

# Compliance Code of Conduct of the Permanent Court of Arbitration at the German-Bulgarian Chamber of Industry and Commerce

- Version from 16.09.2016 -

## Preamble

The Management Board of the German-Bulgarian Chamber of Industry and Commerce has decided on its meeting on 16 June 2016 that the work of the Permanent Court of Arbitration at the German-Bulgarian Chamber of Industry and Commerce shall be carried out on the basis of a comprehensive commitment to compliance-conforming conduct by any person directly or indirectly related to the Court of Arbitration. For this purpose, the following Compliance Code of Conduct of the Permanent Court of Arbitration at the German-Bulgarian Chamber of Industry and Commerce was adopted.

## 1. Scope of application

Any person who is involved in the Permanent Court of Arbitration at the German-Bulgarian Chamber of Industry and Commerce (“**PCA-GBCIC**”) and/or in arbitral proceedings administered by the PCA-GBCIC, e.g. as a person included in the list of arbitrators, as an arbitrator, Secretariat, any secretaries to the Court of Arbitration, the parties to the proceedings (“**the Parties**”), the parties’ representatives, the experts, is bound by this Compliance Code of Conduct (“**CCC**”). The CCC is a basis and a standard for every activity carried out in fulfilling legal (statutory, arbitral or contractual) obligations or any other actions or omissions in connection with the fulfilling of the tasks related to the arbitral proceedings (in general, “**arbitral legal relationship**”).

By agreeing to the jurisdiction of the PCA-GBCIC the parties agree to be bound by this CCC. The CCC applies as a private contract between the parties and in the relationship between the parties and the Court of Arbitration. It is an integral part of the (private contract) Rules of the PCA-GBCIC.

## 2. Agreement to apply the CCC

As a sign of consent every person under point 1 shall immediately provide the PCA-GBCIC with a Declaration of agreement with this CCC (“**Compliance declaration**”).

By agreeing to the arbitration clause which grants the PCA-GBCIC the jurisdiction over the dispute, every party commits itself,

- a) to act personally in accordance with the CCC;
- b) to ensure (e.g. through appropriate instructions or negotiations in the lawyer's contract) that the parties' representatives appointed by it (in particular, lawyers or in-house lawyers) shall on their own act in accordance with the CCC by submitting a respective Compliance declaration pursuant to point 1;
- c) to nominate only such arbitrators who have already provided a Compliance declaration pursuant to point 1 in accordance with the requirements of the CCC or are willing to provide such a declaration in relation to their appointment as arbitrators.

Every nomination, choice or appointment of an arbitrator by one of the parties (or by its legal representative, respectively) or by the PCA-GBCIC shall include the (suspensive) condition that the arbitrator provides a Compliance declaration pursuant to point 1 in accordance with the requirements of the CCC.

### **3. Arbitration rules of compliance**

#### **3.1 Principles**

Every arbitrator must remain impartial and must exercise its judicial activity independently from the parties from the moment he/she accepts to be appointed as an arbitrator until the rendering of the final award or the termination of the arbitral proceedings on any different ground. The same applies to the Court of Arbitration as a whole. Every other person mentioned in point 1 contributes, so that the Court of Arbitration and the arbitrators participating in the proceedings can fulfill their tasks in accordance with the criteria set out in the first sentence.

#### **3.2 Conflict of interests**

3.2.1 An arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator, if he/she has any doubts as to his/her impartiality and independence.

3.2.2 The same applies when facts or circumstances exist or have arisen since the appointment which, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances, would give rise to justifiable doubts

as to the arbitrator's impartiality or independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in point 3.5.

3.2.3 Doubts are justifiable if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his/her decision.

3.2.4 Justifiable doubts as to the arbitrator's impartiality and independence exist

(1) necessarily always when ("*black list*")

- a) there is an identity between the party and the arbitrator or when the arbitrator is a legal representative, employee or mandatary of the party,
- b) the arbitrator is a member of the Supervisory Board of the party or (directly or indirectly) has a controlling influence on one of the parties (e.g. through management activity in the parent company of the party), or has an influence on an entity with a direct economic interest in the award to be rendered in the arbitration,
- c) the arbitrator is a member of the management body of a subsidiary of the party that is dependent on this party,
- d) the arbitrator has significant economic or personal interest in one of the parties or in the outcome of the arbitral proceedings,
- e) the arbitrator personally or his/her firm regularly advises one of the parties or an affiliate of one of the parties and/or the arbitrator derives a significant financial income therefrom, or
- f) the arbitrator is currently or has been within the past two years a lawyer or a legal advisor in a law firm (notwithstanding the form under which the firm is established) ("**law firm**") which has represented or advised one of the parties to the arbitral proceedings.

