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国际律师协会国际仲裁利益冲突指引

国际律师协会理事会 2014 年 10 月 23 日星期四决议通过

A Note on Translations

This document was originally prepared in English by a working group of the International Bar Association and was adopted by IBA Council Resolution.

In the event of any inconsistency between the English language versions and the translations into any other language, the English language version shall prevail.

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《国际律师协会国际仲裁利益冲突指引》（“指引”）[1]自 2004 年发布以来在国际仲裁界获得广泛接受。仲裁员使用“指引”来决定是否接受指定和作出披露。同样，当事人及其法律顾问经常根据“指引”来评估仲裁员的公正性和独立性，仲裁机构和法院也常常参考“指引”来决定对仲裁员的回避申请。正如“指引”第一次获得通过时所预期的那样，颁布十周年前夕是适当的时机以反思这些年在使用过程中积累的经验并确定可能澄清或改进的领域。因此在 2012 年国际律师协会仲裁委员会启动了“指引”审查工作，由扩充了人员的利益冲突小组委员会（“小组委员会”）[2]进行。小组委员会代表了不同法律

[1] 2004 年指引由 19 位专家组成的工作组起草，19 位专家包括：Henri Alvarez（加拿大）、John Beechey（英国）、Jim Carter（美国）、Emmanuel Gaillard（法国）、Emilio Gonzales de Castilla（墨西哥）、 Bernard Hanotiau（比利时）、Michael Hwang（新加坡）、Albert Jan van den Berg（比利时）、Doug Jones（澳大利亚）、Gabrielle Kaufmann-Kohler（瑞士）、Arthur Marriott（英国）、Tore Wiwen Nilsson（瑞典）、Hilmar Raeschke-Kessler（德国）、David W Rivkin（美国）、Klaus Sachs（德国）、Nathalie Voser（瑞士，报告起草人）、David Williams（新西兰）、Des Williams（南非）和 Otto de Witt Wijnen,（荷兰，主席）。

[2] 扩充的利益冲突小组委员会的成员包括：Habib Almulla（阿拉伯联合酋长国）、David Arias（西班牙，联席主席）、Julie Bédard（美国，联席主席）、José Astigarraga（美国）、Pierre Bienvenu（加拿大，审核过程联席主席）、Karl-Heinz Böckstiegel （德国）、Yves Derains （法国）、Teresa Giovannini（瑞士）、Eduardo Damião Gonçalves（巴西）、Bernard Hanotiau（比利时，审核过程联席主席）、Paula Hodges （英国）、Toby Landau （英国）、Christian Leathley （英国）、Carole Malinvaud （法国）、Ciccu Mukhopadhaya（印度）、Yoshimi Ohara（日本）、Tinuade Oyekunle（尼日利亚）、Eun Young Park（韩国）、Constantine Partasides （英国）、Peter Rees （荷兰）、Anke Sessler（德国）、Guido Tawil （阿根廷）、陶景洲 Jingzhou Tao （中国）、Gäetan Verhoosel （英国，报告起草人）、Nathalie Voser （瑞士）、Nassib Ziadé （阿拉伯联合酋长国）和 Alexis Mourre。下列人员提供协助：Niuscha

文化和来自法律顾问、仲裁员和仲裁用户的各方观点。小组委员会由 David Arias 担任主席，后来与 Julie Bédard 共同担任联席主席，审查过程在 Pierre Bienvenu 和 Bernard Hanotiau 领导下进行。

尽管指引最初旨在适用于商业仲裁和投资仲裁，但在审查过程中发现，在投资仲裁的适用方面存在不确定性。同样，尽管“指引”最初版本中的评论意见将其适用范围扩大到非法律专业人员担任仲裁员的情况，但在这方面似乎仍然存在不确定性。现在达成的共识是：广泛认可“指引”适用于商业仲裁和投资仲裁，也适用于法律专业人士和非法律专业人士担任仲裁员的情况。

小组委员会仔细考虑了自 2004 年以来在国际仲裁实践中受到重视的一系列问题，如所谓的“先行弃权”的效力、同时在无关案件但涉及类似法律问题的案件中担任法律顾问和仲裁员的事实是否需要披露、“争议点”冲突、仲裁或行政秘书的独立性和公正性以及第三方资助等。修订后的“指引”反映了小组委员会就这些问题的结论。

Bassiri （比利时）、Alison Fitzgerald（加拿大）、Oliver Cojo（西班牙）和 Ricardo Dalmaso Marques（巴西）。

考虑到全球国际仲裁实践的演变，小组委员会还考虑了修订后的“指引”是否应在仲裁员披露方面施加更严格的标准。修订后的“指引”反映的结论是，尽管 2004 年“指引”的基本方法不应改变，但 2004 年“指引”未考虑到的披露情形在某些情况下仍需要披露。还有必要重申，要求披露的事实——或仲裁员作出披露的事实——并不意味着对仲裁员的公正性或独立性存在怀疑。事实上，披露标准与申请回避标准不同。同样，修订后的“指引”在任何情况下都不意图阻止在大型律师事务所或法律协会执业的律师担任仲裁员。

“指引”于 2014 年 10 月 23 日（星期四）经国际律师协会理事会决议通过。“指引”可从以下网址下载：www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx

由仲裁委员会联席主席于 2014 年 10 月 23 日星期四签署

Eduardo Zuleta

Paul Friedland

前言

1. 仲裁员和当事人代理律师常常不能确定披露范围。国际商务的发展，包括大型集团公司以及国际律师事务所的发展，导致了更多的披露，产生了更复杂的披露和利益冲突问题的分析。当事人有更多的机会利用对仲裁员的回避申请来拖延仲裁程序或否定对方当事人选择的仲裁员。披露任何关系，无论是轻微的还是严重的，可能将引致无根据的或琐碎的回避申请。同时，为了保护仲裁裁决免受因所谓的未披露而被质疑和促进国际仲裁中的各方当事人及法律顾问的公平竞争，向各方当事人提供更多的信息也是重要的。

2. 当事人、仲裁员、仲裁机构和法院共同面临着哪些信息应当披露及披露适用什么标准的复杂决策。此外，如果在披露之后出现异议或回避申请，仲裁机构和法院也将面临着困难的决策。一方面，当事人为获得公平审理而要求披露那些合理引致质疑仲裁员的公正性或独立性的情形，另一方面，为了保护当事人指定其选择的仲裁员的权利，需要避免不必要的回避申请，这两者存在冲突。

3. 保护国际仲裁程序免于对仲裁员提起没有根据的回避申请的羁绊，以及保护程序的合法性不因不确定性和披露、异议和回避申请缺乏统一适用标准而受损，符合国际仲裁界的利益。2004年的指引反应了这样的观点，即当时现行的标准在适用中缺乏足够的明确性和一致性。因此本指引载明了若干一般标准和对标准的解释。此外，为了提升一致性和避免不必要的回避申请和仲裁员更撤，本指引列举了特定情形，载明这些情形是否构成仲裁员披露或不适格的情形。这些清单分为红、橙、绿三类（以下简称“适用清单”）已经被更新并在本修订指引的篇尾列出。

4. 本指引，反映了国际律师协会仲裁委员会对现行的最佳国际实务的理解，现行的最佳国际实务坚定地植根于下列一般标准所表述的基本原则中。一般标准和适用清单是依据同时代的各国成文法、判例法以及国际商事仲裁专家的判断和经验制订的。在审查2004年指引时，国际律师协会仲裁委员会更新了对一些国家法律和实践的分析。本指引寻求平衡当事人、代理人、仲裁员和仲裁机构之间的各种利益，而各方都有责任确保国际仲裁的公正、声誉和效率。2004年的工作组和2012/2014小组委员会通过在国际律师协会年度会议和与仲裁员和从业者的会议上进行公开征询的方式，征求并研究了主要仲裁机构、公司法律顾问以及其他国际仲裁从业者的意见。收到的意见已经被仔细研究，并采纳了其中的许多

建议。国际律师协会仲裁委员会非常感谢众多机构和个人对其提议的严肃思考。

5. 本指引适用于国际商事仲裁和投资仲裁，无论当事人有无律师代理以及是否由法律专业人员担任仲裁员。

6. 本指引不是法律规定，并不凌驾于当事人选择的任何适用的国内法或仲裁规则之上。然而，国际律师协会仲裁委员会希望，本指引会如同2004年指引和其他由其制定的规则和指引一样，在国际仲裁界中获得广泛认可，从而有助于当事人、执业律师、仲裁员、仲裁机构和法院处理有关公正、独立这些重要的事宜。国际律师协会仲裁委员会相信，本指引将依据充分的常识来适用而非过度形式主义的解释。

7. 适用清单涵盖了在实践中出现的多种情形，但是它们无意也不可能穷尽所有情形。然而，国际律师协会仲裁委员会有信心认为，适用清单为适用一般标准提供了具体指引。国际律师协会仲裁委员会将本着进一步优化本指引的目标，持续研究本指引的实际应用。

8. 1987 年，国际律师协会发布了《国际仲裁员行为准则》。该行为准则涵盖了比本指引更多的主题，对本指引未涉事项，其仍然有效。本指引已涉事宜，以本指引为准。

第一部分：公正、独立和披露的一般标准

(1) 一般原则

每位仲裁员在接受指定之时应是公正的、独立于当事人的，并保持如此直至最终裁决作出或仲裁程序另行终止之时。

对一般标准 1 的解释：

作为本指引基石的基本原则是：每位仲裁员在接受指定时应是公正的、独立于当事人的，而且应在整个仲裁程序中保持如此，包括根据相关规则对最终裁决进行改正或解释的期间，如果这些期间是已知的或者容易确定的。

由此产生的问题是，该义务是否延长至裁决在相关法院被提起异议期间？做出的决定是，该义务期间不予延长至此，除非根据相关适用的法律或仲裁机构的规则，终局裁决被发回原仲裁庭重审。因此，仲裁

