



Rules on Conflict of Interest of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry

I. Preamble

The Arbitration Court attached to the Hungarian Chamber of Commerce and Industry has set itself the objective of establishing its own rules to uphold the independence and impartiality of arbitrators, drawing upon internationally recognised norms and the increasingly prevalent practice adopted by other arbitral institutions. The Rules on Conflict of Interest of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, while taking into account international practice, lay down provisions that build on domestic specificities and established case law, are suited to domestic circumstances in the proceedings administered by the Arbitration Court, and are aimed at upholding the requirement of arbitrator independence and impartiality.

II. General provisions

1. Article [Definitions]

Rules of Proceedings: The Rules of Proceedings of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, as in force from time to time, irrespective of whether they are applied by the Arbitration Court or by another institution.

Affiliate: An Affiliate is a legal entity in relation to which a relationship of affiliated undertakings, within the meaning of Act LXXXI of 1996 on Corporate Tax and Dividend Tax, exists on the part of a party involved in the arbitral proceedings.

Grounds for Exclusion: The circumstances set out in Article 5 of the present Rules which result in mandatory exclusion due to the objective conflict of interest inherent in such circumstances. Since in these cases it is not possible to uphold the requirements set out in Article 3 of the present Rules, the arbitrator should already reach the conclusion that the nomination cannot be accepted, or, if the nomination has already been accepted, that the arbitrator may not continue to act as arbitrator and must resign from office, failing which the arbitrator shall be excluded as a result of a challenge submitted by any party.

Family Member: A family member shall mean a spouse, a lineal relative, an adopted child, a stepchild and a foster child, an adoptive parent, a stepparent and a foster parent, a sibling, a domestic partner, the spouse of a lineal relative, the lineal relative and sibling of a spouse, and the spouse of a sibling.

Material Benefit: Any benefit, advantage, or gift, in whatever form, given directly or indirectly to the arbitrator by a party or its counsel, excluding the arbitrator's fees.

Arbitrator: A person nominated as arbitrator pursuant to the Rules of Proceedings of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, who has accepted the nomination.

Arbitration Court: The Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Commercial Arbitration Court), which provides administrative assistance to the parties and the arbitral tribunal through its organs (Presidium, Secretariat) to foster the fast and efficient conduct of arbitral proceedings.

Arbitral Tribunal: An adjudicating body composed of several arbitrators, in an odd number, proceeding to settle the legal dispute of the parties.

2. Article [Scope]

- (1) The provisions of the present Rules detail the obligations of arbitrators in relation to arbitral proceedings conducted under the Rules of Proceedings of the Arbitration Court with respect to ensuring the conditions for independent and impartial proceedings and the scope of the disclosure obligation.
- (2) In accordance with Article 31(2) of the Rules of Proceedings, the Arbitration Court recommends that the present Rules be applied in arbitral proceedings not containing an international element, and that a reference to the application of the present Rules be recorded in a procedural order.
- (3) The parties may, by mutual agreement – including in arbitral proceedings not containing an international element – agree on the application of another national or international standard in lieu of the present Rules, in particular, the IBA Guidelines on Conflicts of Interest in International Arbitration adopted by the International Bar Association.
- (4) Where the arbitral proceedings contain an international element, the parties may, by mutual agreement – no later than the case management conference or, in the absence thereof, at the first hearing – agree on the application of the present Rules.
- (5) If the arbitrator has accepted the nomination and the parties subsequently agree by mutual consent on the application of different rules on conflict of interest or a different standard, the arbitrator shall, upon becoming aware of such agreement without delay, review whether the acceptance of the nomination is consistent with the rules chosen by the parties and whether any further disclosure obligation arises under the newly applicable standard. This obligation forms part of the arbitrator's continuous disclosure obligation. If, under the new standard, the arbitrator could not have accepted the nomination, the arbitrator must resign from office without delay. If a disclosure obligation arises under the new standard, the arbitrator shall disclose the relevant circumstances to the parties without delay.

- (6) The provisions of the present Rules shall be interpreted in accordance with the provisions of Act LX of 2017 on Arbitration and the Rules of Proceedings of the Arbitration Court; the present Rules do not affect the rights, obligations, and other procedural provisions set out therein.

