

CODE OF CONDUCT

Definitions

1. The definitions in Chapter 18 (Dispute Settlement) and Annex 18-A (Rules of Procedure for Arbitration) shall apply to this Annex. In addition, for the purposes of this Annex:
 - (a) "candidate" means an individual who is under consideration for selection as an arbitrator under Article 18.9 (Composition and establishment of the arbitration panel);
 - (b) "proceeding", unless otherwise specified, means an arbitration panel proceeding under Chapter 18 (Dispute Settlement); and
 - (c) "staff", in respect of an arbitrator, means any person under the direction and control of the arbitrator, other than an assistant.

Responsibilities to the process

2. Throughout the proceeding, every candidate and arbitrator shall, avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests, and shall observe high standards of conduct, so that the integrity and impartiality of the dispute settlement mechanism is preserved.
3. Former arbitrators shall comply with the obligations established in paragraphs 19, 22 and 24 of this Annex.

Disclosure obligations

4. Prior to confirmation of his or her selection as an arbitrator under Chapter 18 (Dispute Settlement), a candidate shall disclose any interest, relationship or matter that is likely to affect his

or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

5. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 4 of this Annex shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding at the earliest time the arbitrator becomes aware of it. The arbitrator shall disclose such interests, relationships or matters by informing the disputing parties, in writing, for their consideration.

6. Disclosure of an interest, relationship or matter is without prejudice as to whether that interest, relationship or matter is indeed covered by paragraphs 4 or 5, or whether it warrants recusal or disqualification. In the event of uncertainty regarding whether an interest, relationship or matter must be disclosed, a candidate or arbitrator should err in favour of disclosure.

7. A candidate or an arbitrator shall only communicate matters concerning actual or potential violations of this Annex to the disputing parties for their consideration.

Duties of arbitrators

8. An arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

9. An arbitrator shall comply with the provisions of Chapter 19 (Dispute Settlement) and its Annexes.

10. An arbitrator shall consider only those issues raised in the proceeding and necessary for the ruling and shall not delegate this duty to any other person. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the proceeding.

11. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with, paragraphs 2 to 7, and 19 to 22 of this Annex.

12. An arbitrator shall not engage in any *ex parte* contact concerning the proceeding.

Independence and impartiality of arbitrators

13. An arbitrator shall be independent and impartial, and avoid creating an appearance of impropriety or bias, and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party, or fear of criticism.

14. Arbitrators shall not take instructions from any organisation, individual or government with regard to matters before a panel, or be affiliated to a Party.

15. An arbitrator shall not, directly or indirectly, incur in any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.

16. An arbitrator shall not use his or her position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence them.

17. An arbitrator shall not allow past or ongoing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgement.

18. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.

Confidentiality

19. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of

that proceeding and shall not, in particular, disclose or use any such information to gain a personal advantage or an advantage for others or to affect the interest of others.

20. An arbitrator shall not make any public statement regarding the merits of a pending panel proceeding.

21. An arbitrator shall not disclose an interim report. An arbitrator shall not disclose a final arbitral award or parts thereof prior to its publication in accordance with Chapter 18 (Dispute Settlement).

22. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's view regarding the deliberations, or which arbitrators are associated with majority or minority opinions in a proceeding.

Expenses

23. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his or her expenses, as well as the time and expenses of his or her assistants.

Obligations of former arbitrators

24. A former arbitrator shall avoid actions that may create the appearance that he or she was biased in carrying out his or her duties, or derived any advantage from the decision of the arbitration panel.

Responsibilities of experts, assistants and staff

25. Paragraphs 2 to 7, 9, 12, 19 to 22 and 24 of this Annex shall also apply to experts, assistants and staff.