员的义务，在仲裁庭作出最终裁决并且相关规则允许的对最终裁决的改正或解释已经做出（或者寻求改正或解释的期限已经届满）之时终止，或在仲裁程序终止（例如由于和解）时结束，或在仲裁员不再享有管辖权的其他情况下终止。如果在仲裁裁决被撤销或其他程序之后，争议被发回同一仲裁庭重审，新一轮的披露和对潜在利益冲突的审查可能是必要的。

(2) 利益冲突

(a) 如果仲裁员对其公正性或独立性有任何疑虑，仲裁员应拒绝接受指定；或者，如果仲裁程序已经开始，应拒绝继续担任仲裁员。

(b) 如果存在的事实或情形，或自仲裁员接受指定后产生的事实或情形，在知悉相关事实和情形的合理的第三人看来，将引致对仲裁员的公正性或独立性的正当怀疑，则适用同样的原则，除非当事人已经依据一般标准(4)中所述的规定接受了仲裁员。

(c) 如果合理的知情第三人认为，仲裁员在作出裁决时可能会受到当事人陈述的案件是非之外的因素的影响，则怀疑是正当的。

(d) 如果存在不可弃权的红色清单所描述的任何情形，则对仲裁员的公正性或独立性的正当怀疑必然成立。

对一般标准 2 的解释：

(a) 如果仲裁员对自己保持公正和独立的能力有所怀疑，则必须拒绝接受指定。无论在仲裁程序的哪一个阶段，这一原则均应适用。为了避免混淆和培养对仲裁程序的信心，本指引对这个基本原则做了清楚的说明。

(b) 为了使标准尽可能一致地得以适用，仲裁员不适格的检验标准应该是一个客观标准。“公正性”或“独立性”的措辞源于广为采用的《联合国国际贸易法委员会国际商事仲裁示范法》第12条，并依据第12条第2款规定，对仲裁员的公正性或独立性的正当怀

疑应客观地适用表面检验标准（“合理的第三人检验标准”）。正如对一般标准3(e)的解释所述，无论处于仲裁程序的任何阶段，这一标准均应适用。

(c) 依据正当怀疑标准的法律和规范常常未能界定该标准。本一般标准力图为作出这一认定提供一些来龙去脉。

(d) 不可弃权的红色清单所描述的情形必然产生对仲裁员公正性和独立性的正当怀疑。例如，任何人均不得为自己的法官，即仲裁员与当事人不得为同一人。因此当事人不能对这种情形产生的利益冲突作出弃权。

(3) 仲裁员披露

(a) 如果存在当事人看来可能令仲裁员公正性或独立性受到怀疑的事实或情形，则仲裁员应在接受指定前向当事人、仲裁机构、其它仲裁员指定机构（如果有该等机构且适用的仲裁机构规则如此要求的话）和其他仲裁庭成员（如有）披露该

等事实或情形；或者，如接受指定后才知悉此等事实或情形，在知悉后立即披露。

(b) *对未来可能发生的事实或情形导致的可能的利益冲突作出预先声明或弃权，不能免除仲裁员根据一般规则3（a）所承担的持续披露的义务。*

(c) *一般标准1和一般标准2（a）的推论是，尽管存在所披露的情形，作出披露的仲裁员认为其自身仍是公正的、独立的，因而仍能履行仲裁员职责。否则，其会在一开始就拒绝提名或指定，或辞去仲裁员一职。*

(d) *如仲裁员对是否应披露特定事实或情形存疑，则应决定进行披露。*

(e) *当考虑应披露的事实或情形是否存在时，仲裁员不应考虑仲裁程序是处于开始阶段还是晚些阶段。*

对一般标准 3 的解释：

(a) 根据一般标准3(a)所产生的仲裁员披露义务是基于这样的原则，即让当事人被充分告知在其看来可能相关的一切情形，对当事人是有利的。相应的，一般标准3（d）规定任何对某些事实或情形是否应披露存疑时，应当作出披露的决定。但是，某些情形，例如在绿色清单中规定的情形，根据一般标准2规定的客观检验标准永远不会导致仲裁员失格，则不必对其进行披露。如同一般标准3（c）所表明的，披露并不意味着被披露的事实会引致一般标准2规定的仲裁员不适格。一般标准3（a）规定的披露义务是一个持续不间断的义务。

(b) 国际律师协会仲裁委员会已经考虑到仲裁员候选人越来越多地采用对那些可能在将来产生的事实或情形以及由此导致的利益冲突作出声明（有时被称为“先行弃权”）的做法。这些声明不会免除仲裁员根据一般标准3（a）应承担的持续披露义务。但是本指引并不对‘先行声明’或‘弃权’的有效性和效力持任何立场，因为任何先行声明或弃权的有效性和效力必须根据先行声明或弃权的具体内容、即将发生的特定情况和适用的法律进行评估。

(c) 披露并不意味着存在利益冲突。尽管存在所披露的情形，对当事人进行披露的仲裁员认为，他们自身仍是公正、独立的，否则，他/她会已经拒绝接受指定或辞职。因而，作出披露的仲裁员认为其自身能够履行职责。披露的目的在于允许当事人判断他们是否同意仲裁员的评估，以及如果他们希望的话，允许其进一步探究所披露的情形。本一般标准的颁布希望能消除错误观念，即认为披露本身意味着已存在使仲裁员丧失资格的充分怀疑，或者甚至建立了仲裁员不适格的推定。相反，只有前述一般标准2规定的客观检验标准被满足时，回避申请才能被认可。根据对一般标准实际适用的评论5，未能披露某些在当事人看来可能对仲裁员的公正和独立产生怀疑的事实和情形，并不必然意味着存在利益冲突，或随即取消仲裁员资格。

(d) 在决定哪些事实应当披露的时候，仲裁员应当考虑所有他/她已知的情况。如果仲裁员发现他/她应进行披露，但职业保密准则或其他执业准则或职业行为守则阻止其披露，则他/她不应接受指定或应当辞职。

(e) 披露或不适格（如一般标准2和3所规定）不应取决于仲裁所处的特定阶段。在判定仲裁员是否应进行披露、是否应拒绝指定、是

否应拒绝继续担任仲裁员时，只有事实和情形才具有相关性，程序所处阶段或回避的后果都不具有相关性。实践中，仲裁机构可能会根据仲裁程序的不同阶段做出区分。同样，法院也可能对不同阶段适用不同标准。尽管如此，本指引并未对不同仲裁程序阶段作区别对待。尽管对仲裁程序开始后的仲裁员回避存在实践上的顾虑，但对仲裁阶段作区别对待，是违背一般标准的。

(4) 当事人弃权

(a) *如果当事人在收到仲裁员的任何披露或知悉可能构成仲裁员的潜在利益冲突的事实或情形后三十日内，未就该仲裁员提出明示异议，根据本一般标准(b)和(c)款规定，则当事人被推定已经放弃就该等事实或情形主张仲裁员存在潜在利益冲突的权利，当事人不得在晚些阶段基于该等事实或情形提出任何异议。*

(b) *但是，如果存在不可弃权的红色清单描述的事实或情形，则当事人的任何弃权（包括一般规则3(b)规定的任何声明或先行弃权）或当事人对允许该人担任仲裁员达成的任何协议，*

都应视为无效。

(c) *任何人，凡存在可弃权的红色清单中所例示的利益冲突情形的，不得担任仲裁员。然而，在符合下列条件时，该人仍可以接受指定担任仲裁员或继续担任仲裁员：*

(i) 所有当事人、所有仲裁员、仲裁机构或其它仲裁员指定机构（如果有）充分知悉该利益冲突；并且

(ii) 所有当事人明确同意，尽管存在这样的利益冲突，该人仍可担任仲裁员。

(d) *仲裁员可在仲裁程序的任何阶段通过调停、调解或其他任何方式协助当事人和解争议。然而，在这样做之前，仲裁员应得到所有当事人的明示同意，即这样做不使其丧失继续担任仲裁员的资格。当事人的明示同意，应视为对仲裁员可能因参与此程序或仲裁员在此程序中可能了解的信息而产生的任何潜在利益冲突的有效放弃。如果仲裁员的协助并未促成*

争议的终局和解，则当事人仍应受其弃权的约束。然而，根据一般标准2(a)，尽管有这样的同意，如果因参涉调解程序，仲裁员对其在仲裁程序的未来进程中保持公正或独立的能力产生疑虑，则其应辞职。

对一般标准 4 的解释：

(a) 根据一般标准4(a),如果一方当事人在知悉相关的事实和情况之日起（包括通过披露程序知悉）未能在30天内提出利益冲突的异议，则将被视为对此潜在利益冲突作出弃权。

(b) 一般标准4(b)把不可弃权的红色清单中的事实和情形排除在一般标准4(a)的适用范围之外。一些仲裁员作出声明以寻求当事人对未来可能发生的事实或情形的弃权。无论这些仲裁员寻求的任何弃权如何规定，根据一般标准3(b)，在仲裁过程中发生的事实和情形根据仲裁员承担的持续披露义务，都应当向当事人披露。

(c) 虽然发生严重利益冲突，如发生可弃权的红色清单列示的情形，

但当事人可能仍希望聘任该人担任仲裁员。对此，应在当事人的意思自治与当事人使用公正和独立的仲裁员的期望之间进行平衡。只有在当事人作出充分知情的、明示的弃权时，具有严重利益冲突的人（例如可弃权的红色清单列示的情况），才可以仍然担任仲裁员。

(d) 仲裁庭在仲裁过程中协助当事人和解争议的理念，在一些司法管辖区确立已久，而在另一些司法管辖区中却并非如此。在和解程序开始之前，当事人对该程序的知情同意，应视为对主张潜在利益冲突权利的有效放弃。某些司法管辖区规定当事人应出具签字的书面同意。根据适用法律的要求，明示同意可能已经足够。明示同意也可以在庭审中作出并记录在庭审的记录或笔录中。此外，为避免当事人使用将仲裁员用作调解员以使仲裁员变成不适格的手段，一般标准明确规定，即使调解不成功，弃权仍应有效。当事人在作出明示同意时，应意识到仲裁员在调解过程中协助当事人的后果，包括导致仲裁员辞职的风险。

