

CODE OF ETHICS AND CONDUCT & DISCLOSURE RULES FOR ARBITRATORS 2016 (CODE 16)

BACKGROUND AND INTRODUCTION

The IMC International ADR Centre (IIAC) is an independent company constituted under the Companies Act, 2013 promoted by the Indian Merchants' Chamber for purposes of propagating alternate dispute resolution methods to assist all sections of society, individuals, corporate, firms, institutions and others in resolving disputes.

IIAC does not itself resolve disputes; it administers resolution processes including constituting Arbitral Tribunals in accordance with the various rules framed by it.

The success of the arbitration process depends on the performance and ethical conduct of the Arbitrator because it is the Arbitrator who is primarily responsible for conduct of the arbitration process and passing of an award in accordance with the relevant rules.

Persons who act as Arbitrators undertake serious responsibilities. They are chosen as Arbitrators by the parties in order that their special knowledge of their trade or industry or profession will expedite and assist in deciding disputes expeditiously and in accordance with trade practices and also to meet expectations of the trade and industry.

An Arbitrator has responsibility not only to the parties but also to the process of arbitration itself, and must therefore observe highest standards of conduct so that the integrity and fairness of the process is always preserved. The Arbitrator is responsible for the quality of dispute resolution services delivered to the parties resorting to arbitration of this Dispute Resolution Centre (IIAC).

Arbitrators should recognize that they owe a duty not only to the parties before them but also a larger responsibility to the public, and to all other participants in the proceedings. For arbitration to become effective to the

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satisfaction of persons availing of the services, it is necessary that public confidence is created, in the integrity and fairness of the arbitration process and the persons delivering their services.

Fair and just processes for resolving disputes which are also expeditious and affordable are indispensable in our society.

Arbitration is an important way for deciding many types of commercial and other disputes. The success of an expeditious and fair dispute resolution process helps build and maintain those good business ethics and fair play in the conduct of business which are necessary for promoting the reputation of Indian business and commerce to the world at large.

This *Code of Ethics and Conduct & Disclosure Rules* should be construed and applied to further these objectives.

This Code is intended to embody principles of best practices and provide ethical guidelines for the conduct of all types of arbitrations conducted under the procedures framed by the IMC International ADR Centre (IIAC) and applies to and shall be deemed to be incorporated as part of all procedures and rules framed for the conduct of IIAC arbitrations whether or not specifically so stated in the procedures and rules of IIAC and Arbitrators are expected to observe the spirit of the principles set out in this Code.

Please visit IIAC website: www.iiac.net.in

**CODE OF ETHICS AND
CONDUCT & RULES OF DISCLOSURE
FOR ARBITRATORS (CODE 16)**

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CODE OF ETHICS AND CONDUCT & DISCLOSURE RULES FOR ARBITRATORS (CODE 16)

1. APPLICABILITY

This *Code of Ethics and Conduct & Disclosure Rules for Arbitrators (Code)* shall be effective from 1st April, 2016.

This Code shall apply to and shall be observed by all persons who act as Arbitrators on Arbitral Tribunals constituted under the rules and procedures published by IIAC.

2. DEFINITIONS

In this Code and Rules, the following words have the meanings as set out under:

- (i) **“IIAC”** means IMC International ADR Centre (IIAC).
- (ii) **“Secretariat”** means the Secretariat of IIAC situated at “Secretariat, IMC International ADR Centre (“IIAC”), IMC Building 3rd Floor, IMC Suresh Kotak International ADR Centre, IMC Marg, Churchgate, Mumbai – 400 023, and includes such other persons as IIAC may nominate from time-to-time for carrying out the duties of the Secretariat.
- (iii) **“Panel of Arbitrators”** means Panel of Arbitrators maintained and published by the IIAC.
- (iv) Words importing the singular number include, where the context admits or requires, the plural number and vice versa.
- (v) Words describing a gender such as “his” or “her”; shall include all genders where the context admits or requires.

