

## CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS

### Definitions

1. In this Code of Conduct,
  - (a) "**member**" or "**panelist**" means a member of an arbitration panel effectively established under Article 9.4;
  - (b) "**candidate**" means an individual who is under consideration for appointment as a member of an arbitration panel under Article 9.5;
  - (c) "**assistant**" means a person who, under the terms of appointment of a member, conducts, researches or provides assistance to the member;
  - (d) "**proceeding**", unless otherwise specified, means an arbitration panel proceeding under Chapter 9 (Settlement of Disputes);
  - (e) "**staff**", in respect of a member, means persons under the direction and control of the member, other than assistants.

### Standards of Conduct

2. Every candidate and member 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 is preserved.

### Disclosure Obligations

3. Prior to confirmation of his or her selection as a member of an arbitration panel, 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 proceedings. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

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4. A candidate or panelist 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, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Annex and shall disclose them. The disclosure obligation is a continuing duty which requires a member to disclose any such interests, relationships or matters that may arise during any stage of the proceedings. The member shall disclose such interests, relationships or matters by informing the Joint Committee, in writing, for consideration by the Parties.

#### **The Duties of Panelists**

6. Upon selection, a panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceedings, and with fairness and diligence.

7. A panelist shall consider only those issues raised in the proceedings and which are necessary in order to make a ruling, and shall not delegate this duty to any other person.

8. A panelist shall take all appropriate steps to ensure that the member's assistant and staff are aware of, and comply with the obligations contained in this Code of Conduct.

9. A panelist shall not engage in *ex parte* contacts concerning the proceedings.

#### **Independence and Impartiality of Members**

10. A panelist shall 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, loyalty to a Party or fear of criticism.

11. A panelist 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 his or her duties.

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12. A panelist shall not use his or her 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 the member.
13. A panelist shall not allow financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgment.
14. A panelist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.
15. Government or civil servants who are not from the disputing Parties are not precluded from being appointed as panelists. However, they should act strictly on an *ad personam* basis and must not take instructions neither from their own national government or their agencies nor from any source, be it a non-governmental organisation or government of a third country.

