



ILSCA Code of Ethics and Conduct & Disclosure Rules for Arbitrators

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Introduction:

The ILSCA Code of Ethics and Conduct & Disclosure Rules for Arbitrators (“ILSCA Code of Ethics for Arbitrators”) sets out the minimum standards of conduct that ILSCA arbitrators should observe. ILSCA Code of Ethics for Arbitrators sets forth generally accepted standards of ethical conduct for the guidance of arbitrators in all disputes, and contributes in maintaining high standards in the process of arbitration.

The Indian Law Society’s Centre for Arbitration and Mediation (ILSCA) believes that an Arbitrator has the utmost responsibility of observing and maintaining highest standards of ethical conduct during the process of arbitration.

Therefore, ILSCA has developed the ILSCA Code of Ethics for Arbitrators, to provide basic guidance to the ILSCA Arbitrators in order to preserve integrity and fairness throughout the arbitration process.

Rule 1: Applicability of ILSCA Code of Ethics for Arbitrators

- 1.1 The ILSCA Code of Ethics and Conduct & Disclosure Rules for Arbitrators (for sake of brevity henceforth referred to as “**ILSCA Code of Ethics for Arbitrators**”) shall be effective from 10th January 2020.
- 1.2 The ILSCA Code of Ethics for Arbitrators shall apply to all and shall be observed by all arbitrators appointed under the ILSCA (IA) Rules and who agree to conduct arbitrations according to ILSCA (IA) Rules.
- 1.3 All arbitrators appointed to adjudicate matters as per ILSCA (IA) Rules shall undertake to abide by the ILSCA Code of Ethics for Arbitrators, and the obligation continues throughout the arbitral proceedings.
- 1.4 The Arbitrators are bound to conduct themselves in a manner consistent with the rules and the policies of ILSCA.
- 1.5 All arbitrators appointed to adjudicate matters as per ILSCA (IA) Rules shall make disclosures by filing “Arbitrator’s Statement for Acceptance, Availability, Impartiality and Independence” given in the schedule to ILSCA Code of Ethics for Arbitrators.

Rule 2 : Appointment of Arbitrator and his acceptance

- 2.1. The Appointing Authority, ILSCA before the confirmation of appointment of arbitrator, shall send an official communication to the prospective arbitrator to act as an Arbitrator in relation to the particular dispute along with the details as to the general nature of the dispute referred, the names of the parties, case number and the expected time period required for completion of arbitral proceedings. The Appointing Authority shall seek the Arbitrator's Statement for Acceptance, Availability, Impartiality and Independence as prescribed in the Schedule to ILSCA Code of Ethics for Arbitrators from such prospective arbitrator.
- 2.2. Prospective arbitrators approached by the Appointing Authority, ~~ILSCA~~ shall promptly intimate the Appointing Authority, their acceptance and consent to act as arbitrator or refusal in writing in the prescribed format given in the Schedule to ILSCA Code of Ethics for Arbitrators.
- 2.3. If the prospective arbitrator fails to communicate his acceptance or refusal to act as arbitrator within Fifteen (15) days from the receipt of communication by the Appointing Authority, the prospective arbitrator's silence will be treated as his inability to act and accept the appointment and the Appointing Authority may in its discretion, appoint another arbitrator from ILSCA Panel of Arbitrators, as promptly as possible, without further circulation of additional lists.
- 2.4. In case of emergency arbitrator, if the prospective arbitrator fails to communicate his acceptance or refusal to act as arbitrator within One (1) day from the receipt of communication by the Appointing Authority, the prospective arbitrator's silence will be treated as his inability to act and accept the appointment and the Appointing Authority may in its discretion, appoint another arbitrator from ILSCA Panel of Arbitrators.

Rule 3 : Disclosures- Duty to disclose Independence, Impartiality and time constraints

- 3.1. A prospective arbitrator has a duty to disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, and such duty shall continue throughout the arbitral proceedings with regard to new facts and circumstances.
- 3.2. A prospective arbitrator shall disclose to the Appointing Authority, ILSCA, in the prescribed format given in the Schedule to ILSCA Code of Ethics for Arbitrators:-
 - (a) any circumstances such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
 - (b) the extent of any prior knowledge he may have of the dispute.
- 3.3. A prospective arbitrator shall accept an appointment only if:
 - (a) he is fully satisfied that he is able to discharge his duties independently and without any bias; and
 - (b) he has adequate knowledge of the language of the arbitration; and
 - (c) he is able to give to the arbitral proceedings the time and attention that the parties are reasonably entitled to expect.
- 3.4. The duty and obligation of an ~~Arbitrator~~ arbitrator to make disclosure shall continue throughout the arbitral proceedings until the final arbitral award is made.
- 3.5. Where during the subsistence of an arbitral proceeding, if any new facts or circumstances arise which need to be disclosed, then the Arbitrator concerned shall immediately make “Statement of Further Disclosure”.
- 3.6. The Appointing Authority shall make available to all the parties and other arbitrators, the “Arbitrator’s Statement for Acceptance, Availability, Impartiality and Independence” and the “Statement of Further Disclosure”, if any, filed by arbitrators.

- 3.7. An arbitrator shall remain impartial and independent throughout the arbitral proceedings.
- 3.8. If the prospective arbitrator is aware of any potential time constraints on his ability to discharge his duties if he is appointed as an arbitrator, he shall, without breaching any existing confidentiality obligations, disclose details of such time constraints to the Appointing Authority.

