

2022 Further Revised Agreed Memorandum of Governance Arrangements incorporating the decisions of Commonwealth Foreign Ministers of 26 September 2019

Note

The document was revised following:

- the changes to the governance of the Commonwealth Secretariat agreed by Commonwealth Heads of Government, at their meeting in Coolumburra, Australia, in March 2002.
- the changes required due to the enactment on 7 April 2005 of the International Organisations Act 2005, which amended the Commonwealth Secretariat Act of 1966 on 12 May 2005.
- the changes to the governance of the Commonwealth Secretariat endorsed by Commonwealth Heads of Government, at their meeting in Kigali, Rwanda on 27 June 2022.

2022 Further Revised Agreed Memorandum

The text of the Revised Agreed Memorandum on the establishment and functions of the Commonwealth Secretariat, published at the conclusion of the 1965 meeting of Commonwealth Heads of Government in London, and amended by member governments following the 2002 meeting of Commonwealth Heads of Government in Australia, following the enactment of the International Organisations Bill in April 2005, and further amended at the 2022 meeting of Commonwealth Heads of Government in Kigali, Rwanda, is as follows.

FURTHER REVISED AGREED MEMORANDUM ON THE COMMONWEALTH SECRETARIAT

I. ESTABLISHMENT OF THE SECRETARIAT

1. Pursuant to their decision announced after the conclusion of the Commonwealth Prime Minister's Meeting in July 1964 the Commonwealth Prime Ministers have decided to establish forthwith a Commonwealth Secretariat (thereafter "the Secretariat"). As envisaged in the Communiqué issued at the close of the 1964 Meeting, the Commonwealth Prime Ministers see the Secretariat as being at the service of all Commonwealth Governments and as a visible symbol of the spirit of co-operation which animates the Commonwealth.

II. SITE OF THE SECRETARIAT

2. The United Kingdom Government will arrange for the Secretariat to be accommodated in Marlborough House.

III. FUNCTIONS OF THE SECRETARIAT

3. The Commonwealth Heads of Government gave further consideration to the role of the Secretariat, and the following paragraphs record the functions which they agreed it should perform.

4. The Secretary-General and Secretariat staff should approach their task bearing in mind that the Commonwealth is an association which enables countries in different regions of the world, consisting of a variety of peoples and representing a number of interests and points of view, to exchange opinions in a friendly, informal and intimate atmosphere. The organisation and functions of the Secretariat should be so designed as to assist in supporting and building on these fundamental elements in the Commonwealth association. At the same time the Commonwealth is not a formal organisation. It does not encroach on the sovereignty of individual members. Nor does it require its members to seek to reach collective decisions or to take united action. Experience has proved that there are advantages in such informality. It enables its members to adapt their procedures to meet changing circumstances; conversely there would be disadvantages in establishing too formal procedures and institutions in the association.

5. The Secretariat has an important role in ensuring the most effective possible coordination of Commonwealth activity, which is conducted by Commonwealth member countries, by the Secretariat itself, by the Commonwealth Foundation and the Commonwealth of Learning, and by accredited Commonwealth organisations.

6. The Secretariat should work to improve collaboration and partnership with other Commonwealth organisations (both intergovernmental and accredited). It should take careful note of the High Level Group's findings on collaboration and partnership with accredited organisations and it should address those findings through thorough implementation, and regular review, of its Partnerships Strategy. Commonwealth organisations should have regular access to the Secretariat and to the Board of Governors and vice versa. The Secretariat should, where appropriate, involve relevant Commonwealth organisations at an early stage in its strategic planning processes, and in the preparation of Commonwealth Ministerial meetings. It should actively partner with Commonwealth organisations and member countries to encourage collaboration in pursuit of particular Commonwealth priorities. It should increase the opportunities for collaboration by collating and disseminating online information about the activities of Commonwealth organisations and member countries, and through the provision of space in Marlborough House, where possible.

GENERAL CONSIDERATIONS

7. Both the Secretary-General and Secretariat staff should be seen to be the servants of the Commonwealth countries collectively. They derive their functions from the authority of Commonwealth Heads of Government; and in the discharge of his/her responsibilities in this connection, the Secretary-General should have access to Heads of Government, who will indicate the appropriate channels of communication to them.

8. The Secretariat should not arrogate to itself executive functions. At the same time, it should have, and develop, a relationship with other intra-Commonwealth bodies.

9. The Secretariat should have a constructive role to play. At the same time, it should operate initially on a modest footing; and its staff and functions should be left to expand pragmatically in the light of experience, subject always to the approval of Governments.

10. Against this background and in the expectation that, as its contacts spread, the Secretariat could expect to receive increasing calls on its resources, the various functions which it will exercise fall under the following broad headings: international affairs, economic affairs and general and administrative functions.

International affairs

11. Consultation is the life blood of the Commonwealth association. At their Meeting in July 1964, the Commonwealth Prime Ministers expressed the view that on matters of major international importance a fuller exchange of views could very appropriately be promoted on an increasingly multilateral basis through the agency of the Secretariat. They were particularly anxious to ensure that there should be opportunity for fuller participation by all member countries in the normal processes of Commonwealth consultation. At the same time, they showed themselves conscious of the importance of maintaining the unwritten conventions which have always determined those processes. The Secretary-General will observe the same conventions and act in the same spirit.

12. In so far as Commonwealth Governments agree that the Secretariat should discharge any specific task, it will be fully at their disposal. In general, however, its purpose will be to serve them by facilitating and promoting consultation on matters of common concern.

To this end, subject to the general principles set out in paragraph 14, the Secretary-General will arrange to prepare and circulate papers on international questions of common concern to all Commonwealth Governments where he/she considers it useful to do so. It may also prove helpful if, in consultation with the Governments concerned, the Secretary-General arranges occasional meetings of officials of member Governments for the exchange of information and views on agreed subjects. Such meetings might on occasion, if member Governments agreed, take place in various Commonwealth capitals or elsewhere.

13. The general principles which the Secretary-General will observe are set out in the following paragraphs.

14. The functions of the Secretariat are envisaged as being *inter alia* the dissemination of factual information to member countries on matters of common concern. "Factual" information cannot be precisely defined; but, provided that the Secretary-General proceeds with circumspection in the exercise of this function, he/she is authorised, where he/she thinks it useful to do so, to prepare and circulate, either on his/her own initiative or at the request of a member Government, papers on international questions of common concern, provided that these papers do not propagate any particular sectional or partisan points of view, contain no policy judgments or recommendations by the Secretariat and do not touch upon the internal affairs of a member country or disputes or serious differences between two or more member countries. In addition, the Secretary-General will, on the request of a member Government, circulate papers submitted by that Government on international questions of common concern, provided that, if these touch upon the internal affairs of member countries or disputes between two or more member countries, they will not be circulated without prior concurrence of the country or countries concerned. The Secretary-General has discretion to refuse to prepare or circulate any paper, whatever its origin, which in his/her view propagates any sectional or partisan point of view or would for any other reason be liable to be offensive to any member country or countries.

