

INSTITUTE FOR THE PROMOTION OF ARBITRATION
AND MEDIATION IN THE MEDITERRANEAN



Lebanese Arbitration Center

Cour Marocaine d'Arbitrage

REPORT ON INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS

The present Report has been written by:

Valentina Renna, ISPRAMED Advisor,

with the supervision of **Prof. Charles Jarrosson**, Coordinator of the Network of the Mediterranean Arbitration Centres.

ABBREVIATIONS

Centres

CACI - Centre for Arbitration and Conciliation of the Algerian Chamber of Commerce and Industry
CAM –Chamber of Arbitration of Milan
CCAT – Arbitration and Mediation Centre of Tunis
CMA – Arbitration Court of Morocco
CRCICA – Cairo Regional Centre for International Commercial Arbitration
ITOTAM– Arbitration Centre of the Istanbul Chamber of Commerce
LAC – Lebanese Arbitration Centre

International conventions and laws as mentioned in the Rules Comparison Chart and in the present Report

IBA Guidelines – IBA Guidelines on conflicts of interest in international arbitration, approved on 22 May 2004 by the Council of the International Bar Association

NY Convention - Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958

UNCITRAL ML – United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, 1985, with amendments as adopted in 2006

UNCITRAL Rules - United Nations Commission on International Trade Law Arbitration Rules, 1976, as revised in 2010

ISPRAMED language

ISPRAMED – Institute for the Promotion of Arbitration and Mediation in the Mediterranean

Methodology – Operational pattern agreed upon by the Centres in order to define the common practice in the administration of arbitrations in the Mediterranean area

MOU – Memorandum of Understanding signed by the Centres as members of the Network with the intent to promote arbitration and mediation in the Euro-Mediterranean area and to define shared and common principles

Foreword

The basic purpose of the present report is to condense in a few principles and practices the data and information collected by ISPRAMED among the Centres of the Network on the issue of impartiality and independence of arbitrators.

In fact, the Centres have been prompted to liaise with ISPRAMED on their own arbitration rules as well as on their experience on practical circumstances which call into question the arbitrator's independence and impartiality.

The principles and practices so far collected on the issue, thanks to the contributions of all the members of the Network¹, allow ISPRAMED to illustrate the standards that the Centres generally apply in the cases they manage, in order to preserve the fundamental value of independence and impartiality of arbitrators.

Hence, they represent a shared view of the good administration of arbitration procedures in the Mediterranean area as far as the independence and impartiality of arbitrators is concerned.

In the process of elaborating the common principles and practices, ISPRAMED has presented a draft which has circulated among the members of the Network. The comments received by the Centres have generally supported the draft report and have been used to arrange it when necessary.

Therefore, in accordance with the goals set forth in the MOU, such principles, as listed in the present report, are hereby acknowledged by the Centres as general standards, being endowed with a certain binding character. The Centres undertake to abide by such principles in their everyday activity in order to ensure a top-notch service.

Accordingly, such principles may provide guidance and help in the decision-making process of institutions dealing with cases which raise doubts as to the arbitrators' independence and impartiality. Additionally, they offer guidance to international arbitration users, who are able to know beforehand the positions of the Centres on critical issues of arbitration.

Last but not least, such principles and practices are consistent with the international arbitration practice and able to accommodate the legal and cultural differences in the Mediterranean area.

¹ CMA, ICOC, CCAT, CRCICA, CACI, LAC, CAM

Rules Comparison Chart on independence and impartiality of arbitrators²

As it is commonly perceived, it is “*of fundamental importance that justice not only be done, but should manifestly and undoubtedly be seen to be done*”³ as Lord Hewart CJ said. Consequently, in order for the parties to perceive that justice is being done, it is essential that arbitrators are independent and impartial.

As far as the definition of the two fundamental requirements is concerned “an impartial arbitrator, by definition, is one who is not biased in favour of, or prejudiced against, a particular party or its case, while an independent arbitrator is one who has no close relationship - financial, professional, or personal - with a party or its counsel”⁴. Thus, those two concepts are usually seen as the two sides of the same coin.

