

Obligation of Disclosure in International Arbitration

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The obligation of arbitrators to disclose relevant information is a significant ethical responsibility that contributes to ensuring fair and transparency within the arbitration process. Such disclosures enhance the trust, and credibility of the arbitrator's impartiality, besides; help to build trust in the arbitration process and ensure that it remains a fair and effective.

The obligation to disclose information does not adhere to a specific timeframe; rather, it can be characterized as an Ongoing Duty ideally to be done during the appointment acceptance. However, is not confined to the date of appointment. Arbitrators are required to continuously evaluate their circumstances and must disclose any relevant information immediately upon becoming aware of any events that could potentially lead to a conflict of interest. Additionally, they are responsible for revealing any new information or relationships that may emerge during the proceedings, as such developments could cast doubt on their impartiality and neutrality.

At times, the necessary information may not be accessible on the date of the appointment. Consequently, if the arbitrator becomes aware of a prior event during the proceedings, such as a previous relationship between the firm they represent and a subsidiary of one of the parties involved in the arbitration case, it is arbitrator duty to disclose promptly this information.

What to disclose?

This obligation is not confined to specific events and may vary depending on the nature of the event that necessitates disclosure.

In general, the disclosure must be detailed and include enough information to describe the event(s) that led to the disclosure.

The disclosure key points can be summarized in three main categories:

1. **Conflict of Interest:** Arbitrators are required to disclose any financial, personal, or professional relationships that may affect their decision-making or create a perception

of bias or benefit from the arbitration award. This encompasses relationships with any parties involved in the arbitration, their legal representatives, or any witnesses.

2. Financial Interests: An arbitrator discloses that they own stock in a company that is a subsidiary of one of the parties.
3. Prior involvement: An arbitrator must disclose any prior involvement with any of the parties, even if in a different capacity, to ensure full transparency.
4. Previous Involvement: an arbitrator discloses that they were appointed by the court as a neutral expert in a case involving the same party. Even though the appointment was neutral, the relationship must be disclosed.
5. Prior Employment Relationships: An arbitrator might disclose that they were previously employed by a law firm that had represented one of the parties in a different matter.
6. Relevant Information: If an arbitrator obtains any significant information from one party, it must be promptly disclosed to the other party to uphold fairness and prevent any appearance of bias.
7. Family Connections: If an arbitrator's close relative is employed by one of the parties or has a financial interest in the outcome, this relationship should be disclosed.
8. Other Arbitrations: An arbitrator discloses that he/she is currently serving as an arbitrator in another case involving one of the parties.
9. Social Relationships: If an arbitrator has a personal friendship with an executive of one of the parties or their counsel, this should be disclosed to avoid any appearance of bias.
10. Professional Affiliations: Disclosing membership in professional organizations, especially if the organization has connections to one of the parties.

By providing the disclosures, arbitrators help the integrity and trustworthiness of the arbitration proceedings, ensuring that all parties can make informed decisions about the suitability of the arbitrator.

International Bar Association (IBA) -www.ibanet.org- has a well-known "Red, Orange, and Green List" system.

This system is part of the IBA Guidelines on Conflicts of Interest in International Arbitration. It helps parties and appointing authorities, including arbitration centers, determine the disclosure requirements for arbitrators.

- Red List: Contains situations that give rise to automatic disqualification of an arbitrator.
- Orange List: Includes circumstances that may give rise to doubts about an arbitrator's impartiality or independence.
- Green List: Covers situations that are generally not problematic and do not require disclosure.

Disclosure and rejection of the Arbitrator:

Disclosure by an arbitrator does not necessarily mean that the arbitrator will be rejected.

As the purpose of disclosure is to ensure transparency and allow the parties involved in the arbitration to make an informed decision about the arbitrator's impartiality and suitability for the case in their views.

Informed Decision: Once an arbitrator discloses any potential conflicts of interest or relevant circumstances, the parties involved can evaluate whether they believe the disclosed information affects the arbitrator's ability to remain impartial.