15. The Secretariat will be guided by the principles outlined in the preceding paragraphs because it is important that it should develop as a unifying element within the Commonwealth. But, provided that it begins modestly and remains careful not to trespass on the independence and sovereignty of the member Governments whose servant it will be, it will be possible for it to grow in the spirit of the Commonwealth association itself. All Commonwealth Governments wish to contribute to this process and will be ready to assist the Secretary-General in every possible way. In particular, the Secretary-General will from the outset establish close relations with Commonwealth Governments and with their representatives in London; and Governments will arrange to keep the development of the Secretariat's functions under regular review, by means, *inter alia*, of an annual report on its work. By these means the Secretariat will gradually accumulate, with the passage of time, a body of knowledge and experience which will contribute to an even closer understanding among member Governments on those major international issues which are of common and continuing concern to all the members of the Commonwealth.

16. The Chair-in-Office will continue to work and consult closely with the Secretary-General in support of his/her Good Offices role, in efforts to promote and advocate the collective interests of the Commonwealth in other regional and international fora, and in encouraging the delivery of outcomes in fulfilment of CHOGM mandates and commitments.

17. In line with the principles set out in the Report of the Commonwealth Intergovernmental Committee to Review the Mandates of Commonwealth Organisations (CIC) - Ministerial Meetings, adopted at the 2005 CHOGM, outcomes with new financial and/or operational implications for the Secretariat from ministerial meetings can only be approved for implementation to be undertaken by the Secretariat after appropriate budgetary provisions have been identified and allocated by the Executive Committee and approved by the Board of Governors.

ECONOMIC AFFAIRS

18. The Secretariat will discharge several valuable roles in the economic field, the more important of which are outlined in the following paragraphs.

19. The Secretary-General will initiate, collate and distribute to member Governments material bearing not only on economic problems, but also on social and cultural issues in respect of which the potential value of the Secretariat's work could be considerable. In this connection the Secretary-General may commission, within the limits prescribed by the approved budget, specialist studies from outside expert sources rather than by engaging additional permanent staff.

20. The Secretariat may, as appropriate, be represented at meetings of Commonwealth economic bodies in order to keep in close touch with their activities; and it will also keep in touch with the various United Nations and other multilateral agencies whose work is of direct concern to Commonwealth countries.

21. In connection with the general economic aspects of the Secretariat's work, the proposals advanced at the 1964 meeting of Commonwealth Prime Ministers for the initiation of joint Commonwealth Development Projects in individual Commonwealth countries are relevant. The passage from the 1964 communiqué read:

'In particular they considered a proposal that development projects might be launched in individual Commonwealth countries, which would be implemented by various members acting in close collaboration and contributing whatever resources in men, money, materials, and technical expertise they could most appropriately provide. Such projects, which would be additional to the support which Commonwealth countries already provide to the United Nations Special Fund and Expanded Programme of Technical Assistance, could be directed to a number of different purposes - the improvement of agricultural production and the development of natural resources through extension services, training and research; the enlargement of professional and technical training; the development of new industries; and so forth. But they would all be inspired by the common purpose of promoting the development of the Commonwealth by a coordinated programme of joint or bilateral projects. The British Government said that they would be prepared to make a substantial contribution to projects of this kind within their expanding programme of development aid. The other member Governments expressed support for the objective of the proposal and agreed that further consideration should be given to the basis on which such a programme might be established.'

22. As regards the Secretariat's general functions and, in particular, its activities in the economic field, it is important that nothing should be done which might duplicate the present bilateral and multilateral linkages. The functions of the Secretariat in connection with the development projects are therefore expert and advisory and will not detract from the right of member countries to determine their own aid and development programmes.

23. Subject to these basic considerations the Secretariat will be able to play a valuable part in assisting member Governments, at their request, in advancing, and obtaining support for, development projects and technical assistance in a variety of fields on a multilateral basis, as appropriate.

24. Thus the Secretariat, by accumulating a reliable body of knowledge on the aid potential of the Commonwealth to which member countries can usefully have recourse for the purpose of promoting their own development, will enable Commonwealth countries generally to cooperate to the maximum extent possible in promoting the economic development of all.

25. In general, the Secretary-General, in discharging functions in this field of economic and related affairs, will be guided by the principles set down in paragraph 14.

SERVICING OF COMMONWEALTH MEETINGS

26. The Secretariat, operating as the visible servant of the Commonwealth association, will carry out the task of servicing future meetings of Commonwealth Heads of Government and, where appropriate, other Ministerial and official meetings open to all eligible members of the Commonwealth. The Secretariat will be able to rely on the host country for such secretarial help as it cannot itself provide and for assistance in matters of accommodation, hospitality, transport and the like.

27. As regards Meetings of Heads of Government the Secretary-General will serve as Secretary-General to each Meeting. Subject to the principles set out in paragraphs 12 and 13 above, the Secretary-General's duties will include the preparation, collation and circulation of papers on agenda items, together with such background papers as appear appropriate; the production of minutes; and, with the assistance of the host Government, the general organisation of the Meeting.

28. As to the preparation of the agenda itself, the Secretary-General will be responsible for co-ordinating this process in the light of such direct discussions as Commonwealth Heads of Government may find convenient. Heads of Government will maintain the practice whereby the provisional agenda is drawn up, after consultation among themselves, in the form of a list of broad headings for discussion and they also reserve to themselves decisions on the timing and location of their Meetings.

29. The Secretariat should assist member countries to identify key priorities which require the attention, decisions and endorsement of Commonwealth Heads of Government, and on which there is value in the Commonwealth voice being heard. We also recommend that the CHOGM outcome documents should clarify which actions are for member countries, the Secretariat and other Commonwealth organisations.

IV. ADMINISTRATIVE ARRANGEMENTS

30. In consonance with the above functions of the Secretariat, its administrative organisation will be as follows.

31. The Chief Executive Officer of the Secretariat will be the Secretary-General, and, unless he/she otherwise directs, all members of the staff of the Secretariat will be responsible only to him/her.

32. The Secretary-General will be appointed by Commonwealth Heads of Government collectively, and will be a person of high standing. A significant part of the Secretary-General's duties will be visiting member countries of the Commonwealth.

