



MILAN
CHAMBER OF
ARBITRATION



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INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS

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

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1. RELATIONSHIPS BETWEEN THE ARBITRATOR AND THE PARTIES

CASE N. 1 - 2016

Decision of the Arbitral Council 03.09.2012

ARBITRATOR-PARTY RELATIONSHIP

RELATIONSHIPS (CONSULTANCY, ASSISTANCE, OTHER APPOINTMENTS) WITH BOTH PARTIES – related company – debt restructuring – arbitrator-counsel relationship – filing of the request for arbitration – colleagues relationship – incomplete disclosure – integration of the statement – non confirmation *ex officio*

CASE	<p>The arbitrator appointed by the claimant declares that he served as advisor for both parties, specifying that such relationships are “long over”.</p> <p>Following a request from the Secretariat of the Chamber, the arbitrator supplements the statement of independence, adding that the last consultancy on corporate laws issues for the respondent was provided in the course of 2008 . As for the claimant, the arbitrator declares that an associate of his firm - not bound by associative ties with him - took up a position in 2011 for the restructuring of the debt of both claimant’s company and its related company.</p> <p>After a second request from the Secretariat, related to the request for arbitration that was filed by an associate of the arbitrator’s law firm, the arbitrator declares that, since his office is in Milan, the counsel of the claimant asked one of his associates to file the request for arbitration in order to avoid the travel from Rome to Milan.</p> <p>The claimant declares not to have any comment on these circumstances.</p> <p>The respondent does not file any comment.</p>
REASONS	<p>In the present case, two different relationships have to be considered: the first one occurs between the arbitrator and the party; the second one involves the arbitrator and a party’s counsel.</p> <p>The first statement of independence filed by the arbitrator was incomplete in terms of period and duration of the relationships disclosed. Indeed, the Secretariat had to request twice an integration of the statement. As a general rule, it is a duty of the arbitrator to disclose relevant facts in a complete and systematic manner. Any doubt as to whether the arbitrator should disclose a relevant fact must be resolved in favour of disclosure.</p> <p>The circumstance that the arbitrator has a relationship with both parties does not mean that his position is well balanced. The connection between the arbitrator and one of the parties does not compensate for the connection he has with the counterparty. Each critical relationship must be evaluated separately.</p> <p>Furthermore, the fact that the request for arbitration has been filed by an associate of the arbitrator’s law firm instead of one of the parties’ counsel is a severe circumstance. It implies that the arbitrator has received a procedural act before the starting of the proceeding: briefs and documents shall be transmitted to the Arbitral Tribunal by the Secretariat and they must be received simultaneously by all the arbitrators.</p> <p>The Arbitral Council can proceed to the non-confirmation <i>ex officio</i> of an arbitrator even if the parties do not comment on his appointment or if they declare not to have objections to his confirmation.</p>
DECISION	<p>The Arbitral Council DID NOT CONFIRM the arbitrator.</p>



CASE N. 2 - 2016

Decision of the Arbitral Council 20.02.2013

ARBITRATOR-PARTY RELATIONSHIP

RELATIONSHIP (CONSULTANCY, ASSISTANCE, OTHER APPOINTMENTS) WITH ONE OF THE PARTIES – related company – corporate actions – arbitrator’s law firm-party relationship – participation in the law firm’s profits – period and duration of the relationship – non-binding nature of the IBA Guidelines

CASE	<p>The arbitrator appointed by the respondent declares that in 2009 he served as counsel for one of the companies controlled by the respondent in a corporate transaction that was concluded during that year. Furthermore, the arbitrator states that the law firm where he is a partner has a continuous and ongoing consulting relationship with the respondent and many of its controlled companies, albeit on company issues unrelated to the arbitration proceeding. The arbitrator claims that, however, he is not involved in such consulting relationship.</p> <p>The claimant declares that further information on the arbitrator’s position is needed. The arbitrator supplements his statement of independence and confirms that the law firm where he works has received, and could receive in the future, more appointments by the respondent and its controlled companies on those issues, albeit unrelated to the arbitral proceeding. The arbitrator also specifies that, as a partner of the law firm, he shares the profits arising from the activities carried out by the various offices of the firm.</p> <p>The respondent does not file any other comment.</p>
REASONS	<p>The relationship disclosed is between the arbitrator and one of the parties. In general, it is a more intense and delicate type of relationship to evaluate than those between an arbitrator and a counsel, which frequently are the result of working relationships between professionals.</p> <p>In the present case, the time factor is the crucial element that militates against the confirmation because:</p> <p>(a) only two years have elapsed between the conclusion of the arbitrator’s consulting work for one of the respondent’s controlled companies and his appointment as arbitrator. The Arbitral Council, in fact, using the <i>IBA Guidelines on Conflicts of Interest in International Arbitration</i> as a non-binding reference tool, normally considers as no longer relevant relationships those terminated more than three years ago (unless they keep having actual implications on the case).</p> <p>(b) currently, the arbitrator’s law firm keeps carrying out consulting activities in favour of both the respondent and respondent’s controlled companies. The arbitrator, moreover, as a partner of the firm, participates in its profits, including the fees paid by the company that appointed him and by its controlled companies.</p>
DECISION	<p>The Arbitral Council DID NOT CONFIRM the arbitrator.</p>