III. General principles

3. Article [Independence and impartiality]

- (1) The arbitrator shall be independent and impartial throughout the arbitral proceedings. The arbitrator shall decide all issues of law and fact arising in the course of the arbitral proceedings impartially, giving equal consideration to the arguments of the parties. The arbitrator must be in a position to devote such time and attention to the adjudication of the dispute as may reasonably be expected by the parties. The parties are entitled to have their case adjudicated by an arbitrator who is able to ensure these conditions.
- (2) The arbitrator may only accept the nomination as arbitrator, or, if the nomination has already been accepted, may only continue to act as arbitrator, as long as the arbitrator is satisfied that the obligations set out in paragraph (1) can be fulfilled.
- (3) The requirement of independence and impartiality shall apply to the arbitrator from the time of the nomination in the case until the completion of the arbitrator's duties in the case.
- (4) The arbitrator shall actively contribute to maintaining independence and impartiality. If the arbitrator is satisfied that the requirements set out in paragraph (1) can be fulfilled, the arbitrator shall, simultaneously with the acceptance of the nomination and continuously thereafter throughout the proceedings, disclose all other facts and circumstances that may, in the eyes of the parties, give rise to justifiable doubts as to the arbitrator's independence and impartiality.

4. Article [Communication with the parties during the arbitral proceedings]

- (1) The arbitrator – excluding the preliminary consultations necessary for the nomination as arbitrator and the communication relating to the designation of the presiding arbitrator – shall not hold private discussions with the parties or their representatives on the merits of the case or on procedural matters.
- (2) Following the constitution of the arbitral tribunal, the arbitral tribunal and the individual arbitrators may only communicate with all parties and their counsel simultaneously and with identical content on matters relating to the merits of the case and the proceedings.
- (3) All communication with the parties, other than at the case management conference and the hearing, shall be in writing (including communications in electronic form).
- (4) The arbitrator shall not receive any Material Benefit in connection with the arbitrator's activities as arbitrator.

IV. Circumstances giving rise to justifiable doubts as to the independence and impartiality of the arbitrator

5. Article [Grounds for Exclusion]

- (1) Justifiable doubts as to the impartiality and independence of the arbitrator may be established, and the arbitrator should already reach the conclusion that the nomination as arbitrator cannot be accepted, or, if the nomination has already been accepted, that the arbitrator may not continue to act as arbitrator and must resign from office, failing which a challenge submitted against the arbitrator shall be considered well-founded, including but not limited to cases where it can be demonstrated that the person nominated as arbitrator
 - a. is a party, a person jointly entitled or obliged with a party, or a person whose rights or obligations may be affected by the arbitral proceedings;
 - b. is counsel for a party;
 - c. is a person who has previously participated in the same arbitral proceedings in any other capacity, including but not limited to as an expert, witness, or secretary of the arbitral tribunal;
 - d. practises as a lawyer in the same law firm, association of lawyers, shared office arrangement, or similar legal practice as the counsel for a party;
 - e. has an interest in the outcome of the case, in particular if the arbitrator would derive a financial advantage therefrom, whether directly or indirectly;
 - f. is an owner, or in the case of a publicly listed company a majority owner, an executive officer, or a member of the supervisory board of a company that has an economic interest in the outcome of the dispute;
 - g. currently or regularly advises, or has advised within the past three years, one of the parties and the arbitrator or the arbitrator's law firm derives income therefrom;
 - h. is a Family Member of one of the parties, of an executive officer or owner of one of the parties, of the majority shareholder of a party that is a public limited company, of a supervisory board member of one of the parties, of any person exercising controlling influence over a party or any of its Affiliates, or of the legal representative of a party;
 - i. is subject to any other circumstances that make independent and impartial conduct impossible.
- (2) The Grounds for Exclusion may also be established where the circumstances referred to in points (e) or (f) exist in relation to a Family Member of the arbitrator.
- (3) If the arbitrator practises law as a profession, the arbitrator's law firm shall be considered as bearing the identity of the arbitrator; accordingly, where the circumstances referred to in paragraph (1) exist in relation to the arbitrator's law firm, it may be determined on the basis

of an assessment whether the arbitrator may act in the case. This rule shall also apply to companies in which the arbitrator serves as an executive officer, a member of the supervisory board, an owner, a majority owner in the case of a publicly listed company, or in-house counsel.

- (4) Where the circumstances set out in paragraph (1) exist, the arbitrator must decline the nomination in accordance with Article 3(2), or, if the arbitral proceedings are already pending, must resign from office.
- (5) Where the circumstances set out in paragraph (1) exist, the parties may not agree, even by mutual consent, that the arbitrator concerned shall act in the adjudication of the dispute.

