

DC BAR INTERNATIONAL LAW SECTION - INTERNATIONAL DISPUTE RESOLUTION COMMITTEE
Working Group on Practical Aspects of Transparency and Accountability in International Treaty Arbitration
Comparison Chart on Arbitrators' Standards of Conduct

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ARBITRATOR QUALIFICATION	<p>Rules of Arbitration. Article 9</p> <p>(1) In confirming or appointing arbitrators, <u>the Court shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with these Rules.</u></p> <p>(2) The Secretary General may confirm as co-arbitrators, sole arbitrators and chairmen of Arbitral Tribunals persons nominated by the parties or pursuant to their particular agreements, provided <u>they have filed a statement of independence without</u></p>	<p>Dispute Settlement Understanding (DSU) Article 8</p> <p>1. <u>Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.</u></p> <p>3. <u>Citizens of Members whose governments are parties to the dispute or</u></p>	<p>Rules of Arbitration. Article 6</p> <p>4. <u>In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.</u></p>	<p>Guidelines on Conflicts of Interest in International Arbitration Part I: General Standards Regarding Impartiality, Independence and Disclosure</p> <p>1) General Principle</p> <p><u>Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so during the entire arbitration proceeding until the final award has been rendered or the proceeding has otherwise finally terminated.</u></p>	<p>International Arbitration Rules Article 7 - Impartiality and Independence of Arbitrators</p> <p>1. <u>Arbitrators acting under these rules shall be impartial and independent.</u> Prior to accepting appointment, a prospective arbitrator shall disclose to the administrator any circumstance likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. If, at any stage during the arbitration, new circumstances arise that may give rise to such doubts, an arbitrator shall promptly disclose such circumstances to the parties and to the administrator. Upon receipt of such information from an arbitrator or a party, the administrator shall communicate it to the other parties and to the</p>	<p>Code of Conduct for Dispute Settlement Procedures under Chapters 19 and 20</p> <p>Members of bi-national panels can only be citizens of the States involved in the dispute.</p> <p>IV. Independence and Impartiality of Members</p> <p>A. <u>A member shall be independent and impartial.</u> A member shall act in a fair manner and shall avoid creating an appearance of impropriety or an apprehension of bias.</p> <p>B. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.</p> <p>C. A member shall not, directly or indirectly, incur any obligation or</p>	<p>Convention on the Settlement of Investment Disputes Between States and Nationals of Other States</p> <p>Chapter I , International Centre for Settlement of Investment Disputes</p> <p>Section 4, The Panels</p> <p>Article 14(1) <u>Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.</u></p>
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ARBITRATOR QUALIFICATION	<p>qualification or a <u>qualified statement of independence has not given rise to objections.</u> Such confirmation shall be reported to the Court at its next session. If the Secretary General considers that a co-arbitrator, sole arbitrator or chairman of an Arbitral Tribunal should not be confirmed, the matter shall be submitted to the Court.</p>	<p>third parties as defined in paragraph 2 of Article 10 <u>shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.</u></p>			<p>tribunal.</p> <p>The Code of Ethics for Arbitrators in Commercial Disputes CANON I</p> <p>B. <u>One should accept appointment as an arbitrator only if fully satisfied:</u> (1) <u>that he or she can serve impartially;</u> (2) <u>that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;</u> (3) <u>that he or she is competent to serve;</u> and (4) <u>that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.</u></p>	<p>accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.</p> <p>D. A member shall not use the member's position on the panel or committee to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.</p> <p>E. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgment.</p> <p>F. A member shall avoid entering into any relationship, or acquiring any financial interest, that is <u>likely to affect the member's impartiality or that might reasonably</u></p>	<p>Chapter IV, Arbitration</p> <p>Section 2, Constitution of the Tribunal</p> <p>Article 38 If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary- General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. <u>Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.</u></p> <p>Article 39 <u>The majority of the arbitrators shall be nationals of States other than the Contracting State party to the</u></p>
