



The Work of the Task Force for the Update of the 2014 IBA Guidelines on Conflicts of Interest in International Arbitration

5 July 2023

UNCITRAL Code of Conduct for Arbitrators and the IBA Guidelines

Article 3 – Independence and impartiality

19. Article 3(1) requires an Arbitrator to avoid any conflict of interest, whether it arises directly or indirectly. “Independence” refers to the absence of any external control, in particular the absence of relations with a disputing party that might influence an Arbitrator’s decision. “Impartiality” refers to the absence of bias or predisposition of an Arbitrator towards a disputing party or issues raised in the proceeding.

20. Existing standards prepared by international organizations may provide useful guidance in this regard. For example, the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration (the “IBA Guidelines”) list and categorize situations that may entail conflicts of interests and link them with the duty of disclosure. According to the Guidelines, situations addressed in the Red List, depending on the facts of a given case, give rise to justifiable doubts as to the arbitrator’s impartiality and independence and are instances where an objective conflict of interest exists from the view of a reasonable third person having knowledge of relevant facts and circumstances. The Red List consists of a non-waivable and a waivable list depending on the seriousness of the situations. Situations in the Orange List, also depending on the facts of a given case, may give rise to doubts as to the arbitrator’s impartiality and independence in the eye of the disputing parties. Situations addressed in the Green List are where no appearance or no actual conflict of interest exists from an objective point of view.

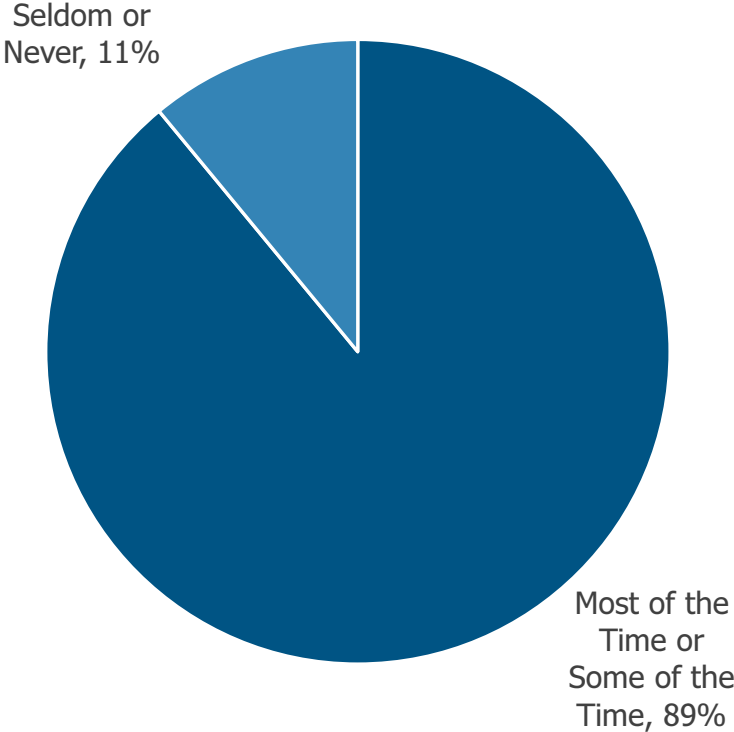
[*Note to the Commission:* The Commission may wish to confirm that the commentary should make a general reference to the IBA Guidelines and describe the Red, Orange and Green list approach taken in the IBA Guidelines, without referring to concrete situations listed therein. The Commission may wish to further note that a task force has been established by the IBA to review the Guidelines.]

- **Article 11 – Disclosure obligations**

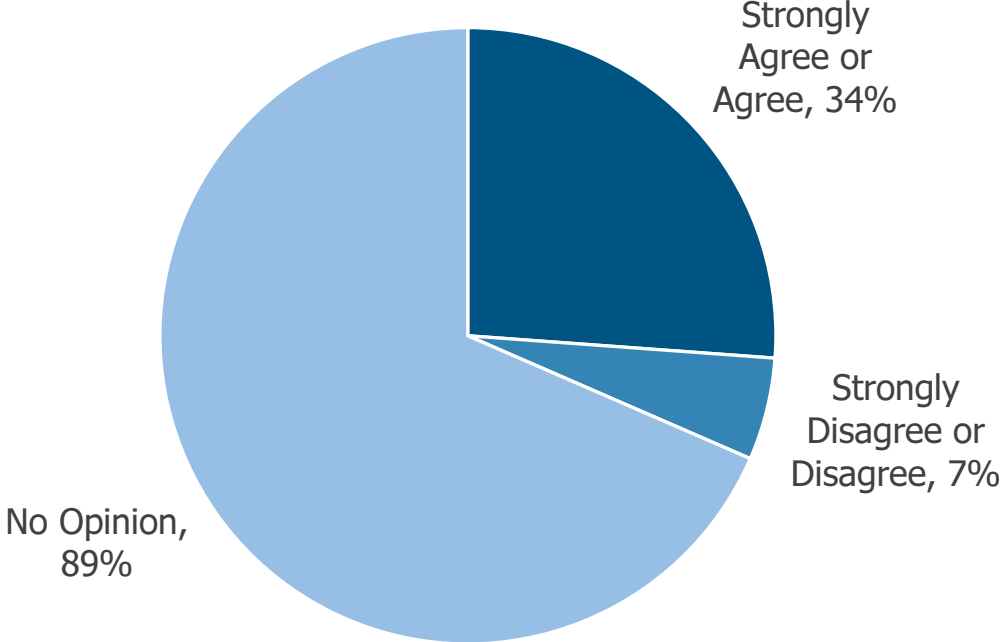
- (...)
- *Standard and scope of disclosure*
- 78. The standard and scope of disclosure in paragraph 1 is broad and covers any circumstances, including any interest, relationship or other matters, “likely to give rise to justifiable doubts” as to the independence or impartiality of a Candidate or an Arbitrator. Doubts are justifiable if any person, whether a disputing party or a third person, having knowledge of the relevant facts and circumstances, would reasonably reach the conclusion that there is a likelihood that a Candidate or an Arbitrator may be influenced by factors other than the merits of the case as presented by the disputing parties in reaching his or her decision.
- [*Note to the Commission: (...)*]
- 79. For instance, a Candidate should inform the disputing parties of any publications and presentations that he or she has made as well as any activities of his or her law firm or organization, which are likely to give rise to justifiable doubts about his or her independence or impartiality. The IBA Guidelines provide useful practical guidance as to the types of circumstances that require disclosure under paragraph 1 (see para. 20 above).
- 80. The circumstances to be disclosed under paragraph 1 are not limited in time. For example, a circumstance, which arose more than five years before the Candidate was contacted, would need to be disclosed if it is likely to give rise to justifiable doubts.