V. General rules on the disclosure obligation

6. Article [Disclosure obligation]

- (1) The arbitrator shall disclose to the parties all facts and circumstances that may give rise to justifiable doubts as to the arbitrator's independence, impartiality, or ability to adjudicate the case objectively. In fulfilling the disclosure obligation, the arbitrator shall act with the degree of diligence generally expected in the given circumstances, thereby ensuring the disclosure of all circumstances that may, in the eyes of the parties, give rise to justifiable doubts as to the arbitrator's independence, impartiality, or ability to adjudicate the case objectively.
- (2) The arbitrator shall fulfil the disclosure obligation at all stages of the arbitral proceedings.
- (3) The disclosure obligation extends, in particular, to the arbitrator's relationships with the parties and their counsel, and in the case of an arbitral tribunal, to the arbitrator's relationships with the other arbitrators, as well as to the arbitrator's statements directly relating to the subject matter of the dispute.
- (4) The arbitrator's primary obligation is to carefully consider whether any circumstance exists that would prevent the acceptance of the nomination. In the case of the Grounds for Exclusion set out in Article 5 of the present Rules, the arbitrator may not accept the nomination. If, in the arbitrator's assessment, a given circumstance does not constitute a Ground for Exclusion, this does not relieve the arbitrator of the disclosure obligation in respect of that circumstance.
- (5) If, as a result of this assessment, the arbitrator concludes that no circumstance exists that would give rise to justifiable doubts in the parties, the arbitrator shall accept the nomination. Upon acceptance of the nomination, however, the disclosure obligation becomes of paramount importance, taking precedence over all other obligations, thereby guaranteeing the impartial and independent conduct of the arbitrator. If the arbitrator has any doubt as to whether a particular circumstance should be disclosed to the parties, the arbitrator shall resolve such doubt in favour of disclosure.

- (6) If, notwithstanding a Ground for Exclusion, the arbitrator accepts the nomination, or if a Ground for Exclusion arises during the course of the arbitrator's proceedings, the arbitrator must resign from office. Where a Ground for Exclusion exists, a challenge against the arbitrator must be upheld.
- (7) If the arbitrator has fulfilled the disclosure obligation and no party has submitted a challenge within the applicable time limit, the arbitrator may act in the case notwithstanding the existence of the disclosed circumstances, except where the Grounds for Exclusion set out in Article 5 exist. Where a Ground for Exclusion exists, the arbitrator must proceed in accordance with paragraph (6).

7. Article [Consequences of failure to comply with the disclosure obligation]

- (1) A failure to comply with the disclosure obligation shall not, as a general rule, in itself justify justifiable doubts as to the arbitrator's conduct.
- (2) A failure to comply with the disclosure obligation may only justify justifiable doubts as to the arbitrator's conduct, based on an assessment of the circumstances, if the arbitrator failed to discharge the disclosure obligation in respect of circumstances that would have given rise to justifiable doubts in a reasonable third person.
- (3) With reference also to Subsection (2) above, if it can be established from the circumstances that the arbitrator could have fulfilled the disclosure obligation but failed to do so, the challenge must be upheld.

8. Article [Consequences of failure to submit a timely challenge]

If, within 15 days following the disclosure of the circumstances, neither party submits a challenge, the circumstances relating to the person of the arbitrator shall be deemed not to give rise to justifiable doubts in the parties. After the expiry of 15 days from the date of becoming aware of such circumstances, no objection may be raised against the arbitrator in respect of the known circumstances.

VI. Specific Circumstances Calling into Question the Independence and Impartiality of the Arbitrator

9. Article [Common rules]

- (1) If the arbitrator accepts the nomination, the arbitrator shall in all cases bring to the attention of the parties, in the course of fulfilling the disclosure obligation, the existence of any specific circumstances calling into question the arbitrator's independence and impartiality.
- (2) If the arbitrator discloses a specific circumstance calling into question the arbitrator's independence and impartiality and a party submits a challenge on this basis, the conflict of interest of the arbitrator may be established in the course of the determination of the challenge, taking into account all the circumstances of the case.

10. Article [Interest in the determination of a legal issue]

The arbitrator shall disclose if, for any reason, the arbitrator has an interest in the outcome of the arbitral proceedings. The arbitrator shall disclose, in particular, if the arbitrator acts as counsel in proceedings involving the same legal issue as the arbitral proceedings, on behalf of a party not involved in the arbitral proceedings.