3. THE CODE OF CONDUCT

All persons who are to be appointed by IIAC and are appointed to act as Arbitrators on Arbitral Tribunals constituted under the Rules and procedures published by IIAC for conduct of arbitrations:

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- (i) *Shall act so as to maintain the highest standards to uphold the neutrality, integrity and fairness of the arbitration process and IIAC;*
- (ii) *Shall disclose existence or absence of facts and circumstance that may give rise to justifiable doubts as to his/her impartiality or independence or may result in a conflict of interest.*
Attention of Arbitrators is drawn to Explanation 1 given below;
- (iii) *Shall conduct the proceedings in a fair and impartial manner and treat all parties with equality at all stages of the proceedings and give adequate opportunity to parties to present their respective cases;*
- (iv) *Shall decide all matters fairly and justly and should exercise his/her own judgment independently and fearlessly. An Arbitrator should not delegate his/her duty to decide or permit outside pressures to affect his/her decision;*
- (v) *Shall accept appointment as an Arbitrator only if they are fully satisfied that they are fit and qualified and have sufficient time to be able to conduct the arbitration proceedings in a prompt and timely manner and publish the award;*
- (vi) *Shall perform duties diligently, efficiently and conclude the proceedings promptly;*
- (vii) *Shall conduct all communication through IIAC and not enter into or carry out any independent communications or discussions with a party or its representative in relation to a pending arbitration;*
- (viii) *Shall maintain confidentiality of all matters relating to the arbitration proceedings and not use or allow exploitation/misuse of any such information;*
- (ix) *Shall accept and abide by the fees structure framed by IIAC and not act in any manner contrary thereto;*
- (x) *Shall not accept any gifts, hospitality or considerations, directly or indirectly, from a party to the arbitration proceedings during the arbitration proceedings and a reasonable period thereafter;*

- (xi) *Shall not enter into any financial, business, professional or personal relationship or acquire any financial or personal interest with any parties directly or indirectly, which is likely to affect impartiality or which is likely to give rise to justifiable doubts as to his independence or impartiality;*
- (xii) *Shall not solicit for work as an Arbitrator;*
- (xiii) *An Arbitrator shall follow and abide by the applicable Rules of procedure, the “General Rules of Procedure & Guidelines” and the “The Code of Ethics and Conduct & Disclosure Rules for Arbitrators” published by IAC and provisions of applicable laws.*

Explanation 1: *The phrase “justifiable doubts” has been taken from the United Nations Commission on International Trade Laws (UNCITRAL) Model Law and is the standard adopted in the Arbitration & Conciliation Act, 1996 (Act). The standard was not defined in any Law or Rules.*

Doubts are to be regarded as “justifiable” if a reasonable third party having knowledge of the facts and circumstances, would reach a conclusion that there is likelihood that the Arbitrator may be influenced by factors other than the merits of the case. Arbitrators are required to observe and adhere to interpretations given in judicial pronouncements from time-to-time and the guidelines set out in the Lists annexed to these Rules for ascertaining the meaning and scope and ambit of this standard.

“List A” in Appendix 3 to these Rules sets out and describes facts and circumstances that IAC considers as necessarily giving rise to “justifiable doubts” as to an Arbitrator’s impartiality or independence and Arbitrators are therefore required to mandatorily comply with this List.

“List B” in Appendix 3 to these Rules sets out and describes facts and circumstances that IAC considers, may give rise to doubts as to an Arbitrators impartiality or independence.

When any doubts arise as to whether an Arbitrator should disclose certain facts or circumstances, then the Arbitrator should make a disclosure.

