

The IBA Guidelines 2024

The Guidelines on Conflicts of Interest in International Arbitration, or more commonly referred to as the IBA Guidelines, have recently been updated by the International Bar Association (“2024 IBA Guidelines”).

The 2024 IBA Guidelines maintain a two-part structure providing general standards regarding impartiality, independence and disclosure of arbitrators, and the practical application of those general standards. The update brings clarity to conflicts of interest and how to deal with them.

(a) General Standard 2 — Conflicts of Interest

General Standard 2 requires that an arbitrator decline an appointment or refuse to continue to act where there are doubts over his or her ability to be impartial or independent.

The arbitrator should bear in mind the objective standard to evaluate the relevant facts or circumstances, and where an objective conflict of interest exists, the appointment must be declined unless that objective conflict is waived pursuant to General Standard 4.

The 2024 IBA Guidelines make clear that an arbitrator should decline an appointment or cease acting where a justifiable doubt exists (in the sense of the Non-Waivable Red List); however, the arbitrator may make a disclosure in accordance with General Standard 3 where such doubts relate to those in the Waivable Red List.

(b) General Standard 3 — Disclosure by the Arbitrator

An arbitrator shall disclose facts and circumstances which in the eyes of the parties may give rise to doubts as to the arbitrator’s impartiality or independence.

A new provision (Item 3(e)) makes it clear that in situations where disclosure is required, but professional secrecy or other rules of practice or professional conduct prevent such disclosure, the arbitrator should not accept the appointment, or should resign. The stage of the arbitration must not influence the arbitrator’s decision as to whether the facts or circumstances should be disclosed.

Arbitration Update

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(c) General Standard 6 — Relationships

The 2024 Guidelines clarify that an arbitrator may not only work for law firms but might be employees of companies; this requires the arbitrator to consider the activities of his or her law firm or employer, its organisational structure and mode of practice, and the relationship of the arbitrator with the law firm or employer, in making the requisite disclosure.

(d) The “*traffic-light system*” list — the orange list

The Orange List is a non-exhaustive list of specific situations that, depending on the facts of a given case, may, in the eyes of the parties, give rise to doubts as to the arbitrator’s impartiality or independence. Some new criteria introduced by the 2024 IBA Guidelines include:

- Where the arbitrator currently serves, or has acted within the past three years, as an expert of for one of the parties, or an affiliate of one of the parties in an unrelated matter (Item 3.1.6)
- Where the arbitrator has, within the past three years, been appointed as an expert on more than three occasions by the same counsel, or the same law firm (Item 3.2.9).
- Where the arbitrator has, within the past three years, been appointed to assist in mock- trials or hearing preparations on more than three occasions by the same counsel, or the same law firm (Item 3.2.10).
- Where an arbitrator and counsel for one of the parties currently serve together as arbitrators in another arbitration (Item 3.2.12).
- Where an arbitrator and their fellow arbitrator(s) currently serve together as arbitrators in another arbitration (Item 3.2.13).

The 2024 IBA Guidelines respond to the ever-developing relationships that exist in the arena of international arbitration and provide some much-needed certainty to arbitrators and parties alike to strengthen the integrity of the arbitral process.

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