

CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL,
MEMBERS OF THE APPEAL TRIBUNAL AND MEDIATORS

ARTICLE 1

Definitions

For the purposes of this Code of Conduct:

- (a) "Member" means a Member of the Tribunal or a Member of the Appeal Tribunal established pursuant to Section B (Resolution of Disputes between Investors and Parties);
- (b) "mediator" means a person who conducts the mediation procedure in accordance with Article 3.31 (Mediation) and Annex 10 (Mediation Mechanism for Disputes between Investors and Parties);
- (c) "candidate" means an individual who is under consideration for selection as a Member of the Tribunal or a Member of the Appeal Tribunal;
- (d) "assistant" means a person who, under the terms of appointment of a member, assists the member in his research or supports him in his duties;

- (e) "staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

ARTICLE 2

Responsibilities to the Process

Every candidate and every Member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial and shall avoid direct and indirect conflicts of interest.

ARTICLE 3

Disclosure Obligations

1. Prior to their appointment, candidates shall disclose to the Parties any past and present interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias. To that end, a candidate shall make all reasonable efforts to become aware of any such interest, relationship or matter.
2. Members shall communicate matters concerning actual or potential violations of this Code of Conduct in writing to the disputing parties.

3. Members shall at all times continue to make all efforts to become aware of any interest, relationship or matter referred to in paragraph 1. Members shall disclose such interests, relationships or matters to the disputing parties.¹

ARTICLE 4

Duties of Members

1. Members shall perform their duties thoroughly and expeditiously throughout the course of the proceedings and shall do so with fairness and diligence.
2. Members shall consider only those issues raised in the proceedings which are necessary for a ruling and shall not delegate this duty to any other person.
3. Members shall take all appropriate steps to ensure that their assistants and staff are aware of, and comply with, Articles 2, 3, 5 and 7 of this Code of Conduct.
4. Members shall not discuss any aspect of the subject matter of the proceedings with a disputing party or the disputing parties in the absence of the other members of the division of the Tribunal or the Appeal Tribunal.

¹ For greater certainty, this obligation does not extend to information which is already in the public domain or was known, or should have reasonably been known, by all disputing parties.

ARTICLE 5

Independence and Impartiality of Members

1. Members shall be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or disputing party or fear of criticism.
2. Members 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 their duties.
3. Members shall not use their position as a member 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 them.
4. Members shall not allow financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgment.
5. Members shall avoid entering into any relationship or acquiring any financial interest that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.¹

¹ For greater certainty, the fact that a Member receives an income from a government or has a family relationship with a person who receives an income from the government shall not in itself be considered to be inconsistent with paragraph 2 and 5.

ARTICLE 6

Obligations of Former Members

1. All former members shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decisions or awards of the Tribunal or the Appeal Tribunal.
2. Without prejudice to paragraph 5 of Article 3.38 (Tribunal) and paragraph 9 of Article 3.39 (Appeal Tribunal), members shall undertake that after the end of their term, they shall not become involved in:
 - (a) investment disputes which were pending before the Tribunal or the Appeal Tribunal before the end of their term;
 - (b) investment disputes with which they dealt with as members of the Tribunal or the Appeal Tribunal and other disputes that have matters of fact in common with such disputes or arise out of the same events and circumstances as such disputes.
3. Members shall undertake that for a period of three years after the end of their term, they shall not act as representatives of one of the disputing parties in investment disputes before the Tribunal or the Appeal Tribunal.

4. If the President of the Tribunal or of the Appeal Tribunal is informed or otherwise becomes aware that a former Member of the Tribunal or of the Appeal Tribunal, respectively, is alleged to have acted inconsistently with the obligations set up in paragraphs 1 to 3, the President shall examine the matter, provide the opportunity to the former member to be heard, and, after verification, inform thereof:
 - (a) the professional body or other such institution with which that former Member is affiliated;
 - (b) the Parties; and
 - (c) the President of any other relevant investment tribunal or appeal tribunal in view of the initiation of appropriate measures.

The President of the Tribunal or of the Appeal Tribunal shall make public its decision to take any actions referred to in subparagraphs (a) to (c), together with the reasons therefore.

ARTICLE 7

Confidentiality

1. Members and former Members shall not disclose or use at any time any non-public information concerning proceedings or acquired during proceedings, except for the purposes of the proceedings, and shall not, in any event, disclose or use such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

2. Members shall not disclose a decision or award or parts thereof prior to its publication in accordance with the transparency provisions of Article 3.36 (Transparency of Proceedings).
3. Members and former Members shall not disclose at any time the deliberations of the Tribunal or the Appeal Tribunal, or any member's views, whatever they may be.

ARTICLE 8

Expenses

Each Member shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred.

ARTICLE 9

Mediators

The rules set out in this Code of Conduct as applying to Members or former Members apply, *mutatis mutandis*, to mediators.

ARTICLE 10

Consultative Panel

1. The President of the Tribunal and the President of the Appeal Tribunal shall be assisted by a Consultative Panel for ensuring the proper application of this Code of Conduct, of Article 3.40 (Ethics) and for the execution of any other task, where so provided.
 2. The Consultative Panel shall be composed of the respective Vice-Presidents and of the two most senior Members of the Tribunal or of the Appeal Tribunal.
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