

Summary

91. It was recalled that there had been support for a ban on double-hatting and at least a cooling-off period of 10 years, on the one hand, as well as support for no limitation, on the other hand. In a spirit of flexibility, willingness to explore various time periods for cooling-off was generally expressed. Specifically, time periods of 6 months, 1 year, 3 years, and 5 years were proposed. After discussion, it was agreed that this should be taken into further consideration as the Working Group sought to reach agreement on a compromise on limitation on multiple roles based on the following proposal regarding articles 3, 4 and 11:

“Article 3 – Independence and Impartiality

...

2. Paragraph 1 includes the obligation not to:

...

(c) Be influenced by any past, present or prospective financial, business, professional, or personal relationship; ...

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 [...], 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 [...], 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 [...], 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 11 – Disclosure obligations

...

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

...

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

92. It was further proposed that the commentary to article 11(2)(e) should read along the following lines: “The purpose of the disclosure prior to an Arbitrator accepting an appointment as a legal representative or an expert witness in any other IID or related proceeding is to allow the disputing parties to know in advance, to ask questions, and to raise any concerns that they may have in terms of whether they believe that acting in the other capacity would violate article 3 of the Code of Conduct. If an Arbitrator accepts the appointment as a legal representative or an expert witness, a disputing party may challenge the Arbitrator under the applicable rules.”