33. The Secretary-General will be appointed for a four-year term, renewable for one additional four-year term.

34. By virtue of his/her appointment by Heads of Government, the Secretary-General is empowered to represent the Commonwealth and run the Secretariat in accordance with the strategic guidance and direction set by Heads and by those whom Heads empower to act on their behalf.

35. A committee, chaired by the Chair-in-Office (or his/her representative) and comprising also the Chair of the Board of Governors and a representative selected by each of the four regional groups, will jointly conduct assessments of the Secretary-General's performance (a) no later than two (2) years after he/she takes office and (b) no later than nine (9) months before the end of the Secretary-General's term. In making these assessments, the committee will invite input, in confidence, from all member countries, as well as from other relevant stakeholders. The Secretary-General's assessment will be judged against, inter alia, the Secretary-General's implementation of the Delivery Plan. The outcome of these assessments will be communicated to the Secretary-General for his/her input before being sent in confidence to Heads through their representatives on the Board of Governors at least a month before the next Commonwealth Heads of Government Meeting.

36. Arrangements for the selection, recruitment and appointment of Secretaries-General, and for renewal of the appointment of a Secretary-General for a second term, shall be as follows:

(i) Appointment of Secretaries-General shall be decided by consensus among Commonwealth member countries. Secretaries-General shall be selected on the basis of merit and competence with specific regard for regional geographic representation and gender balance.

(ii) Heads shall typically decide a Secretary-General's appointment at a CHOGM, where the CHOGM host shall administer the decision-making process. However, where necessary, Heads may instead decide a Secretary-General's appointment in an extraordinary meeting convened for that purpose, where the Chair-in-Office shall administer the decision-making process; or without meeting physically, in which case a committee of member countries (comprising a representative selected by each of the four regional groups, the Chair of the Board of Governors and the Chair-in-Office) shall administer the process, keeping the Board of Governors informed at each stage

of the process; or Heads may delegate the decision to a meeting of Foreign Affairs Ministers.

(iii) Only nationals of Commonwealth member countries are eligible for consideration for the post of Secretary-General.

(iv) Recruitment will be based on clear job specifications, advertised openly among Commonwealth member countries, and conducted according to a published timetable. The job specifications, advertisement and timetable will be approved beforehand by the Board of Governors.

(v) Suitable candidates may apply directly or be nominated by member countries, but each candidate must be endorsed by his/her own government before submitting an application and/or being nominated.

(vi) The recruitment and selection process will normally commence at least twelve (12) months before the beginning of the new Secretary-General's term.

(vii) To allow sufficient time for Heads to receive advice and to consider the candidatures, candidates will be required to make a presentation to the Board of Governors, at least six (6) months before the beginning of the new Secretary-General's term, outlining their manifestos, priorities and plans for the Commonwealth.

(viii) Re-appointment of a Secretary-General for a second term is not automatic. An incumbent Secretary-General serving a first four-year term in the role may, if s/he wishes, apply for appointment for a new term, in which case, s/he will be a candidate in a process as set out above.

Deputy Secretaries General

37. The Secretary-General shall appoint at least one, and no more than three, Deputy Secretaries-General (DSGs) and allocate responsibilities among them in light of the Secretariat's needs, resources and work programmes. A DSG shall be authorised to represent the Secretary-General in cases of his/her absence or incapacity. This shall help to improve corporate governance, enhance continuity, ensure seamless management, allow adequate contingency planning, and ensure consistent representation of the Secretariat.

38. Recruitment and selection of DSGs shall be transparent and based on clear job specifications, advertised openly among Commonwealth member countries, open to all qualified Commonwealth nationals, and conducted according to a published timetable. Before appointing a DSG, the Secretary-General shall circulate the shortlist of candidates to member countries through their representatives on the Board of Governors in confidence and invite feedback. DSGs shall be selected on the basis of merit and competence with specific regard for regional geographic representation and gender balance. One Deputy Secretary-General will have responsibility for the administration of the Commonwealth Fund for Technical Co-operation.

39. The paramount consideration in the selection of staff and in the determination of conditions of service will be the necessity of securing the highest standards of efficiency, competence and integrity, due regard being paid to gender balance and the importance of recruiting the staff on as wide a geographical basis as possible within the Commonwealth. The Secretary-General will have discretion, in the light of the above considerations, to appoint professional staff to the service of the Secretariat. In so doing the Secretary-General will consider names submitted by Commonwealth Governments, who need not feel

themselves limited to Government servants in submitting nominations, as well as candidates applying directly.

40. The Secretary-General has authority to make appointments of other staff. All appointments are subject to the approved budgetary limitations.

41. All persons appointed to the staff of the Secretariat must be subject to clearance to the extent that their own Governments raise no objection to their suitability for employment. All members of the Secretariat, whatever their origin, must be strictly impartial in the discharge of their functions and place loyalty to the Commonwealth as a whole above all other considerations.

42. Deputy Secretaries-General will be appointed for a three-year term, renewable for one additional three-year term.

43. In determining the period of tenure of remaining diplomatic and other professional staff, the Secretary-General will have regard to the need for rotation of staff, in order to ensure that qualified Commonwealth citizens from all member countries have the opportunity to serve as members of staff and also the possible need to stagger appointments in order to ensure continuity.

44. The British Government will introduce legislation in order to give the Secretariat a legal personality under United Kingdom law and to accord to the Secretariat and its staff the immunities and privileges which are set out in Annex A.

45. Other Commonwealth Governments will take steps to accord corresponding immunities and privileges to the staff of the Secretariat when visiting their territories, subject to whatever constitutional processes are required.

46. Contractual disputes involving the Secretariat will be resolved by the Commonwealth Secretariat Arbitral Tribunal (CSAT) established by Commonwealth Governments. The Further Revised CSAT Statute and Rules are annexed as Annex C.

47. The cost of the Secretariat will be borne in agreed shares by Commonwealth Governments on the basis of a scale of contributions agreed by Commonwealth Heads of Government.

48. Member countries should pay their annual assessed contributions to the Secretariat and the Commonwealth Youth Programme within the parameters set by the Abuja Guidelines but, where possible, endeavour to pay within six months of the commencement of the Secretariat's financial year.

49. The budget of the Secretariat and any other budgets will be considered by member governments who will, from time to time, establish such bodies as they consider appropriate to approve matters relating to the activities and financing of the Secretariat, the Commonwealth Fund for Technical Co-operation, and the Commonwealth Youth Programme. The governance arrangements of the Secretariat are set out in Annex B.

