



MILAN
CHAMBER OF
ARBITRATION

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. 16 - 2016	
Decision of the Arbitral Council 11.02.2014	
ARBITRATOR-PARTY RELATIONSHIP	
PLURALITY OF APPOINTMENTS AS ARBITRATOR – arbitrator-parties relationship – arbitrator appointed by one of the parties – arbitrator appointed in other proceedings	
CASE	<p>The arbitrator appointed by one of the parties declares that the other party to the arbitration also appointed him in the past as arbitrator on two different proceedings that have been completed in 2012 and 2013.</p> <p>The parties declare they have no comment to make on the appointment of the arbitrator.</p>
REASONS	<p>The arbitrator appointed by one of the parties discloses that he knows the other party involved in the proceedings because they have met in two different arbitration cases now both concluded. In these proceedings, the arbitrator has been nominated as arbitrator by that party.</p> <p>Circumstances such as the one at hand have to be considered since they disclose relationships with the parties of the proceedings.</p> <p>At the same time, in terms of time, the current relationship refers to proceedings that were already closed at the time of the examination by the Arbitral Council. Furthermore, such proceedings were unrelated to the current one.</p> <p>In this case it is not possible to consider these appointments as “serial”, in fact, the arbitrator has been appointed by both parties (and not by the same one in each of the proceedings considered) on a total of three proceedings.</p> <p>Moreover, the circumstance disclosed does not even suggest the existence of a stable economic relationship between the party (or both parties) and the arbitrator.</p> <p>Lastly, it should be pointed out that the parties expressly declared they did not have any comments.</p>
DECISION	The Arbitral Council CONFIRMED the arbitrator.

2. RELATIONSHIPS BETWEEN THE ARBITRATOR AND THE COUNSELS

CASE N. 17 - 2016	
Decision of the Arbitral Council issued 18.11.2015	
ARBITRATOR-COUNSEL RELATIONSHIP PLURALITY OF APPOINTMENTS AS ARBITRATOR – arbitrator appointed several times by the same counsel – <i>2014 IBA Guidelines, Orange list.</i>	
CASE	<p>The arbitrator declared that he also acts as an arbitrator in another arbitration administered by the CAM where the party that appointed him is assisted by a team of lawyers that includes a lawyer defending the party that appointed him in this arbitration.</p> <p>The parties do not file comments.</p>
REASONS	<p>The arbitrator declares that he has been appointed, on a different occasion, by one of the same counsels representing the party that appointed him in the arbitration case at hand. This other arbitral procedure is also pending before the Milan Chamber of Arbitration.</p> <p>In this context, the following elements have been taken into account by the Arbitral Council when evaluating the arbitrator’s independence:</p> <ol style="list-style-type: none"> 1) the fact that both cases are currently pending before the CAM 2) the limited number of appointments (two); 3) in term of time, only one case is still pending; 4) the fact that these appointments are the result of choice made by the counsel and not by the party he is defending; 5) the absence of link between the cases and their subject matter. <p>Last but not least, the Arbitral Council took note that the 2014 IBA Guidelines consider as falling within the Orange List situations where “the arbitrator has, within the past three years, been appointed on more than three occasions by the same counsel, or the same law firm”.</p>
DECISION	<p>The Arbitral Council CONFIRMED the arbitrator “<i>considering as not relevant the circumstance disclosed, even in light of the 2014 IBA Guidelines on Conflicts of Interest (para. 3.3.8.)</i>”.</p>



CASE N. 18 - 2016

Decision of the Arbitral Council 20.03.2015

ARBITRATOR-COUNSEL RELATIONSHIP

LEGAL REPRESENTATION IN A JUDICIAL PROCEEDING AGAINST THE ARBITRATOR – pending judicial proceeding against the arbitrator

CASE

The arbitrator appointed by the party, declares that the counsels of the other party involved in the arbitration, represent a society that brought legal actions against him and, in such judicial proceedings, he acts as a party personally. Said proceeding is pending before the Court of Appeal and the next hearing is scheduled for 2016.

REASONS

The following elements of this statement are relevant when reviewing the independence of the arbitrator:

- 1) The nature of the arbitrator-counsel relationship: a legal action against the arbitrator;
- 2) The fact that the arbitrator is personally involved (as a party to the other proceedings);
- 3) The timing: the legal action is still pending.

The Arbitral Council considered that these elements were sufficient to call into question the arbitrator's independence and impartiality, at least apparently.

DECISION

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



CASE N. 19 - 2016

Decision of the Arbitral Council 15.01.2015

ARBITRATOR-COUNSEL RELATIONSHIP

LINKS BETWEEN THE LAW FIRM, ARBITRATOR AND COUNSELS – arbitrator is a former partner of the law firm – timing and duration of the relationship.

CASE	<p>The arbitrator declares that he has been a partner in the law firm where two of the counsels defending the party to this arbitration that did not appoint him are currently partners.</p> <p>The parties do not file any comments.</p>
REASONS	<p>The disclosed facts reveal a professional relationship between the arbitrator and counsels involved in this arbitration. All of them have worked at some point for the same law firm as partners.</p> <p>It is important to underline the fact that the professional arbitrator's involvement in the firm ended three years before the decision of the Arbitral Council.</p> <p>The circumstance disclosed is undoubtedly relevant since it reveals a direct relationship between the arbitrator and counsels involved in the arbitral proceedings. Its timing, though, makes it less significant.</p> <p>With this in mind, it should be noted that even the 2014 IBA Guidelines consider as falling within the "Orange List" situations were an arbitrator was, in the preceding three years (and not beyond), a partner of the same law firm as one of the counsel of a party to the arbitration.</p> <p>In the present case, the relationship ceased three years before the ruling of the Arbitral Council.</p> <p>Moreover, the parties did not file comments on the circumstance disclosed by the arbitrator.</p>
DECISION	The Arbitral Council CONFIRMED the arbitrator.