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<p>ARBITRATOR QUALIFICATION</p>						<p><u>create an appearance of impropriety or an apprehension of bias.</u></p>	<p>dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.</p> <p>Rules of Procedure for Arbitration Proceedings (Arbitration Rules)</p> <p>Chapter 1, Establishment of the Tribunal</p> <p>Rule 1, General Obligations</p> <p><u>(3) The majority of the arbitrators shall be nationals of States other than the State party to the dispute and of the State whose national is a party to the dispute, unless the sole arbitrator or each individual member of the Tribunal is appointed by agreement of the parties. Where the Tribunal is to consist of three members, a</u></p>
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ARBITRATOR QUALIFICATION							<p>national of either of these States may not be appointed as an arbitrator by a party without the agreement of the other party to the dispute. Where the Tribunal is to consist of five or more members, nationals of either of these States may not be appointed as arbitrators by a party if appointment by the other party of the same number of arbitrators of either of these nationalities would result in a majority of arbitrators of these nationalities.</p> <p>Additional Facility Rules</p> <p>Schedule C, Arbitration (Additional Facility) Rules,</p> <p>Chapter III, The Tribunal,</p> <p>Article 7, Nationality of Arbitrators, <i>(1) same as Rule 1(3) of the Arbitration Rules</i></p> <p><i>(2) Arbitrators appointed by the Chairman shall not be nationals of the State party to the dispute or of the State</i></p>
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ARBITRATOR QUALIFICATION							<p>whose national is a party to the dispute.</p> <p>Article 8, Qualifications of Arbitrators</p> <p>Arbitrators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment.</p> <p>Possible Improvements of the Framework for ICSID Arbitration</p> <p>Part IV, Disclosure Requirements for Arbitrators</p> <p><i>Para 16. All ICSID arbitrators must be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. The requirement of reliability for independent judgment has been interpreted as</i></p>
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							<i>encompassing impartiality as well as independence from the parties.</i>
ARBITRATOR CONFLICTS	<p>Internal Rules of International Court of Arbitration 2-1</p> <p>(1) <u>The Chairman and the members of the Secretariat of the Court may not act as arbitrators or as counsel in cases submitted to ICC arbitration.</u></p> <p>(3) When the Chairman, a Vice-Chairman or a member of the Court or of the Secretariat is involved in any capacity whatsoever in proceedings pending before the Court, such person must inform the Secretary General of the Court upon becoming aware of such involvement.</p> <p>(4) Such person must refrain from participating in the discussions or in the decisions of the Court concerning the proceedings and must be absent from the courtroom whenever the</p>	<p>Rules of Conduct</p> <p>II- 1. <u>Each person covered by these Rules (as defined in paragraph 1 of Section IV below and hereinafter called "covered person") shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of proceedings of bodies pursuant to the dispute settlement mechanism, so that through the observance of such standards of conduct the integrity and impartiality of that mechanism are preserved.</u> These Rules shall in no way modify the rights and obligations of Members under the DSU nor the rules and procedures therein.</p>	<p>Rules of Arbitration. Article 9</p> <p><u>A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.</u> An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.</p>	<p>Guidelines on Conflicts of Interest in International Arbitration Part I: General Standards Regarding Impartiality, Independence and Disclosure</p> <p>1) General Principle</p> <p><u>Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so during the entire arbitration proceeding until the final award has been rendered or the proceeding has otherwise finally terminated.</u></p> <p>(2) Conflicts of Interest</p> <p>(a) <u>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 doubts as to his or her ability to be impartial or independent.</u></p> <p>(b) The same principle applies if facts or circumstances exist, or have arisen since the appointment, that, from a reasonable third person's point of view having knowledge of the relevant facts, 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).</p> <p>(c) <u>Doubts are justifiable if a reasonable and informed third party would reach the conclusion that there was 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.</u></p> <p>(d) Justifiable doubts necessarily exist as to the arbitrator's impartiality or independence if there is an identity between a party and the arbitrator, if the arbitrator is a legal representative of a legal entity that is a party in the Arbitration, or if the arbitrator has a significant financial or personal interest in the matter at stake.</p> <p>(5) Scope</p> <p>These Guidelines apply equally to tribunal chairs, sole arbitrators and party-appointed arbitrators. These Guidelines do not apply to nonneutral arbitrators, who do not have an obligation to be</p>	<p>The Code of Ethics for Arbitrators in Commercial Disputes CANON I</p> <p>C. <u>After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality.