



GUIDELINES ON THE USE OF THE FICSA LEGAL DEFENCE FUND FOR FULL MEMBERS AND ASSOCIATE MEMBERS

I. Introduction

FICSA in its capacity as a federation of international civil servants' associations, has no *locus standi* before internal appeal bodies of the United Nations and its specialized agencies before the United Nations Appeal Tribunal (UNAT) or the International Labour Organization Administrative Tribunal (ILOAT) to officially represent the interests of its membership and to file a complaint on their behalf. FICSA has, however, in light of representing the general interests of international civil servants, retained the right to submit an *amicus curiae*¹ a practice observed in a number of past judgments, in order to support its membership in arguing meritorious cases at the Tribunal's stage.

II. Background

The Legal Defense Fund established in 1998 under Article 14 of the Financial Rules, is a Fund, treated as a special reserve, with an authorized level of CHF 60,000 at the beginning of each fiscal year of the Federation.

The Article also provides for the replenishment and recovery of any legal costs resulting from successful judgments.

The Fund was initially set up to provide financial assistance to members of FICSA, (Full Members and Associate Members), to cover partial legal costs associated with appeals dealing with general rights and common interests of the majority of its members.

These appeals were to have been brought as "trial cases" on behalf of individual staff members. However, on review by the Standing Committee on Legal Questions (Standing Committee) and by the Executive Committee, it emerged that the Fund has been used on several occasions to assist FICSA members in legal matters of a more general nature, or partially for individual concerns. Furthermore, it was observed that the lack of clarity in the Guidelines has caused inconsistencies in the requests and use of the Fund, lack of transparency in reporting, and difficulty in recovery of monies advanced.

Despite the review of the Guidelines in 2020, such issues persist, and a stricter review of the Guidelines became necessary.

¹ An *amicus curiae* (literally a friend of the court) is someone who is not a party to a case and may or may not have been solicited by a party and who assists a court by offering information, expertise, or insight that has a bearing on the issues in the case; and is typically presented in the form of a brief. The decision on whether to consider an *amicus* brief lies within the discretion of the court.

III. Proposed changes

The revised Guidelines propose that FICSA concentrate its limited means upon support and actions likely to be beneficial for its members and to limit funding to appeals brought by a group or category of staff members against administrative decisions that infringe on their specific rights or entitlements. These, by way of example, can be appeals involving local issues such as the improper application of salary survey methodologies, a change of a staff rule or the promulgation of a policy in breach of the statutory consultative process, or appeals of collective global interest on decisions of conditions of service, common rights or interests of staff determined and recommended by the International Civil Service Commission (ICSC), approved by the General Assembly and implemented by respective executive heads of organizations.

It follows that applications to the Fund shall have exceptional nature and are subject to the assessment and approval of the Standing Committee on Legal Questions (Standing Committee) and of the Executive Committee.

It should be emphasized that, being the recourse to the Fund exceptional in nature, in order to be approved an application will have to be based on a comprehensive legal analysis to be provided together with the application, outlining the general interest of the case, the chances of success, and the relevant details to be considered.

The revised Guidelines, inter alia, provide for:

- specific criteria to be met for the application to the Fund.
- clearer provisions on the ceiling of funds available for each case admitted benefitting from the Fund.
- obligation on the part of the applicant members to periodically report on each phase of the case funded and/or on replacement of counsel to the Standing Committee and the Executive Committee.

FICSA strongly encourages that each member keeps the Federation informed of any administrative action(s) usually couched under the guise of “best practice” that could potentially have an adverse impact on the other members of the Federation.

Whereby FICSA supports the collective interests of its members in all stages of litigation, the Legal Defense Fund is normally tailored for support at the Tribunal’s stage, where legal costs can be recovered, at least partially, in case of successful claim.

In no case funds will be disbursed to cover legal fees already incurred by the member unions or associations without previous approval of FICSA.

IV. Requests for financial support

A. Collective action by individual staff association or union

A request for support should normally be made before an action is launched. Only in exceptional cases will support of an action already under way be considered. Many actions are seriously compromised, or lost, because of failure to respect timelines or to observe the process in the very initial stages of an action, that is, at the time of formulation of a request to an executive head for a decision, or the preparation of the internal appeal. For that reason, even if no costs are involved at that stage, it is important that FICSA be consulted before the action begins.