CASE N. 3 – 2016

Decision of the Arbitral Council 24.01.2013

ARBITRATOR-PARTY RELATIONSHIP

DEFENCE OF A RELATED COMPANY TO ONE OF THE PARTIES – integration of the disclosure – advanced stage of the proceeding

CASE

During the proceeding and after the constitution of the Arbitral Tribunal, the arbitrator appointed by the respondent supplements his statement of independence to add that, at the beginning of 2013, he had taken on the defense in court of a company that is a partner of claimant's parent society. Such dispute, which started in 2012, does not involve the claimant, but different partner companies of its parent society. Both parties explicitly state that they do not have comments.

The Arbitral Council decides at the beginning of 2013.

REASONS

The relationship disclosed, which links the arbitrator and one of the parties, concerns assistance in a judicial proceeding. This is not a direct relationship between the arbitrator and the party since the assistance is provided to a company in partnership with the claimant's parent company.

Such indirect relationship between the arbitrator and the party has to be taken into consideration.

Furthermore, both parties expressly declared to have no objections to the arbitrator's confirmation.

Finally, the Arbitral Council also took into account that such circumstance had occurred during the proceedings, that the arbitrator had immediately disclosed it, and that the proceeding was at an advanced stage (i.e. the evidentiary phase well under way).

DECISION

The Arbitral Council **CONFIRMED** the arbitrator.



CASE N. 4 - 2016

Decision of the Arbitral Council 10.04.2014

ARBITRATOR-PARTY RELATIONSHIP

RELATIONSHIP BETWEEN THE ARBITRATOR'S LAW FIRM AND ONE OF THE PARTIES – arbitrator former partner of the law firm – period of time and duration of the relationship – incomplete disclosure

CASE

The arbitrator appointed by the respondent declares that he is no longer a partner of the law firm “X” (not involved in the present arbitral proceedings) for reasons of seniority. However, he continues a consulting relationship with the law firm X that does not provide for any kind of profit sharing.

Neither him nor the law firm “X” have ever carried out work for the respondent. However, some lawyers of the law firm served as counsels in a judicial proceeding against the claimant between September 2004 and April 2006 and, more recently, served as counsels for the claimant (their duties ceased in September 2013).

The arbitrator was not involved in those judicial proceedings and, to the best of his knowledge, these assistances concerned facts unrelated to the arbitration.

The parties do not have comments.

The Arbitral Council decides in April 2014.

REASONS

The arbitrator disclosed a double indirect relationship with one of the parties.

The first one relates to his former law firm, where he is now a mere consultant, serving as counsel against one of the parties of the arbitral proceeding. The indirect nature of this relationship, its duration and the elapsed time seem to argue in favor of confirming the arbitrator.

The second one refers to a more recent circumstance (that ended a year before the Arbitral Council had to decide on the issue) and concerns the law firm where the arbitrator is now a consultant, which served as counsel for the same interested party. Even in this case, however, the arbitrator was not directly involved and it must be kept in mind that his relationship with the law firm is limited to advisory tasks.

Both episodes involve the party that did not appoint the arbitrator. The former arbitrator's firm acted once against and once for this party. In this regard, it must be said that the simultaneous presence of two opposite relationships does not imply that they compensate each other, because the nature and relevance of any single circumstance must be evaluated separately.

In its assessment, the Arbitral Council took into account the features of relationships disclosed, their timing, the indirect involvement of the arbitrator, the completeness of the statement made by the arbitrator and the absence of comments by the parties, to finally conclude positively on the arbitrator's independence and impartiality.

DECISION

The Arbitral Council **CONFIRMED** the arbitrator.