4. DISCLOSURE RULES FOR ARBITRATORS

- 4.1 Arbitrator shall expeditiously intimate IIAC their acceptance and consent to act or refusal in writing and shall also make a disclosure of all their interests known to them in the format prescribed herein (as set out in Form No. 1 i.e. "*Letter of Consent to act as Arbitrator & Disclosure of Interest*" of **Appendix I**, to these Rules) in accordance with "*The Code of Ethics and Conduct & Disclosure Rules for Arbitrators.*"
- 4.2 Failing receipt of a prompt reply in the Form (as set out in **Appendix 1** to these Rules) within 7 (seven) working days from enquiry by the IIAC of his availability, the proposed Arbitrator's silence will be treated as his inability to act and accept the appointment and IIAC shall take steps to appoint another person as an Arbitrator.
- 4.3 A person shall, on or before accepting appointment as an Arbitrator in any dispute, expeditiously disclose in writing the existence or absence of all facts and circumstances that may give rise to justifiable doubts as to his impartiality or independence, including the information set out in the printed form titled, "*Letter of Consent to act as Arbitrator & Disclosure of Interest*", to IIAC in the Form (as set out in **Appendix 1** to these Rules).

An Arbitrator shall be liable to disclose all facts and circumstances set out in List A and List B of **Appendix 3** to these Rules.

- 4.4 A person shall be ineligible for appointment or continuing as an Arbitrator by reason of existence of facts enumerated in List A of **Appendix 3** to these Rules.

Disclosure of facts and circumstances (as set out in List B of **Appendix 3** to these Rules) will not automatically disqualify a person from being appointed as an Arbitrator on an Arbitral Tribunal, but a party will be entitled to raise objection and challenge the appointment of an Arbitrator on such grounds.

- 4.5 If a party does not raise any objection within 15 (fifteen) working days from date of receipt of an appointed Arbitrators' disclosure from IIAC, then that party shall be deemed to have waived his rights to object to or challenge the appointment of the Arbitrator on basis of the facts and circumstances disclosed.

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- 4.6. IIAC may refuse to appoint any person as an Arbitrator if such person has failed to make required disclosures in a timely manner.
- 4.7. The duty and obligation of an Arbitrator to make disclosures shall continue throughout the arbitration proceedings until the Award is signed and published by IIAC.

Where during the subsistence of an arbitration proceedings, if any new facts or circumstances arise which if they had existed at time of making the aforesaid disclosure statement was liable to have been disclosed, then the Arbitrator concerned shall immediately make a disclosure of such facts or circumstances and date of their occurrence to all parties to the arbitration proceedings and to IIAC in the format prescribed herein (as set out in Form No. 2 of **Appendix 2** to these Rules).

- 4.8. Where facts or circumstance which ought to have been disclosed, are discovered subsequently and an objection is raised by a party, the Arbitrator may either withdraw or be challenged.
- 4.9 IIAC shall make the Arbitrators “Letter of Consent to act as Arbitrator & Disclosure of Interest” and “Letter of Further Disclosure” when filed by Arbitrators, available to the parties.

5. AMENDMENTS

These Rules may be amended, varied or modified by IIAC.

SEE:

Appendix 1: FORM No. 1 – For giving Consent and making of disclosure.

Appendix 2: FORM No. 2 – For further disclosure.

Appendix 3: LIST A and LIST B.

Frequently Asked Questions (FAQs)

FAQ 1: *What are the aspects that a person should consider in order to be satisfied that he or she is, “fit and qualified” to accept an appointment as Arbitrator?*

Answer: The satisfaction is subjective and based on facts generally known only to the person in question.

Briefly, a person should satisfy him/herself by asking oneself the following questions namely:

- a) Whether that person is fully satisfied that he or she has sufficient time available to conduct the arbitration proceedings promptly with the speed that parties are entitled to expect.*
- b) Whether he or she will be able to discharge his duties without any influence, fear of criticism, self-interest or bias.*
- c) Whether he/she, has adequate knowledge of subject matter and the language of the arbitration.*

FAQ 2: *What are the nature of facts and circumstance that may justifiably give rise to doubts as to his/her impartiality or independence?*

Answer: The Arbitrators have a duty to evaluate their facts and circumstances and ensure that their conduct does not give rise to doubts as to their impartiality or independence.