</u> For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described in this paragraph C does</p>	<p>Code of Conduct for Dispute Settlement Procedures under Chapters 19 and 20.</p> <p>IV. Independence and Impartiality of Members</p> <p>B. <u>A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.</u></p> <p>C. <u>A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.</u></p> <p>D. <u>A member shall not use the member's position on the panel or committee to advance any personal or private interests.</u> A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member</p>	<p>Administrative and Financial Regulations</p> <p>Chapter II, The Secretariat</p> <p>Regulation 13, Incompatibility of Functions</p> <p><u>The Secretary-General, the Deputy Secretaries-General and the members of the staff may not serve on the Panel of Conciliators or of Arbitrators, or as members of any Commission or Tribunal.</u></p> <p>Rules of Procedure for Arbitration Proceedings (Arbitration Rules)</p> <p>Rule 1(4)</p> <p>No person who had previously acted as a conciliator or arbitrator in any proceeding for the settlement of the dispute may be appointed as a member of the Tribunal.</p>

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ARBITRATOR CONFLICTS	<p>matter is considered.</p> <p>(5) Such person will not receive any material documentation or information pertaining to such proceedings.</p>			<p>independent and impartial, as may be permitted by some arbitration rules or national laws.</p> <p>(6) Relationships (a) 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, should be reasonably considered in each individual case. Therefore, <u>the fact that the activities of the arbitrator's firm involve one of the parties shall not automatically constitute a source of such conflict or a reason for disclosure.</u> (b) Similarly, if one of the parties is a legal entity which is a member of a group with which the arbitrator's firm has an involvement, such facts or circumstances should be reasonably considered in each individual case. Therefore, this fact alone shall not automatically constitute a source of a conflict of interest or a reason for disclosure. (c) If one of the parties is a legal entity, the managers, directors and members of a supervisory board of such legal entity and any person having a similar controlling influence on the legal entity shall be considered to be the equivalent of the legal entity.</p> <p>(7) Duty of Arbitrator and Parties (a) A party shall inform an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) <u>about any direct or indirect relationship between it (or another company of the same group of companies) and the arbitrator.</u> The party shall do so on its own initiative before the beginning of the proceeding or as soon as it becomes aware of such relationship. (b) In order to comply with General Standard 7(a), a party shall provide any information already available to it and shall perform a reasonable search of publicly available information. (c) An arbitrator is under a duty to make reasonable enquiries to investigate any potential conflict of interest, as well as any facts or circumstances that may cause his or her impartiality or independence to be questioned. Failure to disclose a potential conflict is not excused by lack of knowledge if the arbitrator makes no reasonable attempt to investigate.</p>	<p>not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.</p> <p>D. Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. <u>They should avoid conduct and statements that give the appearance of partiality toward or against any party.</u></p>	<p>shall make every effort to prevent or discourage others from representing themselves as being in such a position. E. <u>A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgment.</u> F. <u>A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.</u></p>	<p>Rule 6(2) Before or at the first session of the Tribunal, each arbitrator shall sign a declaration in the following form:</p> <p>"To the best of my knowledge there is no reason why I should not serve on the Arbitral Tribunal constituted by the International Centre for Settlement of Investment Disputes with respect to a dispute between _____ and _____.</p> <p>"I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any award made by the Tribunal.</p> <p>"I shall judge fairly as between the parties, according to the applicable law, and shall not accept any instruction or compensation with regard to the proceeding from any source except as</p>

