

**Decision by the Commission
of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership
regarding ISDS Code of Conduct**

The Commission decides as follows:

Recalling the provisions of Article 9.22 (Selection of Arbitrators) paragraph 6 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Commission establishes the Code of Conduct for Investor-State Dispute Settlement Proceedings set out in the Annex.

**CODE OF CONDUCT FOR INVESTOR-STATE DISPUTE SETTLEMENT
UNDER CHAPTER 9 SECTION B (INVESTOR-STATE DISPUTE
SETTLEMENT) OF THE COMPREHENSIVE AND PROGRESSIVE
AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP**

1. Definitions

For the purposes of this Code of Conduct:

arbitrator means a member of a tribunal constituted pursuant to Article 9.22 (Selection of Arbitrators);

assistant means a person who, under the terms of appointment of an arbitrator, conducts research or provides support for the arbitrator;

candidate means an individual who is under consideration for selection as an arbitrator pursuant to Article 9.22 (Selection of Arbitrators);

expert means a person appointed pursuant to Article 9.27 (Expert Reports) or applicable arbitration rules;

family member means the spouse of an arbitrator or candidate; or a parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece or nephew of the arbitrator or candidate or spouse of the arbitrator or candidate (including whole and half blood relatives and step relatives); or the spouse of such an individual. Family member also includes any resident of an arbitrator's or candidate's household whom the arbitrator or candidate treats as a member of his or her family;

Rules means applicable rules pursuant to Article 9.19.4 (Submission of a Claim to Arbitration); and

staff, in respect of an arbitrator, means individuals under the direction and control of the arbitrator other than assistants.

2. Responsibilities to the Process

Each candidate, arbitrator and former arbitrator shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

3. Governing Principles

- (a) Each arbitrator shall be independent and impartial, and shall avoid direct or indirect conflicts of interest.

- (b) Each arbitrator and former arbitrator shall respect the confidentiality of tribunal proceedings.
- (c) Each candidate or arbitrator shall disclose the existence of any interest, relationship or matter that is likely to affect the candidate's or arbitrator's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias. An appearance of impropriety or an apprehension of bias is created when a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or arbitrator's ability to carry out the duties with integrity, impartiality and competence is impaired.
- (d) Upon selection, an arbitrator shall refrain, for the duration of the proceeding, from acting as counsel or party-appointed expert or witness in any pending or new investment dispute under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership or any other international agreement.
- (e) An arbitrator shall comply with internationally recognised standards or guidelines regarding direct or indirect conflicts of interest, such as the International Bar Association Guidelines on Conflicts of Interest in International Arbitration.
- (f) In the event of an alleged breach of this Code of Conduct, the Rules governing the arbitration shall apply to any challenge, disqualification or replacement of an arbitrator.

4. Disclosure Obligations

- (a) Throughout the tribunal proceeding, candidates and arbitrators have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.
- (b) The disputing parties or the Secretary-General, as the appointing authority for an arbitration referred to in Article 9.22.2 (Selection of Arbitrators), will provide a candidate a copy of this Code of Conduct and the Initial Disclosure Statement set out in the Appendix to this Code of Conduct.
- (c) A candidate shall submit the Initial Disclosure Statement set out in the Appendix to this Code of Conduct to the disputing parties or the Secretary-General, as the appointing authority, no later than seven days after receipt of that Statement.
[FN 1: This subparagraph does not prevent the appointment of arbitrators by the disputing parties prior to the submission of the Initial Disclosure Statement.]

[FN 2: For greater certainty, the submission of the Initial Disclosure Statement is without prejudice to any further disclosure required pursuant to the Rules.]