(5) 范围

(a) *本指引同等适用于无论用何种方法任命的首席仲裁员、独任仲裁员和当事人指定的仲裁员。*

(b) *单个仲裁员或仲裁庭的仲裁或行政秘书和助手，应遵守与仲裁员一样的保持独立和公正的义务。仲裁庭应确保这些义务在整个仲裁程序中都被遵守。*

对一般标准 5 的解释：

(a) 因为仲裁庭的每一位成员都有义务做到公正、独立，一般标准不区别对待独任仲裁员、首席仲裁员、当事人指定的仲裁员和仲裁机构指定的仲裁员。

(b) 一些仲裁机构要求仲裁或行政秘书和助手签订“独立和公证声明书”。无论是否有这样的规定，仲裁庭的仲裁或行政秘书和助手都应遵守和仲裁员一样的保持独立和公正的义务（包括披露义务），并且仲裁庭应确保这些义务在仲裁程序的所有阶段都得到遵守。此外，无论是仲裁庭或单个仲裁员的仲裁或行政秘书和助

手都同样需要遵守这些义务。

(6) 关系

(a) *仲裁员原则上视为与他/她的律所是同一的，但当考察事实或情形的相关性，以判明是否存在潜在利益冲突或是否应进行披露时，仲裁员的律师事务所的活动（如有）以及仲裁员与律师事务所的关系应在个案中予以考虑。仲裁员的律师事务所的活动一方当事人的事实，并不必然构成利益冲突的来源或披露的理由。类似地，如果一方当事人是与仲裁员的律师事务所有关系的集团的成员，该事实应在个案中予以考虑，但这一事实本身并不必然构成利益冲突的来源或披露的理由。*

(b) *如果一方当事人是法律实体，对该法律实体具有控制影响力，或者与仲裁裁决有直接经济利益，或者负有根据仲裁裁决补偿一方当事人责任的任何法人或自然人，应视同于该方当事人。*

对一般标准 6 的解释：

(a) 律师事务所规模的持续增长，应被视作当今国际仲裁现实的一部分。有必要对当事人自己选择仲裁员的利益（该仲裁员可能是一家大型律师事务所的合伙人），与维持对国际仲裁的公正性和独立性的信心的重要性这两者进行平衡。仲裁员原则上应视为与其律师事务所是同一身份的，但仲裁员的律师事务所的活动并不自动地构成利益冲突。该等活动的相关性，如律师事务所从事的工作的性质、时间、范围，以及仲裁员与律师事务所的关系应在个案中予以考虑。一般标准6(a)使用“参涉”(involve)而非“代理”(acting for)一词，是因为律师事务所与当事人的相关联系，可能包括法律事务的代理行为之外的活动。尽管在考量利益冲突时，大律师事务所不应等同于律师事务所，但是尚未有一般标准适用于大律师事务所。在考量大律师、当事人和法律顾问的关系时，有关大律师事务所的关系也可能会被要求披露。当仲裁的一方当事人是一个集团公司的成员时，会产生特殊的利益冲突问题。由于每个公司结构安排差异巨大，所以，全方位的兜底规则并不适当。相反，应在个案中考虑当事人与同一公司集团内另一实体的关联关系以及另一实体与仲裁员的律师事务所之间关系的具体情形。

(b) 当国际仲裁中的当事人是法律实体时，其他法人或自然人可能对该实体具有控制影响力，或与仲裁裁决有直接的经济利益，或者负有根据仲裁裁决补偿一方当事人的责任。每一种情况都应该单独被评估，一般标准6(b)澄清了此类法人或个人应被实际视同该方当事人。与争议有关的第三方资助人和保险人与仲裁裁决有直接的利益关系，因此可能被视同为该方当事人。为此目的，‘第三方资助人’和‘保险人’是指任何对提起仲裁或进行辩护提供资金或其他物质支持并且与仲裁裁决有直接经济利益，或者根据仲裁裁决补偿一方当事人的任何个人或实体。

(7) 仲裁员与当事人的义务

(a) 一方当事人应告知仲裁员、仲裁庭、其他当事人、仲裁机构或其它仲裁员指定机构（如果有），该当事人（或其所属集团的另一公司或对该当事人有控制影响力的个人）与仲裁员之间的任何直接或间接关系，或者仲裁员与跟仲裁裁决有直接经济利益，或者负有根据仲裁裁决补偿一方当事人义务的任何个人或实体之间的关系。当事人应尽早主动履行告知义务。

(b) *一方当事人应告知仲裁员、仲裁庭、其他当事人、仲裁机构或其他仲裁员指定机构（如果有）代理其参加仲裁的法律顾问身份以及其法律顾问与仲裁员的任何关系，包括在同一个大律师事务所工作。当事人应尽早主动告知，并在法律顾问团队发生任何变动时尽早通知相应信息。*

(c) *为执行一般标准7（a），一方当事人应进行合理查询和提供其已掌握的任何信息。*

(d) *仲裁员有义务进行合理查询，以查明任何利益冲突以及任何可能使其公正性或独立性受到合理质疑的事实或情形。如果仲裁员未尽合理努力进行调查，则其未披露利益冲突的情形不因不知情而获免责。*

对一般标准 7 的解释：

(a) 当事人被要求披露与仲裁员之间的任何关系。披露将减少基于仲裁员被任命后才获知的信息而提出的对仲裁员公正性或独立性

无实体依据的回避申请的风险。当事人披露仲裁员与当事人（或其所属集团的另一成员，或者对该当事人有控制影响力的个人）之间的任何直接或间接的关系的义务已经延伸至披露仲裁员与和仲裁裁决有直接经济利益的个人或实体的关系，例如，向仲裁提供资金支持或依据仲裁裁决对一方当事人承担赔偿的实体。

(b) 当事人必须尽快提供参加仲裁程序的代理人信息。当事人披露法律顾问身份的义务扩大至当事人所有法律顾问团队成员，并在仲裁程序一开始就应履行。

(c) 为了履行披露义务，当事人被要求对任何他们可以合理获取的相关信息进行调查。此外，仲裁的任一当事人被要求，从一开始并在整个程序进行的过程中，需尽合理努力，查明和披露依照一般标准来看可能影响仲裁员公正性和独立性的可得信息。

(d) 为了履行本指引规定的披露义务，仲裁员被要求对任何他们可以合理获得的相关信息进行调查。

第二部分：一般标准的实际适用

1. 如果本指引要具有重要的实际影响，那么它应当体现可能在当今仲裁实践中发生的情况，应当就什么情形构成或不构成利益冲突或应当或不应当披露，向仲裁员、当事人、仲裁机构和仲裁庭提供明确具体的指引。为此，本指引将可能发生的情形归类，列于下列适用清单。这些清单不能涵盖每种情况。在一切情况之下，仍应以一般标准为准。

2. 红色清单包括两部分：“不可弃权的红色清单”（请参看一般标准2(d)和4(b)）和“可弃权的红色清单”（请参看一般标准4(c)）。这些清单是对具体情形的非穷尽式列举。视特定案件的事实而定，清单所列情形会引起对仲裁员的公正性和独立性的正当怀疑，即，在这些情形中，在知悉相关事实和情形的合理的第三人看来，存在客观的利益冲突（请参看一般标准2(b)）。不可弃权的红色清单包括了基于“任何人不得为自己的法官”这一首要原则的各种情形。为此，接受此等情形并不能消除利益冲突。可弃权的红色清单包括了各种重大但不严重的情形。由于这些情形的重大性，所以它们与橙色清单中所描述的情形不同：如一般标准4(c)所规定的，只有当事人知悉利益冲突情形的存在但仍明确地表示愿意

该人担任仲裁员时，这些情形才能被认为是可予放弃的。

3. 橙色清单是对从当事人角度看，视具体案件的事实而定，可能引起对仲裁员的公正性或独立性怀疑的具体情形的非穷尽式列举。因此，橙色清单反映的情形属于一般标准3(a)的范畴，仲裁员有义务披露此类情形。在所有这些情形中，如果当事人各方没有在披露后及时提出异议，则推定当事人各方已经接受了仲裁员（根据一般标准4(a)的规定）。

4. 披露并不意味着存在利益冲突；披露本身并不导致该仲裁员不适格，也不会导致不适格的推定。披露的目的，是为了告知当事人，存在其可能希望进一步探明，以客观地认定，即从知悉相关事实和情形的合理的第三人的角度来看，是否存在对仲裁员的公正性或独立性的正当怀疑。如果结论是不存在正当怀疑，那么该仲裁员就能够任职。除了不可弃权的红色清单规定的情形外，如果当事人没有及时提出异议，该仲裁员能够任职；或者，在所涉情形属于可弃权的红色清单范围而当事人依据一般标准4(c)明示接受时，那么仲裁员也能够任职。如果一方当事人对仲裁员的指定提出异议，但对该异议进行裁定的有权机构裁定该异议未满足不适格的客观标准，那么该仲裁员仍然能够任职。

5. 之后基于仲裁员没有披露该等事实或情形之事实而提起异议，并不应自动导致仲裁员的不受指定、仲裁员之后的不适格或对任何仲裁裁决的成功异议。不披露本身并不会使仲裁员具有偏袒性或缺乏独立性；而只有仲裁员未披露的事实或情形，才会使仲裁员具有偏袒性或缺乏独立性。

6. 未在橙色清单中列出的情形或者超出橙色清单规定的相应期限的情形通常不需要披露。但是，仲裁员需要在每个个案的基础上评估是否一个特定的情形，尽管没有被橙色清单提及，但仍有可能导致对他/她的公正和独立产生合理怀疑。因为橙色清单是一个非穷尽式举例清单，可能存在一些情形虽未被提及，但根据情形仍需要由仲裁员披露，例如，某一仲裁员在超过橙色清单规定的三年期限里被同一当事人或同一法律顾问重复指定，或者当一名仲裁员同时在一个虽然不相关但出现相似法律争议点的案件中担任法律顾问。同样，仲裁员由本案中同一当事人或同一法律顾问在另一个案件中指定为仲裁员，虽然另一个案件正在审理中，根据情形也可能需要披露。虽然本指引不要求仲裁员披露其正在或曾经与其他仲裁庭成员或者与目前正在进行的仲裁程序中的一位法律顾问组成过仲裁庭，但是仲裁员应当根据每个案件的情况评估经常作为法律顾问或仲裁员参加有仲裁庭的其他成员组成的仲裁庭审理的案件是否会在仲裁庭内部造成可以感知到的不平衡。如