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ARBITRATOR CONFLICTS				<p>PART II: Practical Application of the General Standards</p> <p>1. The Working Group believes that the Guidelines should provide specific guidance to arbitrators, parties, institutions and courts as to what situations do or do not constitute conflicts of interest or should be disclosed. For this purpose, the Working Group categorized situations that can occur in the following Application Lists. These lists obviously cannot contain every situation, but they provide guidance in many circumstances, and the Working Group has sought to make them as comprehensive as possible. In all cases, the General Standards should control.</p> <p>1. Non-Waivable Red List. Non exhaustive.</p> <p>1.1. There is an identity between a party and the arbitrator, or the arbitrator is a legal representative of an entity that is a party in the arbitration.</p> <p>1.2. The arbitrator is a manager, director or member of the supervisory board, or has a similar controlling influence in one of the parties.</p> <p>1.3. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.</p> <p>1.4. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.</p> <p>2. Waivable Red List. Non exhaustive.</p> <p>2.1. Relationship of the arbitrator to the dispute</p> <p>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.</p> <p>2.1.2 The arbitrator has previous involvement in the case.</p> <p>2.2. Arbitrator's direct or indirect interest in the dispute</p> <p>2.2.1 The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.</p> <p>2.2.2 A close family member⁴ of the arbitrator has a significant financial interest in the outcome of the dispute.</p> <p>2.2.3 The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.</p>			<p>provided in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and in the Regulations Rules made pursuant thereto.</p> <p>"A statement of my past and present professional, business and other relationships (if any) with the parties is attached hereto."</p> <p>Any arbitrator failing to sign a declaration by the end of the first session of the Tribunal shall be deemed to have resigned.</p> <p>Additional Facility Rules</p> <p>Schedule C, Arbitration (Additional Facility) Rules</p> <p>Chapter III, The Tribunal</p> <p>Article 6, General Provisions (5) Except as the parties shall otherwise agree, no person who had previously acted as a conciliator or arbitrator</p>

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ARBITRATOR CONFLICTS				<p>2.3. Arbitrator's relationship with the parties or counsel</p> <p>2.3.1 The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.</p> <p>2.3.2 The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.</p> <p>2.3.3 The arbitrator is a lawyer in the same law firm as the counsel to one of the parties.</p> <p>2.3.4 The arbitrator is a manager, director or member of the supervisory board, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.</p> <p>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.</p> <p>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.</p> <p>2.3.7 The arbitrator regularly advises the appointing party or an affiliate of the appointing party, but neither the arbitrator nor his or her firm derives a significant financial income therefrom.</p> <p>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 similar controlling influence in one of the parties or an affiliate of one of the parties or with a counsel representing a party.</p> <p>2.3.9 A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.</p> <p>3. Orange List. Non exhaustive.</p> <p>3.1. Previous services for one of the parties or other involvement in the case</p> <p>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.</p> <p>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.</p>			<p>in any proceeding for the settlement of the dispute or as a member of any fact-finding committee relating thereto may be appointed as a member of the Tribunal.</p> <p>Article 13, Constitution of the Tribunal (2) <i>same as Rule 6(2) of the Arbitration Rules.</i></p>

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<p>ARBITRATOR CONFLICTS</p>				<p>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.</p> <p>3.1.4 The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.</p> <p>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.</p> <p>3.2. Current services for one of the parties</p> <p>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 and without the involvement of the arbitrator.</p> <p>3.2.2 A law firm that shares revenues or fees 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.</p> <p>3.2.3 The arbitrator or his or her firm represents a party or an affiliate to the arbitration on a regular basis but is not involved in the current dispute.</p> <p>3.3. Relationship between an arbitrator and another arbitrator or counsel.</p> <p>3.3.1 The arbitrator and another arbitrator are lawyers in the same law firm.</p> <p>3.3.2 The arbitrator and another arbitrator or the counsel for one of the parties are members of the same barristers' chambers.</p> <p>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 same arbitration.</p> <p>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.</p> <p>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.</p> <p>3.3.6 A close personal friendship exists between an arbitrator and a counsel of one party, as demonstrated by the fact that the arbitrator and the counsel regularly spend considerable time together unrelated to professional work commitments or the activities of professional associations or social organizations.</p> <p>3.3.7 The arbitrator has within the past three years received more</p>			
