



Navigating Arbitrator Disclosures and Challenges in International Arbitration

MCLE: 1.5 Hours, 1.5 Legal Ethics

Monday, March 11, 2024

Speakers:

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Conference Reference Materials

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STANDARD INFORMATION STATEMENT

1. I believe that I am eligible to serve as an impartial and independent arbitrator in this arbitration proceeding.

2. I am not personally giving, and to the best of my recollection, I have not personally given, legal advice to any of the Parties to this proceeding. Unless otherwise specifically disclosed, I have not served as an arbitrator in any earlier matter in which they were parties.

3. I belong to various professional and social organizations and speak at professional education conferences. Such memberships, engagements and related activities may overlap with those of other members of the Arbitral Tribunal, and/or with those of representatives of the Parties in this arbitration. I do not view any such activities or overlap as, in themselves, constituting a relationship that affects my impartiality or independence, and I assume that the Parties, by accepting my appointment, confirm that no such overlapping or concurrent membership or activity will, in itself, constitute a basis for questioning my impartiality or independence. If I have a close personal or professional relationship with any other member of the Arbitral Tribunal or with any representative of any of the parties, I shall disclose that relationship specifically.

4. I add the following information for the Parties' consideration, without implying that in my professional judgment the information raises doubts about my ability to serve impartially and independently in this proceeding.

a. I am a retired partner of [law firm], having retired in [year] to conduct an independent practice as an impartial arbitrator and mediator. I conduct this practice independently of any law firm. I no longer have access to [law firm] records, including its conflicts data, so I cannot determine whether [law firm] has or has had any relationship with any of the parties. I am personally not aware of any such relationship.

b. In addition to my practice as an independent arbitrator, I offer services as a legal consultant to law firms and other organizations. During the pendency of this proceeding, I shall decline any request to provide consulting services to any firm in connection with any matter involving any of the Parties.

5. I request that the Parties undertake to disclose promptly any facts or circumstances that may lead any of them to question my impartiality or independence in this matter. I also ask that the Parties undertake to use due diligence in reasonable and continuing monitoring of publicly available information or information otherwise reasonably available to them that may give rise to questions about my independence and impartiality and to raise any such questions without delay.

6. In accordance with prevailing law in the United States, I accept appointments as an arbitrator on the understanding that arbitrators in any matter in which I serve are entitled to the same immunity as applies to judges of the United States in comparable circumstances. Acceptance of my service on an Arbitral Tribunal or panel or as sole arbitrator constitutes agreement to this understanding.

General Disclosure Statement

General Disclosures. In light of current jurisprudence in the United States, including Applied Industrial Materials Corporation v. Ovalar Makine Ticaret Ve Sanayi, A.S., 492 F.3d 132 (2d Cir. 2007), I make a statement substantially similar to this paragraph in disclosure statements for all arbitrations, regardless of administering institution, in which I am nominated as an arbitrator. I do not maintain a current or complete list of engagements, publications, memberships or associations. I am a member of or teach at a number of organizations. I am an editor [of a publication], from whom I receive a small fixed honorarium, and am a member of boards of editors of other periodicals. Advertising, sponsorship or other support by such a periodical or its affiliates for conferences and similar events are matters within the authority of the publishers of those periodicals, not the editors. I also attend numerous conferences and events related to inter alia arbitration and litigation, international business transactions, international law and commercial, investment, project finance and finance law. I participate on several social networks, including OGEMID, Young OGEMID, Facebook and LinkedIn. I do not maintain records of fellow members, speakers, advertisers, sponsors, organizers, faculty, students, authors, participants, “friends,” “connections,” committee members, employees or attendees of such organizations, periodicals, networks or events, as that is not by itself, “from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances,” a matter that “would give rise to justifiable doubts as to the arbitrator’s impartiality or independence,” General Standard 2, International Bar Association Guidelines for Conflicts of Interest in International Arbitration (2014), or a “financial, business, professional or personal relationship which might reasonably affect impartiality or lack of independence in the eyes of any of the parties”, Canon II, Code of Ethics for Arbitrators in Commercial Disputes, American Bar Association (2004). I request any party in an arbitration for which I am proposed as an arbitrator to promptly disclose any facts or circumstances leading that party to question my impartiality or independence as soon as that information is reasonably available to the party and, for that purpose, to undertake a reasonable search of available information and make reasonable inquiries promptly after learning of my prospective appointment as arbitrator. I confirm that nothing in the ICC Rules of Arbitration is affected by the foregoing.