Results of 2022 Survey of the Arbitration Community

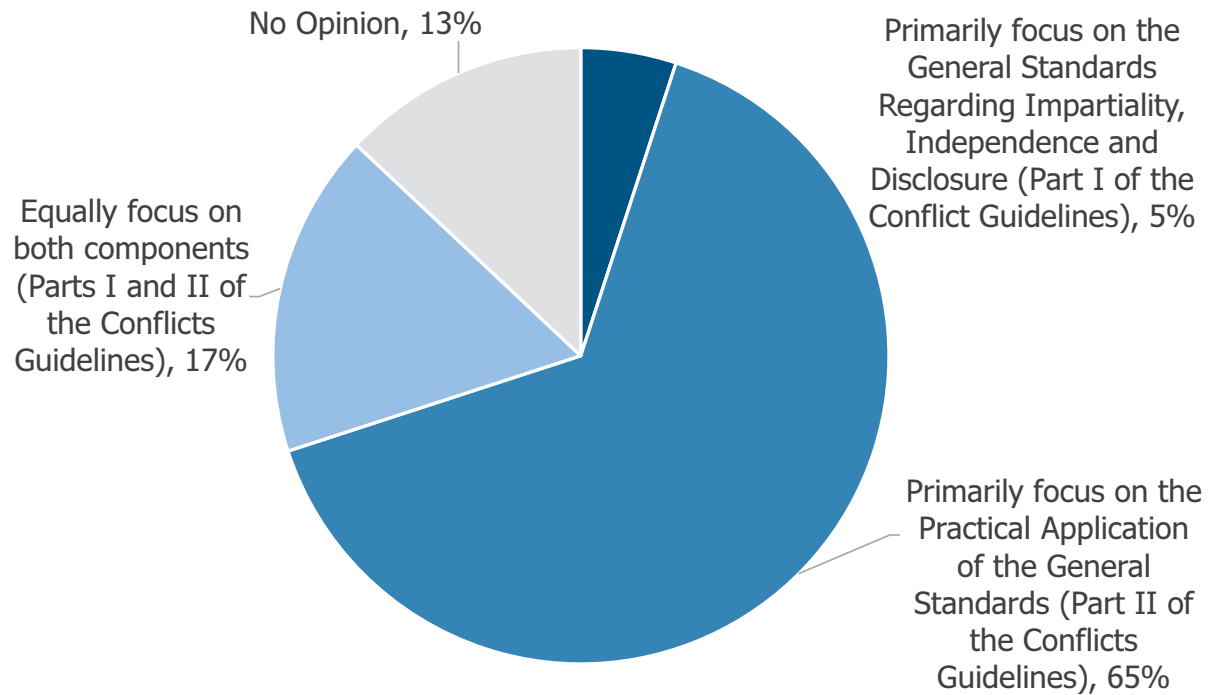
“Of arbitration matters that refer to the Conflicts Guidelines, in approximately what proportion were those Guidelines considered as persuasive or binding by the Arbitral Tribunal?”



“In your view, should the Conflicts Guidelines be revised?”



“To the extent that the Conflicts Guidelines should be revised, on what should changes focus?”



“To the extent that the Conflicts Guidelines should be revised, what should the revisions reflect?”

- Additional general standards or practical application examples regarding arbitrator disclosures
- General standards or practical application examples regarding the use of third-party funding
- Additional general standards or practical application examples regarding “issue conflicts”
- Differing general standards or practical application examples to reflect differing organizational models for legal professionals in different jurisdictions (e.g., Barristers’ chambers, vereins, etc.)
- Additional general standards or practical application examples for conflicts involving expert witnesses
- Differing general standards or practical application examples for sovereigns or their agencies and instrumentalities
- Differing general standards or practical application examples for non-lawyer arbitrators
- Social media

The Task Force

Composition and Structure

- Approximately 60 people from all areas of arbitral practice
 - Counsel
 - Arbitrators
 - Academics
 - In-House Counsel
- Diverse and inclusive composition
- 9 subgroups, each with a chair
- 2 Co-Chairs
- 2 Secretaries

Work Schedule (subject to adjustments)

- Identification by Task Force of issues for review (finished)
- First draft of amendments by Task Force (finished)
- Second draft of amendments by Task Force (on-going)
- Draft revisions published for public comment (summer 2023)
- Deadline for public comments (September/October 2023)
- Final draft of amendments by Task Force (October/November 2023)
- Launch of revised Guidelines (first half of 2024)

Proposed Revisions

Questions