果这个结论是肯定的，仲裁员则应当考虑披露。

7. 绿色清单是对从客观角度看，表面不存在且实际不存在利益冲突的具体情形的非穷尽式列举。为此，仲裁员对绿色清单中规定的情形没有义务进行披露。正如在对一般标准3(a)的解释中所指明的，应基于合理性原则对披露作出限制；在一些情形中，客观检验标准应当较“当事人角度”的纯粹主观检验标准优先适用。

8. 清单的各种分类之间的界线通常是细微的。某个特定情形是应列入这个清单还是另一个清单，颇可争议。同时，这些清单中，对于多种情形还使用了诸如“重大的”和“有关的”这类一般术语。清单最大可能地体现了国际原则和最佳实践。对于标准应当根据个案的事实和情形进行合理解释，对其进一步的界定或将劳而无功。

1. 不可弃权的红色清单

1.1 一方当事人与仲裁员为同一人，或者，仲裁员是参与仲裁的一

方当事人的法人代表或雇员。

1.2 仲裁员是一方当事人或与仲裁裁决结果有直接经济利益的实体的经理、董事或监事会成员，或对一方当事人或对与仲裁裁决结果有直接经济利益的实体具有控制影响力。

1.3 仲裁员在一方当事人或案件结果中具有重大的经济或个人利益。

1.4 仲裁员或他/她的律师事务所经常为当事人或当事人的关联公司提供咨询，并且该仲裁员或他或她的律师事务所从咨询中获取重大经济收入。

2. 可弃权的红色清单

2.1 仲裁员与争议的关系

2.1.1 仲裁员曾就争议为一方当事人或一方当事人的关联公司提供过法律建议或专家意见。

2.1.2 仲裁员以前曾参涉该争议。

2.2 仲裁员在争议中具有直接或间接利益

2.2.1 仲裁员直接或间接地持有一方当事人或一方当事人的关联公司的股份，该当事人或其关联公司为非上市公司。

2.2.2 仲裁员的紧密家庭成员[3]对争议结果具有重大经济利益。

2.2.3 仲裁员或其紧密家庭成员与第三方当事人具有密切关系，该第三方可能被争议的败诉方当事人行使追索权。

[3] 各适用清单中，“紧密家庭成员”指配偶、兄弟姐妹、子女、父母或生活伴侣，以及其他任何存在紧密关系的家庭成员。

2.3 仲裁员与当事人或法律顾问的关系

2.3.1 仲裁员目前代表一方当事人或一方当事人的关联公司，或者为一方当事人或一方当事人的关联公司提供咨询。

2.3.2 仲裁员目前代表担任一方当事人法律顾问的律师或律师事务所，或者为担任一方当事人法律顾问的律师或律师事务所提供咨询。

2.3.3 仲裁员与一方当事人的法律顾问是同一律师事务所的律师。

2.3.4 仲裁员是一方当事人关联公司[4]的经理、董事或监事会成员，或对其具有控制影响力，如果该关联公司直接参涉仲裁中的争议。

[4] 在各适用清单中，“关联公司”一词包括公司集团内的所有公司，包括母公司。

2.3.5 仲裁员的律师事务所以前曾经参涉但现已终止参涉该案件，而仲裁员本人没有参涉其中。

2.3.6 仲裁员的律师事务所目前与一方当事人或一方当事人的关联公司存在重大的商业关系。

2.3.7 仲裁员经常为一方当事人或一方当事人的关联公司提供咨询，但仲裁员本人和其律师事务所均未从该咨询中获得重大经济收入。

2.3.8 仲裁员与一方当事人、一方当事人或其关联公司的经理、董事、监事会成员、对一方当事人或其关联公司具有控制影响力的人、或一方当事人的法律顾问具有紧密家庭成员关系。

2.3.9 仲裁员的紧密家庭成员在一方当事人或一方当事人的关联公司处拥有重大的经济或私人利益。

3. 橙色清单

3.1 对一方当事人的先前服务或其它参涉案件情形

3.1.1 仲裁员在过去的三年内，曾担任一方当事人或一方当事人的关联公司的法律顾问，或曾就不相关事宜为其指定方当事人或其指定方当事人的关联公司提供过咨询或曾被咨询，但仲裁员与当事人或当事人的关联公司没有正在持续的关系。

3.1.2 仲裁员在过去的三年内曾经在不相关的事宜上担任一方当事人或一方当事人关联公司的相对方的法律顾问。

3.1.3 仲裁员在过去的三年中曾经两次或两次以上被一方当事人或一方当事人的关联公司指定为仲裁员。[5]

[5] 在特定类型仲裁中，如海事仲裁、体育仲裁或商品仲裁，实践做法可能是从较小的或专业人士圈中选定仲裁员。如果在这些领域，当事人经常为不同案件指定相同的仲裁员属于惯行做法，且各当事人均熟悉这一惯行做法，则无需披露这一事实。

3.1.4 仲裁员的律师事务所在过去的三年中曾经在不相关的事宜上代理一方当事人或一方当事人的关联公司，或者代理过一方当事人或一方当事人的关联公司的相对方，但仲裁员并未参涉其中。

3.1.5 仲裁员目前担任或曾在过去的三年中担任一方当事人或一方当事人的关联公司参涉其中的、与本案相关的另一仲裁案件的仲裁员。

3.2 目前为一方当事人的服务

3.2.1 仲裁员的律师事务所正在为一方当事人或一方当事人的关联公司提供服务，但没有形成重大的商业关系并且该仲裁员没有参涉其中。

3.2.2 与仲裁员的律师事务所共享大额收入或律师费的律师事务所或其他法律组织在仲裁程序中向一方当事人或一方当事人的关联公司提供服务。

3.2.3 仲裁员或其律师事务所经常代表仲裁一方当事人或其关联公司，但没有参涉当前的争议。

3.3 仲裁员与另一仲裁员或与法律顾问的关系

3.3.1 该仲裁员与另一仲裁员是同一律师事务所的律师。

3.3.2 该仲裁员与另一仲裁员或一方当事人的法律顾问是同一大律师事务所的成员。

3.3.3 该仲裁员在过去的三年中曾是另一仲裁员或同一仲裁案的任一法律顾问的合伙人或有其他关联关系。

3.3.4 仲裁员的律师事务所的律师，在涉及相同的一方当事人（或各方当事人）或一方当事人的关联公司的另一争议案件中担任仲裁员。

3.3.5 仲裁员的紧密家庭成员是代表一方当事人的律师事务所的合伙人或雇员，但该紧密家庭成员没有为争议提供协助。

3.3.6 仲裁员与一方当事人的法律顾问之间存在密切的私人朋友关系。

3.3.7 仲裁员与仲裁程序中的法律顾问之间存有敌意。

3.3.8 该仲裁员在过去的三年中超过三次被同一法律顾问或律师事务所指定。

3.3.9 仲裁员与另一名仲裁员，或者与一方当事人的法律顾问目前正在或者在过去的三年内曾经一起联合代理过案件。

3.4 仲裁员与当事人及其他仲裁参涉方的关系

3.4.1 仲裁员所在的律师事务所目前正在担任一方当事人的相对方或一方当事人的关联公司的相对方的代表。

3.4.2 仲裁员曾以专业身份（例如前雇员或前合伙人）与一方当事人或一方当事人的关联公司存在关联关系。

3.4.3 仲裁员与一方当事人或与仲裁裁决有直接经济利益的实体的经理、董事、监事会成员，或对一方当事人或一方当事人的关联公司有控制影响力（例如享有控股股东利益）的任何人、证人或专家有密切的私人朋友关系。

3.4.4 仲裁员与一方当事人或与仲裁裁决有直接经济利益的实体的经理、董事、监事会成员，或对一方当事人或一方当事人的关联公司有控制影响力的任何人，证人或专家有敌对关系。

3.4.5 如果该仲裁员是前法官，其在过去的三年中审理过一方当事人或一方当事人的关联公司参涉其中的重大案件。

3.5 其他情形

3.5.1 仲裁员直接或间接持有股份，其数量或面值构成对公开上市的一方当事人或一方当事人的关联公司的重大持股。

3.5.2 仲裁员曾以公开论文、演讲或其他形式对仲裁中的案件公开表明特定立场。

3.5.3 仲裁员在与争议有关的仲裁员指定机构中拥有职位。

3.5.4 仲裁员是一方当事人的关联公司的经理、董事、监事会成员或对其具有控制影响力，但该关联公司没有直接参涉仲裁中的争议事项。

4. 绿色清单

4.1 先前表述的法律意见

4.1.1 仲裁员曾就仲裁中同样出现的问题发表过（例如在法律评论文章或公开讲座中）法律意见（但这个意见并未专门针对正在仲裁的案件）。

4.2 目前为一方当事人的服务

4.2.1 与仲裁员的律师事务所联合或结盟但不分享重大律师费或其他收入的律师事务所，在与本案无关的事宜上为一方当事人或一方当事人的关联公司提供服务。

4.3 与另一仲裁员或一方当事人的法律顾问的接触

4.3.1 仲裁员与另一仲裁员或一方当事人的法律顾问，因属于同一专业协会，或社会、慈善组织的会员，或通过社交媒体网络而建立关系。

4.3.2 仲裁员与一方当事人的法律顾问先前曾经一起担任仲裁员。

4.3.3 仲裁员与另一名仲裁员或一方当事人的法律顾问在同一系或学院任教，或者在同一专业协会，或社会、慈善组织任职。

4.3.4 仲裁员与另一名仲裁员或一方当事人的法律顾问一起作为一个或多个会议的演讲者、主持者和组织者，或参加学术研讨会或专业、社会、慈善机构的工作小组。

4.4 仲裁员与一方当事人的接触

4.4.1 仲裁员与一方当事人或一方当事人的关联公司（或他们的法律顾问）在指定前有过初步接触，但该接触行为仅限于其担任仲裁员的可安排性和资格，或首席仲裁员的潜在候选人名单，除了向仲裁员提供基本的案件理解外，没有涉及争议的实体或程序事项。

