

Rules of Ethics for International Arbitrators

Introductory Note

International arbitrators should be impartial, independent, competent, diligent and discreet. These rules seek to establish the manner in which these abstract qualities may be assessed in practice. Rather than rigid rules, they reflect internationally acceptable guidelines developed by practising lawyers from all continents. They will attain their objectives only if they are applied in good faith.

The rules cannot be directly binding either on arbitrators, or on the parties themselves, unless they are adopted by agreement. Whilst the International Bar Association hopes that they will be taken into account in the context of challenges to arbitrators, it is emphasised that these guidelines are not intended to create grounds for the setting aside of awards by national courts.

If parties wish to adopt the rules they may add the following to their arbitration clause or arbitration agreement:

'The parties agree that the Rules of Ethics for International Arbitrators established by the International Bar Association, in force at the date of the commencement of any arbitration under this clause, shall be applicable to the arbitrators appointed in respect of such arbitration.'

The International Bar Association takes the position that (whatever may be the case in domestic arbitration) international arbitrators should in principle be granted immunity from suit under national laws, except in extreme cases of wilful or reckless disregard of their legal obligations. Accordingly, the International Bar Association wishes to make it clear that it is not the intention of these rules to create opportunities for aggrieved parties to sue international arbitrators in national courts. The normal sanction for breach of an ethical duty is removal from office, with consequent loss of entitlement to remuneration. The International Bar Association also emphasises that these rules do not affect, and are intended to be consistent with, the International Code of Ethics for lawyers, adopted at Oslo on 25 July 1956, and amended by the General Meeting of the International Bar Association at Mexico City on 24 July 1964.

1 Fundamental Rule

Arbitrators shall proceed diligently and efficiently to provide the parties with a just and effective resolution of their disputes, and shall be and shall remain free from bias.

2 Acceptance of Appointment

2.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias.

2.2 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is competent to determine the issues in dispute, and has an adequate knowledge of the language of the arbitration.

2.3 A prospective arbitrator should accept an appointment only if he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.

2.4 It is inappropriate to contact parties in order to solicit appointment as arbitrator.

3 Elements of Bias

3.1 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties, or where he is prejudiced in relation to the subject-matter of the dispute.

Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

3.2 Facts which might lead a reasonable person, not knowing the arbitrator's true state of mind, to consider that he is dependent on a party create an appearance of bias. The same is true if an arbitrator has a material interest in the outcome of the dispute, or if he has already taken a position in relation to it. The appearance of bias is best overcome by full disclosure as described in Article 4 below.

3.3 Any current direct or indirect business relationship between an arbitrator and a party, or with a person

who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed. Examples of indirect relationships are where a member of the prospective arbitrator's family, his firm, or any business partner has a business relationship with one of the parties.

3.4 Past business relationships will not operate as an absolute bar to acceptance of appointment, unless they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment.

3.5 Continuous and substantial social or professional relationships between a prospective arbitrator and a party, or with a person who is known to be a potentially important witness in the arbitration, will normally give rise to justifiable doubts as to the impartiality or independence of a prospective arbitrator.

4 Duty of Disclosure

4.1 A prospective arbitrator should disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence. Failure to make such disclosure creates an appearance of bias, and may of itself be a ground for disqualification even though he non-disclosed facts or circumstances would not of themselves justify disqualification.

4.2 A prospective arbitrator should disclose:

(a) any past or present business relationship, whether direct or indirect as illustrated in Article 3.3, including prior appointment as arbitrator, with

any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration. With regard to present relationships, the duty of disclosure applies irrespective of their magnitude, but with regard to past relationships only if they were of more than a trivial nature in relation to the arbitrator's professional or business affairs. Non-disclosure of an indirect relationship unknown to a prospective arbitrator will not be a ground for disqualification unless it could have been ascertained by making reasonable enquiries;

(b) the nature and duration of any substantial social relationships with any party or any person known to be likely to be an important witness in the arbitration;

(c) the nature of any previous relationship with any fellow arbitrator (including prior joint service as an arbitrator);

(d) the extent of any prior knowledge he may have of the dispute;

(e) the extent of any commitments which may affect his availability to perform his duties as arbitrator as may be reasonably anticipated.