ANNEX A*

COMMONWEALTH SECRETARIAT

Proposed Scale of Immunities and Privileges

1. SECRETARIAT

(i) To have a legal personality and immunity from suit and legal process except:

- (a) when expressly waived;
- (b) in respect of motor accidents and motor traffic offences.

(ii) The position of contracts entered into before the coming into force of Section 1 of the International Organisations Act 2005 shall not be affected by the provisions of paragraph (i).

(iii) To have inviolability of premises, archives and communications.

(iv) To have relief from non-beneficial rates out of the United Kingdom Treasury Request for Resources from Parliament.

(v) Goods imported for official purposes to be exempt from all Customs dues.

(vi) To have immunity from direct taxes.

(vii) Indirect taxes on substantial purchases for official purposes to be reimbursed out of the Foreign and Commonwealth Office Request for Resources from Parliament e.g. on furniture and furnishings, office supplies, and motor vehicles purchased in the United Kingdom and duty on motor vehicle fuels used for official purposes. It is intended that the same treatment should be accorded to the Secretariat as is accorded to the Office of a High Commissioner.

2. STAFF

(i) **High Officers**

- The Secretary-General, the Deputy Secretaries-General and other senior staff, to enjoy (provided they are not citizens of or permanently resident in, the United Kingdom) the privileges and immunities appropriate to a diplomatic agent of comparable rank, and to enjoy arrangements as regards United Kingdom income tax as referred to in paragraph 3.

This implies full personal immunities extending to the family of the High Officer, inviolability of private residence, continuing Customs privileges, relief from non-beneficial rates (out of the United Kingdom Treasury Request for Resources from Parliament), and reimbursement of tax on motor vehicles purchased in the United Kingdom and of excise duty on reasonable quantities of alcoholic beverages purchased in the United Kingdom (both out of the Foreign

* In accordance with its obligations as set out in Annex A. the United Kingdom Government has enacted the Commonwealth Secretariat Act 1966.

and Commonwealth Office Request for Resources from Parliament).

In accordance with Article 38 of the Vienna Convention, diplomatic agents who are either citizens of the receiving State or permanently resident there enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions. High Officers of the Secretariat who fall within the ambit of this Article would be treated accordingly; but they would not have their immunities and privileges restricted in this way solely on account of dual citizenship.

(ii) Other Staff

- (a) Any other staff recruited from Commonwealth countries other than the United Kingdom to enjoy first arrival Customs privileges i.e., the right to import duty-free their furniture and personal effects, including a motor vehicle (or refund of tax from the Foreign and Commonwealth Office Request for Resources from Parliament if a motor vehicle is purchased in the United Kingdom), at the time of first taking up their post.
- (b) All staff, including United Kingdom citizens, and the President and members of the Commonwealth Secretariat Arbitral Tribunal or any equivalent successor body, to enjoy immunity from suit and legal process only in relation to their official acts and inviolability only in relation to their official papers and documents. This official immunity will not extend to motor vehicle accidents or motor traffic offences.

3. INCOME TAX

With effect from 6th April 2006, the salaries and emoluments received by all staff as serving officers of the Secretariat will become subject to an internal income tax imposed by the Secretariat for the benefit of the Secretariat. As from 6th April 2006 and subject to the Secretariat maintaining an effective internal tax system in place, those salaries and emoluments will be exempted from United Kingdom income tax. This paragraph does not apply to pensions or annuities paid to former members of staff of the Secretariat.

ANNEX B

COMMONWEALTH SECRETARIAT GOVERNANCE ARRANGEMENTS

Pursuant to the decision of Commonwealth Heads of Government taken at Coolum in March 2002, the Secretariat's governance was streamlined and integrated in order to improve efficiency and transparency, and to improve governments' direction and oversight of the total resources they contribute to Commonwealth activities. In pursuing its mandates, the Secretariat will seek to work closely with other relevant Commonwealth bodies with a view to making the Commonwealth more coherent and effective. The Secretariat's governance was further revised and updated following the enactment of the International Organisations Bill in April 2005, and amended at the 2022 meeting of Commonwealth Heads of Government in Kigali, Rwanda.

1. The Secretary-General is ultimately accountable to Heads. However, in practice between CHOGMs, this accountability shall be exercised on Heads' behalf by the Foreign Affairs Ministers, at their annual meetings, and by the Board of Governors and its relevant committees between Foreign Affairs Ministers' meetings. In other words, Foreign Affairs Ministers and the Board of Governors are empowered to provide strategic direction and guidance to the Secretary-General, and to ensure that the actions of the Secretary-General are consistent with the wishes of Heads and best management and leadership practices.
2. The Board of Governors will support the Secretary-General in his/her duties and will exercise financial oversight of the funds which are managed by the Secretariat, including also reviewing, inter alia, outcomes against the Secretariat's Strategic Plan, Delivery Plan and Budget, and considering what action to take as it [the Board] considers the Secretariat's proposed new plans and budget for the following year. These individual funds are: the Commonwealth Secretariat, Commonwealth Fund for Technical Co-operation and Commonwealth Youth Programme.

BOARD OF GOVERNORS

3. All Commonwealth governments are entitled to be represented on the Board of Governors which is to be comprised of senior officials of member countries.
4. The Board will meet annually or more frequently as required. The annual meeting will be not later than six weeks in advance of the forthcoming budget period. A discrete segment of each meeting of the Board will be dedicated to CFTC issues. The Board will meet in London unless otherwise decided.
5. The Board of Governors will exercise oversight directly and through the Executive Committee and any other committee(s) which the Board may create to examine any particular areas of operation. The Board of Governors may hold additional plenary meetings if requested by the Chair of the Board of Governors, the Chair of the Executive Committee or any member of the Board of Governors with the endorsement of at least nine (9) other members.
6. The Secretary-General will be responsible for the day-to-day management of the Secretariat. However, the Board of Governors, its Executive Committee and any other committees it constitutes may request that the Secretariat provide information, where

such information is deemed to be important in the execution of the Board's oversight responsibilities, and the Board of Governors may act as necessary on such information to ensure the effective operation of the Secretariat.

7. The Board of Governors, shall, from time to time, update the guidelines for reporting by the Secretariat in order to improve the Board's ability to measure results, and to improve reporting, transparency, accountability and efficiency.

8. The Board of Governors will form a standing Legal and Governance Matters Committee to consider specific legal and governance issues referred to it by the Board of Governors.

9. The Board will:

- (i) receive annual reports from the Secretary-General on the operations of each of the individual funds;
- (ii) provide strategic direction on major policy issues;
- (iii) review implementation of CHOGM mandates;
- (iv) approve four-year strategic plans and two-year programme budgets and work programmes;
- (v) consider and approve annual audited accounts; and
- (vi) consider and approve the Secretariat's audit and evaluation plans, including as they apply to the Commonwealth's individual funds, and review and provide policy feedback on audit and evaluation findings and recommendations.