Focusing on the comparison between the provisions of the Centres’ arbitration rules on independence, the chart shows that most of the institutions of the Network make express reference to the arbitrators’ obligation to be independent:

- art. 14 CACI;
- art 3 CCAT;
- art. 6 CAM, Code of Ethics;
- art 7.1 CMA;
- art. 2.7 LAC;
- art. 15 ITOTAM;

while others make reference to the value of independence either in the appointment process (arts. 8.4 and 11.1 CRCICA).

This allows ISPRAMED to state that the independence of arbitrators is highly valued by the members of the Network in the Mediterranean area and regarded as an essential element in international arbitration: its importance cannot be overlooked in the administration of the arbitral proceedings.

As for the impartiality requirement, some of the Centres do not impose on their arbitrators to be impartial (CMA, LAC), either implicitly or explicitly; however, some institutions set forth it explicitly (art. 5 CAM, Code of Ethics; art. 15.1 ITOTAM; art. 14 CACI) and the others mention lack of impartiality among the reasons for challenge (art. 4.1 CCAT, art. 18.1 ITOTAM) or in the disclosure process (art. 11.1 CRCICA; art. 15.2 ITOTAM).

Accordingly, all the Centres Rules state that the arbitrators – no matter whether they are appointed by the parties or the institution - have a duty to disclose any circumstances which may affect their independence and/or impartiality (art. 14 CACI; art 18.1-2 CAM; art 3 CCAT; art 11.1 CRCICA; art. 7.1 CMA; art. 15.2-4 ITOTAM; art. 2.7 LAC). CAM specifies also the content of the declaration of independence (art. 18.2).

The wording of all the provisions is so broad as to enlarge the scope of an arbitrator’s duty to investigate potential conflicts: the arbitrators are indeed requested to disclose any fact that is likely to cause bias. Given the purpose of disclosure, which aims at allowing “the parties to judge whether or not they agree with the evaluation of the arbitrator and, if they so wish, to explore the situation

² Annex no. 1

³ R v Sussex Justices ex parte McCarthy [1924] 1 K.B. 256

⁴ Redfern A. and Hunter M., The law and practice of international Commercial Arbitration, Sweet&Maxwell, London, 1999, at 220

further”⁵, such broad wording – as found in the language of the Centres’ Rules - demonstrates the current trend towards the expansion of the arbitrators’ duty of disclosure.

Based on the rules of the Centres, such duty is also continuous, meaning that the arbitrators are required to disclose any supervening circumstances likely to give rise to justifiable doubts as to their independence and impartiality, which may occur at a later stage.

This means that the members of the Network set forth the obligation for arbitrators to be and remain independent throughout the proceedings. It is worth noting that CAM requires the arbitrators to remain independent also during the period in which annulment of the award can be sought (art. 6 Code of Ethics). ITOTAM sets also similar provision under art. 15.1 where it is required that the impartiality and independence of the arbitrators shall continue until the award becomes final.

As a matter of fact all the Centres of the Network make the arbitrators update their disclosure in the course of the proceedings, if necessary (art. 18.5 CAM; Art. 3.3 CCAT; art. 7.1 CMA; art. 11.1 CRCICA; art. 15.3 ITOTAM; art. 2.7 LAC). However, the updated disclosure feature does not appear in the CACI Rules, although the representatives of the Centre informed ISPRAMED that the rules are currently undergoing a revision process.

Therefore, it can be said that the members of the Network share the belief that arbitrators’ disclosure is the cornerstone of international arbitration in the Mediterranean area. By forcing the arbitrators to divulge any reason of conflict, even in case of any doubts as to their duty to disclose, the Centres avoid any potential problems with an arbitrator not only at the outset but also during the course of the proceedings, safeguarding the overall integrity of the arbitral process.

As for the confirmation step, it must be pointed out that the majority of the Centres does not provide for the confirmation of the arbitrators after the submission of their disclosure: there is no hint at the confirmation process in CCAT, CMA, and CRCICA Rules. Although not laying down a confirmation function, the CRCICA rules explicitly provide for the reverse process, whereas the institution, may, upon the approval of its Advisory Committee, reject the appointment of any arbitrator due to the lack of any legal or contractual requirement or past failure to comply with his or her duties under the Rules. According to CRCICA’s practice the rejection of the appointment of an arbitrator is possible only in the period after the designation of the arbitrator by the parties and before his/her acceptance of the arbitral mission.

