

ANNEX 29B

Code of Conduct

Article 29B.1

Definitions

For the purposes of this Annex:

“ADR provider” means a provider of alternative dispute resolution (ADR) services, namely a provider of good offices, a conciliator or a mediator who provides their services pursuant to Article 29.6 (Good Offices, Conciliation, or Mediation);

“assistant” means a person who, under the terms of appointment and under the direction of a panellist or ADR provider, conducts research or provides assistance to that panellist or ADR provider;

“candidate” means an individual who is under consideration for selection as a panellist under Article 29.9 (Composition of the Panel);

“expert” means an individual or body providing technical information or advice in accordance with Rule 29A.12 (Technical Advice) of the Rules of Procedure;

“family member” means the spouse of a panellist or candidate; or a parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece or nephew of the panellist or candidate or spouse of the panellist or candidate including whole and half blood relatives and step relatives; or the spouse of such an individual. A family member also includes any resident of a panellist’s or candidate’s household whom the panellist or candidate treats as a member of their family;

“proceeding” means the proceeding of the panel, unless otherwise specified; and

“staff” means, in respect of a panellist or ADR provider, persons under the direction and control of the panellist or ADR provider, other than assistants.

Article 29B.2

Provision of Code of Conduct

The Parties shall provide this Code of Conduct and the Initial Disclosure Statement set out in Appendix 29B-a (Initial Disclosure Statement) to a candidate before their appointment as a panellist under Article 29.9 (Composition of a Panel), an expert when they are requested to provide information or technical advice under Rule 29A.12 (Technical Advice) of the Rules of Procedure, or an ADR provider when they are requested to provide their services under Article 29.6 (Good Offices, Conciliation, or Mediation).

Article 29B.3
Responsibilities to the Process

1. In order to preserve the integrity and impartiality of the dispute settlement process, each candidate and panellist shall:
 - (a) get acquainted with this Code of Conduct;
 - (b) avoid impropriety and the appearance of impropriety;
 - (c) be independent and impartial;
 - (d) avoid direct and indirect conflicts of interests; and
 - (e) observe high standards of conduct
2. Former panellists shall comply with the obligations established in Article 29B.7 (Duties of Former Panellists) and paragraphs 1 through 3 of Article 29B.8 (Maintenance of Confidentiality) of this Code of Conduct.

Article 29B.4
Disclosure Obligations

1. Prior to confirmation of their appointment as a panellist in a dispute under this Agreement, a candidate requested to serve as a panellist shall disclose any interest, relationship, or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of such interests, relationships, and matters.
2. Without limiting paragraph 1, candidates shall disclose, at a minimum, the following interests, relationships, and matters:
 - (a) any financial interest of the candidate:
 - (i) in the proceeding or in its outcome; and
 - (ii) in an administrative proceeding, a domestic judicial proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
 - (b) any financial interest of the candidate's employer, business partner, business associate, or family member:
 - (i) in the proceeding or in its outcome; and
 - (ii) in an administrative proceeding, a domestic judicial proceeding, or another international dispute settlement proceeding that

involves issues that may be decided in the proceeding for which the candidate is under consideration;

- (c) any past or existing financial, business, professional, family, or social relationship with an interested party in the proceeding, or its counsel, or any such relationship involving a candidate's employer, business partner, business associate, or family member; and
 - (d) any public advocacy or legal or other representation (including publications or public statements of personal opinion) concerning an issue in dispute in the proceeding or involving the same matters.
- 3. A candidate shall communicate matters concerning actual or potential violations of this Code of Conduct for consideration by the Parties by submitting the Initial Disclosure Statement to each Party's contact point no later than four days after they have been contacted to serve as a panellist.
 - 4. Once appointed, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 2 and shall disclose them promptly, in writing, to the Parties for their consideration. The obligation to disclose is a continuing duty, which requires a panellist to disclose such interests, relationships, and matters that may arise during all stages of the proceeding.
 - 5. In the event of any uncertainty regarding whether an interest, relationship, or matter must be disclosed under paragraphs 1 through 4, a candidate or panellist should err in favour of disclosure.

Article 29B.5

Performance of Duties

- 1. Once appointed, a panellist shall perform their duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence. In performing their duties, each panellist shall recognise that prompt settlement of disputes is essential to the effective functioning of this Agreement.
- 2. A panellist shall not deny other panellists the opportunity to participate in all aspects of the proceeding.
- 3. A panellist shall consider only those issues raised in the proceeding and necessary to make a decision and shall not delegate the duty to decide to any other person.
- 4. A panellist shall take all appropriate steps to ensure that their assistants and staff are aware of, and comply with, this Code of Conduct.
- 5. A panellist shall not engage in *ex parte* contact concerning the proceeding.
- 6. A candidate or panellist shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the

Parties or is necessary to ascertain whether that candidate or panellist has violated or may violate the Code of Conduct.

Article 29B.6

Independence and Impartiality of Panellists

1. A panellist shall be independent and impartial. A panellist shall act in a fair manner, and shall avoid creating an appearance of impropriety or bias.
2. A panellist shall not be influenced by self-interest, outside pressure, political considerations, public clamour, prior affiliation, loyalty to a Party, or fear of criticism.
3. A panellist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of their duties.
4. A panellist shall not use their position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence them. A panellist shall make every effort to prevent or discourage others from representing themselves as being in such a position.
5. A panellist shall not allow past or existing financial, business, professional, family, or social relationships or responsibilities to influence their conduct or judgment.
6. A panellist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.
7. In any proceeding under Chapter 29 (Dispute Settlement), a panellist shall refrain, for the duration of the proceeding, from acting as counsel or party-appointed expert witness in any new or pending dispute, under this Agreement or another international agreement, that directly addresses the same measure in dispute in, or arises out of the facts giving rise to, the proceeding under Chapter 29 (Dispute Settlement).

Article 29B.7

Duties of Former Panellists

All former panellists shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision of the panel on which they served.

Article 29B.8
Maintenance of Confidentiality

1. A panellist or former panellist shall not at any time disclose or use any confidential or non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.
2. A panellist shall not disclose a panel report, or parts thereof, issued under Chapter 29 (Dispute Settlement) prior to release of the final report by the Parties. A panellist or former panellist shall not at any time disclose which panellists are associated with majority or minority opinions in a proceeding.
3. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view.
4. A panellist shall not make a public statement regarding the merits of a pending proceeding.

Article 29B.9
Responsibilities of Experts, Assistants, Staff and ADR Providers

1. Article 29B.3 (Responsibilities to the Process), paragraphs 1, 3, 4 and 5 of Article 29B.4 (Disclosure Obligations) and Article 29B.8 (Maintenance of Confidentiality) shall also apply to experts, assistants and staff, *mutatis mutandis*.
2. Article 29B.3 (Responsibilities to the Process), Article 29B.4 (Disclosure Obligations), paragraphs 1, 3, 4, 5 and 6 of Article 29B.5 (Performance of Duties), and Articles 29B.6 (Independence and Impartiality of Panellists) through Article 29B.8 (Maintenance of Confidentiality) shall also apply to ADR providers, *mutatis mutandis*.