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REGULATING ARBITRATOR CONFLICTS OF INTEREST: INTERNATIONAL STANDARDS, EMERGING CHALLENGES, AND CONTEMPORARY REFORMS

AUTHORED BY - FATHIMA NOOR SHAFA NA
UG Student – Government Law College Kozhikode

1. ABSTRACT

Conflicts of interest pose a persistent challenge to the legitimacy of arbitration, where the credibility of the process depends fundamentally on the independence and impartiality of arbitrators. In recent years, increasing scrutiny of arbitrator conduct, coupled with evolving professional roles and digital visibility, has intensified concerns regarding bias, disclosure, and ethical accountability. This paper examines the contemporary international regulatory framework governing conflicts of interest in arbitration, with particular focus on the UNCITRAL Code of Conduct for Arbitrators (2023)[1] and the IBA Guidelines on Conflicts of Interest in International Arbitration (2024)[2]. It analyses how these instruments seek to address traditional sources of conflict as well as emerging issues such as double-hatting, issue conflict, third-party funding, and the growing influence of social media on perceptions of impartiality. The study further undertakes a comparative review of selected national laws and institutional rules to assess the extent to which international standards have been incorporated at the domestic and institutional levels. Through doctrinal analysis and case-based discussion, the paper argues that while recent reforms represent a significant step towards harmonisation and transparency, gaps remain in enforcement and practical application. The paper concludes that sustained legitimacy of arbitration depends not merely on codified standards, but on consistent disclosure practices, contextual assessment of conflicts, and effective institutional oversight.

Keywords: Conflicts of Interest in Arbitration; Arbitrator Independence and Impartiality; UNCITRAL Code of Conduct (2023); IBA Guidelines (2024); Disclosure Obligations; Double-Hatting; Issue Conflict; Investment Arbitration

[1] United Nations Commission on International Trade Law, *Code of Conduct for Arbitrators in International Investment Dispute Resolution* (UNCITRAL, 2023)
[2] International Bar Association, *IBA Guidelines on Conflicts of Interest in International Arbitration* (IBA Council, 25 May 2024)

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2. INTRODUCTION

A conflict of interest occurs when private interests clash with the official responsibilities of someone in a position of trust, potentially compromising their impartiality. In arbitration, the hallmark of the process is the impartiality and independence of the arbitrators, who are morally obligated to uphold the integrity and fairness of the proceedings. A conflict of interest arises when an arbitrator has connections with the parties involved in the dispute that could affect their judgment or result in bias toward one party. Determining an arbitrator's impartiality can be challenging, as it involves evaluating their relationship with the parties, including the nature, extent, and duration of any connection whether professional, social, or familial and assessing whether this association might impair their ability to act impartially. Arbitrator disclosures concerning conflicts of interest must detail these aspects to ensure transparency and maintain the integrity of the arbitration process.

A conflict of interest in an arbitrator is significant because it can lead to bias, undermining the principles of fairness and equality. If an arbitrator has a conflict of interest, their decisions may be influenced by personal or financial considerations, compromising their impartiality. This defeats the entire purpose of appointing an arbitrator, which is to ensure a fair and unbiased resolution of disputes.

Maintaining impartiality and integrity is crucial for a fair, free, and unbiased arbitral proceeding. If these key qualities are violated, it can render the award ineffective and challenge the validity of the arbitration itself. An arbitration is only as good as the arbitrator, and parties have the right to have their disputes resolved fairly and legitimately. Against this backdrop, the present paper examines the evolving international framework governing conflicts of interest in arbitration, with particular emphasis on recent regulatory developments aimed at strengthening arbitrator independence and impartiality. It seeks to analyse whether contemporary instruments such as the UNCITRAL Code of Conduct for Arbitrators (2023) and the IBA Guidelines on Conflicts of Interest in International Arbitration (2024) adequately address both traditional and emerging sources of conflict, including double-hatting, issue conflict, and the influence of social media. The paper argues that while these instruments mark a significant move towards harmonisation and enhanced transparency, their effectiveness ultimately depends on consistent disclosure practices, institutional enforcement, and meaningful incorporation at the national level.