10. In respect of the CFTC, the Board will also:

- (i) issue guidelines for the general operations and management of the Fund and agree modifications and extensions to them from time to time;
- (ii) discuss and approve plans of expenditure as recommended by the Executive Committee of the Board of Governors; and
- (iii) review the financial regulations of the CFTC at least once every six years.

11. In respect of the Commonwealth Youth Programme (CYP), taking into account the guidance of Commonwealth Youth Ministers, the Board of Governors will also:

- (i) issue guidelines for the general operations and management of the CYP and agree modifications and extensions to them from time to time;
- (ii) discuss and approve plans of expenditure as recommended by the Executive Committee of the Board of Governors; and
- (iii) review the financial regulations of the CYP at least once every six years.

12. The Board will receive reports from the Commonwealth of Learning and the Commonwealth Foundation.

13. The integrity of the individual funds will be preserved.

14. The Board will elect a Chair and may elect one or more other members as Vice-Chair(s). The Secretary-General will participate ex-officio and will be responsible for providing the Secretary for the Board.

15. The Chair of the Board of Governors will have a two-year term of office to ensure a continuity of office with the Chair of the Executive Committee and the rotation of this position among member governments.

16. A representative of the country whose Head of Government is the CHOGM Chair-in-Office will hold one of the posts of Vice-Chair of the Board. Arrangements for the election of any other Vice-Chair should reflect the need for continuity.

17. The Board of Governors will approve a summary of its decisions at the end of each meeting. If requested, minutes of the meeting will be circulated for review within two weeks of the meeting.

EXECUTIVE COMMITTEE OF THE BOARD OF GOVERNORS

18. The Executive Committee is a committee of the Board of Governors and will meet quarterly. It will receive reports from the Secretary-General on the operations of the individual funds, oversee budget and audit functions and other functions referred to it by the Board. The Executive Committee may, however, *suo moto* (on its own initiative), between meetings of the Board of Governors, consider items which it deems important to advancing the work of the Board of Governors and provide advice and recommendations to the Board of Governors in this regard.

19. The Executive Committee of the Board of Governors will consist of representatives of member countries in such number as to ensure that its membership is geographically balanced and includes the major contributors to the Secretariat's Funds. Until otherwise determined by Heads of Government, the Executive Committee will consist of:

- (i) Eight (8) members representing the eight Governments which were the largest contributors to the overall resources of the various Funds of the Secretariat over the period of the three previous financial years. The list of the top 8 contributors to the Secretariat's total resources will be reassessed biennially.
- (ii) Eight (8) members representing other Governments to be elected by the Board of Governors with due regard to regional balance.
- (iii) The Chair of the Board of Governors unless the country which he/she represents on the Board is already represented on the Committee.
- (iv) The Commonwealth Secretary-General or his/her nominee will participate ex-officio and will be responsible for providing the Secretary for the Committee.

20. Members of the Executive Committee, other than those representing the eight largest financial contributors, will normally serve as members for two years. To facilitate rotation while retaining some continuity of membership, at the end of the first year of the Committee's existence, four of their number will retire and be replaced.

21. The Executive Committee will elect a Chair and Vice-Chair from among its members.

22. The Chair will have a two-year term of office (synchronised with the CHOGM cycle). The first Vice-Chair of the newly constituted Committee will be appointed for one year. Thereafter, the Vice-Chair will have a two-year term of office.

23. The Chair of the Board of Governors will not be elected Chair of the Executive Committee, given that as Chair of the Board of Governors s/he also serves as an ex-officio member of the Executive Committee.

24. The Chair-in-Office will not be elected simultaneously as Chair of the Board of Governors or Chair of the Executive Committee. The Vice-Chair of the Board representing the country that is Chair-in-Office will be an ex-officio member of the Executive Committee, unless already represented therein under existing membership criteria.

25. In respect of the CFTC, the Executive Committee, at one of its quarterly meetings, will:

- (i) consider the general balance between headquarters staff, field personnel and other operations to be financed from the Fund;
- (ii) determine, subject to the directions of the Board of Governors, the acceptability of financial or other arrangements proposed for the different parts of the programme to be financed from the Fund and the general terms and conditions under which technical assistance will be provided;
- (iii) review the CFTC content of the annual report of the Secretary-General;
- (iv) in accordance with the CFTC MOU, review as required the CFTC content of Secretariat's Strategic Plan including its planning and implementation framework and make recommendations to the Board of Governors; and
- (v) recommend for the Board of Governors' approval plans of expenditure and supervise their implementation thereafter but with such freedom to modify the plans in the light of changing circumstances as the Board may agree.

26. In respect of the CYP, the Executive Committee will:

- (i) determine, subject to the directions of the Board of Governors, the acceptability of financial or other arrangements proposed for the different parts of the programme to be financed from the CYP budget and the general terms and conditions under which the CYP's programmes are delivered;
- (ii) receive periodic reports from the Secretariat on the operations and effectiveness of CYP programmes;
- (iii) recommend for the Board of Governors' approval plans of expenditure and supervise their implementation thereafter but with such freedom to modify the plans in the light of changing circumstances as the Board may agree.

DECISION MAKING

27. Decisions of the Board of Governors and its Executive Committee will normally be taken by general agreement. The Committee may refer any particular question to the Board of Governors, and will do so if requested by two or more members. Any decision with regard to the CFTC taken by majority decision must have the support of representatives of governments contributing three-quarters of the resources of the CFTC in that financial year.

STATUTE OF THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

Adopted by Commonwealth Governments on 1 July 1995 and amended by them on 24 June 1999, 18 February 2004, 14 May 2005, 16 May 2007 and 28 May 2015.

PART I ESTABLISHMENT

ARTICLE I

There is established by Commonwealth Governments under this Statute, the Arbitral Tribunal of the Commonwealth Secretariat, to be known as the Commonwealth Secretariat Arbitral Tribunal.

PART II JURISDICTION

ARTICLE II

1. The Tribunal shall hear and determine any application brought by:
 - (a) a member of staff of the Commonwealth Secretariat;
 - (b) The Commonwealth Secretariat;
 - (c) any other person who enters into a contract with the Commonwealth Secretariat;

which alleges the non-observance of a contract in writing with the Commonwealth Secretariat and includes, in relation to a contract of service the non-observance of the contract of employment or terms of appointment of such member of staff, and in relation to a contract for services the non-observance of the terms of the contract.