In the remaining institutions the internal body (either a council/committee/court, or the secretariat) enjoys the function of confirming the appointed arbitrators, based on the circumstances they have disclosed (art. 22 CACI; art. 18.4 CAM; art. 2 LAC; art. 15.2-5 ITOTAM). Such confirmation step cannot be considered just a formality as it is a sort of definitive check by the institution on the suitability of the appointed arbitrators.

Almost all the rules of the Centres specify the reasons for challenging an arbitrator, although the wording has a broad reach, referring generally to any justifiable doubts as to the independence and impartiality of arbitrators (art. 19.1 CAM; art. 4.1 a) CCAT; art. 13.1 CRCICA; art. 2.8 LAC; art. 18 ITOTAM; art. 15 CACI). One member of the Network makes reference to the reasons specified in the national arbitration statute (art. 7.2 CMA).

⁵ IBA Guidelines on Conflicts of Interest in International Arbitration 2004 – Explanation to General Standard 3

The challenge procedure is described in detail in the rules of the Centres, which grant to the parties different time limits in a time span of 8-30 days from the moment the challenging party is aware of the grounds for challenge or the disclosure is given by the arbitrator.

Most of the institutions, once the challenge is filed by a party, transmit it to the other parties and the arbitrators for comments (art. 19.3 CAM; art. 7.2 CMA; art. 13.4 CRCICA; art. 2.9 LAC; art. 18.4 ITOTAM).

Finally, the rules of the Centres, with the only exception of CAM, do not present a separate code of ethics, as the principles of deontology and several recommendations to arbitrators are embedded in the rules themselves.

PRINCIPLES

1. Independence

The Centres recognize the importance of the principle of arbitrators' independence as defined by the most renowned authors and scholars worldwide. The Centres agree that such duty concerns each member of the Arbitral Tribunal, whether party-appointed or not and requires the arbitrator to avoid any relationship with the parties and/or their counsels - which may be ambiguous or potentially detrimental to his/her independence - in the personal, social and financial spheres. The arbitrator's obligation to be independent should be met in the course of the entire arbitration proceedings. Finally, the Centres also agree that the lack of independence endangers the fairness and integrity of the arbitral process and may not be a matter of negotiation between the parties - for situations which manifestly jeopardise the overriding principle that no person can be his or her own judge.

2. Impartiality

The Centres acknowledge the importance of freedom of judgment of arbitrators in the arbitral process, to be regarded as a subjective standard concerning the mental state of the arbitrators towards the case, the parties and their counsels. Although some of the Centres do not explicitly require the arbitrators to be impartial, all the members of the Network do not tolerate lack of impartiality and fight to prevent arbitrators' partisanship. The arbitrator's obligation to be impartial should be met in the course of the entire arbitration proceedings. The Centres would be prone to uphold a challenge to an arbitrator whose impartiality is legitimately doubted.

3. Duty to disclose

The Centres believe that the duty of prospective arbitrators to disclose every circumstances likely to give rise to justifiable doubts as to their independence and impartiality is a quintessential requisite to the arbitral process and to the perception of its fairness. Also, the Centres agree that the arbitrators should update their disclosure in the course of the proceedings, subject to supervening circumstances. The scope of the arbitrators' disclosure is broadly construed by the Centres and any doubt by the arbitrators is to be resolved in favour of disclosure.

4. Challenge of arbitrators

The Centres acknowledge the right of the parties to challenge the arbitrators, even the party-appointed arbitrator, based both on the circumstances disclosed by the arbitrators and on circumstances the parties somehow learn in the course of the proceedings. The arbitrators may be challenged by the parties if they do not meet the obligations to be independent and impartial and/or, in some Centres, they lack the qualifications required by the parties. In order to ensure certainty to the process, the Centres set time limits to the parties to submit their challenge: should such time limits expire, the challenge is deemed to have been waived. The parties and the arbitrators are entitled to comment on the proposed challenge.