Any relationship or interest likely to create conflict of interest or a justifiable apprehension of bias should be disclosed.

The Arbitrators are expected to maintain the highest standards and persons contemplating acceptance of appointment as Arbitrators are advised to consider this issue with care and caution to uphold the integrity of the arbitration process and the institution and when necessary to withdraw from the appointment.

When any doubts arise as to whether an arbitrator should disclose certain facts or circumstances, then the Arbitrators should make a disclosure.

As a guidance some illustrative examples of circumstances which have been regarded as giving rise to justifiable doubts as to an Arbitrator’s impartiality or independence are set out in Lists A and B to the Code.

FAQ 3 : Would it be fair and proper for an Arbitrator to assist parties to arrive at a settlement?

Answer: An Arbitrator/s function is to decide on the dispute, however, it is not incompatible with an arbitration agreement for an Arbitral Tribunal to encourage settlement of the dispute. Arbitrators should not act as legal advisors nor act as advocates of a party. With the agreement of the parties, the Arbitral Tribunal may use mediation, conciliation or other procedures to encourage settlement.

One Arbitrator out of an Arbitral Tribunal of three, if alone, should refrain from actively assisting a settlement or remaining present or participating in arriving at a settlement.

FAQ 4: Is an Arbitral Tribunal bound to make an Award in terms of a settlement agreement between parties if requested by them?

Answer: Where parties arrive at and agree upon a settlement of issues in dispute and jointly request an Arbitrator to embody that agreement in an award, an Arbitral Tribunal may do so if it has no objection thereto. An Arbitral Tribunal shall satisfy itself that the settlement agreement is not in contravention of law.

FAQ 5: Is it permissible for an Arbitrator to discuss a case with a party?

Answer: Arbitrators should not discuss the case with any party in the absence of other parties to the arbitration. Arbitrators should not act as advisors to any party.

FAQ 6: Is it permissible for a Panel Arbitrator to mention the fact that he/she is a panel Arbitrator of IIAC or use the logo of IIAC on their visiting cards?

Answer: An Arbitrator may mention his qualifications if any as an Arbitrator or the fact that he is a panel Arbitrator of IIAC on his business card, however, he/she shall not use IIAC logo. An Arbitrator will not canvass for work as an Arbitrator but is at liberty to indicate his/her general willingness to serve as an Arbitrator when asked.

NOTE: These FAQs are in nature of guidance to understand the spirit of the Code and are not intended to interpret the meaning of language used in the Code.

APPENDIX 1

Form No. 1

“Letter of Consent to act as Arbitrator & Disclosure of Interests”

(See Rule No. 4)

(Information provided in this form will be shared with the Parties)

To
The SECRETARIAT
IMC INTERNATIONAL ADR CENTRE (“IIAC”)
IMC Building 3rd Floor
Suresh Kotak International ADR Centre
IMC Marg, Churchgate,
Mumbai-400 023
Maharashtra, INDIA

Re: CASE No.: _____

I _____, having my place of business at _____

1) I have been requested by _____, to act as a Sole Arbitrator/
Arbitrator in relation to disputes arising under a contract dated
____/____/____ between the following parties:

(I) : _____
(Claimants)

(II) : _____
(Respondents)

2) I have read and familiarised myself with:

- (i) The Code of Ethics and Conduct & Disclosure Rules for Arbitrators.
- (ii) The Rules and Procedure applicable to the proposed arbitration proceeding.
- (iii) The Rules and Terms relating to appointment and payment of Fees to Arbitrators published by IIAC.

3) I agree to serve/decline to serve as Arbitrator in the above case.

(NOTE: If you “decline to” serve as Arbitrator you may return this Form without completing the rest of the form).