11. Article [Academic and professional relationships]

- (1) The arbitrator shall disclose if the arbitrator is in an employment or engagement relationship, or performs teaching activity under any other legal relationship, at the same workplace as a party, its counsel, or, in the case of an arbitral tribunal, another arbitrator, including but not limited to a university – in particular, but not limited to, a university department – or other educational institution, specialised college, or other professional organisation.
- (2) The arbitrator shall also disclose any other organisational or institutional membership in which the arbitrator is in a hierarchical relationship with any of the parties or their counsel, or, in the case of an arbitral tribunal, with another arbitrator. For the avoidance of doubt, this provision shall not apply to professional public bodies and organisations connected with the relevant profession, in particular professional chambers, arbitration associations, or the recommended list of arbitrators or governing body of a permanent arbitration court.
- (3) The arbitrator shall disclose if, during the past three years or during the course of the arbitral proceedings, the arbitrator has been in a teacher–student relationship with any of the parties, their counsel, or, in the case of an arbitral tribunal, another arbitrator, where, based on an assessment of the other circumstances, a professional-academic relationship between them may be inferred that could give rise to justifiable doubts as to the arbitrator’s independence and impartiality.
- (4) The arbitrator is not required to disclose the arbitrator’s entire publication history; it is sufficient to disclose publications relevant to the dispute to the parties, in particular where such publications may have relevance to the substantive determination of the case.

12. Article [Relationship with the members of the arbitral tribunal]

- (1) The arbitrator shall disclose if, within the three years preceding the arbitral proceedings, the arbitrator worked as a lawyer in the law firm of another arbitrator or counsel participating in the proceedings, or was otherwise associated with them.
- (2) The arbitrator shall disclose if another member of the arbitrator’s law firm serves as arbitrator in another dispute involving the same party or parties, or an Affiliate of one of the parties.
- (3) The arbitrator must disclose if any Family Member of the arbitrator is a partner or employee of the law firm representing one of the parties.

13. Article [Relationship with the parties]

- (1) The arbitrator shall disclose if, within the three years preceding the nomination as arbitrator, the arbitrator was nominated as arbitrator on at least three occasions by any of the parties to the arbitral proceedings, their Affiliates, or their counsel, provided that the arbitrator accepted such nominations.
- (2) The arbitrator shall disclose if, within the three years preceding the arbitral proceedings, the arbitrator acted as arbitrator or counsel in another case involving one of the parties or any of its Affiliates, or provided legal advice to a party or its Affiliate.
- (3) The arbitrator shall disclose if the arbitrator regularly represents one of the parties to the arbitral proceedings or its Affiliate, but does not participate in the dispute forming the subject matter of the arbitral proceedings.
- (4) The arbitrator shall disclose if, within the past three years or during the course of the arbitral proceedings, the arbitrator has acted or is acting as counsel against one of the parties or any of its Affiliates in an unrelated matter.
- (5) The arbitrator shall disclose if the arbitrator's law firm or employer has or has had, during the course of the arbitral proceedings or within the past three years, a significant commercial relationship with one of the parties or with an Affiliate of one of the parties.
- (6) The arbitrator shall disclose if, during the course of the arbitral proceedings or within the past three years, the arbitrator has acted as an expert on behalf of one of the parties or any of its Affiliates in an unrelated matter.

14. Article [Subject-matter bias]

- (1) The arbitrator shall pay particular attention to examining the circumstances giving rise to a disclosure obligation where, within the three years preceding the appointment as arbitrator, the arbitrator has publicly taken a position on a legal issue arising in a dispute involving the same professional sector and the same legal question.
- (2) A public statement relating to disputes involving the same professional sector and the same legal question may give rise to justifiable doubts in the parties and shall in all cases give rise to a disclosure obligation, where it can be reasonably inferred from the circumstances that the arbitrator's opinion on the merits of the case cannot be dissociated from the arguments put forward in the earlier public statement. This may be established in particular where the arbitrator's earlier statements on the legal issue, the form, style, or frequency of their communication, or other relevant circumstances of the case make this apparent, and as a result the arbitrator is unable to approach the arguments submitted in the arbitral proceedings with sufficient open-mindedness.
- (3) The rule set out in paragraphs (1)-(2) shall not be construed so as to restrict arbitrator appointments in the same professional sector. The mere fact that the arbitrator has acted in

other disputes related to the professional sector of the specific dispute shall not, in itself, give rise to doubts in the parties.

- (4) Subject-matter bias may not be presumed solely from the circumstance that the arbitrator has previously addressed or analysed the legal question forming the subject matter of the dispute in the course of the arbitrator's academic work.

15. Article [Personal relationships]

- (1) The arbitrator shall disclose if the arbitrator has a personal relationship with the parties or their counsel, or, in the case of an arbitral tribunal, with another arbitrator, that may have an effect on the impartial and independent adjudication of the dispute. This includes, but is not limited to, a close friendship or express enmity between the arbitrator and the parties or their counsel, or, in the case of an arbitral tribunal, with another arbitrator.
- (2) The arbitrator is not required to disclose a connection with any of the parties, their counsel, or, in the case of an arbitral tribunal, with another arbitrator, existing solely on social media platforms.