5. Incompatibility

The Centres agree that their members (officers, employees, member of the Board/Council/Court, etc.) cannot be directly appointed by the Centres as arbitrators in the proceedings they manage, as this may seriously call into question the arbitrator's impartiality and independence. Furthermore, the Centres agree that these officers, employees, members of the Board/Council/Court cannot derive any financial benefit from the appointment of an arbitrator.

COMMON PRACTICES

The goal of the present report is to study the principles of arbitrators' independence and impartiality as well as their practical applications by the members of the Network. Thus, along with a few principles, defining the position of the Centres towards the above mentioned issues, the report illustrates the actual practices of the same institutions on cases raising doubts as to the independence and impartiality of arbitrators.

When it comes to independence and impartiality of arbitrators, the primary need is to level the playing field among the Centres of the Network: enjoying similar standards in terms of institutional reactions to certain cases of lack of independence and, also, striving to offer high-quality procedures to arbitration users is the best way to promote arbitration in the Mediterranean area.

Therefore, the Centres believe that harmonization of good practices on independence and impartiality of arbitrators allows certainty, reliability, hence a climate of trust among arbitration practitioners and users.

The Centres have established and shared the meaning and scope of the principles of independence and impartiality; also they have defined and discussed some problematic cases where such values are considered as uncertain or lacking. Each institution is expected to react to each of these cases to the extent allowed by the respective rules either in the way of disqualification or confirmation of the arbitrator. However, the Centres endeavour to take into account the practice and position of the majority of the Centres, in the following cases.

CASES

The Centres have shared a non-exhaustive list of practical examples which are likely to occur in the administration of arbitration procedures. The Centres undertake to follow the most recurring relevant decisions on either confirmation or refusal of arbitrators when confronted with such circumstances in the real practice.

1. Arbitrator's relationship with the Institution

Being an official member of the arbitral institution or having professional relationships with official members of the Centre (such as professional partners or employees of the Centre's official members).

The Centres' rules allow for different evaluations of the above reported case. Some of them find that the situation gives rise to a case of incompatibility (CMA; CAM, where the incompatibility is also extended to professional partners/employees of the arbitral council's members or CAM's employees, unless the parties agree otherwise) while others openly admit such possibility (CACI, although predicting a change when the rules will be revised). According to CRCICA's practice, its Director, officers and employees are prohibited from acting as arbitrators or counsel in arbitrations conducted under its auspices. Pursuant to Article 7 of the By-Laws of CRCICA's Advisory Committee (AC), the Centre may not appoint the AC members as arbitrators except by way of the list procedure. According to ITOTAM practice, persons who have been appointed to any ICOC bodies by election, cannot serve as arbitrators in disputes that concern them or any establishments, institutions or enterprises at which they are employed or with which they have any type of relationship. Employees of ICOC cannot serve as arbitrators, except for hired consultants (art. 9 of the Internal Regulation of ITOTAM (Appendix 1)).

As a matter of principle, in such circumstances an objective conflict of interest may exist from a third person's standpoint, although the values of independence and impartiality are not affected by themselves. Incompatibility serves the purpose of preserving the institution's integrity and autonomy towards the administration of the case. The Centres, regardless of their provisions on incompatibility, endeavour to protect their integrity and to keep their activity separate from that of the arbitrators.

2. Arbitrator's relationship with the parties

a. Present or past parental relationship between an arbitrator and a party

The party appointed arbitrator is the son of the legal representative of the company which appointed him.

The scenario as exemplified in the above case is likely to affect the arbitrator's freedom of judgment, thus causing justifiable doubts as to the arbitrator's impartiality and independence. As regards the 2004 IBA Guidelines, the arbitrator's close family relationship with one of the parties comes under the "waivable red list", which encompasses situations that pose a serious threat to the independence and impartiality of arbitrators, being possibly waived only with the express agreement of all the parties.