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<p>ARBITRATOR CONFLICTS</p>				<p>than three appointments by the same counsel or the same law firm.</p> <p>3.4. Relationship between arbitrator and party and others involved in the arbitration</p> <p>3.4.1 The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.</p> <p>3.4.2 The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.</p> <p>3.4.3 A close personal friendship exists between an arbitrator and a manager or director or a member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or a witness or expert, as demonstrated by the fact that the arbitrator and such director, manager, other person, witness or expert regularly spend considerable time together unrelated to professional work commitments or the activities of professional associations or social organizations.</p> <p>3.4.4 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.</p> <p>3.5. Other circumstances</p> <p>3.5.1 The arbitrator holds shares, either directly or indirectly, which by reason of number or denomination constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.</p> <p>3.5.2 The arbitrator has publicly advocated a specific position regarding the case that is being arbitrated, whether in a published paper or speech or otherwise.</p> <p>3.5.3 The arbitrator holds one position in an arbitration institution with appointing authority over the dispute.</p> <p>3.5.4 The arbitrator is a manager, director or member of the supervisory board, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.</p> <p>4. Green List. Non exhaustive.</p> <p>4.1. Previously expressed legal opinions</p> <p>4.1.1 The arbitrator has previously published a general opinion (such as in a law review article or public lecture) concerning an issue which also arises in the arbitration (but this opinion is not focused on the case that is being arbitrated).</p> <p>4.2. Previous services against one party</p>			
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<p>ARBITRATOR CONFLICTS</p>				<p>4.2.1 The arbitrator's law firm has acted against one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.</p> <p>4.3. Current services for one of the parties</p> <p>4.3.1 A firm in association or in alliance with the arbitrator's law firm, but which does not share 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.</p> <p>4.4. Contacts with another arbitrator or with counsel for one of the parties</p> <p>4.4.1 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 organization.</p> <p>4.4.2 The arbitrator and counsel for one of the parties or another arbitrator have previously served together as arbitrators or as co-counsel.</p> <p>4.5. Contacts between the arbitrator and one of the parties</p> <p>4.5.1 The arbitrator has had an initial contact with the appointing party or an affiliate of the appointing party (or the respective counsels) 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.</p> <p>4.5.2 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.</p> <p>4.5.3 The arbitrator and a manager, director or member of the supervisory board, or any person having a similar controlling influence, in 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. A flow chart is attached to these Guidelines for easy reference to the application of the Lists. However, it should be stressed that this is only a schematic reflection of the very complex reality. Always, the specific circumstances of the case prevail.</p>			
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ARBITRATOR DISCLOSURE	<p>Rules of Arbitration. Article 7</p> <p>(2) <u>Before appointment or confirmation, a prospective arbitrator shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.</u></p> <p>(3) <u>An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature which may arise during the arbitration.</u></p>	<p>RULES OF CONDUCT</p> <p>VI-2 2. As set out in paragraph VI:4 below, all covered persons described in paragraph VI.1(a) and VI.1(b) shall <u>disclose any information that could reasonably be expected to be known to them at the time which, coming within the scope of the Governing Principle of these Rules, is likely to affect or give rise to justifiable doubts as to their independence or impartiality.</u> These disclosures include the type of information described in the Illustrative List, if relevant.</p> <p>VI- 5. During a dispute, each covered person shall also disclose any new information relevant to paragraph VI:2 above at the earliest time they become aware of it.</p> <p>Annex 2</p> <p><u>Each covered person, as defined in Section IV:1 of these Rules of Conduct has a continuing duty to disclose the information</u></p>	<p>Rules of Arbitration. Article 9</p> <p><u>A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.</u> An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.