The member association or union will submit a request for support, using the document “FICSA Request for Legal Assistance Form”, approved by the respective representative body, together with full documentation and a statement of why the proposed appeal is of general interest to its members and to the Federation, to the President of FICSA who in turn will forward it to the Chair and Vice-Chairs of the Standing Committee for review by the full Committee. No request in the name of an individual will be entertained.

In making such a request for assistance, the member association or union defers to FICSA. The member association or union’s internal arrangement(s) with the affected staff (plaintiffs) are its own affair. However, FICSA recommends that a formal written agreement be made between the association or union and the plaintiffs. This should normally cover:

- (a) The engagement of the plaintiffs to continue the action to conclusion, or drop it, on the advice of the association or union.
- (b) Agreement to accept the counsel proposed by the association or union.
- (c) In case of disagreement regarding the counsel proposed by the association or union, approval, by the association or union, of the counsel proposed by the plaintiffs and of the hourly fee as well as of the cost estimation provided by the counsel.
- (d) Agreement to turn over to the association or union any legal costs or damages awarded to the plaintiffs. This agreement should provide that some part of the legal costs and damages, at least to the level of support received, shall be returned to the association or union, and to FICSA. To ensure FICSA’s recovery of legal costs advanced from its Legal Defense Fund, a formal written agreement shall be established between FICSA and the staff association/union concerned prior to drawing on the Fund (see section IV. Agreements below). Such agreement shall indicate the maximum ceiling of support that the Fund can disburse for the case, according to its complexity. The amount can be reviewed during the course of the action. In any event, for each application admitted benefitting from the Fund, a maximum ceiling of 30% of the available funds can be disbursed in a financial year (approx. CHF 18,000). The ceiling allows the Fund to cover at least two other cases per financial year, should the need arise.
- (e) When the collective action is supported or coordinated by an individual staff association or union partially or totally through the FICSA Legal Defense Fund, the legal costs awarded by any competent Tribunal shall be refunded to FICSA for the replenishment of the Fund.
- (f) In this respect, the responsible staff association or union and the designated counsel have a duty to periodically (maximum every 6 months) report to FICSA on (i) the status of the case, (ii) the progress made and (iii) the Tribunal’s decision, in particular, on the awarding of legal costs.
- (g) It should be stressed that in case the legal costs awarded by the competent court are not refunded by the concerned association or union to FICSA (in the amount covered by the Fund) within 6 months from the date of the judgment, FICSA reserves the right to take appropriate legal steps in order to recover such costs directly from the member association or union that promoted the collective action.

B. Collective action coordinated by FICSA

Upon request from the membership, FICSA agrees to coordinate specific actions undertaken by individual staff associations and unions to challenge, inter alia, implementations by executive heads of ICSC decisions on issues involving conditions of service and breach of acquired rights. (see e.g. ILOAT judgments 4138, WIPO; 4137, ITU; 4136, IOM; 4235, WHO/UNAIDS on post adjustment methodology; and 2423, WMO; 2422; IAEA; 2421, FAO on the net remuneration margin).

The participant staff associations and unions agree to abide by the following conditions as per the agreement signed between the two parties:

- (a) FICSA is to be responsible for the overall coordination of the claim and associated costs and is to be kept informed of respective actions taken.
- (b) Agreement to be reached to accept counsel proposed by FICSA. Any changes of counsel to be discussed with FICSA upon assessment of the cost estimation provided by the proposed counsel.
- (c) Agreement to return to FICSA legal costs awarded at the level of support received. In case the legal costs awarded by the competent court are not refunded by the member association or union, signatory of the agreement, to FICSA (in the amount corresponding to the support received) within 6 months from the date of the judgment, FICSA reserves the right to take appropriate legal steps in order to recover such costs directly from the signatory member.
- (d) In this respect, the concerned staff associations or unions and the designated counsel(s) have a duty to periodically (every 6 months) report to FICSA on (i) the status of the case, (ii) the progress made and (iii) the Tribunal's decision, in particular, on the awarding of legal costs.

V. Review by the FICSA Standing Committee on Legal Questions

The President of FICSA will forward all requests for funding to the Standing Committee on Legal Questions through its Chair and Vice-Chairs. In making its recommendation, the Standing Committee will consider the following:

- (a) Whether or not the case rests on matters of general interest to the member associations and unions, that is, whether it merits financial support by the Federation.
- (b) Receivability, and the merits of the case.
- (c) The likely costs of litigation based on the estimation provided by the applicant member association or union.
- (d) Recommended counsel; and
- (e) The recommended degree of support (that is, the proportion of the costs of litigation which FICSA might agree to cover), subject to the application's maximum ceiling of 30% of the available funds within a financial year (approx. CHF 18,000).

