The Professional Code of Conduct for Arbitrators

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the legal system on which society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake responsibilities to the Hong Kong Mediation and Arbitration Centre (hereafter the “HKMAAC”), the general public, as well as to the disputing parties.

Although few cases of unethical behavior by arbitrators have arisen, this Professional Code of Conduct for Arbitrators (hereafter the “Code”) sets forth some generally accepted standards of ethical conduct for the guidance of arbitrators and parties in disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code is intended to apply to all proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called “arbitrators,” although in some types of proceeding they might be called “umpires,” “referees,” “neutrals,” or have some other title(s).

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the time that they serve as arbitrators. Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding.

This Code recognizes these fundamental differences between arbitrators and judges. In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.
Rule I: AN ARBITRATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ARBITRATION PROCESS.

A) An arbitrator has a responsibility not only to the disputing parties but also to the process of arbitration itself, and must observe the highest standards of conduct so that the integrity and fairness of the process will be preserved. To this aim, an arbitrator should recognize a professional responsibility to HKMAAC, the general public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may also include Pro Bono service as an arbitrator (where appropriate).

B) Person should accept appointment as an arbitrator only if he or she can be fully satisfied that:
   (1) he or she can serve impartially;
   (2) he or she can serve independently from the parties and the other arbitrators;
   (3) he or she is competent to serve; and
   (4) he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote sufficient time and attention to its completion that the parties are reasonably entitled to expect.

C) After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described under this paragraph does not render it unethical for one to serve as an arbitrator, where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts as stipulated under Rule II herein.

D) Arbitrators should conduct themselves in a way that is fair to all parties and should not be affected by any undue pressure, public clamor, fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.
E) Where an arbitrator's authority is derived from the agreement of the parties, an arbitrator should neither exceed that authority (i.e. acting *ultra vires*) nor does anything less than that is required to exercise that authority. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules. An arbitrator has no ethical obligation to comply with any agreement, procedures or rules that are unlawful or that, in the arbitrator's judgment, would be inconsistent with this Code.

F) An arbitrator should conduct the arbitration process so as to advance the fair and efficient resolution of the matters submitted for decision. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process as a whole.

G) The ethical obligations of an arbitrator shall begin upon acceptance of the appointment and continue throughout all stages of the arbitration proceedings. In addition, as set forth in this Code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue after the decision in the proceeding has been given to the parties.

H) Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by exceptional circumstances that would render it impossible or impracticable to continue. When an arbitrator is to be compensated for his or her services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of the compensation as agreed.

I) An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of any documents, materials previously provided, and shall preserve the confidentiality of the parties and the whole arbitration proceedings.

**Rule II: AN ARBITRATOR SHOULD DISCLOSE ANY INTEREST OR RELATIONSHIP THAT MAY AFFECT IMPARTIALITY OR CREATE AN APPEARANCE OF PARTIALITY.**

A) Persons who are requested to serve as arbitrators should, before accepting, disclose:
   (1) Any known direct or indirect financial or personal interest in the outcome of the
(2) Any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the related parties;

(3) The nature and extent of any prior knowledge they may have of the dispute; and

(4) Any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

B) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships as described under this Code.

C) The obligation to disclose interests or relationships described under this Code shall be a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stages of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

D) Any doubt as to whether or not disclosure is to be made shall be resolved in favor of disclosure.

E) Disclosure should be made to all parties unless other procedures for disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.

F) When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.

G) If an arbitrator is requested by all parties to withdraw, the arbitrator must do so forthwith. If an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists:

(1) An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or

(2) In the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not
substantial, and that he or she can nevertheless act and decide the case impartially and fairly.

H) If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:
   (1) Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or
   (2) Decide to withdraw the appointment.

RULE III: AN ARBITRATOR SHOULD AVOID IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY IN COMMUNICATING WITH PARTIES.

A) If an agreement of the parties or applicable arbitration rules establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision contained herein under this Code.

B) An arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party, except in any of the following circumstances:
   (1) When the appointment of a prospective arbitrator is being considered, the prospective arbitrator:
      (a) may ask about the identities of the parties, counsel, or witnesses and the general nature of the case; and
      (b) may respond to inquiries from a party or its counsel designed to determine his or her suitability and availability for the appointment. In any such dialogue, the prospective arbitrator may receive information from a party or its counsel disclosing the general nature of the dispute but should not permit them to discuss the merits of the case.
   (2) In an arbitration in which the two party-appointed arbitrators are expected to appoint the third arbitrator, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the choice of the third arbitrator;
   (3) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning arrangements for any compensation to be paid to the party appointed arbitrator.