CASE N. 5 - 2016

Decision of the Arbitral Council 01.06.2014

ARBITRATOR-PARTY RELATIONSHIP

ARBITRATOR APPOINTED MORE THAN ONCE BY THE SAME PARTY – bias or reservation as to the subject matter of the dispute

CASE

The arbitrator declares that he has been appointed by the same party (the respondent) in a previous arbitration proceeding administered by the Milan Chamber of Arbitration.

Such arbitration had involved the same parties, the same agreement and, partially, the same cause of action.

REASONS

The relationship disclosed addresses two important issues.

The first one relates to the arbitrator being appointed more than once by the same party. In the present case, the arbitrator's former mandate ended almost two years before the Arbitral Council had to decide on the issue. This circumstance, however, does not automatically lead to the replacement of the arbitrator. Indeed, in the case of a "serial arbitrator", the Arbitral Council always evaluates the degree, the strength and the timing of the appointments. For instance, being appointed two or three times by the same party over several years is clearly different from receiving several appointments from this same party in a short period of time or simultaneously.

In this instance, two appointments in two years appear to be common and acceptable and do not affect the arbitrator's impartiality and independence.

The second issue stems from the fact that the arbitrator has already fulfilled this role between the same parties, in relation to the same agreement and, partially, the same cause of action. This is known as an "issue conflict" in international arbitration practice. The existence of a prior decision on the same subject matter issued by the same arbitrator constitutes a prejudice that prevents him from performing his office with impartiality and independence. Furthermore, he was the only arbitrator among the ones of the previous proceeding to be appointed again.

See art. 18.2.c of the CAM Arbitration Rules.

DECISION

The Arbitral Council **DID NOT CONFIRM** the arbitrator.



CASE N. 6 - 2016

Decision of the Arbitral Council 16.12.2009

ARBITRATOR-PARTY RELATIONSHIP

FAMILY RELATIONSHIP BETWEEN THE ARBITRATOR AND THE APPOINTING PARTY

CASE

The arbitrator appointed by the claimants declares that one of them is his grandson-in-law, the child of his wife's sister.

REASONS

The fact disclosed represents a -luckily unusual- family relationship case between the party and the arbitrator.

The arbitrator, being a close family member of the appointing party, has a significant interest in the outcome of the dispute. This clearly does not guarantee his impartiality and independence as required by the CAM Arbitration Rules and its annexed code of conduct.

This circumstance also is envisaged by the Italian Code of Civil Procedure as a ground for challenging the arbitrator (see art. 815 n.3).

DECISION

The Arbitral Council **DID NOT CONFIRM** the arbitrator.



CASE N. 7 - 2016

Decision of the Arbitral Council 16.12.2014

ARBITRATOR-PARTY RELATIONSHIP

CONSULTANCY AND OTHER RELATIONSHIPS BETWEEN THE ARBITRATOR'S LAW FIRM AND ONE OF THE PARTIES – duty of disclosure taking into consideration the firm where the arbitrator performs an ongoing professional relationship – unpaid legal services – related company

CASE	<p>The arbitrator appointed by the respondent declares that in 2013 (around two years before the order issued by the Arbitral Council) the law firm where he is currently a partner, occasionally served as consultant for the appointing party. Also, pursuant to an arrangement between his law firm and the respondent, some of such consultancy services have still to be paid by the said party (end of 2014).</p> <p>The arbitrator also states that the law firm where he works has an ongoing consulting relationship with a society that owns 50% of the share capital in the respondent's company without - it is specified - any particular rights that could affect the majority at the shareholders' meeting and its resolutions.</p> <p>The parties do not file any comment.</p>
REASONS	<p>The arbitrator disclosed two indirect relationships.</p> <p>The first one relates to a consultancy relationship between the law firm where the arbitrator is a partner and the respondent. Accordingly, this is not a direct relationship between the arbitrator and the party and the consultancy performed was only occasional. It must be emphasized that the arbitrator, when filling out his statement of independence, must not only take into consideration his relationships with the parties but also those between the parties and the firm where he performs an ongoing professional relationship. In any case, what appears to be of particular relevance is the fact that the respondent has still to pay for consultancy services provided by the law firm. This means that there is an ongoing economic relationship between respondent, arbitrator and the law firm that can affect the (appearance of) impartiality of the arbitrator, even if the consultancy services have been completed for some time.</p> <p>The second critical relationship involves the law firm where the arbitrator works and a company that owns 50% of the share capital of the respondent's company, the same party that appointed the arbitrator. This relationship is ongoing, which means that the time factor here militates against the confirmation of the arbitrator. In addition, the link between the two companies is of such intensity that it does not allow a clear distinction to be made between who performs the consultancy (the arbitrator's law firm) and who receives it (the company that is a 50% shareholder in the respondent's company that appointed the arbitrator).</p> <p>Attention is drawn, by analogy, to article 815 n. 5) of the Italian Code of Civil Procedure.</p>
DECISION	The Arbitral Council DID NOT CONFIRM the arbitrator.