Although not all the members of the Network have experienced such a case (only CMA, CAM and ITOTAM contributed with their positions), it can be argued that the Centres would be prone to refuse or not to confirm the said arbitrator, in view of preserving the fundamental value of independence and impartiality.

b. Present professional relationship of an arbitrator with one of the parties

CASE 1: the party-appointed arbitrator declares that he is currently serving as counsel or as witness expert to the same or the other party in another arbitration or judicial proceedings.

The situation hereby described allows for an economic relationship between the arbitrator and one of the parties: this might greatly affect the freedom of judgment of the arbitrator. Some of the Centres have clearly stated that in such circumstances they have refused or non-confirmed the arbitrator, as this would give rise to justifiable doubts as to the arbitrator's impartiality or independence, with regard to the understanding of a reasonable third person (CAM; CMA; ITOTAM). The Centres acknowledge that an objective conflict of interest exists from the standpoint of a reasonable third person having knowledge of the relevant facts; therefore the professional appointed might not serve as arbitrator in the above described case.

CASE 2: the party appointed arbitrator (or the arbitrator appointed by the institution) declares that he is serving as arbitrator in another arbitration appointed by the same party.

Repeated arbitrator appointments may appear frequent in international arbitration practice and the need is felt to strike the balance between possible bias and the freedom of the parties to appoint the specialist they trust. Some of the Centres would deem such situation truly problematic and consequently would refuse the arbitrator appointed by the same party in two different pending procedures (CMA). Other institutions are willing to invest in closer examinations of the arbitrators' relationships with the parties: it has been pointed out (CAM) that the non confirmation of the arbitrator in such a case may depend on the fact that the subject matter of the disputes is the same, as this can cause a prejudice and a misbalance in the panel (since a party-appointed arbitrator has a wider knowledge of the case). Also, serial appointments may represent a problem when they are made in different times, so as to create a continuative economic relationship between the arbitrator

and the appointing party (CAM). The Centres agree that an existing professional relationship between the arbitrator and one of the parties may give rise to justifiable doubts as to the independence and impartiality of arbitrators, although the relevance of such circumstance should be reasonably considered in each individual case.

c. Past professional relationship of an arbitrator with one of the parties

The party-appointed arbitrator declares that he has served as counsel, as witness expert or as arbitrator for the same or the other party in another arbitration or judicial proceedings 3 years ago.

In assessing whether a past professional relationship between an arbitrator and one of the parties is critical to the arbitrators' independence and impartiality, some of the Centres are inclined to refuse the arbitrator (CMA; CRCICA, experiencing the case of an arbitrator appointed by the same party for three consecutive proceedings) while others have a flexible approach, focusing on the time-span occurring between the services rendered for the party by the arbitrator, making reference to the time limits set by the IBA guidelines (CAM). ITOTAM faced a similar case, where an arbitrator was challenged due to the fact that he had served as a lawyer in a judicial proceeding six years prior to the arbitration for the party who had appointed him. The challenging party raised his challenge shortly after the arbitral tribunal rendered the award, although the award had not been notified to the parties yet. Therefore, the arbitral tribunal did not decide on the challenge issue. Accordingly, the party set aside the award.

In some cases the institution has experienced the reverse situation, where the appointed arbitrator has declined to serve in the arbitration because of past professional relationships with the appointing party, like a judge appointed by a party who declined the appointment because of past involvement of that party in judicial proceedings under his jurisdiction (CCAT). The Centres agree that a past professional relationship between the arbitrator and one of the parties may give rise to justifiable doubts as to the independence and impartiality of arbitrators, although the relevance of such circumstance should be reasonably considered in each individual case.

d. Common nationality of the arbitrator and one of the parties

The chairman holds the nationality of one of the parties who are of different nationalities.

Such case calls into question the concept of neutrality of arbitrators, which is defined as the absence of cultural commonality with one of the parties: this shared feature does not automatically result into partisanship of the arbitrator. The members of the Network do not consider such case problematic as no apparent and/or actual conflict of interest exists from the relevant objective point of view. Also the Centres' Rules may encompass a specific provision on the so called "third nationality rule": where the parties have different nationalities, the Centre may appoint as sole arbitrator or chairman of the Arbitral Tribunal a person of a different nationality, unless otherwise agreed by the parties (CAM).