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3. UNCITRAL Code of Conduct for Arbitrators (2023)

In recent years there has been significant development in the field of arbitration to ensure higher standards of integrity and to protect independence and impartiality. UNCITRAL Code of Conduct for Arbitrators (2023) outlines comprehensive guidelines to regulate the conduct of arbitrators.

i. The arbitrator shall be independent and impartial.

The UNCITRAL Code of Conduct adopts a broad and preventative approach to arbitrator independence by prohibiting not only actual bias but also conduct that may create an appearance of partiality. Arbitrators are restrained from accepting instructions, maintaining conflicting financial or professional relationships, or using their position for personal advantage. By extending the prohibition to past, present, and future relationships, the Code acknowledges that perceived bias can be as damaging to arbitral legitimacy as actual bias. This expansive framing reflects a shift towards safeguarding confidence in the arbitral process rather than merely policing proven misconduct.

ii. limit on multiple roles (Double Hatting)

These restrictions represent a direct response to concerns surrounding double-hatting in investment arbitration, where repeat appointments and overlapping professional roles may compromise neutrality. By imposing cooling- off periods, the Code seeks to prevent arbitrators from leveraging confidential insights or developing unconscious alignment with recurring parties. However, the effectiveness of these provisions depends on consistent enforcement and transparent disclosure, particularly in jurisdictions where arbitrators frequently operate within a limited professional pool.

iii. Duty of diligence, Integrity and competence

The duties of diligence, integrity, and competence imposed under the UNCITRAL Code collectively reinforce the professionalisation of arbitrator conduct. By requiring arbitrators to devote adequate time, avoid delegation of decision-making, and continuously enhance their expertise, the Code recognises that impartiality alone is insufficient without procedural efficiency and ethical discipline. These provisions seek to address criticisms that delays, lack of preparedness, and excessive caseloads can indirectly affect fairness and undermine confidence in arbitral outcomes.

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iv. Ex parte communication

Ex parte communication is prohibited unless allowed by the instrument of consent, applicable rules, agreement of the disputing parties, or specific exceptions. It is permitted when a candidate is being considered for the role of a party-appointed arbitrator, they can communicate with one of the disputing parties. This communication is limited to discussing the candidate's qualifications, such as their expertise, experience, competence, skills, availability, and any potential conflicts of interest.

However, even in these permitted situations, the communication must not touch on any procedural or substantive issues related to the IID proceeding. This restriction ensures that the discussions remain focused solely on the candidate's suitability for the role and do not influence or give the appearance of influencing the outcome of the case. While limited pre-appointment communication is permitted to assess suitability, the strict prohibition on discussing procedural or substantive issues reflects a cautious balance between party autonomy and procedural fairness. This distinction is essential in preventing informal influence while allowing informed arbitrator selection, particularly in party-appointed tribunal systems.

v. Confidentiality

a) Unless allowed by the instrument of consent, applicable rules, or agreement of the disputing parties, a candidate, arbitrator, or former arbitrator shall not:
   - Disclose or use any information from the IID proceeding.
   - Disclose any draft decision in the IID proceeding

a. An arbitrator or former arbitrator shall not disclose the contents of the deliberations in the IID proceeding.
b. An arbitrator or former arbitrator may comment on a decision only if it was made publicly available according to the instrument of consent or applicable rules
c. Even if permitted to comment, an arbitrator or former arbitrator shall not comment on a decision while the IID proceeding is pending, or the decision is subject to a post-award remedy or review.
d. These obligations do not apply if a candidate, arbitrator, or former arbitrator is legally required to disclose the information in court or needs to disclose it to protect or pursue their legal rights in legal proceedings

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vi. Fees and expense

1. Arbitrator fees and expenses must be reasonable and follow the instrument of consent or applicable rules.
2. Discussions about fees and expenses should be concluded with the disputing parties as soon as possible.
3. Proposals for fees and expenses must be communicated to the disputing parties through the administering institution, or by the sole or presiding arbitrator if no institution is involved.
4. An arbitrator must keep an accurate record of time and expenses related to the IID proceeding and provide these records when requesting funds or if requested by a disputing party.

vii. Disclosure obligation

The disclosure regime under the UNCITRAL Code is notably expansive, reflecting a policy choice to prioritise transparency over minimal compliance. Rather than limiting disclosure to direct conflicts, the Code mandates disclosure of circumstances that may merely give rise to justifiable doubts