2. The Tribunal shall also be competent to hear and determine an application involving an international or intergovernmental Commonwealth body or organisation which meets the requirements set out in Annex A to this Statute and which has addressed to the Commonwealth Secretary General a declaration recognising, in accordance with its constitution or internal

administrative arrangements, the exclusive jurisdiction of the Tribunal, as well as its Rules of Procedure and brought by:

- (a) a member of staff of that international or intergovernmental Commonwealth body or organisation;
- (b) that international or intergovernmental Commonwealth body or organisation;
- (c) any other person who enters into a contract with that international or intergovernmental Commonwealth body or organisation;

which alleges the non-observance of a contract in writing with that international or intergovernmental Commonwealth body or organisation including, in relation to a contract of service the non-observance of the contract of employment or terms of appointment of such member of staff, and in relation to a contract for services the non-observance of the terms of the contract.

3. Subject to paragraph 4 of this Article, the Tribunal shall only consider an application if:
 - (a) in relation to a contract of service, the applicant has exhausted all other remedies available within the Commonwealth Secretariat or other body or organisation eligible under Annex A including the redress of grievance procedures specified in the contract or in relevant Staff Rules; and
 - (b) the application is filed within a period of 90 days after the latest of the following:
 - (i) the occurrence of the event giving rise to the application;
 - (ii) receipt of notice, after the applicant has exhausted all other remedies available within the Commonwealth Secretariat or other eligible body or organisation, that the relief asked for or recommended will not be granted; or

- (iii) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within one month after receipt of such notice.
 - (c) Notwithstanding the provisions of paragraph 3 (a) the Tribunal may consider an application where all other remedies have not been exhausted where:
 - (i) the Tribunal determines that the remedies available cannot adequately address the issues raised in the application, *or*
 - (ii) the administration fails to initiate the necessary administrative procedure or measures or to take a decision within a reasonable time from the date of notification to it of the grievance or event which gave rise to the application.
 - (iii) if the administration has not initiated the necessary administrative procedure or taken the necessary measures within 80 days from the notification to it of the grievance or event which gave rise to the application, then subject to paragraph (4) below, the Tribunal may consider the application whether or not it considers that a reasonable time has elapsed
- 4.
 - (i) The Tribunal may nevertheless consider an application which is out of time where it is satisfied that it was not reasonably practicable for the application to be filed before the end of the period of 90 days.
 - (ii) Other than in exceptional circumstances, notwithstanding the provisions of paragraph 3, an application shall not be receivable if it is filed more than one year after the occurrence of any of the events listed in paragraph 3(b) which gave rise to the application.
- 5 For the purpose of this Statute:
 - (a) “contract of employment” and “terms of appointment” include all relevant Regulations and Rules in force at the time of the alleged non-

observance and include the provisions relating to staff gratuity, retirement and end of contract benefits;

- (b) “contract of service” means an agreement between the Commonwealth Secretariat or other eligible body or organisation to which the Tribunal is open under Annex A to this Statute and a member of its staff for work by the staff member over a specified period of time and in relation to which the relevant Regulations, Rules and provisions referred to in paragraph (a) concerning a contract of employment will apply.
- (c) “contract for services” means a contract for the supply of goods or services other than a contract of service.
- (d) “member of staff” means:
 - (i) any current or former member of the headquarters staff of the Commonwealth Secretariat;
 - (ii) a current or former member of staff of a regional office of the Commonwealth Youth Programme (CYP); and current or former office staff of the Commonwealth Small States facility in New York or of any other eligible body or organisation to which the Tribunal is open under Annex A to this Statute; and
 - (iii) any person who is entitled to claim upon a right of a member of the staff as a personal representative
 - (iv) a temporary appointee;

but does not include:

- (v) an expert employed to work under the Commonwealth Fund for Technical Co-operation;
- (vi) a consultant who does not discharge the functions of a substantive post holder at the Commonwealth Secretariat Headquarters or at a regional office of the Commonwealth Youth Programme or at the Commonwealth Small States facility in New York or within any other eligible body or organisation to which the Tribunal is open under Annex A to

this Statute and thereby does not fall within the ordinary meaning of the word “employee”;

- (vii) a person employed in the domestic household of a member of staff.

ARTICLE III

In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the Tribunal.

PART III MEMBERSHIP, APPOINTMENTS AND TENURE

ARTICLE IV

1. The Tribunal shall consist of eight members including the President who shall be nationals of Commonwealth Member States.
2. No two members of the Tribunal may be nationals of the same member State.
3. The members of the Tribunal shall be of high moral character and must:
 - (a) have held, hold or be qualified to hold high judicial office in a Commonwealth country; or
 - (b) be jurisconsults of recognised competence with experience as such for a period of not less than ten years.
4. (a) The President and the other members of the Tribunal shall be selected by Commonwealth Governments on a regionally representative basis with an appropriate gender balance and appointed in accordance with the provisions of Annex B to this Statute;
 - (b) The President and **the** other members of the Tribunal shall be appointed for four year terms;
 - (c) Member Governments may re-select the President or any other member of the Tribunal for appointment for one

additional term not exceeding four years in accordance with the provisions of Annex B.

5. The Tribunal hearing an application shall be composed of three members empanelled by the President. Unless the President decides otherwise and subject to paragraphs 6 - 8 of this Article and paragraph 8 of Article X1, he or she shall be a member of the panel and shall preside over the proceedings. In the absence of the President the panel shall decide who shall preside.
6. Any member who has an actual or potential conflict of interest in a case shall recuse himself or herself.
7. Where a substantial number of applications have been lodged and have been listed for adjudication, the Tribunal if the President so decides, may be constituted in separate chambers of three members each.
8. If the President resigns or dies, or for whatever reason is unlikely to be able to perform the duties of the office for a period exceeding three months, the remaining members of the Tribunal shall elect another member from among their number to perform the duties of the President during the absence of the President or until a new President is appointed.
9. A member of the Tribunal shall have security of tenure and shall remain in office until the end of his/her term of appointment unless the member resigns or dies. A member may only be removed on the ground of manifest unsuitability or inability to perform the duties of a member of the Tribunal following a recommendation of the majority of the other members of the Tribunal addressed to the Commonwealth Secretary-General for the attention of and approval by Member Governments.
10. In the event of the occurrence of any of the contingencies set out in Annex C to this Statute, the procedure to be followed shall be as specified therein.

ARTICLE V

1. The Commonwealth Secretary-General shall make the administrative arrangements necessary for the functioning of the Tribunal including the appointment of a suitably qualified lawyer as Executive Secretary, who is qualified to practice law in at least one Member State.