CASE N. 8 - 2016

Decision of the Arbitral Council 15.10.2014

EXPERT-PARTY RELATIONSHIP

TRIBUNAL APPOINTED EXPERT AND DUTY OF DISCLOSURE AND INDEPENDENCE

– request to recuse an expert – professional relationship

CASE

The tribunal appointed expert submits an irrelevant statement of independence.

Claimant files a challenge against the expert, pointing out that the foundation of the university, where he is an emeritus professor, has been financed by the respondent. The expert, furthermore, has been dean of the faculty and coordinator of all heads of the university. According to claimant, said relationships can affect the expert's independence and impartiality.

The respondent replies noting that the foundation and the university are two different and distinct legal entities.

REASONS

First of all, it must be underlined that the expert (whether appointed by the Arbitral Tribunal or by the Chamber of Arbitration) must also make a statement of independence in the same terms as that of the arbitrators and comply with the same criteria of impartiality and independence, in application of the provisions of the CAM Regulations and the attached Code of Ethics.

The challenge filed by Claimant refers to a strongly indirect relationship between the expert and the counterparty.

Nevertheless, it must be stressed that the presentation of a request for recusal is a more serious act than the mere presentation of observations or comments for a party.

In this case, the relationship between the expert -a former professor- and the respondent who participates in the foundation of the university where the expert used to work appears to be too indirect to affect the impartiality of the latter.

Either way, all these entities involved – the university, the foundation and the respondent – are different and sufficiently distant from each other.

Furthermore, no economic relationship between the expert and the respondent can be found.

DECISION

The Arbitral Council rejected the challenge and **CONFIRMED** the expert.



2. RELATIONSHIPS BETWEEN THE ARBITRATOR AND THE COUNSEL

CASE N. 9 - 2016	
Decision of the Arbitral Council 17.09.2014	
ARBITRATOR-COUNSEL RELATIONSHIP SHARED PREMISES – request to recuse the arbitrator – forensic code of conduct.	
CASE	<p>The arbitrator appointed by the respondent declares that he is a member of the same law firm as the counsel for the respondent.</p> <p>The claimant files a request to recuse the arbitrator.</p>
REASONS	<p>This is a typical case in which the party-appointed arbitrator works in the same law firm as the counsel of the appointing-party. Such relationship does not only imply that the two are sharing premises but also the existence of an even closer relationship between them.</p> <p>In any case, this circumstance creates an unavoidable connection between the arbitrator and the counsel that may affect both the merits of the dispute and therefore the outcome of the proceedings. Hence, it is not possible to guarantee the necessary equidistance of the arbitrator as required by the criteria of independence and impartiality.</p> <p>It should also be considered that the forensic code of conduct (see art. 61.3) holds the appointment as arbitrator incompatible when a party (not necessarily the one who appointed him) is assisted by a lawyer that shares, in any capacity, the premises with the arbitrator.</p> <p>For these reasons, the challenge against the arbitrator is granted by the Arbitral Council.</p>
DECISION	The Arbitral Council GRANTED the request to recuse the arbitrator and DID NOT CONFIRM him.



CASE N. 10 - 2016

Decision of the Arbitral Council 20.09.2011

ARBITRATOR-COUNSEL RELATIONSHIP

SHARED PREMISES – information on the website – undisclosed circumstances – comments by one of the parties – forensic code of conduct

CASE

The arbitrator appointed by the claimant submits a disclosure without any relevant statements (“blank” disclosure).
The respondent contests pointing out that the arbitrator has withheld to disclose his ongoing professional relationship with the counsel of the party that appointed him since, as evidenced by the arbitrator’s law firm website, he is an associate in such law firm.
The arbitrator replies that the above relationship is limited to the mere sharing of premises.

REASONS

The situation described relates to the sharing of premises between the arbitrator and the counsel of the appointing party.