Decision to support an action

The Chair of the Standing Committee on Legal Questions will also consult the full Executive Committee of FICSA before committing the Federation to support a particular action. In doing so, the Treasurer will provide information on the state of the Fund, and the likely financial implications of the proposed litigation. The President of FICSA will inform member associations and unions of the decision.

VI. Agreements

A. Between the Federation and association or union on local collective actions

Once the decision is taken to support the collective action, a standard agreement will be concluded between the Federation and association or union (see above section IV.A). It will contain the following:

- (a) A description of the modalities of support, and an indication of the proposed budget, pursuant to the criteria established under section IV.A (d) and (e).
- (b) The agreement of the association or union to reimburse the Federation a part of any legal costs awarded, and a part of the possible damages, these two sums equal at least to the Federation's support, pursuant to the obligations set out in section IV.A (e) and (g).
- (c) Practical arrangements for the handling of counsel's invoices, and for channels of communication with counsel; and
- (d) An undertaking by the association or union to forward promptly to FICSA any documents made, or received, in connection with the action, pursuant to the obligations set out in section IV.A (f).

The Standing Committee on Legal Questions will follow the action closely and give any advice it considers useful to the President of FICSA.

The Standing Committee will report to each FICSA Council, and to each mid-year meeting of the Executive Committee on litigation supported by the Fund, including on issues of non-compliance of members to this Guidelines and to the related agreements signed with FICSA.

B. Between the Federation and association or union on collective actions coordinated by FICSA

Once the decision is taken to support the action, an agreement will be drawn up between the Federation and individual associations or unions (see above section IV.B). It will contain the following:

- (a) A description of the modalities of support, and an indication of the proposed budget.
- (b) The agreement of the association or union to hand over to the Federation a part of any legal costs awarded, and a part of the possible damages, these two sums equal at least to the Federation's support, in accordance with Section IV.B (c).
- (c) Counsel for a collective action coordinated by FICSA will be engaged by FICSA, not by the association or union. Counsel will be required, together with the obligations set out in Section IV.B (d), to forward to FICSA drafts of the pleadings, so that FICSA may ensure that the Federation's strategic aims are properly reflected.
- (d) The engagement of the association or union not to change counsel, except with the prior agreement of the Federation (see Section IV.B (b)); and
- (e) Practical arrangements for the handling of counsel's bills, and for channels of communication with counsel.

The Standing Committee on Legal Questions will follow the action closely and give any advice it considers useful to the President of FICSA.

The Standing Committee will report to each FICSA Council, and to each mid-year meeting of the Executive Committee on litigation supported by the Fund, including on issues of non-compliance of members to this Guidelines and to the related agreements signed with FICSA.

Revised Statute: Legal Defense Fund

Article 14: FICSA will maintain a Legal Defense Fund established at the 51st FICSA Council (1998). The fund will have an authorized level of CHF 60,000 at the beginning of each fiscal year of the Federation. The Fund should be replenished to the level of CHF 60,000 at the start of each financial year as follows:

- (a) By the recovery of any legal costs and damages resulting from litigation currently supported by the Federation.
- (b) By voluntary contributions from association and unions.
- (c) The allocation to the Fund of any monies unexpended within the Federation's audited account up to the authorized level as stated above.
- (d) Should the foregoing sources be insufficient to bring the level of the Fund to CHF 60,000, then the amount of such shortfall shall be included as a regular budget item for approval in such fiscal year.

In addition, the full expected costs for annual legal activities agreed during the Council, after consideration by the Standing Committee on Legal Questions of ongoing and possible litigation, should be budgeted and assessed as part of the contributions for the year.

The Legal Defense Fund will be treated as a special reserve for accounting and investment purposes. All returns from the investment of this Fund will be credited to it and reported separately at each FICSA Council session and to the Executive Committee mid-year meeting.

FICSA reserves the right to report to the Council member associations and unions which are not in compliance with the Legal Defense Fund refunding policy and to implement measures to recover funds in cases of non-compliance of the concerned member associations and unions.

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