2. In the discharge of his or her duties, the Executive Secretary shall be responsible only to the Tribunal and, subject to the Tribunal Rules, shall keep confidential any information or material related to any matter coming before the Tribunal.
3. If the Secretary is absent or unable to act, the duties of the Secretary shall, during the period of his/her absence or inability to act, be performed by an alternate appointed by the Secretary General and who satisfies the requirements prescribed in paragraph 1. When performing the functions of the Secretary, the alternate Secretary shall be subject to the same duty of confidentiality as the Secretary and responsible only to the Tribunal.
4. The expenses of the Tribunal shall be borne by Member Governments and any body or organisation recognising and submitting to the jurisdiction of the Tribunal pursuant to Article II paragraph 2. The expenses to be borne by any such body or organisation shall be in accordance with Annex A, paragraph 2.

PART IV PROCEDURE

ARTICLE VI

1. Subject to the provisions of the present Statute, the Tribunal shall draw up its rules and shall determine its procedure. When amending its Rules, the Tribunal may take into account any views expressed by Commonwealth Governments, the Secretary General and the Commonwealth Secretariat Staff Association.
2. The Rules of the Tribunal shall contain provisions to ensure that applications before the Tribunal are dealt with in a manner that is independent and impartial and consistent with Commonwealth Principles relating to fundamental human rights and independence of the judiciary.
3. Without prejudice to Article XII, in drawing up its Rules the Tribunal shall take into account the practice and procedure of other international administrative tribunals and shall ensure that the Rules permit the hearing of relevant cases in accordance with the law governing international organisations.

4. The Rules shall include provisions concerning:
 - (a) the presentation of applications, including application for anonymity and the procedure to be followed in respect of them;
 - (b) intervention by persons, bodies or organisations to whom the Tribunal is open pursuant to paragraphs 1 and 2 of Article II and as defined in paragraph 5 of Article II, whose rights or obligations may be affected by the judgment;
 - (c) hearing, for the purposes of information, of persons, bodies or organisations to whom the Tribunal is open under paragraphs 1 and 2 of Article II; and
 - (d) other matters relating to the functioning of the Tribunal
5. The Tribunal may require the production of documents held by the Commonwealth Secretariat or other organisation concerned
6. The Secretary General or Head of the body or organisation concerned may object to the production of relevant documents on the grounds that the security of individuals would be endangered or confidentiality of the organisation's discussions or negotiations infringed. Such objection shall be considered by the Tribunal and shall be upheld unless ad to the extent that the Tribunal holds that the objection is unsupported by reasonable and sufficient grounds.
7. For the purpose of making a determination under paragraph 6, the Tribunal may:
 - (i) Inspect the documents which are the subject of the dispute (without disclosing them to the Applicant or the Applicant's representatives), and
 - (ii) To the extent that it is practicable and appropriate in the light of the reasons given for non-disclosure, invite submissions from both parties on questions of principle as to whether the documents should be disclosed.

ARTICLE VII

1. The Tribunal shall hold sessions and sit on dates and at times to be fixed in accordance with its rules.
2. In dealing with applications before it and subject to its rules, the Tribunal shall proceed as expeditiously as the circumstances permit.
3. The Tribunal shall hold its sessions at the principal office of the Commonwealth Secretariat, unless it considers that the efficient conduct of the proceedings necessitates holding sessions elsewhere and budgetary considerations permit, or where the Respondent is another organisation which has accepted the jurisdiction of the Tribunal under Article II paragraph 2 and upon the request of that organisation.
4. In dealing with an application, unless it decides to hold oral proceedings, the Tribunal may dispose of the application on the strength of the documents only by exchange of correspondence and without the need for a formal sitting.

ARTICLE VIII

1. The Tribunal shall decide whether oral proceedings are warranted and shall so decide if the interests of justice appear to it to require the calling of witnesses.
2. The Tribunal shall hear any witness whose evidence it considers relevant to the hearing and may require any official of the respondent organisation to appear before it as a witness
3. Any party making or responding to an application, or entitled under paragraph 4(b) of Article VI to intervene, may make representations in this regard. Any oral proceedings shall be held in public, unless the Tribunal decides that the interests of justice require that they be held in private, in particular where the Applicant has requested anonymity and the Tribunal grants the request.

ARTICLE IX

1. The Tribunal shall take all its decisions by a majority of the members of the panel which heard the case. Where a panel has been reduced to two members and the members fail to agree, the presiding member shall order a re-hearing by a new panel.
2. The Tribunal shall state the reasons for its judgment in writing.
3. The Tribunal shall determine who shall bear the costs of the application and in doing so may take into account the means of the parties.
4. In an application where the Tribunal has held oral proceedings the Tribunal may decide, if it considers that circumstances require it, that its judgment shall be delivered at an open sitting by a member of the panel which heard the case.
5. Subject to Article X1, the judgment of the Tribunal shall be final and binding on the parties and shall not be subject to appeal.

ARTICLE X

1. If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked, or in addition to, or alternatively to any such remedy, appropriate compensation for any loss or damage occasioned. Where an application is made by a staff member, where relevant, the Tribunal shall, at the same time, fix the amount of compensation to be paid to the applicant for the loss, injury or damage sustained, provided that such compensation shall not normally exceed the equivalent of three years' net remuneration of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher amount of compensation. A statement of the specific reason for such an order shall be made.
2. Subject to Article II 3(c), if the Tribunal finds that there has been unreasonable delay in instituting the procedure prescribed in the rules of the Commonwealth Secretariat or other eligible body or organisation or that

the prescribed procedure has not be observed, it may, at the request of the Secretary-General or at the request of the Head of a body or organisation to which Article II paragraph 2 applies, and prior to the determination of the merits, order the case to be remanded for institution of the required procedure or correction of the faulty procedure.

Where a case is remanded, the Tribunal may order the payment of compensation, not exceeding the equivalent of three months' net remuneration, to the applicant for such loss as may have been caused by the procedural delay.

3. The filing of an application shall not have the effect of suspending execution of the decision contested, unless in the interests of justice the President otherwise decides.

ARTICLE XI

1. The Tribunal may, of its own motion or at the request of a party, correct any clerical, typographical, computational or any other errors of a similar nature discovered in a judgment within 60 days of such judgment.
2. A party to a case in which judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, apply to the Tribunal, within a period of 180 days after the judgment was delivered, to revise the judgment.
3. An application to revise a judgment of the Tribunal shall contain the information necessary to show that the conditions laid down in paragraph 2 of this Article have been complied with. The application shall be accompanied by the original or a certified copy of all supporting documents.
4. The Tribunal, sitting as the original panel that heard the initial application, before considering the application for revision shall invite the other party to submit a response to the application.
5. A party to a case in which judgment has been delivered who challenges the judgment on the ground that the Tribunal has exceeded or failed to exercise

its jurisdiction or competence, or has erred on a question of fact or law or both, or that there has been a fundamental error in procedure which has resulted in a failure of justice or that the Tribunal has acted unreasonably having regard to the material placed before it, may apply to the Tribunal, within a period of 60 days after the judgment was delivered, for a review of the judgment.