</p>	<p>Guidelines on Conflicts of Interest in International Arbitration</p> <p>Part I: General Standards Regarding Impartiality, Independence and Disclosure</p> <p>(3) Disclosure by the Arbitrator</p> <p>(a) <u>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 to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them.</u></p> <p>(b) 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.</p> <p>(c) <u>Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure.</u></p> <p>(d) When considering whether or not facts or circumstances exist that should be disclosed, the arbitrator shall not take into account whether the arbitration proceeding is at the beginning or at a later stage.</p> <p>(7) Duty of Arbitrator and Parties</p> <p>(a) <u>A party shall inform</u> an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) <u>about any direct or indirect relationship between it (or another company of the same group of companies) and the arbitrator.</u> The party shall do so on its own initiative before the beginning of the proceeding or as soon as it becomes aware of such relationship.</p> <p>(b) In order to comply with General Standard 7(a), a party shall provide any information already available to it and shall perform a reasonable search of publicly available information.</p> <p>(c) An arbitrator is under a duty to make reasonable enquiries to investigate any potential conflict of interest, as well as any facts or circumstances that may cause his or her impartiality or</p>	<p>International Arbitration Rules - Article 7, Impartiality and Independence of Arbitrators</p> <p>1. Arbitrators acting under these rules shall be impartial and independent. <u>Prior to accepting appointment, a prospective arbitrator shall disclose to the administrator any circumstance likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence.</u> If, at any stage during the arbitration, <u>new circumstances arise that may give rise to such doubts, an arbitrator shall promptly disclose such circumstances to the parties and to the administrator.</u> Upon receipt of such information from an arbitrator or a party, the administrator shall communicate it to the other parties and to the tribunal.</p> <p>CANON II</p> <p>A. <u>Persons who are requested to serve as arbitrators should, before accepting, disclose:</u></p>	<p>Code of Conduct</p> <p>II. Disclosure Obligations</p> <p>A. <u>A candidate shall disclose any interest, relationship or matter that is likely to affect the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding.</u> To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters. The candidate shall disclose such interests, relationships and matters by completing an Initial Disclosure Statement provided by the Secretariat and sending it to the Secretariat. Without limiting the generality of the foregoing, <u>candidates shall disclose the following interests, relationships and matters:</u></p> <p>(1) <u>any financial interest of the candidate</u></p>	<p>Rules of Procedure for Arbitration Proceedings (Arbitration Rules)</p> <p>Rule 6(2)</p> <p>Before or at the first session of the Tribunal, each arbitrator shall sign a declaration in the following form:</p> <p>"To the best of my knowledge there is no reason why I should not serve on the Arbitral Tribunal constituted by the International Centre for Settlement of Investment Disputes with respect to a dispute between _____ and _____.</p> <p>"I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any award made by the Tribunal.</p> <p>"I shall judge fairly as between the parties, according to the applicable law, and shall not accept any instruction or</p>

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ARBITRATOR DISCLOSURE		<p>described in Section VI:2 of these Rules which may include the following:</p> <p>(a) financial interests (e.g. investments, loans, shares, interests, other debts); business interests (e.g. directorship or other contractual interests); and property interests relevant to the dispute in question;</p> <p>(b) professional interests (e.g. a past or present relationship with private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);</p> <p>(c) other active interests (e.g. active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);</p> <p>(d) considered statements of personal</p>		<p>independence to be questioned. Failure to disclose a potential conflict is not excused by lack of knowledge if the arbitrator makes no reasonable attempt to investigate.</p>	<p>(1) <u>any known direct or indirect financial or personal interest in the outcome of the arbitration;</u></p> <p>(2) <u>any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties.</u> For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. <u>They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;</u></p> <p>(3) <u>the nature and extent of any prior knowledge they may have of the dispute;</u> and</p> <p>(4) <u>any other matters, relationships, or interests</u></p>	<p>(a) in the proceeding or in its outcome, and (b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;</p> <p>(2) <u>any financial interest of the candidate's employer, partner, business associate or family member</u> (a) in the proceeding or in its outcome, and (b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;</p> <p>(3) <u>any past or existing financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member;</u> and</p>	<p>compensation with regard to the proceeding from any source except as provided in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and in the Regulations Rules made pursuant thereto.