3. Arbitrator's relationship with the parties' counsels

a. Present or past parental relationship between arbitrator and counsels or arbitrator's relatives and counsels (and vice-versa)

The arbitrator declares that his son is working within the same law firm of the counsel assisting the party who appointed him.

Some of the Centres state that such situation gives rise to justifiable doubts as to the arbitrator's impartiality or independence and therefore would not confirm the arbitrator based on that disclosure (CMA; CAM; ITOTAM). Given the overriding importance of arbitrators' independence and impartiality and also of the appearance of independence and impartiality, it can be inferred that all the members of the Network would share the same position and would be inclined to refuse the arbitrator, in the interest of the arbitration's fairness.

b. Present or past professional relationship of arbitrator with one of the parties' counsel

CASE 1: the arbitrator and the counsel serve together as co-counsel in other proceedings.

This may be a very recurring case in the international arbitration practice. While a few institutions believe that a professional enjoying such a connection with a party's counsel in principle may not serve as arbitrator in the arbitration (CMA; CACI), others consider that the appointed arbitrator should be granted the opportunity to act as such in the proceedings, provided that no direct economic relationship exists between the arbitrator and counsel (CAM, which would treat in a different way – i.e. with a non confirmation - the case of an existing professional collaboration, like in the event of a counsel domiciled at the arbitrator's firm for a judicial proceedings. Along the same lines, ITOTAM approach would be not to confirm the arbitrator).

The Centres agree that a professional relationship between the arbitrator and one of the parties' counsels may put at serious risk the independence and impartiality of arbitrators, leading to bias: therefore they undertake to closely peruse such circumstances in view of safeguarding those values.

CASE 2: the arbitrator and one of the parties' counsel are associates in the same law firm.

An existing and also stable professional partnership between the arbitrator and one of the parties' counsel is likely to affect the freedom of judgment of the arbitrator, thus most of the Centres, when experiencing such case, are disposed to refuse/not to confirm the said arbitrator (CAM; CMA; CACI; ITOTAM; LAC, which experienced the case of previous professional collaboration in the same firm between the co-arbitrator appointed by one of the party and the counsel of that party). In other circumstances, the members of the Network have faced the case of an arbitrator being appointed by the same counsel (or firm) for three consecutive appointments (CRCICA, which confirmed the arbitrator); or the case of a previous bad professional relationship between the arbitrator appointed by the court and the counsel of a party (LAC, which confirmed the arbitrator, although later on the arbitrator resigned). The Centres agree that the case of a professional partnership can give rise to justifiable doubts as to the arbitrator's impartiality or independence and should lead to refuse the arbitrator.

c. Sharing the same premises not being associates

The Centres enjoy different attitudes towards the case of an arbitrator sharing the same professional premises with a parties' counsel, without any partnership. Some of the members of the Network have a rigorous approach (CACI; CAM; CCAT has experienced the reverse case, where an arbitrator refused to serve as arbitrator because he shared the premises with the counsel of the appointing party), whilst others believe that such a case would not give rise to justifiable doubts as to the arbitrator's impartiality or independence (CMA; ITOTAM). The Centres agree that such relationship may unduly "put in contact" the arbitrator and one of the party, therefore they commit to a thorough analysis of the individual case, in order to protect the fundamental principles of arbitrators' independence and impartiality.

d. Academic relationships

Having experienced such a case, the Centres believe that an academic relationship between the arbitrator and a party's counsel does not pose a threat to the arbitrators' independence and

impartiality from a reasonable third person's point of view (CMA; CAM; ITOTAM; CACI). Although sharing the belief that the said circumstance per se cannot be considered as a ground for challenging/non confirming the arbitrator, nonetheless they agree on the importance of analysing the nature of the existing relationship.

4. Arbitrator's relationship with another arbitrator

a. Present or past relationship of an arbitrator and another arbitrator

CASE 1: the arbitrator and another arbitrator are associates in the same law firm.