1. A candidate and an arbitrator must disclose any circumstances likely to give rise to justifiable doubts about their independence or impartiality.
2. The following information must be disclosed, regardless of whether required under point 1
   - Any financial, business, professional, or close personal relationship in the past five years with:
     I. Any disputing party;
     II. The legal representative of a disputing party in the IID proceeding;
     III. Other arbitrators and expert witnesses in the IID proceeding;
     IV. Any person or entity identified by a disputing party as having a direct or indirect interest in the outcome of the IID proceeding, including a third-party funder.
   - Any financial or personal interest in:
     I. The outcome of the IID proceeding;
     II. Any other proceeding involving the same measures;
     III. Any other proceeding involving a disputing party or related person/entity.

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- All IID and related proceedings in which the candidate or arbitrator has been involved in the past five years as an arbitrator, legal representative, or expert witness.
- Any appointment by a disputing party or its legal representative as an arbitrator, legal representative, or expert witness in the past five years.
- Any prospective concurrent appointment as a legal representative or expert witness in any other IID or related proceeding.

3. An arbitrator has a continuing duty to disclose new or newly discovered circumstances and information as soon as they become aware of them.
4. A candidate and an arbitrator must make all reasonable efforts to become aware of such circumstances and information.
5. If in doubt about whether to disclose, a candidate or arbitrator should err on the side of disclosure.
6. If bound by confidentiality obligations, a candidate or arbitrator should disclose to the extent possible. If unable to disclose circumstances that may give rise to justifiable doubts, they should not accept the appointment or should resign or recuse themselves from the IID proceeding.
7. A candidate and an arbitrator must make the disclosure prior to or upon appointment to the disputing parties, other arbitrators in the IID proceeding, any administering institution, and any other persons prescribed by the instrument of consent or applicable rules.
8. Non-disclosure alone does not necessarily establish a lack of independence or impartiality.

Although this approach enhances transparency, it also raises concerns regarding over-disclosure and practical feasibility, particularly for arbitrators with extensive professional networks. The subjective standard of "justifiable doubts" may lead to inconsistent application, thereby shifting the burden of assessment onto parties and institutions rather than providing clear thresholds.

2. IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION (2024).

The IBA Guidelines on Conflicts of Interest in International Arbitration operate as a globally influential soft-law instrument, offering practical guidance on arbitrator independence and

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disclosure while preserving party autonomy. Unlike binding statutory frameworks, the Guidelines rely on a contextual and objective assessment grounded in the perception of a reasonable third person. Their strength lies not in rigid prohibitions, but in a structured methodology that assists arbitrators and parties in identifying, disclosing, and evaluating potential conflicts of interest throughout the arbitral process.

i. Conflict of interest

Under the IBA Guidelines, an arbitrator is required to decline appointment or withdraw where circumstances give rise to justifiable doubts regarding their independence or impartiality. The assessment is based on the perspective of a reasonable third person, fully informed of the relevant facts, who would consider whether the arbitrator is likely to be influenced by factors external to the merits of the case. This objective standard seeks to prevent both actual bias and the appearance of bias, recognising that confidence in arbitration depends as much on perception as on substantive fairness.

ii. Disclosure obligation

The Guidelines impose a continuous duty of disclosure, requiring arbitrators to reveal any facts or circumstances that may reasonably raise doubts about their impartiality or independence. Disclosure must be made prior to acceptance of appointment and must continue throughout the proceedings as new circumstances arise. Importantly, the Guidelines clarify that disclosure does not imply the existence of bias; rather, it enables informed party participation and institutional oversight. By resolving any doubt in favour of disclosure, the Guidelines prioritise transparency while leaving the ultimate assessment of acceptability to the parties.

iii. Waiver by the parties

Party autonomy is preserved under the IBA framework through the doctrine of waiver. Where a party, having knowledge of a potential conflict, fails to object within thirty days, it is deemed to have waived its right to later challenge the arbitrator on those grounds. This mechanism prevents tactical objections and promotes procedural efficiency. However, the waiver principle operates alongside the arbitrator's independent ethical obligations, ensuring that party consent does not legitimise situations that fundamentally undermine arbitral integrity

a. Waivable Red List

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The Waivable Red List identifies serious conflict situations that may compromise arbitrator independence, but which parties may expressly waive with full knowledge of the relevant facts. These situations involve direct relationships or prior involvement that could reasonably raise concerns of bias.

