

## **ANNEX 7**

### **CODE OF CONDUCT FOR ARBITRATORS APPOINTED UNDER CHAPTER 8 (INVESTMENT) AND CHAPTER 16 (DISPUTE SETTLEMENT)**

#### *Definitions*

For the purposes of this Annex, unless otherwise specified:

“arbitrator” means a member of a tribunal appointed under Article 27 (Selection of Arbitrators) of Chapter 8 (Investment) or Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement) .

“proceeding” means a tribunal proceeding under Chapter 8 (Investment) or Chapter 16 (Dispute Settlement).

#### *Responsibilities to the Process*

1. Every arbitrator 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 process are preserved. Former arbitrators shall comply with the obligations established in paragraphs 17, 18, 19 and 20.

#### *Disclosure Obligations*

2. Prior to confirmation of his or her selection as an arbitrator under this Agreement, 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 proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

3. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 2 and shall disclose them by communicating them in writing to the Parties for their consideration. The obligation to disclose is a continuing duty, which requires an arbitrator to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

#### *Performance of Duties by Arbitrators*

4. An arbitrator shall comply with the provisions of Chapter 8 (Investment) and Chapter 16 (Dispute Settlement) and the applicable rules of procedure.

5. On selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the proceeding.

7. An arbitrator shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

8. An arbitrator shall take all appropriate steps to ensure that any staff he or she may appoint, with the approval of the Parties, are aware of, and comply with paragraphs 1, 2, 3, 18, 19 and 20.

9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

10. An arbitrator shall not communicate matters concerning actual or potential violations of this Annex unless the communication is to both Parties or is necessary to ascertain whether an arbitrator has violated or may violate this Annex.

#### *Independence and Impartiality of Arbitrators*

11. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

12. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a disputing party or non-disputing Party, or fear of criticism.

13. An arbitrator 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 the arbitrator's duties.

14. An arbitrator shall not use his or her position on the tribunal to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator. An arbitrator shall make every effort to prevent or discourage others from representing themselves as being in such a position.

15. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgment.

16. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the arbitrator's impartiality or that might reasonably create an appearance of impropriety or bias.

#### *Duties in Certain Situations*

17. An arbitrator or former arbitrator shall avoid actions that may create the appearance that the arbitrator was biased in carrying out the arbitrator's duties or would benefit from the decision or ruling of the tribunal.

### *Maintenance of Confidentiality*

18. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.

19. An arbitrator shall not disclose a tribunal ruling or parts thereof prior to its publication except in accordance with Chapter 8 (Investment) and Chapter 16 (Dispute Settlement).

20. An arbitrator or former arbitrator shall not at any time disclose the deliberations of a tribunal, or any arbitrator's view except as required by law.

### *Additional procedures relating to disputes under Chapter 16 (Dispute Settlement):*

For the purposes of paragraphs 21, 22, 23 and 24;

“arbitrator” means a member of a tribunal appointed under Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement); and

“proceeding” means a tribunal proceeding under Chapter 16 (Dispute Settlement).

21. If a Party considers that an arbitrator has violated the Code of Conduct, it shall notify the other Party and seek to reach agreement as to whether or not there has been a violation no later than 10 days after the notification.

22. If the Parties agree that an arbitrator has violated this Code of Conduct, they may remove the arbitrator, waive the violation, or request the arbitrator to take steps within a specified time period to cease or ameliorate the violation. If the Parties agree to waive the violation or determine that, after taking steps, the violation has ceased, the arbitrator may continue to serve on the tribunal.

23. If a selected arbitrator is removed pursuant to paragraph 22, the Parties shall select a replacement as expeditiously as possible in accordance with the selection procedure that was followed to select that arbitrator pursuant to Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement).

24. Any time period applicable to a proceeding shall be suspended for a period beginning on the date an arbitrator dies, withdraws, is removed, is authorised to take steps to seek to cease or ameliorate a violation, or otherwise becomes unavailable, and ending on the date specified for taking steps to cease or ameliorate the violation, a replacement is selected, or the violation has ceased.