4.3 The duty of disclosure continues throughout the arbitral proceedings as regards new facts or circumstances.

4.4 Disclosure should be made in writing and communicated to all parties and arbitrators. When an arbitrator has been appointed, any previous disclosure made to the parties should be communicated to the other arbitrators.

5 Communications with Parties

5.1 When approached with a view to appointment, a prospective arbitrator should make sufficient enquiries in order to inform himself whether there

may be any justifiable doubts regarding his impartiality or independence; whether he is competent to determine the issues in dispute; and whether he is able to give the arbitration the time and attention required. He may also respond to enquiries from those approaching him, provided that such enquiries are designed to determine his suitability and availability for the appointment and provided that the merits of the case are not discussed. In the event that a prospective sole arbitrator or presiding arbitrator is approached by one party alone, or by one arbitrator chosen unilaterally by a party (a 'party-nominated' arbitrator), he should ascertain that the other party or parties, or the other arbitrator, has consented to the manner in which he has been approached. In such circumstances he should, in writing or orally, inform the other party or parties, or the other arbitrator, of the substance of the initial conversation.

5.2 If a party-nominated arbitrator is required to participate in the selection of a third or presiding arbitrator, it is acceptable for him (although he is not so required) to obtain the views of the party who nominated him as to the acceptability of candidates being considered.

5.3 Throughout the arbitral proceedings, an arbitrator should avoid any unilateral communications regarding the case with any party, or its representatives. If such communication should occur, the arbitrator should inform the other party or parties and arbitrators of its substance.

5.4 If an arbitrator becomes aware that a fellow arbitrator has been in improper communication with a party, he may inform the remaining arbitrators and they should together determine what action should be taken. Normally, the appropriate initial course of action is for

the offending arbitrator to be requested to refrain from making any further improper communications with the party. Where the offending arbitrator fails or refuses to refrain from improper communications, the remaining arbitrators may inform the innocent party in order that he may consider what action he should take. An arbitrator may act unilaterally to inform a party of the conduct of another arbitrator in order to allow the said party to consider a challenge of the offending arbitrator only in extreme circumstances, and after communicating his intention to his fellow arbitrators in writing.

5.5 No arbitrator should accept any gift or substantial hospitality, directly or indirectly, from any party to the arbitration. Sole arbitrators and presiding arbitrators should be particularly meticulous in avoiding significant social or professional contacts with any party to the arbitration other than in the presence of the other parties.

6 Fees

Unless the parties agree otherwise or a party defaults, an arbitrator shall make no unilateral arrangements for fees or expenses.

7 Duty of Diligence

All arbitrators should devote such time and attention as the parties may reasonably require having regard to all the circumstances of the case, and shall do their best to conduct the arbitration

in such a manner that costs do not rise to an unreasonable proportion of the interests at stake.

8 Involvement in Settlement Proposals

Where the parties have so requested, or consented to a suggestion to this effect by the arbitral tribunal, the tribunal as a whole (or the presiding arbitrator where appropriate), may make proposals for settlement to both parties simultaneously, and preferably in the presence of each other. Although any procedure is possible with the agreement of the parties, the arbitral tribunal should point out to the parties that it is undesirable that any arbitrator should discuss settlement terms with a party in the absence of the other parties since this will normally have the result that any arbitrator involved in such discussions will become disqualified from any future participation in the arbitration.

9 Confidentiality of the Deliberations

The deliberations of the arbitral tribunal, and the contents of the award itself, remain confidential in perpetuity unless the parties release the arbitrators from this obligation. An arbitrator should not participate in, or give any information for the purpose of assistance in, any proceedings to consider the award unless, exceptionally, he considers it his duty to disclose any material misconduct or fraud on the part of his fellow arbitrators.