
UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution

Article 1 Definitions

For the purposes of the Code:

(a) “International investment dispute (IID)” means a dispute between an investor and a State or a regional economic integration organization or any constituent subdivision of a State or agency of a State or a regional economic integration organization submitted for resolution pursuant to an instrument of consent;

(b) “Instrument of consent” means:

(i) A treaty providing for the protection of investments or investors;

(ii) Legislation governing foreign investments; or

(iii) An investment contract between a foreign investor and a State or a regional economic integration organization or any constituent subdivision of a State or agency of a State or a regional economic integration organization,

upon which the consent to arbitrate is based;

(c) “Arbitrator” means a person who is a member of an arbitral tribunal or an International Centre for Settlement of Investment Disputes (ICSID) ad hoc Committee, who is appointed to resolve an IID;

(d) “Candidate” means a person who has been contacted regarding a potential appointment as an Arbitrator, but who has not yet been appointed;

(e) “Ex parte communication” means any communication concerning the IID by a Candidate or an Arbitrator with a disputing party, its legal representative, affiliate, subsidiary or other related person, without the presence or knowledge of the other disputing party or its legal representative;

(f) “Applicable rules” means the applicable arbitration rules and any law applicable to the IID proceeding; and

(g) “Assistant” means a person who is working under the direction and control of an Arbitrator to assist with case-specific tasks.

Article 2 Application of the Code

1. The Code applies to an Arbitrator in, or a Candidate for, an IID proceeding, or a former Arbitrator. The Code may be applied in any other dispute resolution proceeding by agreement of the disputing parties.

2. If the instrument of consent contains provisions on the conduct of an Arbitrator, a Candidate or a former Arbitrator, the Code shall complement such provisions. In the event of any incompatibility between the Code and such provisions, the latter shall prevail to the extent of the incompatibility.

Article 3

Independence and impartiality

1. An Arbitrator shall be independent and impartial.
2. Paragraph 1 includes the obligation not to:
 - (a) Be influenced by loyalty to any disputing party or any other person or entity;
 - (b) Take instruction from any organization, government or individual regarding any matter addressed in the IID proceeding;
 - (c) Be influenced by any past, present or prospective financial, business, professional or personal relationship;
 - (d) Use his or her position to advance any financial or personal interest he or she has in any disputing party or in the outcome of the IID proceeding;
 - (e) Assume any function or accept any benefit that would interfere with the performance of his or her duties; or
 - (f) Take any action that creates the appearance of a lack of independence or impartiality.

Article 4

Limit on multiple roles

1. Unless the disputing parties agree otherwise, an Arbitrator shall not act concurrently as a legal representative or an expert witness in any other proceeding involving:
 - (a) The same measure(s);
 - (b) The same or related party (parties); or
 - (c) The same provision(s) of the same instrument of consent.
2. For a period of three years, a former Arbitrator shall not act as a legal representative or an expert witness in any other IID or related proceeding involving the same measure(s) unless the disputing parties agree otherwise.
3. For a period of three years, a former Arbitrator shall not act as a legal representative or an expert witness in any other IID or related proceeding involving the same or related party (parties) unless the disputing parties agree otherwise.
4. For a period of one year, a former Arbitrator shall not act as a legal representative or an expert witness in any other IID or related proceeding involving the same provision(s) of the same instrument of consent unless the disputing parties agree otherwise.

Article 5

Duty of diligence

An Arbitrator shall:

- (a) Perform his or her duties diligently;
- (b) Devote sufficient time to the IID proceeding; and
- (c) Render all decisions in a timely manner.

Article 6

Integrity and competence

An Arbitrator shall:

- (a) Conduct the IID proceeding competently and in accordance with high standards of integrity, fairness and civility;

-
- (b) Possess the necessary competence and skills and make all reasonable efforts to maintain and enhance the knowledge, skills and qualities necessary to perform his or her duties; and
 - (c) Not delegate his or her decision-making function.

Article 7

Ex parte communication

1. Unless permitted by the instrument of consent, the applicable rules, agreement of the disputing parties or paragraph 2, ex parte communication is prohibited.
2. Ex parte communication is permitted when a Candidate engages in a communication with a disputing party that has contacted him or her regarding a potential appointment as a party-appointed Arbitrator for the purpose of determining the Candidate's expertise, experience, competence, skills, availability and the existence of any potential conflict of interest.
3. When permitted under this article, ex parte communication shall not, in any case, address any procedural or substantive issues relating to the IID proceeding or those that a Candidate or an Arbitrator can reasonably anticipate would arise in the IID proceeding.

Article 8

Confidentiality

1. Unless permitted by the instrument of consent, the applicable rules or agreement of the disputing parties, a Candidate, an Arbitrator or a former Arbitrator shall not:
 - (a) Disclose or use any information concerning, or acquired in connection with, the IID proceeding; or
 - (b) Disclose any draft decision in the IID proceeding.
2. An Arbitrator or a former Arbitrator shall not disclose the contents of the deliberations in the IID proceeding.
3. An Arbitrator or a former Arbitrator may comment on a decision rendered in the IID proceeding only if it was made publicly available in accordance with the instrument of consent or the applicable rules.
4. Notwithstanding paragraph 3, an Arbitrator or a former Arbitrator shall not comment on a decision while the IID proceeding is pending or the decision is subject to a post-award remedy or review.
5. The obligations in this article shall not apply to the extent that a Candidate, an Arbitrator or a former Arbitrator is legally compelled to disclose the information in a court or other competent body or needs to disclose such information to protect or pursue his or her legal rights or in relation to legal proceedings before a court or other competent body.

