

Rules on Impartiality and Independence of Arbitrators*

Introduction

In accordance with Article 12 of the Law of the Russian Federation No. 5338-1 “On international commercial arbitration”, issued on July 7, 1993, and Annex 1, Article 8 of the Federal law No. 102-ФЗ “On arbitral tribunals in the Russian Federation”, issued on July 24, 2002, arbitrators shall be impartial and independent in the course of arbitration proceedings carried out within the territory of the Russian Federation. In case a person is approached in connection to his possible appointment as an arbitrator, this person shall disclose any circumstances likely to give rise to justifiable doubts about his impartiality and independence. The arbitrator’s obligation to disclose any such circumstances to the parties without delay remains throughout the arbitration proceedings. On a practical level, considerable complications arise concerning the circumstances under which the law imposes an obligation to decline to accept an appointment to serve and a duty of disclosure of the relevant information, and sets grounds for disqualification of an arbitrator. Parties’ attempts to disrupt arbitration proceedings by making unfounded challenges, both in terms of compliance with procedural deadlines and in essence, are not uncommon.

Rules on Impartiality and Independence of Arbitrators (hereinafter referred to as “**Rules**”) aim to help to resolve the abovementioned issues and to perform a somewhat preventive function as well, i.e. contributing to settle certain issues at the earliest stage possible. The Rules aim to provide practical guidance to arbitrators. The Rules are also intended for the use by the authorized bodies that are entitled to resolve the issues of disqualification of arbitrators and termination of their powers for any other reasons. The Rules may be used by Russian state courts, when they consider cases on setting aside arbitral awards and on recognition and enforcement of arbitral awards, rendered within the territory of the Russian Federation.

The Rules reflect relevant international experience, including, in particular, International Bar Association Guidelines on Conflict of Interests in International Arbitration, and other relevant documents of international and professional associations, and a number of leading permanent arbitral institutions. Reflection of these documents indicates the universality of basic approaches to defining the essence of impartiality and independence of arbitrators. The Rules also reflect Russian case law and practitioners’ experience being aware of the importance of legal provisions of the place of arbitration.

The Rules are of advisory nature and are to be applied considering an agreement of the parties, arbitration rules and provisions of applicable law.

* recommended for application by the Presidium of International Commercial Arbitration Court under the RF CCI and Directorate of the Russian Centre of Arbitration and Conciliation Assistance

Section I. General Provisions

Article 1. Scope of regulation

1. These Rules establish ethical requirements for arbitrators, individuals, who are approached in connection with their possible appointments as arbitrators, and for candidate arbitrators, including requirements on their impartiality and independence, procedure for disclosure of certain circumstances, procedure for challenges and deciding challenges, as well as provisions on arbitrators' communication with the parties to arbitration and their counsel.

2. These Rules do not cover any other requirements that can be imposed on arbitrators by the parties' agreement, arbitration regulations or applicable law.

The provisions of these Rules dealing with the procedure for challenges and deciding challenges can be applied in case of challenges unrelated to requirements of impartiality and independence.

3. The provisions of these Rules are to be implemented considering agreement of the parties, arbitration rules and applicable legal provisions.

Article 2. Field of application

1. The present Rules are recommended for the use by permanent arbitral institutions (arbitral tribunals) established at the Chambers of commerce and industry in the Russian Federation.

2. The present Rules are used by the President of the Chamber of Commerce and Industry of the Russian Federation, when fulfilling the functions specified in the Law of the Russian Federation No. 5338-I "On international commercial arbitration", issued on July 7, 1993.

3. The present Rules are also recommended for the use in arbitration proceedings carried out in the Russian Federation by other arbitral tribunals.

Article 3. Use of terms

In these Rules, the following basic terms are used:

- arbitration – an arbitral tribunal established under a permanent arbitral institution or an arbitral body, or an *ad hoc* arbitral tribunal that conduct arbitration proceedings under the Law of the Russian Federation No. 5338-I "On international commercial arbitration", issued on July 7, 1993, and the Federal law No. 102-Φ3 "On arbitral tribunals in the Russian Federation", issued on July 24, 2002;

- arbitrator – an individual appointed by a party or under the established procedure in order to have a dispute resolved by an arbitral tribunal and consenting to serve as an arbitrator, including the presiding arbitrator of the arbitral tribunal, sole arbitrator, replacement presiding arbitrator of the arbitral tribunal, replacement sole arbitrator and replacement arbitrator (in case appointment of replacement arbitrators is provided in the arbitration rules);

- arbitral tribunal – a sole arbitrator or panel of arbitrators established for resolving a dispute between the parties to arbitration;