- Where the arbitrator has given legal advice or an expert opinion to a party or its affiliate.
- Where the arbitrator had prior involvement in the dispute

b. Orange List

The Orange List reflects situations that may give rise to doubts depending on the specific facts of the case. Disclosure is mandatory, and failure to object following disclosure is deemed acceptance of the arbitrator.

- Where an arbitrator currently serves or has served in the past three years on another arbitration addressing a related issue.
- Where an arbitrator has publicly advocated a specific position regarding the case being arbitrated, whether in a published paper, speech, or otherwise.

c. Green list

The green list is a non-exhaustive list of specific situations where no appearance and no actual conflict of interest exists from an objective point of view. The arbitrator has no duty to disclose these situations: Where an arbitrator has previously published a general opinion (such as in a law review article or public lecture) concerning an issue that also arises in the arbitration, provided this opinion is not focused on the case being arbitrated. These situations are considered too remote or insignificant to affect an arbitrator's impartiality.

d. Waivable red list: serious but not severe situations, whereby the parties can knowingly agree to waive the conflict such as having a close family relationship with a party.

Collectively, the IBA Guidelines strike a pragmatic balance between ethical regulation and party autonomy by offering structured guidance rather than inflexible rules. While their non-binding nature limits enforceability, their widespread acceptance has rendered them a de facto standard in international arbitration. Nonetheless, the reliance on subjective assessments and voluntary compliance highlights the continuing need for complementary institutional and

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statutory safeguards.

i. Relationships

- An arbitrator is usually considered to bear the identity of their law firm or employer. However, potential conflicts or the need for disclosure should be assessed individually, considering the firm's activities, structure, and the arbitrator's relationship with it. Involvement of the arbitrator's firm with a party doesn't automatically require disclosure or indicate a conflict
- If a party is part of a group related to the arbitrator's firm, this should be evaluated individually but doesn't necessarily mean a conflict or need for disclosure.
- Entities or persons with a controlling influence on a party, a direct economic interest in, or a duty to indemnify a party may be considered as bearing the party's identity
- Entities or persons controlled by a party may also be considered as bearing the party's identity

ii. Impact of Social Media

Social media has transformed the landscape of arbitration law, mirroring its impact on our daily lives. It introduces unique challenges for arbitrators, potentially undermining their obligations of independence, impartiality, confidentiality, and avoidance of ex parte communications. While some of these issues exist outside the digital realm, the online environment magnifies both the risk and visibility of such problems.

Social media involves the formation of relationships, both known and unknown, of varying degrees and natures, which may influence the perceived independence and neutrality of arbitrators. Tweets and posts by an arbitrator can lead to challenge and annulment proceedings due to concerns of bias.

The scrutiny of an arbitrator's online activities includes:

- Reviewing a proposed arbitrator's profile on a law firm website or reading their publicly available blog posts or unprotected tweets.
- Engaging in passive review of a proposed arbitrator's social media, even if the arbitrator is notified of the review, such as through LinkedIn notifications or by becoming a listed "follower" on an unprotected Twitter account.

Attorneys should avoid sending Facebook "friend requests" or LinkedIn "invitations"

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to prospective arbitrators, as these actions could raise concerns about impartiality.

iii. Social Media Disclosure

To ensure a level playing field, it is crucial for arbitration parties to fully realize one of the primary benefits of arbitration: the opportunity to meaningfully participate in the selection of an impartial arbiter.Attorneys representing parties in arbitration typically expect arbitrators to disclose any social media connections they have with participants in the arbitration. This information is valuable for attorneys navigating the arbitrator-selection process. Failure to make adequate disclosure about social media activity expose themselves to ethical and reputational risk and their awards to vacatur Often parties may raise objections or concerns regarding an arbitrator's impartiality or neutrality. Such objections can undermine the arbitration process, potentially jeopardizing the intended independence and fairness of the proceedings. In 2023, the Paris Court of Appeal[3] set aside an arbitration award due to an undisclosed close relationship between the chairman of the arbitral tribunal and the claimant's counsel the late Emmanuel Galliard. This connection came to light through a written eulogy for Gaillard, posted online by Clay, in which Clay mentioned their "more personal" friendship and that he would consult Gaillard "before making any important decision."

