

ANNEX 17-A

CODE OF CONDUCT FOR ARBITRATORS

Definitions

1. In this Code of Conduct:

“arbitrator” means a member of an arbitration panel established under Article 17.7 (Composition and Establishment of the Arbitration Panel);

“candidate” means an individual who is under consideration for selection as an arbitrator under Article 17.7 (Composition and Establishment of the Arbitration Panel);

“assistant” means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;

“proceeding”, unless otherwise specified, means an arbitration panel proceeding under Chapter 17 (Dispute Settlement);

“staff”, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

Responsibilities to the Process

2. Throughout the proceedings, 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 are preserved. Arbitrators shall not take instructions from any organisation or government with regard to matters before an arbitration panel. Former arbitrators must comply with the obligations established in paragraphs 15, 16, 17 and 18.

Disclosure Obligations

3. Prior to confirmation of his or her selection as an arbitrator under Chapter 17 (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.
4. A candidate or an arbitrator shall only communicate matters concerning actual or potential violations of this Code of Conduct to the Joint Committee for consideration by the Parties.

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 3 and 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 Joint Committee, in writing, for consideration by the Parties.

Duties of Arbitrators

6. Upon selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
7. An arbitrator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
8. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18.
9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

Independence and Impartiality of Arbitrators

10. An arbitrator must 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, and loyalty to a Party or fear of criticism.
11. An arbitrator 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 her or his duties.
12. An arbitrator may not use her or his 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 her or him.
13. An arbitrator may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.
14. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of Former Arbitrators

15. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived any advantage from the decision or ruling of the arbitration panel.

Confidentiality

16. No arbitrator or former arbitrator shall 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.
17. An arbitrator shall not disclose an arbitration panel determination or parts thereof prior to its publication in accordance with Chapter 17 (Dispute Settlement).
18. 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.

Expenses

19. 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.