

NCAC

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NATIONAL COMMERCIAL ARBITRATION CENTRE



CODE *of* CONDUCT
***for* ARBITRATOR**

28 March 2021

Preface

The use of arbitrations to resolve disputes in the business world has risen dramatically and has formed a very important component in the judicial system that our society needs when it comes to the proper determination of legal rights. Consequently, individuals who serve as arbitrators shall have a clear responsibility to the general public as well as to the parties in dispute. This responsibility shall also include essential ethical obligations.

Arbitrators, like judges, have the power to decide on the case within their jurisdiction. Unlike judges, arbitrators generally have other professions before, during and after they serve as an arbitrator.

This Code of Conduct provides the guiding principles on ethics for all arbitrators who have been registered as a member at the National Commercial Arbitration Centre of Cambodia and those who have been appointed under the Arbitration Rules of the NCAC.

This Code of Conduct is established to ensure neutrality of all arbitrators including the party-appointed arbitrators, unless the parties' agreement or the arbitration rules agreed upon by the parties or relevant laws provides otherwise.

This Code cannot be used to provide grounds or to limit the discretion of the court in deciding on the setting aside or the recognition and enforcement of any arbitral award.

The Lists that are attached to this Code of Conduct: the Red List and Orange List are meant to provide non-exhaustive enumeration of specific situations which warrant disclosure or disqualification of an arbitrator as described in Articles 3 to 8 below regarding conflicts of interest, and the Green List is to determine any specific situation where an arbitrator has no duty to disclose.

1. General Principles

Every arbitrator shall commence his or her proceedings to resolve the dispute of the parties diligently/attentively in a timely and efficient manner. He or she shall be impartial and independent of the parties at the time of acceptance of an appointment and shall remain so during the entire arbitration proceedings. He or she shall not permit outside pressure, fear of criticism or any form of self-interest to affect his or her decisions and shall decide all the issues submitted for determination after a careful deliberation and the exercise of his or her own diligent and impartial judgment.

2. Acceptance of Appointment

- 2.1 An arbitrator shall not ask the party in a dispute to appoint/nominate him/herself as an arbitrator.
- 2.2 An arbitrator shall accept an appointment only if he or she is fully satisfied that he or she is competent to resolve the dispute.
- 2.3 An arbitrator shall accept an appointment only if he or she can give the time and full attention to the arbitration proceedings in accordance with the expectation of the parties.
- 2.4 An arbitrator shall accept an appointment only if he or she is fully satisfied that he or she is able to execute his or her duties impartially and independently in accordance with the following Articles.

3. Conflicts of Interest - Impartiality and Independence

The criteria for assessing matters relating to conflict of interest are impartiality and independence. Partiality arises when an arbitrator favours one of the parties, or when he or she is prejudiced in relation to the subject matter of the dispute.

Dependence arises from relationships between arbitrator and one of the parties or someone closely connected/associated with one of the parties.

4. Conflicts of Interest - Duty to Decline or Resign

- 4.1 An arbitrator shall decline an appointment or, if the arbitration has already been commenced, resign as an arbitrator if:
 - he or she has any doubts as to his or her ability to be impartial or independent; and/or
 - any of the circumstances described in the Red List occurs.
- 4.2 In accordance with the general principles of reasonableness philosophy, if there are facts or circumstances which occur or have occurred since the time of appointment which has created doubts that cannot be corrected as to his or her impartiality or independence, the arbitrator shall decline the appointment; or if the proceedings has already been started, the arbitrator shall resign unless the parties agree otherwise in accordance with the conditions stipulated in Article 6.

5. Conflicts of Interest and Duty to Disclose

- 5.1 If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence as those laid out in the Orange List and the Red List, the arbitrator shall disclose such facts or circumstances in writing to the parties in dispute or the NCAC Appointment and Proceedings Committee when he or she is appointed by the Appointment and Proceedings Committee or the NCAC General Secretariat and to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them.
- 5.2 Article 4.1 above applies if an arbitrator who has made a disclosure considers himself or herself to be partial and not independent of the parties regardless of the disclosed facts and his capability in performing his or her duties as arbitrator.
- 5.3 Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure.
- 5.4 When considering whether or not facts or circumstances exist that should be disclosed, the arbitrator shall not continue the arbitration proceedings whether at the beginning or at a later stage.