4.4.2 仲裁员持有公开上市的一方当事人或一方当事人的关联公司的数量并不重大的股份。

4.4.3 仲裁员曾经作为联合专家或以其他专业身份（包括在同一案件担任仲裁员），与一方当事人或一方当事人的关联公司的经理、董事、监事会成员或具有控制影响力的人共事。

4.4.4 仲裁员与一方当事人或其关联公司通过社交媒体网络建立联系。

IBA Guidelines on Conflicts of Interest in International Arbitration

Adopted by resolution
of the IBA Council
on Thursday 23 October 2014

the global voice of
the legal profession

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ISBN: 978-0-948711-36-7

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the global voice of the legal profession

IBA Guidelines on Conflicts of Interest in International Arbitration 2014

Since their issuance in 2004, the *IBA Guidelines on Conflicts of Interest in International Arbitration* (the 'Guidelines')[1] have gained wide acceptance within the international arbitration community. Arbitrators commonly use the Guidelines when making decisions about prospective appointments and disclosures. Likewise, parties and their counsel frequently consider the Guidelines in assessing the impartiality and independence of arbitrators, and arbitral institutions and courts also often consult the Guidelines in considering challenges to arbitrators. As contemplated when the Guidelines were first adopted, on the eve of their tenth anniversary it was considered appropriate to reflect on the accumulated experience of using them and to identify areas of possible clarification or improvement. Accordingly, in 2012, the IBA Arbitration Committee initiated a review of the Guidelines, which was conducted by an expanded Conflicts of Interest Subcommittee (the 'Subcommittee'),[2] representing diverse legal

1 The 2004 Guidelines were drafted by a Working Group of 19 experts: Henri Alvarez, Canada; John Beechey, England; Jim Carter, United States; Emmanuel Gaillard, France; Emilio Gonzales de Castilla, Mexico; Bernard Hanotiau, Belgium; Michael Hwang, Singapore; Albert Jan van den Berg, Belgium; Doug Jones, Australia; Gabrielle Kaufmann-Kohler, Switzerland; Arthur Marriott, England; Tore Wiwen Nilsson, Sweden; Hilmar Raeschke-Kessler, Germany; David W Rivkin, United States; Klaus Sachs, Germany; Nathalie Voser, Switzerland (Rapporteur); David Williams, New Zealand; Des Williams, South Africa; and Otto de Witt Wijnen, The Netherlands (Chair).

2 The members of the expanded Subcommittee on Conflicts of Interest were: Habib Almulla, United Arab Emirates; David Arias, Spain (Co-Chair); Julie Bédard,

cultures and a range of perspectives, including counsel, arbitrators and arbitration users. The Subcommittee was chaired by David Arias, later co-chaired by Julie Bédard, and the review process was conducted under the leadership of Pierre Bienvenu and Bernard Hanotiau.

While the Guidelines were originally intended to apply to both commercial and investment arbitration, it was found in the course of the review process that uncertainty lingered as to their application to investment arbitration. Similarly, despite a comment in the original version of the Guidelines that their application extended to non-legal professionals serving as arbitrator, there appeared to remain uncertainty in this regard as well. A consensus emerged in favour of a general affirmation that the Guidelines apply to both commercial and investment arbitration, and to both legal and non-legal professionals serving as arbitrator.

The Subcommittee has carefully considered a number of issues that have received attention in international arbitration practice since 2004, such as the effects of so-called 'advance waivers', whether the fact of acting concurrently as counsel and arbitrator in unrelated cases raising similar legal issues warrants disclosure, 'issue' conflicts, the independence and impartiality of arbitral or administrative secretaries and third-party funding. The revised Guidelines reflect the Subcommittee's conclusions on these issues.

United States (Co-Chair);José Astigarraga, United States; Pierre Bienvenu, Canada (Review Process Co-Chair); Karl-Heinz Böckstiegel, Germany; Yves Derains, France; Teresa Giovannini, Switzerland; Eduardo Damião Gonçalves, Brazil; Bernard Hanotiau, Belgium (Review Process Co-Chair); Paula Hodges, England; Toby Landau, England; Christian Leathley, England; Carole Malinvaud, France; Ciccu Mukhopadhaya, India; Yoshimi Ohara, Japan; Tinuade Oyekunle, Nigeria; Eun Young Park, Korea; Constantine Partasides, England; Peter Rees, The Netherlands; Anke Sessler, Germany; Guido Tawil, Argentina; Jingzhou Tao, China; Gäetan Verhoosel, England (Rapporteur); Nathalie Voser, Switzerland; Nassib Ziadé, United Arab Emirates; and Alexis Mourre. Assistance was provided by: Niuscha Bassiri, Belgium; Alison Fitzgerald, Canada; Oliver Cojo, Spain; and Ricardo Dalmaso Marques, Brazil.

The Subcommittee has also considered, in view of the evolution of the global practice of international arbitration, whether the revised Guidelines should impose stricter standards in regard to arbitrator disclosure. The revised Guidelines reflect the conclusion that, while the basic approach of the 2004 Guidelines should not be altered, disclosure should be required in certain circumstances not contemplated in the 2004 Guidelines. It is also essential to reaffirm that the fact of requiring disclosure – or of an arbitrator making a disclosure – does not imply the existence of doubts as to the impartiality or independence of the arbitrator. Indeed, the standard for disclosure differs from the standard for challenge. Similarly, the revised Guidelines are not in any way intended to discourage the service as arbitrators of lawyers practising in large firms or legal associations.

The Guidelines were adopted by resolution of the IBA Council on Thursday 23 October 2014. The Guidelines are available for download at: **www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx**

Signed by the Co-Chairs of the Arbitration Committee
Thursday 23 October 2014

Eduardo Zuleta

Paul Friedland

Introduction

1. Arbitrators and party representatives are often unsure about the scope of their disclosure obligations. The growth of international business, including larger corporate groups and international law firms, has generated more disclosures and resulted in increased complexity in the analysis of disclosure and conflict of interest issues. Parties have more opportunities to use challenges of arbitrators to delay arbitrations, or to deny the opposing party the arbitrator of its choice. Disclosure of any relationship, no matter how minor or serious, may lead to unwarranted or frivolous challenges. At the same time, it is important that more information be made available to the parties, so as to protect awards against challenges based upon alleged failures to disclose, and to promote a level playing field among parties and among counsel engaged in international arbitration.

2. Parties, arbitrators, institutions and courts face complex decisions about the information that arbitrators should disclose and the standards to apply to disclosure. In addition, institutions and courts face difficult decisions when an objection or a challenge is made after a disclosure. There is a tension between, on the one hand, the parties' right to disclosure of circumstances that may call into question an arbitrator's impartiality or independence in order to protect the parties' right to a fair hearing, and, on the other hand, the need to avoid unnecessary challenges against arbitrators in order to protect the parties' ability to select arbitrators of their choosing.

3. It is in the interest of the international arbitration community that arbitration proceedings are not hindered by ill-founded challenges against arbitrators and that the legitimacy of the process is not affected by uncertainty and a lack of uniformity in the applicable standards for

disclosures, objections and challenges. The 2004 Guidelines reflected the view that the standards existing at the time lacked sufficient clarity and uniformity in their application. The Guidelines, therefore, set forth some 'General Standards and Explanatory Notes on the Standards'. Moreover, in order to promote greater consistency and to avoid unnecessary challenges and arbitrator withdrawals and removals, the Guidelines list specific situations indicating whether they warrant disclosure or disqualification of an arbitrator. Such lists, designated 'Red', 'Orange' and 'Green' (the 'Application Lists'), have been updated and appear at the end of these revised Guidelines.

4. The Guidelines reflect the understanding of the IBA Arbitration Committee as to the best current international practice, firmly rooted in the principles expressed in the General Standards below. The General Standards and the Application Lists are based upon statutes and case law in a cross-section of jurisdictions, and upon the judgement and experience of practitioners involved in international arbitration. In reviewing the 2004 Guidelines, the IBA Arbitration Committee updated its analysis of the laws and practices in a number of jurisdictions. The Guidelines seek to balance the various interests of parties, representatives, arbitrators and arbitration institutions, all of whom have a responsibility for ensuring the integrity, reputation and efficiency of international arbitration. Both the 2004 Working Group and the Subcommittee in 2012/2014 have sought and considered the views of leading arbitration institutions, corporate counsel and other persons involved in international arbitration through public consultations at IBA annual meetings, and at meetings with arbitrators and practitioners. The comments received were reviewed in detail and many were adopted. The IBA Arbitration Committee is grateful for the serious consideration given to its proposals by so many institutions and individuals.

5. The Guidelines apply to international commercial arbitration and investment arbitration, whether the representation of the parties is carried out by lawyers or non-lawyers, and irrespective of whether or not non-legal professionals serve as arbitrators.

6. These Guidelines are not legal provisions and do not override any applicable national law or arbitral rules chosen by the parties. However, it is hoped that, as was the case for the 2004 Guidelines and other sets of rules and guidelines of the IBA Arbitration Committee, the revised Guidelines will find broad acceptance within the international arbitration community, and that they will assist parties, practitioners, arbitrators, institutions and courts in dealing with these important questions of impartiality and independence. The IBA Arbitration Committee trusts that the Guidelines will be applied with robust common sense and without unduly formalistic interpretation.

7. The Application Lists cover many of the varied situations that commonly arise in practice, but they do not purport to be exhaustive, nor could they be. Nevertheless, the IBA Arbitration Committee is confident that the Application Lists provide concrete guidance that is useful in applying the General Standards. The IBA Arbitration Committee will continue to study the actual use of the Guidelines with a view to furthering their improvement.