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- 4) I agree to serve as Arbitrator under and in accordance with IIAC Rules applicable to arbitrations and agree to observe and abide by the “Code of Ethics and Conduct & Disclosure Rules for Arbitrators”, as also the Rules and Terms relating to appointment and payment of Fees to Arbitrators and all Rules and Procedures published by IIAC from time-to-time applicable for conduct of the proposed arbitration proceeding and agreed to by parties for the conduct of their arbitration, including those referred to in paragraph 2 above and on that basis, I accept appointment as a sole Arbitrator/Arbitrator in respect of the above referred disputes (Case Number) and make the following disclosures:

		Write YES or NO
1	I have read List A of Appendix 3 and I confirm I am not disqualified by any of the circumstances set out therein.	
2	I have read List A of Appendix 3 and I am disqualified by some of the circumstances set out therein.	
3	Nothing to disclose: I am independent and impartial and intend to remain so.	
4	Acceptance with disclosure: I am independent and impartial and intend to remain so, however being aware of my obligations to disclose all facts and circumstance which may call into question my independence and impartiality or may give rise to reasonable doubts or give rise to reasonable doubts as to my independence or impartiality, I am making under mentioned disclosures.	

Note: A person answering Serial No. 2 in the positive need not fill up rest of the form.

Disclosure required to be made by Arbitrator

S. No.		Arbitrators Disclosure
1	Whether Arbitrator has in past 5 years, had any business relationship or dealing with any parties to the dispute or any person representing a party or had a common identity with any party to the arbitration such as being partners, ex-partners, employee, agent or business representative?	
2	Whether Arbitrator is part of the management of any of the parties or in a position to control or influence of any of the parties to the dispute or any entity that has an economic or financial interest in the business of a party to the dispute or in the subject matter of the dispute or in the outcome of the award.	
3	Whether Arbitrator has a significant financial or personal interest in any of the parties or outcome of the dispute?	
4	Whether the Arbitrator has or had a prior interest or involvement in the dispute, whether financial, business, professional or any other kind.	
5	Whether any person appearing before an Arbitrator is a "Related person", within the meaning of the term "relative" as defined in the Companies Act, 2013.	
6	Whether the Arbitrator or any of his partners or associates regularly represents, advices or provides services or has business dealings with a party to the arbitration or any of its affiliates, associates or subsidiaries.	
7	Whether the Arbitrator is related to another Arbitrator in the same Arbitral Tribunal or associated to him as a partner or as a Chamber colleague.	

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S. No.		Arbitrators Disclosure
8	Whether there exists any facts or circumstances likely to affect the Arbitrator's ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within period prescribed by IAC Rules or a period statutorily prescribed.	
9	The extent of any prior knowledge that Arbitrator may have of the dispute.	
10	Whether the Arbitrator has rendered any advice or services or has had some business dealings with a party to the arbitration.	
11	Whether the Arbitrator has within the past three years been appointed as an Arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.	
12	Whether a close personal friendship or enmity exists between the Arbitrator and a party or its representative appearing in the arbitration proceedings.	
13	Whether any person appearing before the Arbitrator as party or representative is or has been related or associated with the Arbitrator.	
14	Whether there is or has been any past or present relationship or business relationship or interest or dealings whether, direct or indirect, with any person who may be or is appearing as a witness.	
15	Any facts which may affect his/her independence and impartiality as Arbitrator or any prejudice or reservation he/she may have as to any party or to the subject matter of the dispute which may affect his/her impartiality, or which comes within the grounds enumerated in 5 th Schedule of Arbitration and Conciliation Act, 1996 as amended.	(Use an Attached Sheet if necessary)

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S. No.		Arbitrators Disclosure
16	I confirm that I have the qualifications to conduct this arbitration as agreed by parties.	
17	I confirm that apart from the above disclosed facts there are no other facts and circumstances to my knowledge which I need to disclose and which may be regarded as giving rise to justifiable grounds affecting my independence and/or my impartiality.	