CASE N. 20 - 2016

Decision of the Arbitral Council 17.09.2014

ARBITRATOR-COUNSEL RELATIONSHIP

PLURALITY OF APPOINTMENTS AS ARBITRATOR – appointments made by the same counsel – *2014 IBA Guidelines, Orange list.*

CASE	<p>The arbitrator appointed by one of the parties declares that, in the last three years, he has been appointed as arbitrator in two other arbitral proceedings unrelated to the current one. Even though the parties to these two other cases do not have any link to the current arbitration, this fact is relevant because the counsels that represented them at the time are now defending one of the parties to the current arbitration.</p> <p>The parties do not file comments.</p>
REASONS	<p>The arbitrator disclosed that he has been appointed, within the past three years, on two different occasions by the same law firm that appointed him in the current proceeding.</p> <p>This situation matches one of the hypotheses contemplated in the 2014 IBA Guidelines “Orange List”, i.e. the situation where “the arbitrator has been appointed on more than three occasions during the previous three years by the same counsel or the same law firm”.</p> <p>In the case at hand, though, some elements need to be stressed:</p> <ol style="list-style-type: none">1) the two different proceeding in which the arbitrator has been appointed are completely unrelated to the current one, both in terms of subject matter of the dispute and parties involved;2) the arbitrators has been appointed 3 times in total (which is the limit set by the IBA Guidelines – Orange List);3) no comments were submitted by the parties. <p>The Arbitral Council, after weighing each one of these elements, considered the arbitrator impartial and independent.</p>
DECISION	The Arbitral Council CONFIRMED the arbitrator.



CASE N. 21- 2016

Decision of the Arbitral Council 04.07.2016

ARBITRATOR-COUNSEL RELATIONSHIP

OTHER RELATIONSHIPS – supplement to the statement of independence – legal action with a party represented by the same counsel defending one of the parties to the arbitration

CASE	<p>The arbitrator appointed by party "A" supplements his statement of independence declaring that the lawyer defending party "B" has made a claim for damages for abusive legal action (in legal proceedings unrelated to the present arbitration and whose parties are different) against the opposing party and its lawyers, among whom the arbitrator is included.</p> <p>Party "A" does not file comments while Party "B" notes that the circumstance declared by the arbitrator is not related to the arbitration.</p>
REASONS	<p>The arbitrator supplemented his statement of independence at a rather advanced stage of the arbitration.</p> <p>The circumstance disclosed concerns the relationship between the arbitrator and one of the counsels.</p> <p>Both parties involved in such proceedings and the subject matter of the dispute are distinct and unrelated to the present arbitration.</p> <p>The relationship disclosed is counterbalanced by two elements:</p> <ol style="list-style-type: none">1- both the parties and the subject matter of the disputes are not identical;2- the parties expressly stated they do not have comments regarding the arbitrator's independence. <p>These factors have been highlighted by the Arbitral Council in its confirmatory decision on the position of the arbitrator.</p>
DECISION	<p>The Arbitral Council CONFIRMED the arbitrator "<i>taking into account that the parties did not raise objections to the confirmation of the arbitrator and considering the advanced stage of the proceedings</i>".</p>



3. OTHER RELATIONSHIPS

CASE N. 22 - 2016	
Decision of the Arbitral Council 07.07.2015	
RELATIONSHIP BETWEEN ARBITRATORS	
LEGAL ASSISTANCE IN ARBITRAL AND JUDICIAL PROCEEDINGS – counterparty defended by arbitrators as counsels and by other colleagues of the other party’s counsel	
CASE	<p>The President of the Arbitral Tribunal, jointly appointed by the co-arbitrators (also referred to as “X” and “Y”), declares that he is:</p> <ol style="list-style-type: none">1) counsel for a party in a judicial proceeding in which the opposing counsel is “X”;2) counsel for a party in another arbitral proceeding in which the opposing party has appointed “Y” as arbitrator;3) counsel for a party in a judicial proceeding in which the opposing party is assisted by lawyers different from those defending the respondent in the present arbitration, but who work in the same law firm. <p>The parties explicitly state that they do not have comments.</p>
REASONS	<p>The statement reveals that the President of the Arbitral Tribunal has met on different occasions various actors involved in this arbitration.</p> <p>All the listed relationships see the arbitrator:</p> <ul style="list-style-type: none">– serving as counsel,– in pending arbitral or judicial proceedings,– where the opposing parties are assisted either by the co-arbitrators or by lawyers from the same law firm assisting a party to this arbitration. <p>It should be emphasized that the relationships disclosed do not involve the parties to this arbitration and do not relate to the same subject matter.</p> <p>It should also be pointed out that the parties expressly declared not to have any comments.</p> <p>The 2014 IBA Guidelines does not contemplate situations similar to the ones disclosed by the arbitrator in the case at hand.</p> <p>The Arbitral Council considered favorably the position of independence and impartiality of the arbitrator, taking into consideration:</p> <ol style="list-style-type: none">1. the nature of the relationships disclosed,2. the parties involved,3. the completeness and timing of the statement submitted by the President,4. the absence of comments from the parties,5. the fact that the President had been jointly appointed by his co-arbitrators.
DECISION	The Arbitral Council CONFIRMED the arbitrator.