8. In 1987, the IBA published *Rules of Ethics for International Arbitrators*. Those Rules cover more topics than these Guidelines, and they remain in effect as to subjects that are not discussed in the Guidelines. The Guidelines supersede the *Rules of Ethics* as to the matters treated here.

Part I: General Standards Regarding Impartiality, Independence and Disclosure

(1) General Principle

Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final award has been rendered or the proceedings have otherwise finally terminated.

Explanation to General Standard 1:

A fundamental principle underlying these Guidelines is that each arbitrator must be impartial and independent of the parties at the time he or she accepts an appointment to act as arbitrator, and must remain so during the entire course of the arbitration proceeding, including the time period for the correction or interpretation of a final award under the relevant rules, assuming such time period is known or readily ascertainable.

The question has arisen as to whether this obligation should extend to the period during which the award may be challenged before the relevant courts. The decision taken is that this obligation should not extend in this manner, unless the final award may be referred back to the original Arbitral Tribunal under the relevant applicable law or relevant institutional rules. Thus, the arbitrator's obligation in this regard ends when the Arbitral Tribunal has rendered the final award, and any correction or interpretation as may be permitted under the relevant rules has been

issued, or the time for seeking the same has elapsed, the proceedings have been finally terminated (for example, because of a settlement), or the arbitrator otherwise no longer has jurisdiction. If, after setting aside or other proceedings, the dispute is referred back to the same Arbitral Tribunal, a fresh round of disclosure and review of potential conflicts of interests may be necessary.

(2) Conflicts of Interest

(a) An arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator, if he or she has any doubt as to his or her ability to be impartial or independent.

(b) The same principle applies if facts or circumstances exist, or have arisen since the appointment, which, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances, would give rise to justifiable doubts as to the arbitrator's impartiality or independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in General Standard 4.

(c) Doubts are justifiable if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.

(d) Justifiable doubts necessarily exist as to the arbitrator's impartiality or independence in any of the situations described in the Non-Waivable Red List.

Explanation to General Standard 2:

(a) If the arbitrator has doubts as to his or her ability to be impartial and independent, the arbitrator must decline the appointment. This standard should apply regardless of the stage of the proceedings. This is a basic principle

that is spelled out in these Guidelines in order to avoid confusion and to foster confidence in the arbitral process.

(b) In order for standards to be applied as consistently as possible, the test for disqualification is an objective one. The wording 'impartiality or independence' derives from the widely adopted Article 12 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law, and the use of an appearance test based on justifiable doubts as to the impartiality or independence of the arbitrator, as provided in Article 12(2) of the UNCITRAL Model Law, is to be applied objectively (a 'reasonable third person test'). Again, as described in the Explanation to General Standard 3(e), this standard applies regardless of the stage of the proceedings.

(c) Laws and rules that rely on the standard of justifiable doubts often do not define that standard. This General Standard is intended to provide some context for making this determination.

(d) The Non-Waivable Red List describes circumstances that necessarily raise justifiable doubts as to the arbitrator's impartiality or independence. For example, because no one is allowed to be his or her own judge, there cannot be identity between an arbitrator and a party. The parties, therefore, cannot waive the conflict of interest arising in such a situation.

(3) Disclosure by the Arbitrator

(a) If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and the co-arbitrators, if any, prior to accepting his or her appointment

or, if thereafter, as soon as he or she learns of them.

(b) An advance declaration or waiver in relation to possible conflicts of interest arising from facts and circumstances that may arise in the future does not discharge the arbitrator's ongoing duty of disclosure under General Standard 3(a).

(c) It follows from General Standards 1 and 2(a) that an arbitrator who has made a disclosure considers himself or herself to be impartial and independent of the parties, despite the disclosed facts, and, therefore, capable of performing his or her duties as arbitrator. Otherwise, he or she would have declined the nomination or appointment at the outset, or resigned.

(d) Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure.

(e) When considering whether facts or circumstances exist that should be disclosed, the arbitrator shall not take into account whether the arbitration is at the beginning or at a later stage.

Explanation to General Standard 3:

(a) The arbitrator's duty to disclose under General Standard 3(a) rests on the principle that the parties have an interest in being fully informed of any facts or circumstances that may be relevant in their view. Accordingly, General Standard 3(d) provides that any doubt as to whether certain facts or circumstances should be disclosed should be resolved in favour of disclosure. However, situations that, such as those set out in the Green List, could never lead to disqualification under the objective test set out in General Standard 2, need not be disclosed. As reflected in General Standard 3(c), a disclosure does not imply that the disclosed facts are such as to disqualify the arbitrator under General Standard 2.

The duty of disclosure under General Standard 3(a) is ongoing in nature.

(b) The IBA Arbitration Committee has considered the increasing use by prospective arbitrators of declarations in respect of facts or circumstances that may arise in the future, and the possible conflicts of interest that may result, sometimes referred to as 'advance waivers'. Such declarations do not discharge the arbitrator's ongoing duty of disclosure under General Standard 3(a). The Guidelines, however, do not otherwise take a position as to the validity and effect of advance declarations or waivers, because the validity and effect of any advance declaration or waiver must be assessed in view of the specific text of the advance declaration or waiver, the particular circumstances at hand and the applicable law.

(c) A disclosure does not imply the existence of a conflict of interest. An arbitrator who has made a disclosure to the parties considers himself or herself to be impartial and independent of the parties, despite the disclosed facts, or else he or she would have declined the nomination, or resigned. An arbitrator making a disclosure thus feels capable of performing his or her duties. It is the purpose of disclosure to allow the parties to judge whether they agree with the evaluation of the arbitrator and, if they so wish, to explore the situation further. It is hoped that the promulgation of this General Standard will eliminate the misconception that disclosure itself implies doubts sufficient to disqualify the arbitrator, or even creates a presumption in favour of disqualification. Instead, any challenge should only be successful if an objective test, as set forth in General Standard 2 above, is met. Under Comment 5 of the Practical Application of the General Standards, a failure to disclose certain facts and circumstances that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, does

not necessarily mean that a conflict of interest exists, or that a disqualification should ensue.

(d) In determining which facts should be disclosed, an arbitrator should take into account all circumstances known to him or her. If the arbitrator finds that he or she should make a disclosure, but that professional secrecy rules or other rules of practice or professional conduct prevent such disclosure, he or she should not accept the appointment, or should resign.

(e) Disclosure or disqualification (as set out in General Standards 2 and 3) should not depend on the particular stage of the arbitration. In order to determine whether the arbitrator should disclose, decline the appointment or refuse to continue to act, the facts and circumstances alone are relevant, not the current stage of the proceedings, or the consequences of the withdrawal. As a practical matter, arbitration institutions may make a distinction depending on the stage of the arbitration. Courts may likewise apply different standards. Nevertheless, no distinction is made by these Guidelines depending on the stage of the arbitral proceedings. While there are practical concerns, if an arbitrator must withdraw after the arbitration has commenced, a distinction based on the stage of the arbitration would be inconsistent with the General Standards.

(4) Waiver by the Parties

(a) If, within 30 days after the receipt of any disclosure by the arbitrator, or after a party otherwise learns of facts or circumstances that could constitute a potential conflict of interest for an arbitrator, a party does not raise an express objection with regard to that arbitrator, subject to paragraphs (b) and (c) of this General Standard, the party is deemed to have waived any potential conflict of interest in respect of the arbitrator based on such facts or circumstances and may not raise any

objection based on such facts or circumstances at a later stage.

(b) However, if facts or circumstances exist as described in the Non-Waivable Red List, any waiver by a party (including any declaration or advance waiver, such as that contemplated in General Standard 3(b)), or any agreement by the parties to have such a person serve as arbitrator, shall be regarded as invalid.

(c) A person should not serve as an arbitrator when a conflict of interest, such as those exemplified in the Waivable Red List, exists. Nevertheless, such a person may accept appointment as arbitrator, or continue to act as an arbitrator, if the following conditions are met:

(i) all parties, all arbitrators and the arbitration institution, or other appointing authority (if any), have full knowledge of the conflict of interest; and

(ii) all parties expressly agree that such a person may serve as arbitrator, despite the conflict of interest.

(d) An arbitrator may assist the parties in reaching a settlement of the dispute, through conciliation, mediation or otherwise, at any stage of the proceedings. However, before doing so, the arbitrator should receive an express agreement by the parties that acting in such a manner shall not disqualify the arbitrator from continuing to serve as arbitrator. Such express agreement shall be considered to be an effective waiver of any potential conflict of interest that may arise from the arbitrator's participation in such a process, or from information that the arbitrator may learn in the process. If the assistance by the arbitrator does not lead to the final settlement of the case, the parties remain bound by their waiver. However, consistent with General Standard 2(a) and notwithstanding such agreement, the arbitrator shall resign if,

as a consequence of his or her involvement in the settlement process, the arbitrator develops doubts as to his or her ability to remain impartial or independent in the future course of the arbitration.

Explanation to General Standard 4:

(a) Under General Standard 4(a), a party is deemed to have waived any potential conflict of interest, if such party has not raised an objection in respect of such conflict of interest within 30 days. This time limit should run from the date on which the party learns of the relevant facts or circumstances, including through the disclosure process.

(b) General Standard 4(b) serves to exclude from the scope of General Standard 4(a) the facts and circumstances described in the Non-Waivable Red List. Some arbitrators make declarations that seek waivers from the parties with respect to facts or circumstances that may arise in the future. Irrespective of any such waiver sought by the arbitrator, as provided in General Standard 3(b), facts and circumstances arising in the course of the arbitration should be disclosed to the parties by virtue of the arbitrator's ongoing duty of disclosure.

(c) Notwithstanding a serious conflict of interest, such as those that are described by way of example in the Waivable Red List, the parties may wish to engage such a person as an arbitrator. Here, party autonomy and the desire to have only impartial and independent arbitrators must be balanced. Persons with a serious conflict of interest, such as those that are described by way of example in the Waivable Red List, may serve as arbitrators only if the parties make fully informed, explicit waivers.