Article 9

Fees and expenses

1. Fees and expenses of an Arbitrator shall be reasonable and in accordance with the instrument of consent or the applicable rules.
2. Any discussion concerning fees and expenses shall be concluded with the disputing parties as soon as possible.
3. Any proposal concerning fees and expenses shall be communicated to the disputing parties through the institution administering the proceeding. If there is no administering institution, such proposal shall be communicated to the disputing parties by the sole or presiding Arbitrator.

4. An Arbitrator shall keep an accurate record of his or her time and expenses attributable to the IID proceeding and shall make such records available when requesting the disbursement of funds or upon the request of a disputing party.

Article 10
Assistant

1 Prior to engaging an Assistant, an Arbitrator shall agree with the disputing parties on the role, scope of duties and fees and expenses of his or her Assistant.

2. An Arbitrator shall make all reasonable efforts to ensure that his or her Assistant is aware of and acts in accordance with the Code, including by requiring the Assistant to sign a declaration to that effect, and shall remove an Assistant who does not act in accordance with the Code.

3. An Arbitrator shall ensure that the Assistant keeps an accurate record of his or her time and expenses attributable to the IID proceeding.

Article 11
Disclosure obligations

1 A Candidate and an Arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality.

2. Regardless of whether required under paragraph 1, the following information shall be disclosed:

(a) Any financial, business, professional or close personal relationship in the past five years with:

(i) Any disputing party;

(ii) The legal representative of a disputing party in the IID proceeding;

(iii) Other Arbitrators and expert witnesses in the IID proceeding; and

(iv) Any person or entity identified by a disputing party as being related or as having a direct or indirect interest in the outcome of the IID proceeding, including a third-party funder;

(b) Any financial or personal interest in:

(i) The outcome of the IID proceeding;

(ii) Any other proceeding involving the same measure(s); and

(iii) Any other proceeding involving a disputing party or a person or entity identified by a disputing party as being related;

(c) All IID and related proceedings in which the Candidate or the Arbitrator is currently or has been involved in the past five years as an Arbitrator, a legal representative or an expert witness;

(d) Any appointment as an Arbitrator, a legal representative or an expert witness by a disputing party or its legal representative in an IID or any other proceeding in the past five years; and

(e) Any prospective concurrent appointment as a legal representative or an expert witness in any other IID or related proceeding.

3. An Arbitrator shall have a continuing duty to make further disclosures based on new or newly discovered circumstances and information as soon as he or she becomes aware of such circumstances and information.

4. For the purposes of paragraphs 1 to 3, a Candidate and an Arbitrator shall make all reasonable efforts to become aware of such circumstances and information.

5. A Candidate and an Arbitrator shall err in favour of disclosure if he or she has any doubt as to whether a disclosure shall be made.

6. If a Candidate or an Arbitrator is bound by confidentiality obligations and cannot disclose all of the required circumstances or information in this article, he or she shall make the disclosure to the extent possible. If a Candidate or an Arbitrator is unable to disclose circumstances that are likely to give rise to justifiable doubts as to his or her independence or impartiality, he or she shall not accept the appointment or shall resign or recuse himself or herself from the IID proceeding.

7. A Candidate and an Arbitrator shall make the disclosure prior to or upon appointment to the disputing parties, other Arbitrators in the IID proceeding, any administering institution and any other persons prescribed by the instrument of consent or the applicable rules.

8. The fact of non-disclosure does not in itself necessarily establish a lack of independence or impartiality.

Article 12

Compliance with the Code

1. An Arbitrator, a former Arbitrator and a Candidate shall comply with the Code.

2. A Candidate shall not accept an appointment and an Arbitrator shall resign or recuse himself or herself from the IID proceeding if he or she is not able to comply with the Code.

3. Any challenge or disqualification of an Arbitrator or any other sanction or remedy is governed by the instrument of consent or the applicable rules.

Annex 1 (Candidates/Arbitrators)

Declaration, disclosure and background information

1. I have read and understood the attached UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution (the “Code of Conduct”) and I undertake to comply with it.

2. To the best of my knowledge, there is no reason why I should not serve as an Arbitrator in this proceeding. I am impartial and independent and have no impediment arising from the Code of Conduct.

3. I attach my current curriculum vitae to this declaration.

4. In accordance with article 11 of the Code of Conduct, I wish to make the following disclosure and provide the following information:

[Insert relevant information]

5. I confirm that as of the date of this declaration, I have no further circumstance or information to disclose. I shall make further disclosures based on new or newly discovered circumstances and information as soon as I become aware of such circumstances and information.

Annex 2 (Assistants)

Declaration

1. I have read and understood the attached UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution (the “Code of Conduct”) and I undertake to act in accordance with it.

2. I confirm that at the date of this declaration, I am not aware of any circumstance that would preclude me from acting in accordance with the Code of Conduct.