- person approached in connection with his possible appointment as an arbitrator – a natural person chosen by a party or appointed in order to have a dispute resolved by an arbitral tribunal, who has not yet consented to accept appointment to serve as an arbitrator under an established procedure or has not declined appointment as an arbitrator;

- arbitration proceedings – the process of resolving a dispute by an arbitral tribunal with a decision to be issued by this arbitral tribunal;

- arbitration rules – regulations, provisions, rules and other similar documents regulating the

procedure of resolving a dispute by this arbitral tribunal;

- authorized body – an arbitral tribunal, a body or a person authorized under the agreement of the parties, arbitration rules or applicable law to resolve issues related to disqualification of an arbitrator and termination of arbitrator's powers for any other reasons.

Section II. Impartiality and Independence of Arbitrator

Article 4. General requirements on impartiality and independence of an arbitrator

1. From the moment of acceptance of an appointment to serve as an arbitrator, and in the whole course of arbitration proceedings, the arbitrator shall be impartial and independent.

2. An arbitrator is considered impartial if he is not interested either expressly or impliedly in the outcome of the dispute and has no preconceived preferences or prejudices for or against a certain party to arbitration, its counsel, expert, consultant or witness.

3. An arbitrator is independent if there are no relationships between the arbitrator and the parties to arbitration, their counsel, experts, consultants, witnesses that can influence the judgment of the arbitrator on the case.

4. Doubts about impartiality and independence can be based on (without limitation) property, business, professional or personal relationships, which bind or has bound the arbitrator with a party to arbitration, its counsel, expert, consultant or witness at the time of arbitration proceedings, or within a prior reasonable period of time. Besides, doubts about impartiality and independence can be based on matrimonial or blood relations, as well as on employer-employee dependence, which bind the arbitrator with the other arbitrators belonging to the same arbitral tribunal in the course of arbitration proceedings.

5. A person approached in connection with his possible appointment as an arbitrator should decline to accept such appointment, and if he has already accepted appointment, he should recuse himself if he does not consider himself impartial or independent.

6. The provisions of this Section are applicable to individuals approached in connection with their possible appointments as arbitrators.

Article 5. Circumstances unconditionally precluding from serving as an arbitrator

The following circumstances evidence a lack of impartiality or independence, and unconditionally preclude a person from serving as an arbitrator:

1) the arbitrator, his spouse or close relative participates or has previously participated in these arbitration proceedings as a party to arbitration, its counsel, expert, consultant or witness;

2) the arbitrator, his spouse or close relative has a material interest in the charter (joint stock) capital or is a member of the executive body, board of directors (supervisory board) or another body of a legal entity, appearing as a party to arbitration, or of a parent company or subsidiary of a party to arbitration or its counsel. Interest is considered significant in any case if the arbitrator, his spouse or close relative, individually or jointly, holds a participatory interest exceeding 5% of the capital;

3) the arbitrator is a spouse or close relative of an arbitrator serving on the same arbitral tribunal;

4) the arbitrator is involved in employment relations with a party to arbitration or with its counsel, or earns a reward from them under civil law contracts, or represents the interests of a party to arbitration in another case, which is not connected with the present dispute, or acts as its expert or consultant;

5) the arbitrator has made public statements in relation to the subject matter of arbitration and, in

particular, expressed his legal evaluation of it.

Article 6. Circumstances to be disclosed

1. In case an arbitrator considers himself impartial and independent, he still shall immediately disclose any circumstances defined in the present article.

2. Any circumstances, which in the eyes of a reasonable and informed person can cause justifiable doubts about arbitrator's impartiality or independence, are subject to disclosure.

Any doubts shall be interpreted in favor of disclosure of the relevant circumstances.

3. The following circumstances shall be disclosed:

1) the arbitrator has been involved in employment relationship with a party to arbitration or its counsel, or received a reward from them under civil law contracts within three years prior to the commencement of arbitration;

2) the arbitrator has represented interests of any party to arbitration in another case, which is not connected with the present dispute, or acted in another case, where one of the parties to arbitration participated, as a counsel, expert or consultant within three years prior to the commencement of arbitration;

3) the arbitrator, who is or has been involved into employment relationship with an entity or earns reward from it under civil law contracts, or is a member of an attorney association, provided that such an entity or association (employees of such an entity or attorneys-at-law belonging to such an association) render legal services to one of the parties to arbitration or to its parent or subsidiary in the dispute in question or in another case not connected to the present dispute within three years prior to the commencement of the arbitration;

4) the arbitrator and a counsel, or an expert, or a consultant to one of the parties to arbitration are involved or have been involved into employment relations within the same organization within three years prior to the commencement of arbitration;