Opportunity to Object: Based on the disclosure, the parties have the option to raise any concerns or objections. If they believe the disclosed information presents a significant conflict of interest, they can request the replacement of the arbitrator.

No Automatic Revoking: Disclosure itself does not automatically lead to the rejection or disqualification of the arbitrator. It's up to the parties to decide if the disclosed information is significant enough to warrant a change.

Mutual Agreement: In many cases, the parties might mutually agree that the disclosed information does not compromise the arbitrator's impartiality and choose to proceed with the original arbitrator.

Request for revocation: Should any party believe that the disclosure necessitates a request for the replacement of the arbitrator, that party is required to bring this matter to the attention of the arbitrator (or the Arbitration Panel). If the arbitrator does not withdraw, the party may then escalate the issue to the appointing authority, which will determine whether to approve the request for replacement or to deny it, allowing the arbitrator to continue in their role within the arbitration proceedings.

Consequently, we conclude that the disclosure will not lead automatically to replacement of the arbitrator.

Below two Practical Examples where disclosure is made and the arbitrator was not rejected, beside one example of rejecting the Arbitrator.

Practical Example 1

Initial Disclosure: During the arbitration proceedings, the tribunal Chairman reveals that he came to know that his law firm had represented the claimant in five court cases.

(This transparency is a part of his ethical obligation to disclose any potential conflicts of interest.)

Opportunity for Comments: The parties are given 10 days to submit their comments on the disclosure.

(This allows them to consider whether they believe the disclosed information affects the Chairman's impartiality.)

Request for Further Information: The parties request more details about the disclosure.

(This shows their due diligence in ensuring the arbitration process remains fair and unbiased).

Additional Disclosure: The Chairman provides further information, clarifying that he was not personally involved in the court cases.

(This additional detail helps the parties assess the significance of the initial disclosure.)

Mutual Agreement: After considering the additional information, both parties agree that the Chairman can continue in his role, and no request for rejection is raised.

(This scenario highlights that disclosure itself doesn't automatically disqualify an arbitrator. Instead, it provides the parties with the necessary information to make an informed decision. By agreeing to continue with the Chairman, the parties waive their right to later object based on the disclosed information. This process ensures transparency and maintains the integrity of the arbitration.)

Practical Example 2:

Initial Disclosure: the arbitrator disclosed that he had previously worked as an advisor for both parties since more than five years.

This disclosure was made before the arbitrator accepted the appointment, allowing the parties to assess any potential conflict of interest and decide whether to proceed with that arbitrator or request a replacement.

After considering the disclosed information, both parties agree that the arbitrator can continue in his role, and no request for rejection is raised.

Practical Example 3:

This situation highlights the significance of an arbitrator's duty of disclosure and the potential consequences of failing to fulfill it:

Concerns Raised: The Respondent expressed a concern that the Arbitrator had not disclosed his prior appointment by the court as a neutral expert in a case involving the Claimant.

Arbitrator's Defense: The Arbitrator defended himself by stating that he was appointed by the Government Court and not by the Claimant, implying his neutrality and impartiality remained intact.

Respondent's Argument: The Respondent argued that the Arbitrator was still under an obligation to disclose this prior involvement, regardless of who appointed him, to maintain transparency.

Request for Replacement: Based on the perceived lack of disclosure, the Respondent requested the arbitration Centre to replace the arbitrator.

Arbitration Centre's Decision: The Arbitration Centre reviewed the situation and accepted the request, leading to the replacement of the Arbitrator.

This example underscores that the duty of disclosure is essential to maintaining trust and transparency in the arbitration process. Even if an arbitrator believes their prior involvement does not affect their impartiality, it's crucial to disclose such information so that the parties can make an informed decision. By failing to disclose this information, the arbitrator jeopardized the perceived fairness of the proceedings, resulting in his replacement.

The above examples highlight the importance of transparency and the ongoing duty of arbitrators to disclose any circumstances that might affect their impartiality throughout the arbitration process.

In summary, the duty of disclosure enhances transparency and trust in the arbitration process, giving parties the opportunity to address potential conflicts while ensuring that the arbitrator's impartiality is preserved.