In the *Sun Yang v. Agence Mondiale Antidopage* (AMA)[4] and Fédération Internationale de Natation (FINA) case, the Supreme Court of Switzerland annulled an arbitral award issued by the Court of Arbitration for Sport (CAS) due to concerns about bias. The issue arose from the presiding arbitrator's comments on social media, specifically racist remarks directed at Chinese nationals. The Court acknowledged that expressing personal opinions on social media does not inherently create bias. However, it concluded that the violent and racist language used by the arbitrator, particularly after arbitration proceedings involving a Chinese athlete had commenced, provided valid grounds for an apprehension of bias. This case highlights the potential impact of an arbitrator's social media activity on their perceived impartiality and the overall integrity of the arbitration process. These cases demonstrate how digital expression can blur the boundary between personal opinion and professional neutrality. While arbitrators retain

[3] Paris Court of Appeal, *Port Autonome de Douala v Douala International Terminal S.A.*, RG no. 20/18330, decision dated 10 January 2023 (annulment due to undisclosed close relationship between arbitrator Thomas Clay and counsel Emmanuel Gaillard)

[4] Swiss Federal Supreme Court, *Sun Yang v. Agence Mondiale Antidopage (AMA) and Fédération Internationale de Natation (FINA)*, Decision of 22 December 2020

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freedom of expression, the permanence and public accessibility of online content intensify reputational and ethical scrutiny. As arbitration becomes increasingly transparent, social media conduct is likely to remain a growing source of challenge and annulment proceedings.

The increased ease of sharing video and audio recordings, coupled with the rise in public expression of personal opinions, heightens the risk of challenges and annulment proceedings against arbitrators due to concerns about bias. Arbitrators' tweets, online posts, and even likes or reposts that suggest endorsement of certain views can all potentially prompt challenges.

iv. DOUBLE HATTING

Double hatting refers to the practice of a legal professional acting as both an arbitrator and an advising or arguing counsel to parties in different legal disputes. This dual role includes scenarios where an arbitrator has previously acted as legal counsel for one of the parties in a dispute they are currently adjudicating, or where a legal counsel has served as an arbitrator in a case involving their client. The primary concern with double hatting is the potential threat to an arbitrator's independence, fairness, and impartiality when dealing with parties they have previously represented or arbitrated for.

v. ISSUE CONFLICT

Issue conflict in arbitration refers to the actual or perceived bias of an arbitrator due to their previously expressed views on a key question in the case. This bias can stem from the arbitrator's relationship with the subject matter, affecting their perceived ability to remain open-minded. Issue conflict can arise where an arbitrator is said to have "pre-judged" issues based on their prior awards or decisions, publications and statements indicating their views on particular legal issues or on ISDS as a regime. The following circumstance may raise concerns about issue conflict:

- Where an arbitrator has previously made awards or decisions on a disputed issue in the current case or has expressed an opinion on it.

  For example, in prior awards or decisions: Arbitrator A previously issued a ruling in a case that involved interpreting a specific contractual clause. In the current case, the same contractual clause is being contested. The parties might be concerned that Arbitrator A has already formed an opinion based on their prior ruling.
- Where an arbitrator has expressed an opinion or published a scholarly article on a

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disputed issue in the current case

- For example, in expressed opinion or published work: Arbitrator B has published a scholarly article expressing a strong opinion on a specific legal issue. In the current case, this same legal issue is being disputed. The parties might worry that Arbitrator B's previously stated views could impact their impartiality in the current case.
- where an arbitrator is concurrently acting, or has previously acted, as counsel in another case raising the same or similar factual issues;

  For example: An arbitrator who is currently serving as an arbitrator in a breach of contract dispute between Company X and Company Y. Simultaneously, Arbitrator is acting as legal counsel in a separate case involving Company Z, which also pertains to a breach of contract with similar factual circumstances.
- where an arbitrator is concurrently acting, or has previously acted, as counsel in another case raising the same or similar legal issues; and