5) the arbitrator is or has been within three years prior to the commencement of arbitration proceedings in an employer-employee dependence with an arbitrator on the same arbitral tribunal;

6) the arbitrator, his spouse or close relative has an interest in charter (joint stock) capital of a party to arbitration or its parent company or subsidiary, while the amount of such interest does not matter;

7) the arbitrator has been previously appointed by a party to arbitration (its parent company or subsidiary) as an arbitrator in another case or has been appointed in another way as an arbitrator in another case where a party to arbitration participates, provided that this other case is not related to the present dispute by the nature of the filed claims and such another case has not commenced simultaneously with these arbitration proceedings;

8) the arbitrator has discussed issues related to these arbitration proceedings with a party to arbitration or its counsel contrary to the provisions of Articles 9 or 11 of these Rules;

9) the arbitrator acts or has acted within three years prior to the commencement of arbitration as an academic supervisor or research adviser of a party's counsel in the preparation of a thesis, otherwise, a party's counsel on the case acts or has acted within three years prior to the commencement of the arbitration as an academic supervisor or research adviser of the arbitrator in the preparation of a thesis;

10) a close personal friendship exists between an arbitrator and a counsel of a party, the arbitrator and the counsel of a party, inter alia, contribute a lot of time to personal communication not related to their professional activities, participation in professional or public associations.

4. The mere fact of disclosure of circumstances which can create justifiable doubts about arbitrator's impartiality or independence, does not preclude accepting and exercising powers of an arbitrator and does not oblige the authorized body to sustain a challenge by a party to arbitration to this arbitrator.

Article 7. Order of disclosure

1. The circumstances defined in Article 6 of these Rules are subject to disclosure not later than when a person accepts appointment to serve as an arbitrator, and if such circumstances occur or the arbitrator becomes aware of them at a later stage of the arbitration proceedings, these circumstances shall be disclosed immediately after the arbitrator becomes aware of them.

2. In order to fulfill his disclosure obligations the arbitrator shall take into account all available information and reasonably assess all the available information.

3. The arbitrator discloses the circumstances defined in Article 6 of these Rules in an order specified by the arbitration rules, and if such an order is not specified, he is to disclose these circumstances in writing directly to the permanent arbitral institution. The permanent arbitral institution shall without any delay bring the circumstances that the arbitrator has disclosed to it to the notice of the parties to arbitration as well as of the other arbitrators belonging to the same arbitral tribunal.

If an ad hoc arbitral tribunal decides the case, and the procedure for disclosure of the relevant circumstances is not specified by arbitration rules, then relevant circumstances are disclosed by the arbitrator in writing directly to the parties to arbitration and to the other arbitrators belonging to the same arbitral tribunal.

4. If certain circumstances which are subject to disclosure are confidential (i.e. recognized as state, commercial, official, professional secret or any other legally protected secret), then a person approached in connection with his possible appointment as an arbitrator or an arbitrator shall preliminarily apply to an authorized person in order to get his consent for disclosure of such circumstances, and if such consent is not received within a reasonable period of time, this person should decline to accept an appointment to serve as an arbitrator, and if this person has already been appointed, he should recuse himself.

Article 8. Circumstances that do not have to be disclosed

1. The arbitrator is not obliged to disclose circumstances, which cannot create justifiable doubts about arbitrator's impartiality or independence.

2. The following circumstances in particular do not interfere with serving as an arbitrator and are not subject to disclosure:

1) the arbitrator has expressed in the press or in a public speech a general opinion on the legal issue raised in the arbitration proceedings, but not in respect of the dispute in question;

2) the party's counsel in these arbitration proceedings studies or has formerly studied at an educational institution where the arbitrator teaches or has formerly taught, provided that the arbitrator does not act or has not acted within three years prior to the commencement of the arbitration as an academic supervisor or research adviser of the party's counsel at the preparation of a thesis;

3) the arbitrator and the party's counsel in these arbitration proceedings, expert, consultant, witness or another arbitrator from the same arbitral tribunal are or have been members at the same attorney chambers or at another professional or public association;

4) several arbitrators from the same arbitral tribunal work or have worked in the past in the same organization, provided that these arbitrators are not and have not been involved in relationship of

employer-employee dependence within three years prior to the commencement of the arbitration proceedings;

5) several arbitrators from the same arbitral tribunal or the arbitrator and a party's counsel, expert, consultant, witness are independent co-authors of the same multi-authored publication or acted as editors or reviewers of that publication;

6) several arbitrators from the same arbitral tribunal are or were on another tribunal of the same or another arbitral institution;