</p> <p>"A statement of my past and present professional, business and other relationships (if any) with the parties is attached hereto."</p> <p>Any arbitrator failing to sign a declaration by the end of the first session of the Tribunal shall be deemed to have resigned.</p> <p>Additional Facility Rules</p> <p>Schedule C, Arbitration (Additional Facility) Rules</p> <p>Article 13, Constitution of the Tribunal (2) <i>same as Rule 6(2) of the Arbitration Rules.</i></p> <p>Possible</p>

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<p>ARBITRATOR DISCLOSURE</p>		<p>opinion on issues relevant to the dispute in question (e.g. publications, public statements);</p> <p>(e) employment or family interests (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).</p>			<p>which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.</p> <p>B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.</p> <p>C. <u>The obligation to disclose interests or relationships described in paragraph A is a continuing duty</u> which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.</p> <p>D. <u>Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.</u></p> <p>E. Disclosure should be made to all parties unless other procedures for</p>	<p>(4) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods.</p> <p>B. A member in an Article 1904 proceeding shall, after receiving the complaint, disclose any interests, advocacy or representation referred to in paragraph A(1)(b) or (2)(b) or subsection (4) by completing a Supplementary Disclosure Statement provided by the Secretariat and sending it to the Secretariat for consideration by the appropriate Parties.</p> <p>C. Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in section A and shall disclose them. <u>The obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.</u></p> <p>The member shall</p>	<p>Improvements Of The Framework For ICSID Arbitration</p> <p>IV. Disclosure Requirements for Arbitrators</p> <p><i>Para 16. At the outset of the proceedings, <u>the arbitrators must sign declarations affirming that they know of no reason why they should not serve as arbitrators in the case, that they will judge fairly between the parties according to the applicable law, and that they will accept no unauthorized instruction or compensation. Arbitrators are required to <u>append to the declarations statements of any past or present professional, business or other relationships with the parties.</u> Once signed, the declarations are transmitted by ICSID to the parties.</u></i></p> <p><i>Para 17. With the large number of new cases, the disclosure requirements for ICSID arbitrators might usefully be expanded. Under the UNCITRAL Arbitration Rules, an</i></p>
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<p>ARBITRATOR DISCLOSURE</p>					<p>disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.</p> <p>F. When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.</p> <p>H. If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either: (1) Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or (2) Withdraw.</p>	<p>disclose such interests, relationships and matters by communicating them in writing to the Secretariat for consideration by the appropriate Parties.</p>	<p><i>arbitrator is required to disclose to the parties any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. The relevant ICSID provisions, ICSID Arbitration Rule 6(2) and Article 13(2) of the Additional Facility Arbitration Rules, could be amended similarly to require the arbitrator to disclose, not only any past or present relationships with the parties, but more generally any circumstances likely to give rise to justifiable doubts as to the arbitrator's reliability for independent judgment. This might in particular be helpful in addressing perceptions of issue conflicts among arbitrators. The ICSID provisions could also be amended to make it clear that the expanded disclosure requirement would apply throughout the entire proceeding and not just at its commencement. Consideration might, in addition, be given to the elaboration by ICSID of</i></p>
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							<i>a code of conduct for arbitrators like codes elaborated in other intergovernmental settings.</i>

* *Italicized text reflects Commentary by the Staff of the Secretary General of the International Centre for the Settlement of Investment Disputes (ICSID) and does NOT represent the current rules of ICSID.*

DC Bar International Law Section – International Dispute Resolution Committee Working Group on Transparency/Accountability in Investment Treaty Arbitration by Earl McLaren (DEMCLAREN@aol.com, tel. 202 488-6733) & Omar E. Garcia-Bolivar (omargarcia@bg-consulting.com, Tel. 703-5357577, ext: 102)