6. Conflicts of Interest and Waiver by the Parties

- 6.1 If, within 30 (thirty) days after the receipt of any disclosure by the arbitrator or after a party learns of facts or circumstances that could constitute a potentially substantial conflict of interest for an arbitrator, a party does not raise an objection with regard to that arbitrator in accordance with Articles 6.2 and 6.3 below, that party is deemed to have waived any potential conflict of interest by the arbitrator based on such facts or circumstances and may not raise any objection to such facts or circumstances at any later stage.
- 6.2 However, if facts or circumstances exist as described in Article 4.1 above (i.e., if the arbitrator himself or herself doubts whether he or she is able to be independent and impartial and/or in case of circumstances described in the Non-Waivable Red List), any waiver by a party or any agreement by the parties to have such a person serve as arbitrator shall be regarded as invalid.
- 6.3 A person should not serve as an arbitrator when there is a conflict of interest, such as those exemplified in the Non-Waivable Red List, exists. Nevertheless, such a person may accept appointment as arbitrator or continue to act as an arbitrator, if the following conditions are met:
 - All parties, all arbitrators and the NCAC Appointment and Proceedings Committee when the arbitrator is appointed by it or the NCAC General Secretariat, in all other cases, must have full knowledge of the conflict of interest; and
 - All parties must expressly agree that such person may serve as arbitrator despite the conflict of interest.

- 6.4 An arbitrator has a duty to conduct investigation to find out whether there is potential conflicts of interest, as well as any facts or circumstances that may cause his or her impartiality or independence to be questioned. Failure to disclose a potential conflict is not excused by the lack of knowledge if the arbitrator makes no reasonable attempt to investigate.
- 6.5 An arbitrator may assist the parties in reaching a settlement of the dispute in accordance with the NCAC Arbitration Rules. However, before doing so, the arbitrator should receive an express agreement by the parties that acting in such a manner shall not disqualify the arbitrator from continuing to serve as arbitrator. Such express agreement shall be considered to be an effective waiver of any potential conflict of interest that may arise from the arbitrator's participation in such process or from information that the arbitrator may learn in the process. If the assistance by the arbitrator does not lead to final settlement of the case, the parties shall remain bound by their waiver.

7. Conflicts of Interest and Relationships

- 7.1 When considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists or whether disclosure should be made, in principle, the arbitrator must be deemed as identical to his or her law firm. Nevertheless, the fact that the activities of the arbitrator's law firm involve one of the parties shall not automatically constitute a source of such conflict or a reason for disclosure. However, the relevance of such activities, such as the type of work, time and workload of the law firm will be considered on a case-by-case basis.
- 7.2 Similarly, if one of the parties is a legal entity which is a member of a group with which the arbitrator's law firm has an involvement, such facts or circumstances should be considered in a case-by-case basis. Therefore, the mere fact alone shall not automatically constitute a source of a conflict of interest or a reason for disclosure.
- 7.3 If one of the parties is a legal entity, the managers, directors or members of a board of supervisory board of such legal entity and any person having a similar controlling power/influence on the legal entity shall be considered to be equivalent of the legal entity.

8. Conflicts of Interest and Duty of Parties to Inform

- 8.1 Each party shall inform the arbitrator, the arbitral tribunal, the other party and the NCAC Appointment and Proceedings Committee when the arbitrator is appointed by it, or the NCAC General Secretariat about any direct or indirect relationship between the informing party and the arbitrator. Each party shall do so on its own initiative before the beginning of the proceedings or as soon as it becomes aware of such relationship.
- 8.2 In order to comply with Article 8.1 above, a party shall provide any information already available to it as required by Article 8.1 and shall perform a reasonable research/investigation from publicly available information.

9. Communications with Parties

- 9.1 When approached with a view of appointment, a prospective arbitrator should make sufficient enquiries in order to inform himself not only whether there may be justifiable doubts regarding his impartiality or independence but also whether he is competent to resolve the dispute and able to give the arbitration the time and full attention required as referred to in Article 2 above. He or she may also respond to enquiries from those approaching him or her, provided that such enquiries are designed to determine his or her qualifications, availability and independence and impartiality for the appointment and provided that the merits of the case are not discussed.

In the event that a party or the arbitrator which has already been appointed wishes to appoint an arbitrator or a presiding arbitrator, the prospective arbitrator or presiding arbitrator shall inform the other party or parties, or the other arbitrator in order for his or her appointment be acknowledged.

- 9.2 Throughout the arbitral proceedings, an arbitrator should avoid any unilateral communications regarding the case with any party or its representatives.
- 9.3 Throughout the arbitral proceedings, except during any hearings or meetings, an arbitrator shall communicate with the parties or their representatives only in writing.
- 9.4 If an arbitrator becomes aware that a co-arbitrator has been in irregular communication with a party or has acted or is acting otherwise in violation of this Code, he or she shall inform the remaining arbitrator and they should together determine what action should be taken. Normally, the appropriate initial course of action is to request the offending arbitrator to refrain from making any further improper communications with the party or from making any further impropriety. If the offending arbitrator fails or refuses to refrain from such improper communications or further impropriety, the remaining arbitrators may inform the innocent party in order for him or her to consider what action he or she should take. An arbitrator may act unilaterally to inform a party of the conduct of another arbitrator in order to allow the said party to consider a challenge against the offending arbitrator only in extreme circumstances, and after having communicated his or her intention to the other arbitrators in writing.
- 9.5 Sole arbitrators and presiding arbitrators should be particularly meticulous in avoiding significant social or professional contacts with any party to the arbitration other than in the presence of the other party.
- 9.6 No arbitrator should accept any gift or substantial hospitality, directly or indirectly, from any party to the arbitration.

