



MILAN  
CHAMBER OF  
ARBITRATION

## **INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS**

### **COLLECTION OF DECISIONS OF THE ARBITRAL COUNCIL OF THE MILAN CHAMBER OF ARBITRATION**

#### **The publication**

The collection of decisions of the Arbitral Council of the Milan Chamber of Arbitration regarding the independence and impartiality of the arbitrator meets the broadly felt need for transparency in arbitration.

Indeed, before appointing an arbitrator, parties and counsels often wonder whether certain circumstances or facts would hinder the professional they are going to appoint.

Furthermore, challenges of arbitrators and comments on their position have undoubtedly raised over the last years, while the growing number of professionals involved in arbitral proceedings has unavoidably widened the amount of potential conflicts of interest between parties, arbitrators and counsels.

The aim of the publication is to collect relevant cases in which the Arbitral Council has been called upon to evaluate the arbitrator's confirmation or non-confirmation on the basis of their statements of independence and/or in light of the comments or challenges filled by the parties. The publication is anonymous and periodical.

This collection of decisions focuses on the most controversial cases and it is not meant to cover those related to a clear lack of independence or frivolous challenges. The publication aims at drawing attention to the most doubtful and sensitive cases where the Arbitral Council had to ponder carefully various elements such as the intensity of a given relationship, its frequency and the presence or absence of comments by the parties.

To date, the cases published deal with the relationship between an arbitrator and a party or its counsel. Thereafter, more rulings will be made public, focusing on other aspects, such as the arbitrator's personal or economic interest in the subject matter of the dispute, or his or her bias as to the questions at issue.

The publication represents a first step towards an institutional case law on arbitrators' independence and impartiality and it contributes to spread a culture of transparency and independence of arbitrators in commercial arbitration.

### **The procedure followed by the CAM to verify the independence and impartiality of arbitrators**

The Milan Chamber of Arbitration ensures the independence and impartiality of arbitrators through a control based on the following principles:

- 1.** The arbitrator, whether appointed by the parties, the Chamber or any other individual or entity, must be independent and impartial throughout the arbitral proceedings.
- 2.** Each arbitrator must fill a declaration of acceptance, availability, impartiality and independence in which he/she has to disclose any circumstance and relationship that might be relevant.
- 3.** Any doubt as to whether the arbitrator should disclose a relevant fact which might affect his/her impartiality or independence must be resolved in favour of disclosure. When filling the statement of independence, the arbitrator must make sure to specify for each potential conflict of interest its time and duration. The statement must cover all the actors involved: the parties and their counsels, the other arbitrators, as well as the technical consultant and the arbitral institution.
- 4.** When filling the statement of independence, the arbitrator shall take into consideration the firm or organization where he/she performs an ongoing professional relationship.
- 5.** The disclosure of relevant facts, circumstances and relationships does not imply the existence of doubts as to the impartiality or independence of the arbitrators. The disclosure leads to a verification by the Arbitral Council, after the parties have been heard.
- 6.** The duty of disclosure continues during the arbitral proceedings and the statement of independence must be reiterated when new relevant facts or circumstances occur during the arbitral proceedings.
- 7.** Each party may file written comments or an action to challenge the arbitrator within ten days from the receipt of the statement of independence or from the date when the party becomes aware of the ground for the challenge.
- 8.** When deciding on the confirmation or non-confirmation of an arbitrator, the Arbitral Council takes into consideration his/her statement of independence and any comment or challenge filed by the parties.