This circumstance should have been disclosed from the beginning. The fact that the relationship has emerged from the comments of one of the parties worsen the position of the arbitrator: an undeclared circumstance – which clearly should have been mentioned in the statement of independence – appears to be more serious because of the lack of disclosure.

The respondent, in this case, opted for filing comments according to art. 18.3 of the Rules instead of filing a request to recuse the arbitrator; given the seriousness of the situation, the matter had to be submitted to the scrutiny of the Arbitral Council.

The arbitrator clarified that the relationship consisted of a mere sharing of premises. Nevertheless this situation results in a continuous and direct contact between the counsel and the arbitrator that may negatively impact the impartiality and independence of the latter. In addition, it must be reminded that the forensic code of conduct (see art. 61.3) holds the appointment as arbitrator incompatible when a party (not necessarily the one who appointed him) is assisted by a lawyer that shares, in any capacity, the premises with the arbitrator.

DECISION

The Arbitral Council **DID NOT CONFIRM** the arbitrator.



CASE N. 11 - 2016

Decision of the Arbitral Council 12.03.2014

ARBITRATOR-COUNSEL RELATIONSHIP

ARBITRATOR AND COUNSEL CO-DEFENDING A PARTY – arbitrator as a counterparty of the parties' counsels in other proceedings – non confirmation *ex officio*

CASE

The President of the Arbitral Tribunal, appointed jointly by the co-arbitrators, declares that he is co-defending a party, together with the counsel for the respondent, in a judicial proceeding. He further declares that he/she is defending in another ordinary proceeding a party whose opponent is assisted by professionals from the same firm where the Respondent's lawyer in arbitration is working.

The parties do not file comments.

REASONS

The arbitrator's statement of independence reveals two different ongoing relationships with the team defending one of the parties.

In the first one, the arbitrator is co-defending a party together with the counsel for the respondent in an ongoing judicial proceeding. With regard to this relationship, both its nature and timing (i.e. the fact that it is concomitant to the arbitral proceeding) are relevant to the analysis, which must give it particular attention.

This is, indeed, the most relevant relationship to be taken into account in evaluating the impartiality and independence of the arbitrator.

The second disclosed relationship is considered as less likely to affect the arbitrator's impartiality because it is not uncommon for lawyers practicing in the same field to have met at some point in a professional setting.

Nevertheless, it must be noted that the presence of two opposite relationships, one "in favour" of the respondent (or rather, its counsel) and one "against" the same party (its counsel), does not mean that the position of the arbitrator is well balanced. The relevance of any single fact persists and must be evaluated separately.

In particular, the nature of the first relationship and the timing of both relationships (which are ongoing and occurring contemporaneously with the arbitral proceeding) have led the Arbitral Council to a non-confirmation *ex officio*, albeit in absence of any comments by the parties.

DECISION

The arbitral Council **DID NOT CONFIRM** the arbitrator.



CASE N. 12- 2016

Decision of the Arbitral Council 15.10.2014

ARBITRATOR-COUNSEL RELATIONSHIP

“OF COUNSEL” – special advisor – non confirmation *ex officio*

CASE

The arbitrator appointed by the respondent declares that he has been named *of counsel* of the law firm representing the respondent in the arbitral proceedings. He specifies that such appointment as *of counsel* occurred after the filing of the request for arbitration containing his appointment as arbitrator.

The parties do not file comments.

REASONS

The circumstance disclosed refers to a relationship between the arbitrator and the team defending the party that appointed him.

An “*of counsel*” is an attorney who maintains a relationship with a law firm, without being neither an associate nor partner. Indeed, the term is used to describe a professional who does not necessarily share the law firm premises but has a continuous and regular relationship with the law firm, being available for occasional consultations.

The nature of the arbitrator’s relationship with the counsels for the respondent’s firm does not lead to an automatic non-confirmation of the arbitrator. However, in this particular case, the timing of the appointment as “*of counsel*” - closely following the appointment as arbitrator - led the Arbitral Council to express serious concerns as to the confirmation.

In this context, this new circumstance and, above all, its timing seem to undermine the equidistance and independence imposed on arbitrators by the Rules and the Code of Ethics for Arbitrators.

Therefore, albeit in absence of any comments by the parties, the Arbitral Council decided to proceed with a non-confirmation *ex officio*.

DECISION

The Arbitral Council **DID NOT CONFIRM** the arbitrator.