10. Fees

- 10.1 In accepting an appointment, an arbitrator shall agree to the arbitrator fee and reimbursement of expenses determined by the NCAC. An arbitrator shall make no unilateral arrangements for fees or expenses.
- 10.2 All matters relating to arbitrator's fees and expenses shall be dealt with in accordance with the Arbitration Rules and other applicable rules of the NCAC.

11. Confidentiality

The deliberations of the arbitral tribunal must remain confidential in perpetuity unless the parties release the arbitrators from this obligation. The contents of the award itself must remain confidential except that such award is published in accordance with the NCAC Arbitration Rules.

An arbitrator should not participate in/or give any information in any arbitration proceedings that may influence the decision, unless the arbitrator thinks he or she has a duty to disclose any serious mistakes of the other co-arbitrators.

12. Implementation of Arbitration Proceedings

- 12.1 All arbitrators shall always devote their time and full attention to all the circumstances of the dispute as reasonably required by the parties, and shall attempt to conduct the arbitration proceedings in such manner that will not incur an unreasonable expenses/costs.
- 12.2 Within a reasonable time after rendering an award, the arbitrator shall avoid any act as described in Articles 9.3, 9.6 and 9.7 above which may cause a party or any other person to believe that the arbitral award was rendered on the basis of such improprieties.
- 12.3 The NCAC, through its Appointment and Proceedings Committee, shall stimulate and supervise compliance with this Code of Conduct by arbitrators who are members of the NCAC or conduct proceedings that are administered by the NCAC. The arbitrators shall be willing to discuss with the NCAC or its appropriate committee of any feedback or complaints received from the parties or other persons during or after the arbitral proceedings with regard to their performance, in particular any perceived breach of this Code of Conduct or other applicable NCAC regulations.

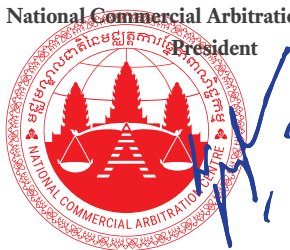
13. Other Provisions

- 13.1 This Code has been approved by the General Assembly of NCAC on 28 March 2021.
- 13.2 Any provision contrary to this Code is repealed. This Code is effective from 28 June 2021 onwards.

Phnom Penh, 28 March 2021

National Commercial Arbitration Centre

President



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Annex

1. Non-Waivable Red List

A person shall not serve as an arbitrator if the person meets any of the following circumstances:

- 1.1 has a close relationship with any party or is a legitimate representative of an organization/entity which is a party to the arbitration proceedings.
- 1.2 is a manager, director or member of the supervisory board, or has a similar controlling influence in an organization/entity which is a party to the arbitration proceedings.
- 1.3 has a significant financial interest in one of the parties or receive benefits from the outcome of the case.
- 1.4 regularly advises the appointing party or an affiliate of the appointing party and the arbitrator or his or her law firm derives a significant financial income therefrom.

2. Waivable Red List

A person should not serve as an arbitrator if the person meets any of the following circumstances:

- 2.1 Relationship of the arbitrator to the dispute
 - 2.1.1 The arbitrator has given his views or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
 - 2.1.2 The arbitrator has previous involvement in the case.

2.2 Arbitrator's direct or indirect interest in the dispute

2.2.1 The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.

2.2.2 A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.

2.2.3 The arbitrator or a close family member of the arbitrator has a close relationship with a third party whose influences may affect the outcome of the arbitration proceedings.

2.3 Arbitrator's relationship with the parties or counsel

2.3.1 The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

2.3.2 The arbitrator currently acts as an adviser to the lawyer or law firm acting as counsel for one of the parties.

2.3.3 The arbitrator is a lawyer in the same law firm as the counsel to one of the parties.

2.3.4 The arbitrator is a manager, director or member of the supervisory board or has a similar controlling influence in the Parent company or its subsidiaries directly involved in the matters in dispute in the arbitration.

2.3.5 The arbitrator's law firm had a previous involvement in the case without the arbitrator being involved himself or herself.