7) the arbitrator and a party's counsel, expert, consultant, witness are or have previously been on another tribunal of the same or another arbitral institution provided that another arbitral tribunal was composed to resolve a dispute not related to the dispute at hand;

8) the arbitrator was appointed by the same party to arbitration or by its parent or affiliate companies as an arbitrator on another case (cases) or was in another way appointed as an arbitrator on another case (cases) with the participation of the party to arbitration, provided that such another case (cases) is not related to the dispute at hand in its matter, or such another case (cases), which is related to the dispute in its matter, has commenced simultaneously with the present arbitration proceedings;

9) the arbitrator has participated in public events (conferences, seminars, presentations, etc.) a party to arbitration or its counsel financially or organizationally supported provided that the arbitrator has not received any award from the party to arbitration or its counsel;

10) the arbitrator and counsel of a party to arbitration, expert, consultant, witness are (or have previously been) enrolled in same list of arbitrators or conciliators continuously used by the permanent arbitral institution or by another alternative dispute resolution body;

11) the arbitrator is or has formerly been a consumer of goods (works, services) provided by a party to arbitration or its parent or subsidiary provided that the arbitrator purchased such goods (works, services) under the conditions similar to other consumers purchasing these goods (works, services).

Section III. Procedure for Communication with Parties to Arbitration and their Counsels

Article 9. Communications between a candidate arbitrator and a party to arbitration or its counsel

1. If, according to an agreement of the parties, arbitration rules or applicable law, a party may appoint an arbitrator, then prior to making a decision on the appointment of a person who will be serving as an arbitrator, a party to arbitration and its counsel may ask the candidate for arbitrator's position (further referred to as "candidate") to be interviewed in an order set in this Article.

2. The interview is carried out only to confirm that there are no justifiable doubts about impartiality and independence of the candidate, to assess the compliance of the candidate with the requirements on professional skills and experience necessary to exercise the powers of an arbitrator and to establish that the candidate has enough time for participation in the arbitration proceedings.

3. In case the candidate has agreed on the interview, than in the process of such interview with a party to arbitration or its counsel the candidate may discuss the following issues:

- titles or names of parties to arbitration and their counsel, names of parent and affiliate companies related to the parties to arbitration and their counsel, titles or names of third persons who are or can be involved in the arbitration proceedings, names of other chosen or appointed arbitrators from the same arbitral tribunal and names of appointed experts, consultants and witnesses;

- the general nature of the dispute, the type of the claims, the language of the arbitration proceedings, the applicable law, the place of arbitration and the arbitration rules to be applied;

- the proposed duration of arbitration proceedings;
- the candidate's expertise and professional background.

4. The candidate shall withhold from a discussion with a party to arbitration or its counsel of the issues that go beyond the limits set out in the present article.

5. In the process of an interview with a party to arbitration or its counsel the candidate is not authorized to discuss the following issues in any case:

- the factual background of the claim;
- legal views and arguments of the parties to arbitration;
- the calculation of the amounts claimed;
- evidence presented or to be presented by a party to arbitration;
- special terms concerning payment of arbitration fees or compensation of any expenses of the arbitrator;
- other issues that would result in the candidate expressing his or her opinion in respect of the dispute.

6. An interview between the candidate and a party to arbitration or its counsel, in case the provisions of this article are followed, is not considered as circumstances, which might give rise to justifiable doubts about impartiality and independence of an arbitrator, and are not subject to disclosure in an order set out in Article 7 of the present Rules if the interviewed person was subsequently appointed as an arbitrator or nominated as an arbitrator by any of the parties of the arbitration proceedings.

7. The candidate may reject or terminate the interview with a party to arbitration or its counsel at any point without any explanation. Such rejection of the interview or its termination are not considered as circumstances, which might give rise to justifiable doubts in respect of impartiality and independence of an arbitrator, and are not subject to disclosure as per the procedure set out in Article 7 of the present Rules provided that the interviewed person was subsequently appointed as an arbitrator or nominated as an arbitrator by any of the parties to arbitration.

8. The candidate may inquire on his own initiative the information indicated in paragraphs 2-3 of this article from a party to arbitration or its counsel approaching him.

9. The candidate may provide a brief biography to a party or its counsel approaching him including information on education, current and previous professional activities.

10. The provisions of the present article cover communications of the candidate with a party to arbitration or its counsel in any form and by any means of communication.

Article 10. Disclosure of information upon accepting the arbitral appointment

1. A person accepting an appointment to serve as an arbitrator shall fill in and sign an application where he expresses his consent to accept and exercise the powers of an arbitrator as per an agreement of the parties, arbitration rules and applicable law.