(d) The concept of the Arbitral Tribunal assisting the parties in reaching a settlement of their dispute in the course of the arbitration proceedings is well-established in some jurisdictions, but not in others. Informed consent by the parties to such a process prior to its beginning should be regarded as an effective waiver of a potential conflict of interest. Certain jurisdictions may require such

consent to be in writing and signed by the parties. Subject to any requirements of applicable law, express consent may be sufficient and may be given at a hearing and reflected in the minutes or transcript of the proceeding. In addition, in order to avoid parties using an arbitrator as mediator as a means of disqualifying the arbitrator, the General Standard makes clear that the waiver should remain effective, if the mediation is unsuccessful. In giving their express consent, the parties should realise the consequences of the arbitrator assisting them in a settlement process, including the risk of the resignation of the arbitrator.

(5) Scope

(a) These Guidelines apply equally to tribunal chairs, sole arbitrators and co-arbitrators, howsoever appointed.

(b) Arbitral or administrative secretaries and assistants, to an individual arbitrator or the Arbitral Tribunal, are bound by the same duty of independence and impartiality as arbitrators, and it is the responsibility of the Arbitral Tribunal to ensure that such duty is respected at all stages of the arbitration.

Explanation to General Standard 5:

(a) Because each member of an Arbitral Tribunal has an obligation to be impartial and independent, the General Standards do not distinguish between sole arbitrators, tribunal chairs, party-appointed arbitrators or arbitrators appointed by an institution.

(b) Some arbitration institutions require arbitral or administrative secretaries and assistants to sign a declaration of independence and impartiality. Whether or not such a requirement exists, arbitral or administrative secretaries and assistants to the Arbitral Tribunal are bound by the same duty of independence and impartiality (including the duty of disclosure) as arbitrators, and it is the responsibility of the Arbitral Tribunal to

ensure that such duty is respected at all stages of the arbitration. Furthermore, this duty applies to arbitral or administrative secretaries and assistants to either the Arbitral Tribunal or individual members of the Arbitral Tribunal.

(6) Relationships

(a) The arbitrator is in principle considered to bear the identity of his or her law firm, but when considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists, or whether disclosure should be made, the activities of an arbitrator's law firm, if any, and the relationship of the arbitrator with the law firm, should be considered in each individual case. The fact that the activities of the arbitrator's firm involve one of the parties shall not necessarily constitute a source of such conflict, or a reason for disclosure. Similarly, if one of the parties is a member of a group with which the arbitrator's firm has a relationship, such fact should be considered in each individual case, but shall not necessarily constitute by itself a source of a conflict of interest, or a reason for disclosure.

(b) If one of the parties is a legal entity, any legal or physical person having a controlling influence on the legal entity, or a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration, may be considered to bear the identity of such party.

Explanation to General Standard 6:

(a) The growing size of law firms should be taken into account as part of today's reality in international arbitration. There is a need to balance the interests of a party to appoint the arbitrator of its choice, who may be a partner at a large law firm, and the importance of maintaining confidence in the impartiality and independence of international arbitrators. The arbitrator must, in principle,

be considered to bear the identity of his or her law firm, but the activities of the arbitrator's firm should not automatically create a conflict of interest. The relevance of the activities of the arbitrator's firm, such as the nature, timing and scope of the work by the law firm, and the relationship of the arbitrator with the law firm, should be considered in each case. General Standard 6(a) uses the term 'involve' rather than 'acting for' because the relevant connections with a party may include activities other than representation on a legal matter. Although barristers' chambers should not be equated with law firms for the purposes of conflicts, and no general standard is proffered for barristers' chambers, disclosure may be warranted in view of the relationships among barristers, parties or counsel. When a party to an arbitration is a member of a group of companies, special questions regarding conflicts of interest arise. Because individual corporate structure arrangements vary widely, a catch-all rule is not appropriate. Instead, the particular circumstances of an affiliation with another entity within the same group of companies, and the relationship of that entity with the arbitrator's law firm, should be considered in each individual case.

(b) When a party in international arbitration is a legal entity, other legal and physical persons may have a controlling influence on this legal entity, or a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration. Each situation should be assessed individually, and General Standard 6(b) clarifies that such legal persons and individuals may be considered effectively to be that party. Third-party funders and insurers in relation to the dispute may have a direct economic interest in the award, and as such may be considered to be the equivalent of the party. For these purposes, the terms 'third-party funder' and 'insurer' refer to any person or entity that is contributing funds, or other material support,

to the prosecution or defence of the case and that has a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration.

(7) Duty of the Parties and the Arbitrator

(a) A party shall inform an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) of any relationship, direct or indirect, between the arbitrator and the party (or another company of the same group of companies, or an individual having a controlling influence on the party in the arbitration), or between the arbitrator and any person or entity with a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration. The party shall do so on its own initiative at the earliest opportunity.

(b) A party shall inform an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) of the identity of its counsel appearing in the arbitration, as well as of any relationship, including membership of the same barristers' chambers, between its counsel and the arbitrator. The party shall do so on its own initiative at the earliest opportunity, and upon any change in its counsel team.

(c) In order to comply with General Standard 7(a), a party shall perform reasonable enquiries and provide any relevant information available to it.

(d) An arbitrator is under a duty to make reasonable enquiries to identify any conflict of interest, as well as any facts or circumstances that may reasonably give rise to doubts as to his or her impartiality or independence. Failure to disclose a conflict is not excused by lack of knowledge, if the arbitrator does not perform such reasonable enquiries.

Explanation to General Standard 7:

(a) The parties are required to disclose any relationship with the arbitrator. Disclosure of such relationships should reduce the risk of an unmeritorious challenge of an arbitrator's impartiality or independence based on information learned after the appointment. The parties' duty of disclosure of any relationship, direct or indirect, between the arbitrator and the party (or another company of the same group of companies, or an individual having a controlling influence on the party in the arbitration) has been extended to relationships with persons or entities having a direct economic interest in the award to be rendered in the arbitration, such as an entity providing funding for the arbitration, or having a duty to indemnify a party for the award.

(b) Counsel appearing in the arbitration, namely the persons involved in the representation of the parties in the arbitration, must be identified by the parties at the earliest opportunity. A party's duty to disclose the identity of counsel appearing in the arbitration extends to all members of that party's counsel team and arises from the outset of the proceedings.

(c) In order to satisfy their duty of disclosure, the parties are required to investigate any relevant information that is reasonably available to them. In addition, any party to an arbitration is required, at the outset and on an ongoing basis during the entirety of the proceedings, to make a reasonable effort to ascertain and to disclose available information that, applying the general standard, might affect the arbitrator's impartiality or independence.

(d) In order to satisfy their duty of disclosure under the Guidelines, arbitrators are required to investigate any relevant information that is reasonably available to them.

Part II: Practical Application of the General Standards

1. If the Guidelines are to have an important practical influence, they should address situations that are likely to occur in today's arbitration practice and should provide specific guidance to arbitrators, parties, institutions and courts as to which situations do or do not constitute conflicts of interest, or should or should not be disclosed. For this purpose, the Guidelines categorise situations that may occur in the following Application Lists. These lists cannot cover every situation. In all cases, the General Standards should control the outcome.

2. The Red List consists of two parts: 'a Non-Waivable Red List' (see General Standards 2(d) and 4(b)); and 'a Waivable Red List' (see General Standard 4(c)). These lists are non-exhaustive and detail specific situations that, depending on the facts of a given case, give rise to justifiable doubts as to the arbitrator's impartiality and independence. That is, in these circumstances, an objective conflict of interest exists from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances (see General Standard 2(b)). The Non-Waivable Red List includes situations deriving from the overriding principle that no person can be his or her own judge. Therefore, acceptance of such a situation cannot cure the conflict. The Waivable Red List covers situations that are serious but not as severe. Because of their seriousness, unlike circumstances described in the Orange List, these situations should be considered waivable, but only if and when the parties, being aware of the conflict of interest situation, expressly state their willingness to have such a person act as arbitrator, as set forth in General Standard 4(c).

3. The Orange List is a non-exhaustive list of specific situations that, depending on the facts of a given case, may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence. The Orange List thus reflects situations that would fall under General Standard 3(a), with the consequence that the arbitrator has a duty to disclose such situations. In all these situations, the parties are deemed to have accepted the arbitrator if, after disclosure, no timely objection is made, as established in General Standard 4(a).

4. Disclosure does not imply the existence of a conflict of interest; nor should it by itself result either in a disqualification of the arbitrator, or in a presumption regarding disqualification. The purpose of the disclosure is to inform the parties of a situation that they may wish to explore further in order to determine whether objectively – that is, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances – there are justifiable doubts as to the arbitrator's impartiality or independence. If the conclusion is that there are no justifiable doubts, the arbitrator can act. Apart from the situations covered by the Non-Waivable Red List, he or she can also act if there is no timely objection by the parties or, in situations covered by the Waivable Red List, if there is a specific acceptance by the parties in accordance with General Standard 4(c). If a party challenges the arbitrator, he or she can nevertheless act, if the authority that rules on the challenge decides that the challenge does not meet the objective test for disqualification.

5. A later challenge based on the fact that an arbitrator did not disclose such facts or circumstances should not result automatically in non-appointment, later disqualification or a successful challenge to any award. Nondisclosure cannot by itself make an arbitrator partial or lacking independence: only the facts or circumstances that he or she failed to disclose can do so.