Rule 4 : Communications

- 4.1. Before accepting an appointment, an arbitrator may enquire with Appointing Authority, ILSCA any other additional information in respect of the dispute referred.
- 4.2. **Save ??** as may be permitted under the ILSCA (IA) Rules, no arbitrator shall converse with any of the parties or their counsel until after the Appointing Authority gives notice of the formation of the Arbitral Tribunal to the parties.
- 4.3. Throughout the arbitral proceedings, the arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.
- 4.4. All communications between a prospective arbitrator and the parties relating to a pending arbitration shall be made through the Appointing Authority.
- 4.5. An arbitrator shall not accept any substantial gift or hospitality, directly or indirectly, from any party to the arbitration, except in the presence of the other parties and/or with their consent.

Rule 5 : Arbitrator's Fees

- 5.1 In accepting an appointment, the arbitrator agrees to the Arbitral Tribunal's Fee as provided in the ILSCA Schedule of Fees – Arbitration.
- 5.2 All matters relating to arbitrators' fees and expenses shall be in accordance with the ILSCA Schedule of Fees – Arbitration.
- 5.3 The arbitrator shall not make independent arrangements with any of the parties or their counsel for any additional fees or expenses, except with the express consent of the Appointing Authority, ILSCA.
- 5.4 In no circumstances shall the ~~Arbitrator~~ arbitrator be entitled to charge any fixed fee per sitting or for attendance at hearings.

Rule 6: Conduct of Arbitrators

- 6.1 Once the arbitral proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions related to the proceedings so that he may properly understand the dispute.
- 6.2 All persons who are appointed by ILSCA to act as ~~Arbitrators~~ arbitrators on Arbitral Tribunals constituted under the ILSCA (IA) Rules shall : -
- (a) act so as to maintain the highest standards to uphold the neutrality, integrity and fairness in the arbitral proceedings;
 - (b) 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 the parties to present their respective cases;
 - (c) exercise their own judgment independently and fearlessly. An ~~Arbitrator~~ arbitrator should not delegate his duty to decide or permit outside pressures to affect his decision;
 - (d) accept appointment as arbitrators only if they are fully satisfied that they are fit and qualified and have sufficient time to be able to conduct the arbitral proceedings in a prompt and timely manner;
 - (e) perform duties diligently, efficiently and conclude the arbitral proceedings promptly;
 - (f) 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 independence or impartiality or give rise to justifiable doubts as to their independence or impartiality;
 - (g) not solicit for work as an Arbitrator.

Rule 7 : Confidentiality

- 7.1 The arbitral proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the arbitral proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- 7.2 The arbitrator shall not use or allow exploitation/misuse of any such information relating to arbitral proceedings.



Schedule

ILS Centre for Arbitration and Mediation

Chiplunkar Road (Law College Road), Pune 411004

Arbitrator's Statement for Acceptance, Availability, Impartiality and Independence

To

The Appointing Authority

ILSCA

Re: CASE No.: _____

I _____ (First Name) _____ (Middle name) _____ (Last Name), residing at _____, have been approached by the Appointing Authority, ILSCA to act as an Arbitrator in relation to Case No. _____ by its letter dated ____/____/____, bearing number _____, between the following parties:

_____ (Claimants)

_____ (Respondents)

Please tick all relevant boxes. (*sentence is in italic*)

1. ACCEPTANCE

Acceptance

- I accept** to serve as arbitrator in the case number _____ in accordance with the ILSCA Institutional Arbitration Rules (ILSCA (IA) Rules) and allied Rules. I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by ILSCA in accordance with the ILSCA Schedule of Fees – Arbitration. By accepting to serve as arbitrator

under the ILSCA (IA) Rules, with the consent of the parties, I consent to publication of my award(s) according to ILSCA (IA) Rules.

Non-Acceptance

I decline to serve as arbitrator in this case. *(If you tick here, simply mention the date and sign at the end of the form without completing any other sections.)*

2. AVAILABILITY

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration throughout the entire duration of the case as diligently, efficiently and expeditiously as possible in accordance with the time limits in the ILSCA (IA) Rules, subject to any extensions granted in accordance with the ILSCA (IA) Rules. I understand that it is important to complete the arbitration as promptly and reasonably as practicable. My current professional engagements are mentioned below for the information of ILSCA and the parties.

Number of currently pending cases in which I am involved

- *(i.e. arbitrations and court litigation pending; additional details in relation to these matters can be provided in a separate sheet).*

| | As Sole Arbitrator | As co-arbitrator | As Counsel |
|------------------|--------------------|------------------|------------|
| Arbitrations | | | |
| Court litigation | | | |

I have marked in the annexed calendar for the next 12 months all currently scheduled hearings and other existing commitments that would prevent me from sitting in a hearing on this matter.

I have further provided in the box below or in a separate sheet any other relevant information regarding my availability.

3. INDEPENDENCE and IMPARTIALITY

(Tick one box and provide details below and/or, if necessary, on a separate sheet)

.....

In deciding which box to tick, you should take into account, having regard to the ILSCA (IA) Rules, whether there exists any past or present relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the parties, their lawyers or other representatives, or related entities and individuals or other arbitrators. Any doubt must be resolved in favor of disclosure. The disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information. In deciding which box to tick and as the case may be in preparing your disclosure, you should also consult with care the relevant provisions of the ILSCA (IA) Rules, ILSCA Code of Ethics for Arbitrators and the Fifth Schedule of the Arbitration and Conciliation Act, 1996.

Nothing to disclose: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my impartiality or independence in the opinion of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality or independence.

Acceptance with disclosure: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my impartiality or independence in the opinion of any of the parties or that could give rise to reasonable doubts as to my impartiality or independence, I draw attention to the matters below and/or in the attached sheet.

Date:

Signature: