



Nairobi Centre
for International
Arbitration

where disputes meet resolution



Code of Conduct for Arbitrators 2021

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CODE OF CONDUCT FOR ARBITRATORS

March 2021

PREAMBLE

This Code of Conduct applies to all arbitration proceedings in which disputes or claims are submitted to one or more Arbitrators upon appointment by the NCIA. NCIA expects Arbitrators to observe fundamental standards of ethical conduct. Various aspects of Arbitrator conduct, including some matters covered by this Code, may be governed by agreements of the parties or applicable rules or law. This Code does not take the place of, or supersede, any such agreements, rules and laws, and does not establish any new or additional grounds for judicial review of arbitration awards. While this Code is intended to provide ethical guidelines, it is not part of the arbitration rules of the NCIA.

For the purpose of this Code of Conduct, the term 'Rules' means the NCIA Arbitration Rules, 2015.

PRINCIPLE 1: Appointment

1. When approached with an appointment, an Arbitrator shall conduct reasonable enquiries with regard to potential conflict of interest that may arise from his appointment for that particular matter that may affect impartiality and independence. The International Bar Association (IBA) Guidelines on Conflict of Interest will be a point of reference in determining the disclosure requirement and whether an Arbitrator is conflicted.
2. An Arbitrator shall only accept an appointment if he is fully satisfied that he is independent of the parties at the time of the appointment, and is able to remain so until final award has been rendered, able to discharge his duties without bias, has adequate knowledge of the language of the proceedings, has adequate experience and ability for the case at hand, and is able to give to the proceedings the time and

attention which parties are reasonably entitled to expect.

PRINCIPLE 2:

Integrity and fairness of the dispute resolution process

1. An Arbitrator should recognize a responsibility to the parties whose rights will be decided, to other participants in the proceeding, to the integrity and fairness of the process itself and to the public.
 2. An Arbitrator should perform duties diligently, conduct a proceeding as effectively and economically as possible, and conclude a case as efficiently and promptly as the circumstances reasonably permit.
 3. Arbitrators should treat all parties equally and conduct themselves in a way that is fair to all parties. They should not be swayed by outside pressure, by public clamor, by fear of criticism or by self-interest.
 4. An Arbitrator should be patient with and courteous to the parties, their lawyers and the participants, and should encourage similar conduct by all participants in the proceedings.
 5. An Arbitrator should comply with applicable procedures and rules, and should neither exceed authority nor do less than is required to exercise authority completely.
 6. An Arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties by other participants or other abuses or disruption of the process.
 7. The ethical obligations of an Arbitrator begin upon appointment and continue throughout all stages of the proceeding.
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PRINCIPLE 3:

Disclosure Of Any Interest Or Relationship That Affects Impartiality Or Creates An Unfavorable Appearance Of Partiality Or Bias

1. An Arbitrator should avoid entering into any financial, business, professional, family or social relationship, or acquiring any financial or personal interest, that adversely affects impartiality or might reasonably create the unfavorable appearance of partiality or bias. For a reasonable period of time after a case, arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances that might reasonably create the impression that they had been influenced by the anticipation or expectation of the relationship or interest.
2. Persons who are asked to serve as arbitrators should, before accepting, disclose:
 - a. Any known direct or indirect financial, personal or material interest in the outcome of the arbitration;
 - b. Any existing or past material, financial, business, professional, family or social relationships that affect impartiality or might reasonably create an unfavorable appearance of partiality or bias.
 - c. The nature and extent of any prior knowledge they may have of the dispute; and
 - d. Any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or applicable law regulating arbitrator disclosure.
3. Persons asked to serve as Arbitrators should disclose any such relationships they personally have with any Party, lawyer or individual whom they understand will be

a witness. They should also disclose any such relationships involving immediate members of their families or their current employers, partners or business associates.

4. Arbitrators should make a reasonable effort to inform themselves of any interests or relationships described above.
5. The obligation to disclose the material interests or significant relationships described above is a continuing duty. An Arbitrator must disclose any such interests or relationships regardless of the stage in the proceedings in which they arise, or are recalled or discovered.
6. Disclosure should be made to all parties and to any other Arbitrator.
7. In the event that all parties ask an Arbitrator to withdraw because of prejudice or bias, the Arbitrator should do so. In the event that fewer than all of the parties ask an Arbitrator to withdraw because of prejudice or bias, the Arbitrator should withdraw unless either of the following circumstances exists:
 - a. Other applicable rules exist determining challenges; or
 - b. The Arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, that the Arbitrator can act and decide the case impartially and fairly, and that withdrawal would cause unfair delay or expense to another Party or would be contrary to the ends of justice.

