



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. 23 - 2017	
Decision of the Arbitral Council 23.10.2015	
EXPERT-PARTY RELATIONSHIP	
EXPERT AND DUTIES OF IMPARTIALITY AND INDEPENDENCE – Previous consultations for one of the parties	
CASE	<p>The expert appointed by the Arbitral Council declares that in the years 2011-2012 his company served as technical expert for a third party on a issue related to the financing of 4 plants of the claimant. At the time, the claimant was therefore the expert's company co-contractor.</p> <p>The parties do not file comments.</p>
REASONS	<p>The expert submitted his statement of independence as provided for in art. 26.2 of the Rules.</p> <p>In the case at hand, the expert states that the company where he is still working carried out a consultancy for a party not involved in the present arbitral proceedings but who played a role in the financing of plants owned by the claimant to the current arbitration.</p> <p>Hence, this relationship does not directly concern the expert but involves the company he works for.</p> <p>Furthermore, the timing of the disclosed circumstance is particularly important: (1) the consultancy was provided three years before the expert was appointed in the present proceedings and, (2) the reference time limit usually set out in the 2014 IBA Guidelines on Conflicts of Interest is three years.</p> <p>Finally, the absence of comments by any parties on this circumstance is another factor in favour of the arbitrator's confirmation.</p>
DECISION	The Arbitral Council CONFIRMED the expert.



CASE N. 24 - 2017

Decision of the Arbitral Council 10.10.2016

ARBITRATOR-PARTY RELATIONSHIP

PLURALITY OF APPOINTMENTS BY THE SAME PARTY – other arbitral proceedings – pending proceedings.

CASE

The arbitrator declares that he has been appointed by the same party in two other pending arbitral proceedings, administered by CAM. In these cases, the counterparty is not involved in the present arbitration.

The parties do not file comments.

REASONS

The circumstance disclosed by the arbitrator is serious and delicate. The following elements have been assessed carefully:

1. The plurality of appointments: the arbitrator has been appointed by the same party on three different occasions. “Serial” appointments, i.e. situations where a party appoints several times the same persona as arbitrator, are contemplated in the “Orange List” of the IBA Guidelines on Conflicts of Interest (para. 3.1.3)

2. The time of occurrence: all the proceedings in which the arbitrator has been appointed are still pending.

In this context, there seems to be an excessively strong relationship of trust between the arbitrator and the party.

DECISION

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



2. RELATIONSHIPS BETWEEN THE ARBITRATOR AND THE COUNSEL

CASE N. 25 - 2017	
Decision of the Arbitral Council 18.11.2015	
ARBITRATOR-PARTY RELATIONSHIP	
PLURALITY OF APPOINTMENTS BY THE SAME COUNSEL – 2014 IBA Guidelines, Orange list	
CASE	<p>The arbitrator, appointed by A, declares that one of the counsels for the party that appointed him in this arbitration also appointed him in another arbitration administered by CAM.</p> <p>In such different arbitration the party A is assisted by some lawyers among which there is also one of the counsels defending A in the current proceeding.</p> <p>The parties do not file comments.</p>
REASONS	<p>The arbitrator disclosed a relationship with one of the counsels for the party that appointed him.</p> <p>It should be noted that said relationship is ongoing: the arbitrator has been appointed in the present proceeding while the other arbitration was still pending; furthermore, as to the other proceeding the appointment has been made by the defence team that include one of the counsels defending A.</p> <p>A similar situation is described by the “Orange list” of the 2014 IBA Guidelines on Conflicts of Interest (para. 3.3.8.), which considers as acceptable the limit of three appointments of the same person in the last three years.</p> <p>In the case at hand we have two appointments made in two different pending proceedings: the <i>2014 IBA Guidelines on Conflicts of Interest</i> consider as an acceptable limit the situation in which the arbitrator has been appointed on a total of three occasions within the past three years.</p> <p>These considerations, together with the fact that the relationship between the arbitrator and the lawyer is purely professional (arbitrator-party relationships are more problematic) and that the parties did not object to the confirmation of the arbitrator, prompted the Arbitral Council to finally confirm the arbitrator.</p>
DECISION	<p>The Arbitral Council CONFIRMED the arbitrator, finding not relevant the circumstance disclosed, even in the light of the <i>2014 IBA Guidelines on Conflicts of Interest</i> (para. 3.3.8. – orange list).</p>



CASE N. 26 - 2017

Decision of the Arbitral Council 16.12.2015

EXPERT-COUNSEL RELATIONSHIP

EXPERT AND DUTIES OF IMPARTIALITY AND INDEPENDENCE – professional relationship – time and duration

CASE

The expert declares to have had a professional relationship with some lawyers of the law firm where the counsels of one of the parties are currently working. Such relationship involved different lawyers than the ones defending the party in the present arbitration and came to an end a few months before the expert was appointed.

The parties declare they do not have comments.

REASONS

The expert, according to art. 26.2 of the Rules, submitted his statement of independence disclosing the existence of a previous relationship with the law firm representing one of the parties to the arbitration, though clarifying that such relationship involved different counsels than the ones in the current proceeding.

The time context here is extremely relevant, in fact, only few months elapsed between the end of the professional relation and the moment when the expert rendered his statement.

The absence of any comments from the parties does not make the position of the arbitrator any less severe. Indeed the professional- economic relationship between the expert and the law firm representing one of the parties is very recent.

DECISION

The Arbitral Council **DID NOT CONFIRM** the expert due to reasons of appropriateness.

3. OTHER RELATIONSHIPS

CASE N. 27 - 2017	
Decision of the Arbitral Council 17.11.2016	
RELATIONSHIPS BETWEEN ARBITRATORS OTHER RELATIONSHIPS – legal assistance in judicial proceedings	
CASE	<p>The President of the Arbitral Tribunal and one of his co-arbitrators, both appointed by the Arbitral Council, declare that they are serving as co-counsel (for different parties than the ones involved in the arbitration) in a judicial proceeding pending before the Court of Cassation.</p> <p>The parties do not file comments.</p>
REASONS	<p>Two members of the Arbitral Tribunal state that they are acting as co-counsel in a pending judicial proceeding. The parties involved in such proceedings are different from the ones facing each other in this arbitration.</p> <p>The Arbitral Council took into account the following considerations:</p> <ol style="list-style-type: none"> 1. the relationship disclosed does not concern the parties to the arbitration nor the subject matter of the dispute, 2. the time of occurrence of the fact disclosed is not particularly relevant since the circumstance itself is minor, 3. the <i>IBA Guidelines on Conflicts of Interest</i> include this type of situation in the “Orange list” (para. 3.3.9), 4. the parties did not have any comments to make.
DECISION	The Arbitral Council CONFIRMED the arbitrator, considering that the facts disclosed did not seriously call into question his independence.



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