Although such an instance would be quite rare in the arbitration practice, the Centres believe that this relationship would endanger the arbitrators' independence and impartiality. Therefore they may wish to explore further on it and this may possibly lead to the arbitrators' disqualification (CMA; CACI).

ITOTAM's approach would be no to confirm the arbitrators. Before the new arbitration rules of ITOTAM entered into force, ICOC faced a few cases where the arbitrators were associates. Surprisingly in these cases, the arbitrators were not challenged. Since there was not an arbitration court, the confirmation mechanism was not applied; this was a result of peculiar appointment mechanism set forth by the old rules. Where there was no agreement of the parties on the appointment procedure, the arbitrator included in the first arbitrator's list and whose turn had come was acting as a president and appointed the other two arbitrators. Almost in all the above-mentioned cases, the president has appointed an arbitrator from his law firm. ITOTAM believes that this jeopardizes the impartiality of the arbitrators.

CASE 2: the arbitrator has served as co-counsel with another arbitrator in other proceedings.

When experiencing that kind of relationship between two of the members of the Arbitral Tribunal, the Centres may have different approaches. Some of them are inclined to refuse the arbitrator (CACI) whereas others would treat the case in a less rigorous way, confirming the arbitrator (CMA; CAM; CRCICA, which experienced the case of the co-arbitrator and the chairman being former judges who used to sit in the same court chamber). The Centres agree that such case should not automatically result in a disqualification of the arbitrator; they are at liberty to analyse the above described situation, taking into account the best interest of the parties.

5. Arbitrator's relationship with the subject matter of the dispute

a. Personal or economic interest either direct or indirect in the subject matter of the dispute

The arbitrator holds relevant shares of one party.

The Centres believe that justifiable doubts necessarily exist as to the arbitrator's independence and impartiality if he has a significant financial connection with one of the party. Such a case is listed in the waivable red list of the IBA Guidelines, as giving rise to an objective conflict of interest, from the standpoint of a reasonable third person having knowledge of the relevant facts. The situation is serious and undermines the arbitrator's duties to act in an impartial and independent way. Consequently the Centres would refuse/not confirm the arbitrator (CAM; CMA; CACI; ITOTAM).

b. Arbitrator appointed in connected arbitrations

The arbitrator has already decided on the same subject matter between the same parties.

The Centres have experienced the above case and believe that it may give rise to serious doubts as to the arbitrator's impartiality and independence. Therefore, they may take into account the other party's position on the issue and refuse the arbitrator who enjoys a knowledge of the subject matter between the parties for having already served as arbitrator on the disputed issues between the same parties (CMA; CACI; ITOTAM; CAM, which experienced different cases falling under the above category: (i) the arbitrator was required to decide between the same parties a claim which was rejected in the previous arbitration as time barred; (ii) an arbitrator was appointed by the same party in two different arbitrations which originated from the same contractual relationship while the other party (to both proceedings) had not appointed the same arbitrator; CRCICA also faced different situations: (i) the Arbitral Tribunal rendered a unanimous final award on its jurisdiction declaring the inadmissibility of the case because the claimant lacked standing to sue. The company having standing according to the award filed a new arbitration appointing the same arbitrator rendering the award on jurisdiction; (ii) an arbitrator reappointed by the same party to decide on the same dispute between the same parties after setting aside of the first award and the filing of a new arbitration case).

c. Arbitrator professor of law

The arbitrator is a professor of law and he has written an article/essay on the disputed issue. If the parties believe that he is biased and bring a challenge on such basis only, the Centres agree that the challenge has to be rejected by the institution: also according to international case law, such thing bears no importance and does not put at risk the independence and impartiality of an arbitrator.

Future developments

The Centres wish for and are committed to a steady application of the above listed 5 principles as well as of the above practices. Also, as far as the future course of the Centres' activity is concerned, they engage with levelling, as much as possible, the playing field with regard to the different sets of rules, so that highstandard uniform principles are established and adhered to by the Centres on the most important arbitration issues. ISPRAMED will endeavour to become a reference point for advice for the Centres, both in their daily practice and in crucial circumstances (e.g. the revision of the Rules, the implementation of the agreed common principles, etc.).