PRINCIPLE 4:

Impropriety or appearance of impropriety in communication

1. An Arbitrator should not discuss a case with any Party in the absence of each other Party, except in any of the following circumstances.
 - a. Discussions may be had with a Party concerning such matters as setting the time and place of proceedings or making other arrangements for the conduct of the proceedings or procedural questions. The Arbitrator should not make any final determination concerning the matter discussed before giving each absent Party an opportunity to respond.
 - b. If a Party fails to be present at a proceeding after having been given due notice, the Arbitrator may discuss the case with any Party who is present.
 - c. Private discussions may take place if requested or consented to by all parties.
 - d. Such discussions may take place as otherwise provided in applicable rules or in an agreement of the parties.
2. Whenever an Arbitrator communicates in writing or by e-mail with one Party, the Arbitrator should at the same time send a copy of the communication to each other Party.
3. Reference shall be made to the Nairobi Centre for International Arbitration (Arbitration) Rules, 2015 for the rule on communication.

PRINCIPLE 5:

Honesty, trust and confidentiality

1. An Arbitrator is in a relationship of trust with the parties and should not, at any time, use confidential information acquired during the proceeding to gain personal advantage or advantage for others, or to adversely affect the interest of another.
2. Unless otherwise agreed by the parties, or required by applicable rules or law, an Arbitrator shall keep confidential all matters relating to the proceedings and shall not disclose to anyone except the parties at any time confidential awards or settlements.
3. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by all the provisions under this Code.
4. It shall be improper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it shall be improper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it shall be improper for an arbitrator to assist in proceedings to enforce or challenge the relevant arbitration award.

PRINCIPLE 6:

Decisions should be made in a just, independent and deliberate manner

1. An Arbitrator should, after careful deliberation, decide all issues submitted for determination and not other issues.
2. An Arbitrator should not delegate to any other person the duty to decide.
3. In the event that all parties agree upon a settlement of the issues in dispute and ask an Arbitrator to embody that agreement in an award, an Arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of the agreement. Whenever an Arbitrator embodies a settlement in an award, the Arbitrator should state in the award that it is based on an agreement of the parties.

PRINCIPLE 7:

Termination on corruption, unlawful or illegal activities

1. Termination Without prejudice to any other rights of the NCIA, if the Arbitrator is convicted by any court of law for corruption or any unlawful or illegal activities in relation to this Code of Conduct or any other agreement that the Arbitrator may have with the NCIA, NCIA shall be entitled to the removal or disqualification of the NCIA Arbitrator at any time.
2. Consequences of Termination
 - a. In the event this Code of Conduct no longer applies, principle 7 and its provisions shall remain in force.
 - b. For the avoidance of doubt, NCIA and the Arbitrator hereby agree that the Arbitrator shall not be entitled to any compensation or any other form of losses including any loss of profit, damages, claims or whatsoever other than the payments stipulated in principle 8 below.

- c. NCIA and the Arbitrator further agree that the payment made by NCIA under Principle 8 shall constitute as full and final settlement between the Parties.

PRINCIPLE 8.

Fees, compensation and reimbursement of expenses

1. For matters conducted under NCIA (Arbitration) Rules, 2015 an Arbitrator shall adopt and adhere to the NCIA Schedule of Fees, unless agreed otherwise in accordance with the Rules.
2. Immediately after the first preliminary meeting, the Arbitrator shall notify NCIA, in writing, of an estimated budget of fees and expenses for the arbitration.
3. The Arbitral Tribunal shall keep NCIA informed, in writing, of any changes in the estimated amount during the proceeding as it affects the scale of fees applicable.
4. Arbitrators should avoid bargaining with parties over the amount of payments, engaging in negotiations concerning payments or discussing payments in any way that would create an appearance of coercion or other impropriety.
5. Arbitrators who seek to be compensated or reimbursed for an expense incurred during the arbitral proceedings shall be required to provide proof of such expenditure and shall adhere to the highest standards of integrity and fairness in requesting for such reimbursement.
6. Save for exceptional circumstances, and only in consultation with the Registrar and in agreement with the parties, arbitrators should not request or demand any increases in the basis of their compensation during the course of a proceeding.



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