  For example: An Arbitrator who is serving in a patent infringement dispute between Company M and Company N. Meanwhile, the arbitrator has previously acted as legal counsel in a case involving Company O, which also centered on patent infringement issues.
- where the arbitrator is to act as counsel in a subsequent case raising similar issues or involving the same party and/or counsel

  For example: An arbitrator who is currently arbitrating a case between Corporation A and Corporation B. Once this case concludes, the arbitrator is set to act as legal counsel in a new case involving Corporation A and another party, where the dispute also involves similar contractual issues.

3. NATIONAL AND INSTITUTIONAL RULES

- Australia

  The key legislation for international arbitration in Australia is the International Arbitration Act 1974. This Act has been updated to include the 2006 UNCITRAL Model Law. The International Arbitration Amendment Act 2010, implemented on 6 July 2010, improved Australia's standing in international arbitration, moving away from its litigation-focused reputation.
- China

  China's Arbitration Law is not based on the UNCITRAL Model Law, although some

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aspects of it adopt similar provisions in some aspects (e.g. some of the provisions relating to foreign-related arbitrations).

- Hong kong

  Hong Kong's Arbitration Ordinance was passed on 11 November 2010 and came into force on 1 June 2011. It unifies the regimes for domestic and international arbitrations, extending the application of the UNCITRAL Model Law to all arbitrations in Hong Kong[5]. Arbitration awards in Hong Kong can only be challenged by setting them aside according to Article 34 of the UNCITRAL Model Law.

  The Ordinance incorporates many articles from the Model Law and uses provisions from the English Arbitration Act 1996 as a guide. Hong Kong was the second place in the Asia-Pacific region (after Brunei) to implement interim measures based on Article 17 of the Model Law (2006 amendments). This allows arbitral tribunals to grant interim measures like preserving assets and other orders to protect the arbitration process.

- India

  The Indian Arbitration and Conciliation Act, based on the UNCITRAL Model Law, came into force in January 1996. It was amended by the Arbitration and Conciliation (Amendment) Act, 2015, incorporating many proposals from the 246th Law Commission Report of 2014. The Amendment Act brought significant changes to improve arbitration in India:

  1. Once the arbitral tribunal is constituted, courts cannot entertain applications for interim relief unless the tribunal's order is unworkable.
  2. Prospective arbitrators must disclose any past or present relationships with the parties or the dispute subject that could raise doubts about their independence and impartiality.

- Japan

  The main law for domestic and foreign arbitral proceedings and the recognition and enforcement of awards in Japan is the Arbitration Act (Law No. 138 of 2003). This Act, amended in 2004, is largely based on the original 1985 UNCITRAL Model Law. To enhance Japan's reputation as a reliable and safe place for arbitration, important proposed amendments aim to incorporate aspects of the 2006 UNCITRAL Model Law amendments. These include making interim measures issued by arbitral tribunals enforceable.

[5] Arbitration Ordinance (Hong Kong), Cap. 609 (2011).

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- Korea

  The Korean Arbitration Act, initially enacted in 1996, underwent its first amendments on December 31, 1999. Although these revisions did not fully adopt the UNCITRAL Model Law, they incorporated a significant portion of it, with modifications to align with the Korean judicial system.

- New Zealand

  International arbitration in New Zealand is governed by the Arbitration Act 1996, which was amended in 2007.

  These amendments came into effect on October 18, 2007, and aimed to align the Act with updates to the UNCITRAL Model Law, giving parties more control over arbitration and reducing judicial intervention. The amendments also granted arbitrators broader powers to issue interim and preliminary orders.

  The Act closely follows the UNCITRAL Model Law with minor modifications, and this law applies to both international and domestic arbitrations in New Zealand. In 2016, further amendments empowered the Minister of Justice to appoint a default appointing authority for all arbitrations in New Zealand. The Arbitrators and Mediators Institute of New Zealand (AMINZ) was appointed as this authority on March 9, 2017.