- (d) A candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the tribunal proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters. Therefore, a candidate shall disclose, at a minimum, the following interests, relationships and matters:
 - (i) any financial or personal interest of the candidate in:
 - (A) the tribunal proceeding or its outcome; and
 - (B) an administrative proceeding, a domestic judicial proceeding or another international dispute settlement proceeding that involves issues that may be decided in the tribunal proceeding for which the candidate is under consideration;
 - (ii) any financial interest of the candidate's employer, business partner, business associate or family member in:
 - (A) the tribunal proceeding or its outcome; and
 - (B) an administrative proceeding, a domestic judicial proceeding or another international dispute settlement proceeding that involves issues that may be decided in the tribunal proceeding for which the candidate is under consideration;
 - (iii) any past or current financial, business, professional, family or social relationship with any interested parties in the tribunal proceeding, or their counsel, or any such relationship involving a candidate's employer, business partner, business associate or family member; and
[FN: For greater certainty, "interested parties" may include the home country of the investor.]
 - (iv) public advocacy or legal or other representation concerning an issue in dispute in the tribunal proceeding or involving the same investment.
- (e) Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in

subparagraph (d) and shall disclose them. The obligation to disclose is a continuing duty that requires an arbitrator to disclose any such interests, relationships and matters that may arise during any stage of the tribunal proceeding.

- (f) In the event of any uncertainty regarding whether an interest, relationship or matter must be disclosed under subparagraph (d) or subparagraph (e), a candidate or arbitrator should err in favour of disclosure. Disclosure of an interest, relationship or matter is without prejudice as to whether the interest, relationship or matter is covered by subparagraph (d) or subparagraph (e), or whether it warrants recusal, amelioration or disqualification.
- (g) The disclosure obligations set out in subparagraphs (a) through (f) should not be interpreted so that the burden of detailed disclosure makes it impractical for individuals in the legal or business community to serve as arbitrators, thereby depriving the disputing parties of the services of those who might be best qualified to serve as arbitrators. Thus, candidates and arbitrators should not be called upon to disclose interests, relationships or matters whose bearing on their role in the tribunal proceeding would be trivial.

5. Performance of Duties by Candidates and Arbitrators

- (a) A candidate who accepts an appointment as an arbitrator shall be available to perform, and shall perform, once the arbitrator is appointed pursuant to Article 9.22 (Selection of Arbitrators), an arbitrator's duties thoroughly, fairly, diligently and expeditiously throughout the course of the tribunal proceeding.
- (b) An arbitrator shall ensure that he or she is contactable, at all reasonable times, by the Secretary-General, disputing parties, arbitration institution in charge of the proceeding and other arbitrators of the tribunal in order to conduct tribunal work.
- (c) An arbitrator shall comply with the provisions of Chapter 9 Section B (Investor-State Dispute Settlement) and the Rules.
- (d) An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the tribunal proceeding.
- (e) An arbitrator shall consider only those issues raised in the tribunal proceeding and necessary to make a decision, order or award.
- (f) An arbitrator shall not delegate the duty to make a decision, order or award to any other individual.

- (g) An arbitrator shall take all reasonable steps to ensure that his or her assistants and staff comply with paragraphs 2 (Responsibilities to the Process), 4(a), 4(d), 4(e), 4(f) and 4(g) (Disclosure Obligations), 5(c), 5(h) and 5(i) (Performance of Duties by Candidates and Arbitrators), and 8 (Maintenance of Confidentiality) of this Code of Conduct.
- (h) An arbitrator shall not engage in any *ex parte* contact concerning the tribunal proceeding.
- (i) A candidate or arbitrator shall only communicate matters concerning actual or potential violations of this Code of Conduct to the Secretary-General, disputing parties and arbitration institution in charge of the proceedings, or if necessary to ascertain whether that candidate or arbitrator has violated or may violate this Code of Conduct, to the Secretary-General, the disputing parties, and arbitration institution in charge of the proceedings.
- (j) Each arbitrator shall keep a record and render a final account of the time devoted to the proceeding and of his or her expenses, as well as the time and expenses of his or her staff and assistants.

6. Independence and Impartiality of Arbitrators

- (a) An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall not create an appearance of impropriety or an apprehension of bias.
- (b) An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a disputing party or a non-disputing Party or fear of criticism.
- (c) An arbitrator 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 his or her duties.
- (d) An arbitrator shall not use his or her position on the tribunal to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator. An arbitrator shall make every effort to prevent or discourage others from representing themselves as being in such a position.
- (e) An arbitrator shall not allow past or ongoing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgment.