6. Where the limitation period for an application for revision or review has expired the Tribunal may, in the interests of justice, enlarge time for the application to be submitted, where exceptional circumstances led to the failure to file an application within time.
7. An application to review a judgment under paragraph 5 shall contain a statement of the grounds on which the allegation of error of law or fact or unreasonableness is based and shall set out the legal and factual arguments in support of the application.
8. The President, if satisfied that the requirements of paragraph 5 have been met, shall constitute a panel comprising the five members who did not sit on the initial panel that delivered the judgment in question, to sit as a Review Board to review the judgment.
9. In determining an application for revision or review the Tribunal shall follow the procedure outlined in Articles VIII, IX paragraphs 1 to 3 and Article X1 paragraph 11 as may be appropriate.
10. In determining an application for revision or review, the panel or the Review Board, as applicable, may affirm or rescind in whole or in part the judgment in question.
11. Where the Review Board rescinds a judgment in whole or in part, it shall have the power to:
 - (a) substitute its own determination and may make an order granting a remedy;
 - (b) refuse to make any order granting a remedy;
 - (c) order a re-hearing before a different panel comprising only members who did not sit on the initial panel.

12. Where the Review Board rescinds a judgment in part only, it may substitute its own determination to the extent only of the rescission and may make an order granting a remedy.
1213. Subject to paragraph 11(c), the judgment of the Tribunal sitting as a Review Board shall be final and binding on the parties and shall not be subject to appeal. This provision shall constitute an “exclusion agreement” within the meaning of the laws of any member State requiring arbitration or as those laws may be amended or replaced.

PART V MISCELLANEOUS

ARTICLE XII

1. In dealing with a case relating to a contract of service, and subject to paragraph 2 of Article VI, the Tribunal shall be bound by the principles of international administrative law which shall apply to the exclusion of the national laws of individual member countries.
2. In all other cases, the Tribunal shall apply the law specified in the contract. Failing that, it shall apply the law most closely connected with the contract in question.
3. For the purposes of this Article, contracts with Applicants referred to in Article II 5(d) (v) and (vi) shall be treated as contracts of service.

ARTICLE XIII

1. The original of each judgment shall be filed in the archives of the Secretariat. Where the dispute involves another international or intergovernmental Commonwealth body or organisation pursuant to Article II, paragraph 2(a) a judgment shall be drawn up in two originals, one of which shall be filed in the archives of the Commonwealth Secretariat and the other in the archives of the body or organization involved. A copy of the judgment shall be delivered to each of the other parties to the dispute. Copies shall also be made available by the Secretary to other persons on request.
2. The Statute, Rules and Judgments of the Tribunal shall be published on the official website of the Tribunal.

ARTICLE XIV

Neither the President nor any member of the Tribunal or the Secretary and other staff of the Tribunal or an expert witness called by the Tribunal shall be liable to any person for any act or omission in connection with arbitration under this Statute.

ARTICLE XV

This Statute may be amended by Commonwealth Governments. When amending the Statute, Commonwealth Governments may consider any views expressed by the President, the Secretary General and the Commonwealth Secretariat Staff Association.

ANNEX A

REQUIREMENTS FOR AN INTERNATIONAL OR INTERGOVERNMENTAL COMMONWEALTH BODY OR ORGANIZATIONS TO BE ELIGIBLE TO ACCESS THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

1. To be eligible to recognize the jurisdiction of the Commonwealth Secretariat Arbitral Tribunal in accordance with paragraph 2 of Article II of this Statute, an organization must be an international or intergovernmental Commonwealth body or organization that fulfils the following conditions:
 - (a) it shall be clearly international or intergovernmental in character, having regard to its membership, structure and scope of activity;
 - (b) it shall not specifically be required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and
 - (c) it shall be endowed with functions of such nature at the international level as, in the opinion of its Governing Body, offer sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.
2. Article V paragraph 4 of the Statute shall apply to require that the expenses to be borne by a body or organisation recognising and submitting to the jurisdiction of the Tribunal under Article II paragraph 2 shall only be the expenses occasioned by the sessions or hearings relating to a complaint filed involving such body or organisation.
3. Any compensation awarded against a body or organization by the Tribunal shall be chargeable to the budget of the international body or organization against which the complaint is filed.

ANNEX B

PROCEDURE FOR THE SELECTION AND APPOINTMENT OF MEMBERS OF THE TRIBUNAL

1. When a vacancy is about to occur in the Tribunal, the Commonwealth Secretariat shall notify Member Governments in the Region(s) concerned and the Commonwealth Secretariat Staff Association of the impending vacancy and invite nominations of suitable candidates from Member Governments within the time period specified.
2. The Commonwealth Secretariat shall also notify the recognised representatives of the Commonwealth legal fraternity of the impending vacancy and invite them to express any views they may have either directly or through their regional branches to the relevant member governments concerning their nomination of candidates.
3. At the end of the specified time period the Commonwealth Secretariat shall compile a list of the nominees proposed by Member Governments and shall circulate the list to Member Governments for their consideration. The Commonwealth Secretariat shall also send a copy of the list to the Commonwealth Secretariat Staff Association for its information.
4. Member Governments shall meet to select the President and the other members of the **Tribunal**. Member Governments shall select the members of the Tribunal on a regionally representative basis taking into account the need for continuity and the maintenance of an appropriate gender balance in the Tribunal. In selecting or re-selecting members of the Tribunal, Member Governments may take into account any views expressed by the Commonwealth Secretary General and the Commonwealth Secretariat Staff Association.
5. In the interests of continuity of Tribunal membership, where possible, selection of Tribunal members should be so structured that no more than four members of the Tribunal conclude their four year term within the same year.
6. Thereafter, the Commonwealth Secretary General shall formally appoint the President and the other members of the Tribunal, selected or re-selected by

Member Governments to serve for such period not exceeding four years as determined by Member Governments, by a letter of appointment signed by him or her or by a duly authorised representative.

ANNEX C

CONTINGENCIES AFFECTING THE TRIBUNAL

1. 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, 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.
2. Notwithstanding the expiry of his or her term of office, a member of the Tribunal shall 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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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 2016.

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 member¹ 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.

¹ 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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