- London court of International Arbitration

  While the LCIA[6] rules do not explicitly reference updates to the UNCITRAL Model Law, their features and procedures align closely with the principles embodied in the Model Law. The LCIA's rules emphasize flexibility, efficiency, and fairness in the arbitration process, reflecting the UNCITRAL Model Law's objectives of providing a robust framework for resolving international commercial disputes effectively.

  The LCIA charges arbitration costs and arbitrator fees on an hourly basis. Additionally, it enforces stringent confidentiality requirements, ensuring that all aspects of the arbitral proceedings, including the materials and the award, remain confidential. This confidentiality extends to the disputing parties, the tribunal, and certain third parties involved in the process.

- International Chamber of Commerce

  The ICC[7]'s fees for arbitration and those of the arbitrators are determined based on the amount in dispute and the complexity of the case. Although the ICC Rules do not

[6] London Court of International Arbitration (LCIA), *LCIA Arbitration Rules* (2020) https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx
[7] International Chamber of Commerce (ICC), *ICC Arbitration Rules* (2021)

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explicitly provide for confidentiality, the tribunal has the authority to address confidentiality issues upon a party's request, and arbitrations are generally conducted on a confidential basis. The ICC usually publishes awards, but parties have the option to object to publication or request that the award be anonymized or pseudonymized.

In terms of aligning with the UNCITRAL Model Law, the ICC has incorporated many of its principles into its rules. While not explicitly updating to mirror the Model Law, the ICC's procedures reflect a commitment to fairness and efficiency in international arbitration, which are core objectives of the UNCITRAL framework.

The flexibility in addressing confidentiality and the approach to managing fees and complexity align with the Model Law's emphasis on providing a fair and efficient arbitration process.

A comparative assessment reveals a broad convergence towards UNCITRAL-inspired standards, albeit with varying degrees of institutionalisation. While jurisdictions such as Hong Kong and India demonstrate closer alignment with Model Law principles, others retain distinct procedural approaches. This uneven incorporation underscores the continued relevance of international soft-law instruments in bridging regulatory gaps.

4. IMPLEMENTATION OF THE UNCITRAL CODE

Investment arbitration is a procedure designed to resolve disputes between foreign investors and host states. This mechanism assures foreign investors that, in the event of a dispute, they will have access to independent and qualified arbitrators who can adjudicate the matter and issue an enforceable award.

By enabling foreign investors to bypass national courts, which might be perceived as biased or lacking independence, investment arbitration allows disputes to be resolved based on protections offered under international treaties. For a foreign investor to initiate an investment arbitration, the host state must have given its consent to this process.

Arbitration provides several benefits to disputing parties, including neutrality, flexibility, and enforceability. These advantages make arbitration a preferred method for resolving disputes between foreign investors and host states.

There are several ways to implement the Code, each of which can be used independently or in combination with others. These options are not mutually exclusive. Three options are:

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1) by incorporating the Code in a treaty,
2) by integrating it via the agreement of the disputing parties on a case-by-case basis, and
3) by incorporating it into procedural rules of arbitral institutions, adjudicators' disclosure declarations, or court rules and regulations.
4) making the Code part of a multilateral instrument on ISDS reform

5. IMPACT OF UNCITRAL CODE ON INVESTMENT ARBITRATION

The UNCITRAL Code contributes to the development of a unified and coherent framework for investment arbitration by addressing procedural and ethical challenges inherent in cross-border disputes. By clarifying the duties of independence and impartiality, and distinguishing them from related obligations such as the absence of financial interest, the Code strengthens confidence in adjudicatory neutrality. It further preserves party autonomy through the freedom to choose the applicable law, while ensuring that arbitral proceedings are not paralysed by the absence of mutual agreement between parties. At the same time, the Code delineates the scope and role of national laws, reinforcing arbitration as a fair and effective dispute resolution mechanism even in the face of procedural delays. Collectively, these provisions promote predictability, procedural continuity, and institutional coherence in the investment arbitration regime.

i. Investment Attraction and Economic Implications

The implementation of UNCITRAL's legal instruments, particularly those governing international commercial arbitration and insolvency, enhances investor confidence by reducing legal uncertainty in cross-border transactions. A predictable and neutral dispute resolution framework reassures foreign investors of fair treatment, thereby encouraging increased inflows of foreign direct investment. In this manner, the UNCITRAL Code indirectly contributes to economic development by strengthening the credibility of host state commitments.