In case of the circumstances specified in Article 6 of the present Rules, a person accepting an appointment to serve as an arbitrator shall simultaneously disclose such circumstances in order set out in Article 7 of these Rules.

2. A person, accepting an appointment to serve as an arbitrator, shall immediately provide the permanent arbitral institution with a brief biography, including information on education, current and previous professional activities, if such information has not been submitted to the permanent arbitral

institution before, or in case it has been changed. The permanent arbitral institution provides this brief biography to the parties to arbitration upon their request.

3. In case an arbitral tribunal is specifically established to resolve a dispute (ad hoc), then a person accepting an appointment to serve as an arbitrator shall immediately submit such brief biography directly to the parties to arbitration or to the authorized body upon their request.

Article 11. Legitimacy of discussion of the issues of arbitration with a person approached in connection with his possible appointment as an arbitrator, and with an arbitrator

1. Arbitrator, as well as a person approached in connection with his possible appointment as an arbitrator, has no right to discuss the issues related to the arbitration proceedings at hand with the parties to arbitration, their counsel, experts, consultants, witnesses, beyond the limits set for the arbitration proceedings.

2. Violation of the hereby set limits for discussion of the issues, related to the present arbitration proceedings, is a circumstance, which may give rise to justifiable doubts about impartiality and independence of an arbitrator.

Section IV. Disqualification and Termination of Arbitrator's Powers

Article 12 Right to challenge

1. A party to arbitration may challenge arbitrator with a written motivated notice of challenge within the time limits set out in the arbitration rules or applicable law, in case there are circumstances giving rise to justifiable doubts about impartiality and independence of an arbitrator.

However, such challenge by a party to arbitration does not suspend or terminate arbitrator's powers.

2. A party to arbitration may challenge an arbitrator, whom it has appointed or in appointment of whom the party has participated, only because of the circumstances that the party became aware of after his appointment.

3. Disagreement of a party to arbitration with the position of the arbitrator on legal or factual issues cannot construe a ground for a challenge.

4. If within the set time period the party to arbitration, which received the information, disclosed by the arbitrator or of which it became aware from the other sources, giving rise to justifiable doubts about impartiality and independence of the arbitrator, did not challenge him, it is deemed that such a party to arbitration has waived its right to challenge.

The authorized body, however, can accept the challenge to its consideration even if the challenge was submitted untimely, taking into account the validity of the excuse for the untimely submission and essence of the grounds for the party's challenge.

5. A party will not be considered to have waived its right to challenge in case of the circumstances laid down in Article 5 of these Rules.

Article 13. Procedure for deciding on the challenge

1. Arbitrator may be disqualified upon an agreement of the parties to arbitration, arbitrator's self-recusal, decision of a body authorized to decide on challenges to arbitrators and upon the other grounds specified in the arbitration rules or applicable laws.

2. If one of the parties to arbitration challenges an arbitrator, and the other party agrees to the challenge, then arbitrator is considered to be disqualified by agreement of the parties to arbitration.

3. Self-recusal of the arbitrator or disqualification upon an agreement between the parties to arbitration do not amount to acceptance of the circumstances upon which the challenge was based.

4. In case a challenged arbitrator does not self-recuse and the other party to arbitration does not agree on disqualification, then the challenge shall be decided in accordance with the procedure laid down in arbitration rules and applicable law.

5. The authorized body determines if the circumstances laid down in the challenge create justifiable doubts about arbitrator's impartiality and independence. At that, arbitrator's impartiality and independence are assessed from the viewpoint of an unprejudiced and reasonable person, fully informed on all relevant circumstances.

6. When deciding on the challenge, the authorized body may take into account whether the challenged arbitrator has timely complied with his obligation to disclose certain circumstances laid down in Article 6 of these Rules.

7. Prior to deciding on the challenge, the other party to arbitration and the challenged arbitrator disqualification are offered to outline their positions on the challenge in writing and submit them that to the authorized body within the specified time limits.

If an authorized body other than arbitral tribunal decides the challenge, then the other arbitrators from the same arbitral tribunal are timely offered to submit their positions on the challenge in writing.

The authorized body can also propose to the other individuals, whose opinion can have a value for the decision on the challenge, to lay down their positions on the challenge in writing.

The authorized body can also propose to individuals, mentioned in this clause, to submit additional clarifications on the previously laid down position.

8. The authorized body can decide upon its own initiative on a challenge to arbitrator if these powers are granted in the arbitration rules or applicable law, and the authorized body, after considering all circumstances, made a conclusion that there are circumstances giving rise to justifiable doubts about impartiality and independence of the arbitrator.