2.3.6 The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

2.3.7 The arbitrator regularly advises the appointing party or an affiliate of the appointing party, but neither the arbitrator nor his or her law firm derives a significant financial benefit therefrom.

2.3.8 The arbitrator has a close family relationship with one of the parties or with a manager, director or member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or with a counsel representing that party.

2.3.9 A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

3. Orange List

A person may be appointed as an arbitrator if the person meets any of the following circumstances:

3.1 Previous services for one of the parties or other involvement in the case

3.1.1 The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of

the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.

- 3.1.2 The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.
- 3.1.3 The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.
- 3.1.4 The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.
- 3.1.5 The arbitrator currently serves, or has served, as arbitrator in another arbitration proceedings on a related issue involving one of the parties or an affiliate of one of the parties within the last one year.

3.2 Current services for one of the parties

- 3.2.1 The arbitrator's law firm is currently rendering services to one of the parties or to an affiliate of one of the parties without creating a significant commercial relationship and without the involvement of the arbitrator.
- 3.2.2 A law firm that shares revenues or fees with the arbitrator's law firm is rendering services to one of the parties or an affiliate of one of the parties before the arbitral tribunal.
- 3.2.3 The arbitrator or his or her law firm represents a party or an affiliate of one of the parties to the arbitration on a regular basis but is not involved in the current dispute.

3.3 Relationship between an arbitrator and another arbitrator or counsel

- 3.3.1 The arbitrator and another arbitrator are lawyers in the same law firm.
- 3.3.2 The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or another counsel in the same arbitration.
- 3.3.3 A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.
- 3.3.4 A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties but is not assisting in the dispute.
- 3.3.5 A close personal friendship exists between the arbitrator and a counsel of one party, as demonstrated by the fact that the arbitrator and the counsel regularly spend considerable time together unrelated to work but rather in activities of a professional association or social organization.

3.3.6 The arbitrator has within the last one year received more than three appointments by the same counsel or the same law firm.

3.4 Relationship between arbitrator and party and others involved in the arbitration

3.4.1 The arbitrator's law firm is currently acting on a complaint against one of the parties or an affiliate of one of the parties.

3.4.2 The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

3.4.3 A close personal friendship exists between an arbitrator and a manager or director or a member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or a witness or expert of the party, as demonstrated by the fact that the arbitrator and such director, manager, other person, witness or expert regularly spend considerable time together unrelated to work but rather in activities of a professional association or social organization.

3.5. Other circumstances

3.5.1 The arbitrator holds a small number of shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is publicly listed.

3.5.2 The arbitrator has publicly advocated a specific position regarding the case that is being arbitrated, whether in a published paper or speech or otherwise.

3.5.3 The arbitrator holds one position in an arbitration institution with appointing authority over the dispute.

3.5.4 The arbitrator is a manager, director or member of the supervisory board, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in the dispute in the arbitration.

4. Green List

A person should not decline to serve as an arbitrator if the person meets any of the following circumstances:

4.1 Previously provided legal opinions

4.1.1 The arbitrator has previously published a general opinion such as in a law review article or public lecture concerning an issue which also arises in the arbitration but this opinion is not focused on the case that is being arbitrated.

4.2 Previous services against one party

4.2.1 The arbitrator's law firm has acted in a complaint against one of

the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.

4.3 Current services for one of the parties

4.3.1 A branch officer or partner of the arbitrator's law firm which does not share fees or other revenues with the arbitrator's law firm renders services to one of the parties or an affiliate of one of the parties in an unrelated matter of the dispute in the arbitration.

4.4 Relationship with another arbitrator or with counsel for one of the parties

4.4.1 The arbitrator has a relationship with another arbitrator or with the counsel for one of the parties through membership in the same professional association or social organization.

4.4.2 The arbitrator and counsel for one of the parties or another arbitrator have previously served together as arbitrators or as co-counsel.

4.5 Relationship between the arbitrator and one of the parties

4.5.1 The arbitrator had a prior contact with the appointing party or an affiliate of the appointing party or their counsels prior to appointment, if this contact is limited to see the arbitrator's availability and qualifications to serve or to the names of possible candidates for a chairperson and did not address the merits or procedural aspects of the dispute.

4.5.2 The arbitrator holds de minimis amount of shares in one of the parties or an affiliate of one of the parties, which is publicly listed.

4.5.3 The arbitrator and a manager, director or member of the supervisory board, or any person having a similar controlling influence, in one of the parties or an affiliate of one of the parties, have worked together as joint experts or in another professional capacity, including as arbitrators in the same case.

Notes

1. The term "close family member" refers to a spouse, sibling, child, parent or life partner.
2. The term "affiliate" encompasses all companies in one group of companies including the parent company and its subsidiaries.

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