- (f) An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.
- (g) If an interest, relationship or matter of a candidate or arbitrator is inconsistent with subparagraphs (a) through (f), the candidate may accept appointment to a tribunal and an arbitrator may continue to serve on a tribunal if the disputing parties waive the violation or if, after the candidate or arbitrator has taken steps to ameliorate the violation, the disputing parties determine that the inconsistency has ceased.

7. Duties of Former Arbitrators

A former arbitrator shall avoid actions that may create the appearance that the arbitrator was biased in carrying out his or her duties or would benefit from the decision, order or award of the tribunal.

8. Maintenance of Confidentiality

- (a) An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the tribunal proceeding or acquired during the tribunal proceeding except for the purposes of the tribunal 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 another.
- (b) An arbitrator shall not disclose a decision, order or award or parts thereof prior to its publication in accordance with Chapter 9 Section B (Investor-State Dispute Settlement), except in accordance with Article 9.23.10 (Conduct of the Arbitration).
- (c) An arbitrator or former arbitrator shall not at any time disclose the deliberations of a tribunal, or any arbitrator's view.
[FN: For greater certainty, this subparagraph (c) does not apply to the arbitrator's view in a decision, order, award or opinion.]
- (d) An arbitrator shall not make a public statement regarding the merits of a pending tribunal proceeding.

9. Responsibilities of Experts, Assistants and Staff

Paragraphs 2 (Responsibilities to the Process), 4(a), 4(d), 4(e), 4(f) and 4(g) (Disclosure Obligations), 5(c), 5(h) and 5(i) (Performance of Duties by Candidates and Arbitrators), 7 (Duties of Former Arbitrators) and 8 (Maintenance of Confidentiality) of this Code of Conduct shall also apply to experts, assistants and staff.

10. Review

A Party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership may request the Trans-Pacific Partnership Commission established under Article 27.1 (Establishment of the Trans-Pacific Partnership Commission) to review and amend the Code of Conduct for Investor-State Dispute Settlement to take into account, as appropriate, relevant developments concerning Investor-State Dispute Settlement.

**APPENDIX TO CODE OF CONDUCT FOR INVESTOR-STATE DISPUTE
SETTLEMENT UNDER CHAPTER 9 SECTION B (INVESTOR-STATE
DISPUTE SETTLEMENT) OF THE COMPREHENSIVE AND PROGRESSIVE
AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP**

INITIAL DISCLOSURE STATEMENT FORM

1. I acknowledge having received a copy of the Code of Conduct for investor-state dispute settlement under Chapter 9 Section B (Investor-State Dispute Settlement) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
2. I acknowledge having read and understood the Code of Conduct.
3. I understand that I have a continuing obligation, while participating in the tribunal proceeding, to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process. As a part of this continuing obligation, I am making the following initial disclosures:
 - (a) My financial interest in the tribunal proceeding for which I am under consideration or in its outcome is as follows:
 - (b) My financial interest in any administrative proceeding, domestic judicial proceeding or other international dispute settlement proceeding that involves issues that may be decided in the tribunal proceeding is as follows:
 - (c) The financial interests that any employer, business partner, business associate or family member of mine may have in the tribunal proceeding or in its outcome are as follows:
 - (d) The financial interests that any employer, business partner, business associate or family member of mine may have in any administrative proceeding, domestic judicial proceeding or other international dispute settlement proceeding that involves issues that may be decided in the tribunal proceeding are as follows:
 - (e) My past or current financial, business, professional, family and social relationships with any interested parties in the tribunal proceeding, or their counsel, are as follows:
 - (f) The past or current financial, business, professional, family and social relationships with any interested parties in the tribunal proceeding, or their counsel, involving any employer, business partner, business associate or family member of mine are as follows:

- (g) My public advocacy or legal or other representation concerning an issue in dispute in the tribunal proceeding or involving the same investment is as follows:
- (h) My other interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process and that are not disclosed in subparagraphs (a) through (g) above are as follows:

Signed on this _____ day of _____, 20__.

By:

Signature _____

Name _____