processes within timelines, reminders of forthcoming proceedings, etc;
- get acquainted with the Arbitration Rules chosen to govern the reference to ensure compliance;
- ensure timely communication of information as communication to the Registrar will be deemed to be received by the Tribunal and the parties;
- be accessible to the Tribunal and the parties;
- be dependable, early arrival at the venue of proceedings and hearings;
- have a good command of the spoken and written language of the reference;
- make effective use of technology; and,
- be thorough, pay attention to details.

Do you need a good understanding of the arbitration process to act as a Registrar?

Though there are no specific requirements for the knowledge of the arbitration process by a Registrar; in addition to the aforementioned attributes of a good Registrar, a basic understanding of the arbitral process will be beneficial to a Registrar. For instance, the Registrar must understand the objective of the preliminary meeting which is to set the timetable for the reference and to ensure effective use of time; the prehearing review which ensures that parties have filed all relevant processes and are prepared for hearing; use of witness statements which eliminate the need for examination-in-chief of the witnesses and therefore speeds up the arbitration process; use of written submissions; party autonomy and the arbitrators' powers, etc.

BENEFITS

- You will gain a proper understanding of the arbitration process, the preliminary meeting, the pre-hearing review, the hearing, orders for directions, etc.
- You may have the opportunity to observe members of the Tribunal in conference as they reason out the award.
- You may have access to the award before it is published i.e. delivered to the parties.

CONCLUSION

An effective Registrar will not only assist in the smooth running of the reference but will ensure that the benefits of arbitration as a dispute resolution mechanism, particularly as it relates to speed and privacy, are achieved.

Thank you.

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