

ICAI Code of Ethics for Arbitrators

Following Code of Ethics is recommended for all arbitrators and Mediators empanelled with ICAI. Such members empanelled with ICAI shall be deemed to have accepted the Code of Ethics on empanelment.

Article 1: Fundamental Rule

1.1 Arbitrators shall proceed diligently and efficiently to provide the parties with a just and effective resolution of their disputes, and shall be and shall remain free from bias.

Article 2: Acceptance of Appointment

2.1 An arbitrator to be appointed shall accept an appointment only if he is satisfied that he is able to discharge his duties independently.

2.2 An arbitrator to be appointed shall accept an appointment only if he is satisfied that he is competent to determine the issues in dispute, and has an adequate knowledge of the language of the arbitration.

2.3 An arbitrator to be appointed should accept an appointment only if he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.

Article 3: Independence

3.1 The arbitrator/s shall, in the normal course of conduct of discharging their obligations as an arbitrator/s, act, independently and impartially without any fear or favour.

3.2 Any current direct or indirect business relationship between an arbitrator and a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed. Examples of indirect relationships are where a member of

the prospective arbitrator's family, his firm, or any partner has a business relationship with one of the parties.

3.3 Past business relationships will not operate as an absolute bar to acceptance of appointment, unless they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment.

3.4 Continuous and substantial social or professional relationships between a prospective arbitrator and a party, or with a person who is known to be a potentially important witness in the arbitration, will normally give rise to justifiable doubts as to the impartiality or independence of a prospective arbitrator.

Article 4: Duty of Disclosure

4.1 An arbitrator to be appointed should disclose all facts or circumstances that may give rise to justifiable doubt as to his impartiality or independence. Failure to make such disclosure creates an appearance of bias, and may by itself be a ground for disqualification even though the non-disclosed facts or circumstances would not of themselves justify disqualification.

4.2 What to disclose?

An arbitrator to be appointed shall disclose:

- Any past or present business relationship, whether direct or indirect as illustrated in Article 3 including prior appointment as arbitrator, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration. With regard to present relationships, the duty of disclosure applies irrespective of their magnitude but with regard to past relationships only if they were of more than a trivial nature in relation to the arbitrator's professional or business affairs. Non-disclosure of an indirect relationship unknown to a prospective arbitrator will not be a ground for

disqualification unless it could have been ascertained by making reasonable enquiries;

- the nature of any previous relationship with any fellow arbitrator (including prior joint service as an arbitrator);
- the extent of any prior knowledge he may have of the dispute;
- The extents of any commitments which may affect his availability to perform his duties as arbitrator as may be reasonably anticipated.

4.3 The duty of disclosure continues throughout the arbitral proceedings as regards new facts or circumstances.

4.4 Disclosure should be made in writing and communicated to all parties and arbitrators. When an arbitrator has been appointed, any previous disclosure made to the parties should be communicated to the other arbitrators.

4.5 Any doubt as to whether or not disclosure is to be made should be resolved in favour of disclosure.

Article 5: Conduct of proceedings

5.1 An arbitrator should conduct the proceedings fairly. An arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.

5.2 The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.

Article 6: Communications with parties

6.1 When approached with a view to appointment, a prospective arbitrator should make sufficient enquiries in order to inform himself whether there may be any justifiable doubts regarding his impartiality or independence; whether he is competent to determine

the issues in dispute; and whether he is able to give the arbitration the time and attention required. He may also respond to enquiries from those approaching him, provided that such enquiries are designed to determine his suitability and availability for the appointment and provided that the merits of the case are not discussed. In the event that a prospective sole arbitrator or presiding arbitrator is approached by one party alone, or be one arbitrator chosen unilaterally by a party or (a "party-nominated" arbitrator), he should ascertain that the other party or parties, or the other arbitrator, has consented to the manner in which he has been approached. In such circumstances he should, in writing, inform the other party or parties, or the other arbitrator, of the substance of the initial conversation.

6.2 Throughout the arbitral proceedings, an arbitrator should avoid any unilateral communications regarding the case with any party, or its representatives. If such communication should occur, the arbitrator should inform the other party or parties and arbitrators of its substance.

6.3 It is improper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.

6.4 It is improper to:

- (a) Disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;
- (b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision; or
- (c) Disclose any final decision or interim decision in advance of the time that it is disclosed to all parties

6.5 If an arbitrator becomes aware that a fellow arbitrator has been in improper communication with a party, he may inform the remaining arbitrators and they should together determine what action should be taken. Normally, the appropriate initial course of action is for the offending arbitrator to be requested or refrain from making any further improper communications with the party. Where the offending arbitrator fails or refuses to refrain from improper communications, the remaining arbitrators may inform the innocent party in order that he may consider what action he 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 of the offending arbitrator only in extreme circumstances, and after communicating his intention to his fellow arbitrators in writing.

6.6 No arbitrator should accept any gift or hospitality, directly or indirectly from any party to the arbitration. Sole arbitrators and presiding arbitrators should be particularly meticulous in avoiding significant social or professional or personal contracts with any party to the arbitration other than in the presence of the other parties

Article 7: Fees

7.1 Unless the parties agree, an arbitrator shall make no unilateral arrangements for fees or expenses.

7.2 Before the arbitrator finally accepts appointment, the basis of payment, including any cancellation fee, compensation in the event of withdrawal and compensation for study and preparation time, and all other charges, should be established. All parties should be informed in writing of the terms established.

Article 8: Duty of diligence

8.1 All arbitrators should devote such time and attention as the parties may reasonably require having regard to all the circumstances of the case and shall do their best to conduct the arbitration in such a manner that costs do not rise to an unreasonable proportion of the interests at stake.

Article 9: Involvement in settlement proposals

9.1 Where the parties have so requested or consented to a suggestion to this effect by the arbitral tribunal, the tribunal as a whole (or the presiding arbitrator where appropriate) may make proposals for settlement to both parties simultaneously and preferably in the presence of each other. Although any procedure is possible with the agreement of the parties, the arbitral tribunal should point out to the parties that it is undesirable that any arbitrator should discuss settlement terms with a party in the absence of the other parties since this will normally have the result that any arbitrator involved in such discussions will become disqualified from any future participation in the arbitration.

Article 9: Confidentiality of the Deliberations

9.1 The deliberations of the arbitral tribunals, and the contents of the award itself, remain confidential in perpetuity unless the parties release the arbitrators from this obligation. An arbitrator should not participate in, or give any information for the purpose of assistance in any proceedings to consider the award unless, exceptionally, he considers it his duty to disclose any material misconduct or fraud on the part of his fellow arbitrators.

9.2 An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and protection of confidentiality.

Article 10: Saving Clause

10.1 These Code of Ethics is in addition to the code of Ethics issued by the Council of the Institute and not in derogation to the same.