Submission of routine written requests for payment of compensation and expenses in accordance with such arrangements and written communications
pertaining solely to such requests need not be sent to the other party;
(4) Discussions may be had with a party concerning such logistical matters as setting
the time and place of hearings or making other arrangements for the conduct of
the proceedings. However, the arbitrator should promptly inform each other party
of the discussion and should not make any final determination concerning the
matter discussed before giving each absent party an opportunity to express the
party's views; or
(5) If a party fails to be present at a hearing after having been given due notice, or if
all parties expressly consent, the arbitrator may discuss the case with any party
who is present.

C) Unless otherwise provided under this Code (or in any applicable arbitration rules or
an agreement of the parties), whenever an arbitrator communicates in writing with
one party, the arbitrator should at the same time send a copy of the communication to
every other party, and whenever the arbitrator receives any written communication
concerning the case from one party which has not already been sent to every other
party, the arbitrator should send or cause it to be sent to the other parties.

RULE IV: AN ARBITRATOR SHOULD CONDUCT THE PROCEEDINGS FAIRLY
AND DILIGENTLY.

A) An arbitrator shall conduct the proceedings fairly. The arbitrator should be patient and
courteous to the parties, their representatives, the witnesses and should encourage
similar conducts by all kinds of the participants.

B) The arbitrator should afford to all parties the right to be heard and due notice of the
time and place of any hearing. The arbitrator should allow each party a fair
opportunity to present its evidence and arguments.

C) The arbitrator should not deny any party the opportunity to be represented by legal
representatives or by any other person chosen by the party.

D) If a party fails to appear after due notice, the arbitrator should proceed with the
arbitration when authorized to do so, but only after receiving assurance that
appropriate notice has been given to the absent party.

E) When the arbitrator determines that more information than has been presented by the
parties is required to decide the case, it shall not be improper for the arbitrator to ask
questions, call witnesses, and request documents or other evidence, including expert testimony.

F) Although it shall not be improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement or the use of other dispute resolution processes, an arbitrator should not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator should not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so by all parties.

G) Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

RULE V: AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

A) The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

B) An arbitrator should decide all matters justly, exercising independent judgment, and should not permit any undue pressure to affect the decision.

C) An arbitrator should not delegate the duty to decide to any other person.

D) In the event that all parties agree upon a settlement of issues in dispute and request the arbitrator to embody that agreement in an arbitration award, the arbitrator may do so accordingly. Nevertheless, the arbitrator shall not be required to do so unless the arbitrator is satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an arbitration award, the arbitrator should state in such award that it is based on an agreement of the parties.

RULE VI: AN ARBITRATOR SHOULD BE FAITHFUL TO THE RELATIONSHIP OF TRUST AND CONFIDENTIALITY INHERENT IN THAT OFFICE.

A) An arbitrator is in a relationship of trust to the parties and therefore should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.
B) The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by all the provisions under this Code.

C) It shall be improper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it shall be improper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it shall be improper for an arbitrator to assist in proceedings to enforce or challenge the relevant arbitration award.

D) Unless the parties so request, an arbitrator should not appoint himself or herself to a separate office related to the subject matter of the dispute, nor should a panel of arbitrators appoint one of their panel members to such office.

RULE VII: AN ARBITRATOR SHOULD ADHERE TO THE HIGHEST STANDARDS OF INTEGRITY AND FAIRNESS WHEN MAKING ARRANGEMENTS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES.

A) Arbitrators who are to be compensated for their services or reimbursed for their expenses shall adhere to the highest standards of integrity and fairness in making arrangements for such payments.

B) Below are some generally recognized practices which may preserve the integrity and fairness of the arbitration process:
   (1) Before the arbitrator finally accepts appointment, the basis of payment, including but not limited to any cancellation fee, compensation in the event of withdrawal, compensation for preparation time, and all other charges, shall be established. All parties shall be equally informed in writing of the terms established.
   (2) In proceedings conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, communication related to compensation should be made through the institution. In proceedings where no institution has been engaged by the parties to administer the arbitration, any communication with arbitrators concerning payments should be in the presence of all parties; and
(3) Save for exceptional circumstances, arbitrators should not request or demand any
increases in the basis of their compensation during the course of a proceeding.

RULE VIII: AN ARBITRATOR MAY ENGAGE IN ADVERTISING OR
PROMOTION OF PROFESSIONAL SERVICES WHICH IS
TRUTHFUL AND ACCURATE.

Any advertising or promotion of an arbitrator in relation to arbitral services must be truthful
and accurate and should not be misleading in any circumstances. Any statements about the
knowledge, expertise, experience and qualification of the arbitrator must be honest and
truthful.