6. Situations not listed in the Orange List or falling outside the time limits used in some of the

Orange List situations are generally not subject to disclosure. However, an arbitrator needs to assess on a case-by-case basis whether a given situation, even though not mentioned in the Orange List, is nevertheless such as to give rise to justifiable doubts as to his or her impartiality or independence. Because the Orange List is a non-exhaustive list of examples, there may be situations not mentioned, which, depending on the circumstances, may need to be disclosed by an arbitrator. Such may be the case, for example, in the event of repeat past appointments by the same party or the same counsel beyond the three-year period provided for in the Orange List, or when an arbitrator concurrently acts as counsel in an unrelated case in which similar issues of law are raised. Likewise, an appointment made by the same party or the same counsel appearing before an arbitrator, while the case is ongoing, may also have to be disclosed, depending on the circumstances. While the Guidelines do not require disclosure of the fact that an arbitrator concurrently serves, or has in the past served, on the same Arbitral Tribunal with another member of the tribunal, or with one of the counsel in the current proceedings, an arbitrator should assess on a case-by-case basis whether the fact of having frequently served as counsel with, or as an arbitrator on, Arbitral Tribunals with another member of the tribunal may create a perceived imbalance within the tribunal. If the conclusion is 'yes', the arbitrator should consider a disclosure.

7. The Green List is a non-exhaustive list of specific situations where no appearance and no actual conflict of interest exists from an objective point of view. Thus, the arbitrator has no duty to disclose situations falling within the Green List. As stated in the Explanation to General Standard 3(a), there should be a limit to disclosure, based on reasonableness; in some situations, an objective test should prevail over the purely subjective test of 'the eyes' of the parties.

8. The borderline between the categories that comprise the Lists can be thin. It can be debated

whether a certain situation should be on one List instead of another. Also, the Lists contain, for various situations, general terms such as 'significant' and 'relevant'. The Lists reflect international principles and best practices to the extent possible. Further definition of the norms, which are to be interpreted reasonably in light of the facts and circumstances in each case, would be counterproductive.

1. Non-Waivable Red List

1.1 There is an identity between a party and the arbitrator, or the arbitrator is a legal representative or employee of an entity that is a party in the arbitration.

1.2 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence on one of the parties or an entity that has a direct economic interest in the award to be rendered in the arbitration.

1.3 The arbitrator has a significant financial or personal interest in one of the parties, or the outcome of the case.

1.4 The arbitrator or his or her firm regularly advises the party, or an affiliate of the party, and the arbitrator or his or her firm derives significant financial income therefrom.

2. Waivable Red List

2.1 Relationship of the arbitrator to the dispute

2.1.1 The arbitrator has given legal advice, or provided an expert opinion, on the dispute to a party or an affiliate of one of the parties.

2.1.2 The arbitrator had a prior involvement in the dispute.

2.2 Arbitrator's direct or indirect interest in the dispute

2.2.1 The arbitrator holds shares, either directly or indirectly, in one of the parties, or an affiliate of one of the parties, this party or

an affiliate being privately held.

2.2.2 A close family member[3] of the arbitrator has a significant financial interest in the outcome of the dispute.

2.2.3 The arbitrator, or a close family member of the arbitrator, has a close relationship with a non-party who may be liable to recourse on the part of the unsuccessful party in the dispute.

2.3 Arbitrator's relationship with the parties or counsel

2.3.1 The arbitrator currently represents or advises one of the parties, or an affiliate of one of the parties.

2.3.2 The arbitrator currently represents or advises the lawyer or law firm acting as counsel for one of the parties.

2.3.3 The arbitrator is a lawyer in the same law firm as the counsel to one of the parties.

2.3.4 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence in an affiliate[4] of one of the parties, if the affiliate is directly involved in the matters in dispute in the arbitration.

2.3.5 The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

2.3.6 The arbitrator's law firm currently has a significant commercial relationship with one of the parties, or an affiliate of one of the parties.

2.3.7 The arbitrator regularly advises one of

3 Throughout the Application Lists, the term 'close family member' refers to a: spouse, sibling, child, parent or life partner, in addition to any other family member with whom a close relationship exists.

4 Throughout the Application Lists, the term 'affiliate' encompasses all companies in a group of companies, including the parent company.

the parties, or an affiliate of one of the parties, but neither the arbitrator nor his or her firm derives a significant financial income therefrom.

2.3.8 The arbitrator has a close family relationship with one of the parties, or with a manager, director or member of the supervisory board, or any person having a controlling influence in one of the parties, or an affiliate of one of the parties, or with a counsel representing a party.

2.3.9 A close family member of the arbitrator has a significant financial or personal interest in one of the parties, or an affiliate of one of the parties.

3. Orange List

3.1 Previous services for one of the parties or other involvement in the case

3.1.1 The arbitrator has, within the past three years, served as counsel for one of the parties, or an affiliate of one of the parties, or has previously advised or been consulted by the party, or an affiliate of the party, making the appointment in an unrelated matter, but the arbitrator and the party, or the affiliate of the party, have no ongoing relationship.

3.1.2 The arbitrator has, within the past three years, served as counsel against one of the parties, or an affiliate of one of the parties, in an unrelated matter.

3.1.3 The arbitrator has, within the past three years, been appointed as arbitrator on two or more occasions by one of the parties, or an affiliate of one of the parties.[5]

5 It may be the practice in certain types of arbitration, such as maritime, sports or commodities arbitration, to draw arbitrators from a smaller or specialised pool of individuals. If in such fields it is the custom and practice for parties to frequently appoint the same arbitrator in different cases,

3.1.4 The arbitrator's law firm has, within the past three years, acted for or against one of the parties, or an affiliate of one of the parties, in an unrelated matter without the involvement of the arbitrator.

3.1.5 The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties, or an affiliate of one of the parties.

3.2 Current services for one of the parties

3.2.1 The arbitrator's law firm is currently rendering services to one of the parties, or to an affiliate of one of the parties, without creating a significant commercial relationship for the law firm and without the involvement of the arbitrator.

3.2.2 A law firm or other legal organisation that shares significant fees or other revenues with the arbitrator's law firm renders services to one of the parties, or an affiliate of one of the parties, before the Arbitral Tribunal.

3.2.3 The arbitrator or his or her firm represents a party, or an affiliate of one of the parties to the arbitration, on a regular basis, but such representation does not concern the current dispute.

3.3 Relationship between an arbitrator and another arbitrator or counsel

3.3.1 The arbitrator and another arbitrator are lawyers in the same law firm.

3.3.2 The arbitrator and another arbitrator, or the counsel for one of the parties, are members of the same barristers' chambers.

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no disclosure of this fact is required, where all parties in the arbitration should be familiar with such custom and practice.

3.3.3 The arbitrator was, within the past three years, a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the arbitration.

3.3.4 A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties, or an affiliate of one of the parties.

3.3.5 A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

3.3.6 A close personal friendship exists between an arbitrator and a counsel of a party.

3.3.7 Enmity exists between an arbitrator and counsel appearing in the arbitration.

3.3.8 The arbitrator has, within the past three years, been appointed on more than three occasions by the same counsel, or the same law firm.

3.3.9 The arbitrator and another arbitrator, or counsel for one of the parties in the arbitration, currently act or have acted together within the past three years as co-counsel.

3.4 Relationship between arbitrator and party and others involved in the arbitration

3.4.1 The arbitrator's law firm is currently acting adversely to one of the parties, or an affiliate of one of the parties.

3.4.2 The arbitrator has been associated with a party, or an affiliate of one of the parties, in a professional capacity, such as a former employee or partner.

3.4.3 A close personal friendship exists between an arbitrator and a manager or director or a member of the supervisory board of: a party; an entity that has a direct economic interest in the award to be rendered in the arbitration; or any person

having a controlling influence, such as a controlling shareholder interest, on one of the parties or an affiliate of one of the parties or a witness or expert.

3.4.4 Enmity exists between an arbitrator and a manager or director or a member of the supervisory board of: a party; an entity that has a direct economic interest in the award; or any person having a controlling influence in one of the parties or an affiliate of one of the parties or a witness or expert.

3.4.5 If the arbitrator is a former judge, he or she has, within the past three years, heard a significant case involving one of the parties, or an affiliate of one of the parties.

3.5 Other circumstances

3.5.1 The arbitrator holds shares, either directly or indirectly, that by reason of number or denomination constitute a material holding in one of the parties, or an affiliate of one of the parties, this party or affiliate being publicly listed.

3.5.2 The arbitrator has publicly advocated a position on the case, whether in a published paper, or speech, or otherwise.

3.5.3 The arbitrator holds a position with the appointing authority with respect to the dispute.

3.5.4 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence on an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

4. Green List

4.1 Previously expressed legal opinions

4.1.1 The arbitrator has previously expressed a legal opinion (such as in a law review article or public lecture) concerning an

issue that also arises in the arbitration (but this opinion is not focused on the case).

4.2 Current services for one of the parties

4.2.1 A firm, in association or in alliance with the arbitrator's law firm, but that does not share significant fees or other revenues with the arbitrator's law firm, renders services to one of the parties, or an affiliate of one of the parties, in an unrelated matter.

4.3 Contacts with another arbitrator, or with counsel for one of the parties

4.3.1 The arbitrator has a relationship with another arbitrator, or with the counsel for one of the parties, through membership in the same professional association, or social or charitable organisation, or through a social media network.

4.3.2 The arbitrator and counsel for one of the parties have previously served together as arbitrators.

4.3.3 The arbitrator teaches in the same faculty or school as another arbitrator or counsel to one of the parties, or serves as an officer of a professional association or social or charitable organisation with another arbitrator or counsel for one of the parties.

4.3.4 The arbitrator was a speaker, moderator or organiser in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organisation, with another arbitrator or counsel to the parties.

4.4 Contacts between the arbitrator and one of the parties

4.4.1 The arbitrator has had an initial contact with a party, or an affiliate of a party (or their counsel) prior to appointment, if this contact is limited to the arbitrator's availability and qualifications to serve,

or to the names of possible candidates for a chairperson, and did not address the merits or procedural aspects of the dispute, other than to provide the arbitrator with a basic understanding of the case.

4.4.2 The arbitrator holds an insignificant amount of shares in one of the parties, or an affiliate of one of the parties, which is publicly listed.

4.4.3 The arbitrator and a manager, director or member of the supervisory board, or any person having a controlling influence on one of the parties, or an affiliate of one of the parties, have worked together as joint experts, or in another professional capacity, including as arbitrators in the same case.

4.4.4 The arbitrator has a relationship with one of the parties or its affiliates through a social media network.

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