Dated this ____ day of ____

Place:

Name and Signature of Arbitrator

APPENDIX 2
Form No. 2
“Letter of Further Disclosure”

(See Rule No. 4.2)

(Information provided in this form will be shared with the Parties)

To
The Secretariat
IMC INTERNATIONAL ADR CENTRE (“IIAC”)
IMC Building 3rd Floor
Suresh Kotak International ADR Centre
IMC Marg, Churchgate,
Mumbai-400 023
Maharashtra, INDIA

Re: CASE No: _____

I _____
having my place of business at _____

1. On _____20___ , I was appointed as a Sole Arbitrator/Arbitrator and am presently acting as such in relation to disputes arising under a contract dated ___/___/20 between following parties:
 - (I) : _____
(Claimants)
 - (II) : _____
(Respondents)
2. On _____20___ , I had filed a Letter of Consent to act as Arbitrator & Disclosure of Interest as required under the “Code of Ethics and Conduct & Rules for Disclosure for Arbitrators” published by IIAC. Thereafter, certain events have transpired which necessitates my making this further disclosure of my interests, which I am doing hereunder.
 - (i) Nature of interest and facts and circumstances in which new/ further interest arises: _____.

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(ii) Date when Interest arose and/or facts and circumstance occurred:
_____.

Dated this _____ day of _____

Place:

Name and Signature of Arbitrator

APPENDIX 3
LIST A

Non-waivable list setting out facts and circumstances, if disclosed, will disqualify a person from being appointed.

- (a) When there is or has in the past 5 years been any business relationship or dealings whether direct or indirect with any of the parties to the dispute or any person representing a party or common identity between the Arbitrator and any party to the arbitration such as that of being partners or ex-partners, employee, agent or business representative.
- (b) Where the Arbitrator is a partner, manager, director or member of the management of a firm or company or has a controlling influence on one of the parties to the arbitration or in an entity that has an economic or financial interest or business dealings with or other relationship with the business of a party to the dispute or he has any personal or economic interest in the subject matter of the dispute or in the award or outcome of the dispute.
- (c) Where the Arbitrator has a significant financial or personal interest in one of the parties or in the outcome of the dispute.

However, a person shall not be deemed to be disqualified from acting as an Arbitrator merely because he or she holds a financial investment with a party before him, being, a listed body corporate or a mutual fund, where the investment is not a material holding and provided such holding does not exceed ₹ 75 lakh in case of a mutual fund or an investment of shares in the share capital of a listed body corporate which is not more than 3% of its issued Share Capital; however the holding of such investments if exceeding ₹ 5 lakh shall be disclosed.

- (d) Where the Arbitrator has or had a prior involvement in the dispute or with a party appearing before an Arbitrator in connection with the dispute.
- (e) Where any person appearing before an Arbitrator is a "*Related person*", within the meaning of the term "*relative*" as defined in the Companies Act, 2013, then the Arbitrator shall be liable to make a disclosure.
- (f) Where the Arbitrator or any of his partners or associates regularly represents advices or provides services or has business dealings with a party to the arbitration or any of its affiliates, associates or subsidiaries.

- (g) Where the Arbitrator is related to another Arbitrator in the same Arbitral Tribunal or associated to him as a partner or as a chamber colleague.

LIST B

List setting out facts and circumstances which should be disclosed and which do not entail a disqualification unless objected to by a party and established to be ground giving justifiable doubts as to an Arbitrator's independence and impartiality.

- (i) Where the Arbitrator has rendered any advice or services or has had some business dealings with a party to the arbitration.
- (ii) Where the Arbitrator has within the past three years been appointed as an Arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.
- (iii) Where a close personal friendship exists or enmity exists between an Arbitrator and a party or its representative appearing in the arbitration proceedings.
- (iv) Where any person appearing before an Arbitrator as party or representative is or has been related or associated with the Arbitrator.
- (v) Where there is or has been any past or present relationship or business relationship or dealings, whether direct or indirect, with any person who may be or is appearing as a witness.
- (vi) Any of the circumstances or grounds set out in 5th Schedule to the Arbitration and Conciliation Act, 1996 as amended.