CASE N. 13 - 2016

Decision of the Arbitral Council 16.11.2013

ARBITRATOR-COUNSEL RELATIONSHIP

ARBITRATOR DEFENDED BY THE COUNSEL – arbitrator represented by the counsel for the party that appointed him in different judicial proceedings

CASE

The arbitrator appointed by one of the parties declares that he is personally assisted and defended, in other civil and criminal proceedings, by the same law firm where the counsels of the party who appointed him are partners.

REASONS

The relationship disclosed reveals a strong connection between the arbitrator and the team of lawyers defending the appointing party.

Two different considerations must be stressed.

On one hand, it must be taken into account that this relationship linking the arbitrator to the counsels for the respondent in the arbitration (who are assisting him in other civil and criminal proceedings) creates an economic connection between the arbitrator and these counsels' firm.

On the other hand, it must be highlighted that the plurality of cases before the courts pending at the time of the statement of independence implies the existence of an intense relationship of trust with the defendants. Lastly, the fact that these cases are pending should be weighted in the balance.

The nature and timing of this circumstance led the Arbitral Council to a non-confirmation of the arbitrator.

DECISION

The Arbitral Council **DID NOT CONFIRM** the arbitrator.



CASE N. 14 - 2016

Decision of the Arbitral Council 17.01.2006

ARBITRATOR-COUNSEL RELATIONSHIP

FAMILY RELATIONSHIP – arbitrator’s son employed by the law firm representing one of the parties – supplement to the disclosure according to Art. 18.5 of the Rules – *IBA Guidelines*.

CASE

The arbitrator appointed by the respondent declares that, during the arbitral proceeding, his son began to work in another office of the firm defending the party that appointed him in Italy.

REASONS

First of all, the arbitrator supplemented his statement of independence in the course of the arbitration because of the occurrence of a new fact that could potentially give rise to a conflict of interest: his son started to work in the same law firm that represents the respondent in the arbitration. An important detail is that his son is employed in a different office, located in another city, from the one where the respondent’s counsels are working.

It must be recalled that it is the arbitrator’s duty to supplement his statement of independence and inform the Institution and all those involved in the arbitration in the event of news facts arising in the course of an arbitral proceedings which could potentially affect his independence and impartiality (Art. 18.5 of the Rules).

The circumstance disclosed does not reveal a direct family relationship between the arbitrator and one of the parties’ counsels to the arbitration, which is a situation contemplated by Art. 815, para. 3 of the Italian Code of Civil Procedure. Nevertheless it represents a situation that affects the arbitrator’s appearance of independence and impartiality, in particular from the counterparty’s point of view.

The IBA Guidelines, although used by CAM as a non-binding reference tool, consider this circumstance as falling within the “Orange List”, i.e. among hypotheses that do not lead to an immediate non-confirmation, but that could be such as to give raise to justifiable doubts about to the impartiality or independence of the arbitrator. Consequently, they must be assessed both on a case-by-case basis and in terms of opportunity.

The circumstance that the arbitrator’s son became an employee of the law firm representing the party that appointed him in the course of the proceedings, is considered negatively in terms of opportunity.

DECISION

The Arbitral Council **DID NOT CONFIRM** the arbitrator.



CASE N. 15 – 2016

Decision of the Arbitral Council 19.03.2013

ARBITRATOR-COUNSEL RELATIONSHIP

ARBITRATOR AS OPPOSING PARTY OF A COUNSEL – sole arbitrator.

CASE

The sole arbitrator appointed by the Arbitral Council declares that he has defended before an ordinary court, and for a period of about 2 years, a person having as opposing counsel the Claimant's counsel in the arbitration.

The Respondent declares to not have any reason to object to the arbitrator's confirmation.

REASONS

This disclosure reveals a relationship between the arbitrator and the counsel for one of the parties.

In the past, the arbitrator has served as counsel in a case completely unrelated to the arbitration and his opposing party was defended by the counsel of one of the arbitration parties.

Therefore, in the present case and with regard to the test for the arbitrator's independence and impartiality, particular attention must be given to the following details: (1) the arbitrator and the lawyer involved crossed paths in the normal practice of their profession, (2) in a case unrelated to the present arbitration and (3) they no longer assume the same kind of role in the present proceedings.

Last but not least, the arbitrator was appointed directly by the Arbitral Council (not by the parties), which increases the guarantee that the arbitrator stay neutral and equally distant from both parties.

DECISION

The Arbitral Council **CONFIRMED** the arbitrator.