6. ROLE OF ICSID IN IMPLEMENTING UNCITRAL-INSPIRED REFORMS

i. ICSID Reform Initiatives and Rationale

Following extensive consultations with ICSID Member States and key stakeholders, ICSID has undertaken a series of reforms aimed at enhancing the efficiency,

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transparency, and legitimacy of investment arbitration. These consultations identified persistent concerns relating to arbitrator conduct, third-party funding, procedural delays, and the opacity of arbitral decision-making. In response, the revised rules introduce enhanced disclosure requirements for third-party funding, increased transparency through the publication of awards, decisions, and orders, provisions on security for costs, and more detailed declarations concerning the independence and impartiality of arbitrators and conciliators. Collectively, these measures reflect a deliberate shift towards greater openness and institutional accountability within the ISDS framework.

ii. Importance of Adopting UNCITRAL-Inspired Standards within ICSID

ICSID's potential adoption of UNCITRAL-inspired standards addresses several long-standing concerns regarding the conduct of arbitrators within the existing ISDS system. Issues such as repeat appointments, conflicting professional roles, and insufficient disclosure have raised doubts about arbitrators' impartiality, independence, availability, and professional capability. By strengthening disclosure obligations and regulating conflicting appointments, the revised framework seeks to mitigate both actual and perceived conflicts of interest that have historically undermined confidence in investment arbitration.

The new draft further enhances regulatory clarity by distinguishing between the obligations applicable to candidates and those applicable to appointed adjudicators, thereby ensuring continuous adherence to ethical standards throughout the arbitral process. The introduction of an annexed disclosure form promotes uniformity and transparency in disclosures, while the inclusion of references to both arbitrators and judges signals preparedness for a future standing mechanism for investment dispute settlement. Additionally, the definition of "treaty party" clarifies the distinction between disputing parties and treaty-signatory states, improving the coherence and practical application of the rules.

7. CONCLUSION

Conflicts of interest remain one of the most persistent threats to the legitimacy of arbitration, striking at the core principles of independence, impartiality, and procedural fairness. As arbitration continues to expand across jurisdictions and subject matters, arbitrators increasingly operate within complex professional networks that blur the boundaries between adjudication,

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advocacy, and academic engagement. This evolving reality has made traditional approaches to regulating conflicts insufficient, necessitating more comprehensive and transparent ethical frameworks.

The UNCITRAL Code of Conduct for Arbitrators (2023) and the revised IBA Guidelines on Conflicts of Interest in International Arbitration (2024) represent meaningful responses to these challenges. By broadening disclosure obligations, addressing practices such as double-hatting and issue conflict, and recognising the influence of digital visibility and social media, these instruments reflect an awareness of both longstanding and emerging sources of perceived bias. Their emphasis on transparency and preventative regulation marks a shift from reactive challenge- based mechanisms to a more proactive safeguarding of arbitral legitimacy.

However, the effectiveness of these standards ultimately depends on their implementation and enforcement. As the comparative review of national laws and institutional rules demonstrates, incorporation of international standards remains uneven, with significant variations in interpretation and application. Soft-law instruments, while influential, cannot by themselves ensure consistency or accountability without supportive institutional oversight and meaningful engagement by arbitral tribunals. Over-disclosure, subjective assessments of "justifiable doubts," and the absence of uniform enforcement mechanisms continue to pose practical difficulties.

In this context, the role of institutions such as ICSID becomes particularly significant. Institutional reforms inspired by UNCITRAL principles signal an emerging convergence towards higher ethical standards and enhanced transparency within investment arbitration. Yet, sustained confidence in arbitration will require more than formal rule-making. It demands a culture of ethical responsibility among arbitrators, rigorous institutional supervision, and a willingness to adapt regulatory frameworks in response to evolving professional realities.

Ultimately, the legitimacy of arbitration rests not merely on codified norms, but on their consistent and context- sensitive application. As arbitration navigates the pressures of increased scrutiny, digital exposure, and expanding roles for adjudicators, a balanced approach one that preserves party autonomy while ensuring impartial adjudication will be essential to maintaining trust in the arbitral process.