(2) with the admissible exceptions set out in Art 3.4 ("*grey list*"), in particular when

- a) the arbitrator has given a legal advice or any other another expert advice on the dispute to one of the parties or an affiliate of one of the parties or has been otherwise involved in the legal dispute,
- b) the arbitrator holds shares, either directly or indirectly in one of the parties or in an affiliate of one of the parties,
- c) the arbitrator has a significant economic or personal interest in one of the parties or in the outcome of the arbitral proceedings,

- d) within the past 5 years the arbitrator has received fees or any other significant economic benefits from giving advices or other activity for one of the parties,
- e) the arbitrator has a significant economic or personal interest against a third (legal) person that has its own direct or indirect interest in the outcome of the arbitral proceedings (e.g., a subcontractor),
- f) the arbitrator is a member of the management body of an independent subsidiary of one of the parties or of an affiliate of one of the parties,
- g) the arbitrator was a lawyer or a legal advisor in a law firm which represents one of the parties in the arbitral proceedings more than two years ago,
- h) the arbitrator's law firm has been previously involved in the legal dispute but the arbitrator has not participated personally in the proceedings,
- i) the arbitrator's law firm has significant economic relationship to one of the parties or an affiliate of one of the parties,
- j) the arbitrator advises one of the parties or its subsidiary without receiving a significant financial income,
- k) a close family member of the arbitrator or a closely related person to him/her has economic or personal interest in one of the parties, an affiliate of one of the parties or in the outcome of the arbitral proceedings,
- l) the arbitrator or a close family member of the arbitrator has a relationship with a non-party which can incur economic disadvantages from the outcome of the arbitral proceedings,
- m) the arbitrator has a close family relationship with a party, a member of its management or supervisory body or a person with a controlling influence on the party or its subsidiary or an advisor to one of the parties.

(3) In case of a “special relationship” between a person nominated or appointed as an arbitrator to the arbitral proceedings and/or one of the parties, this person is obliged,

- a) in the cases of the “*black list*” (point 3.2.4 (1)) to decline to accept the appointment or to resign immediately after becoming aware of the violation,
- b) in the cases of the “*grey list*” (point 3.2.4 (2)) either to decline to accept the appointment or to disclose the circumstances so that a decision according to point 3.4 can be rendered.

(4) Every arbitrator is obliged, during the arbitral proceedings, to refrain from acting in such matters and accepting such appointments that give rise to justifiable doubts as to his/her impartiality and independence as an arbitrator according to the criteria of the

*“black list”* (point 3.2.4 (1)). In the cases of the *“grey list”* (point 3.2.4 (2)) the circumstances that justify the doubts as to the impartiality and independence shall be disclosed (before they occur) so that proceedings pursuant to point 3.4 (analogously) can be initiated.

### **3.3 Arbitrator’s obligation of disclosure**

3.3.1 If facts or circumstances exist that may, in the eyes of one of the parties, give rise to doubts as to the arbitrator’s impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the co-arbitrators and the Presidency of the Court of Arbitration, before accepting the appointment as an arbitrator or at latest – as soon as he or she learns of them. A Compliance declaration already provided does not discharge from this obligation of disclosure. If it is questionable as to whether an arbitrator should disclose certain facts or circumstances in connection with his/her impartiality or independence, these doubts shall be resolved in favor of disclosure.

3.3.2 If a party does not raise an explicit objection against the arbitrator within 14 days after the receipt of the declaration of disclosure by the arbitrator or after the party becomes aware of the facts or circumstances that could impair the impartiality and independence of the arbitrator according to the *“grey list”* (point 3.2.4 (2)), the party is precluded to raise objections based on such facts or circumstances. In cases of the *“black list”* (point 3.2.4 (1)) the objections shall be raised immediately, if possible, but they can be raised at any time.

### **3.4 Exemption of the obstacles set out in the *“grey list”***

Apart from the cases when the facts and circumstances set out in the *“grey list”* (point 3.2.4 (2)) occur, a person can accept his/her nomination as an arbitrator or can continue to act as an arbitrator if

- all parties, all arbitrators and the Presidency of the Court of Arbitration have full knowledge of the facts and circumstances that give rise to a conflict of interests and
- all parties, all arbitrators and the Presidency of the Court of Arbitration explicitly agree that such a person may act as an arbitrator, despite the conflict of interest.

In this case the Compliance declaration submitted pursuant to point 1 is deemed to be in conformity with the requirements.

### **3.5 Relationships justifying conflict of interests**

The arbitrator is in principle considered to bear the identity of his or her company or law firm in which he/she is employed or is working for. When considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists, or whether disclosure should be made, the activities of an arbitrator's company or law firm, if any, and the relationship of the arbitrator with the company or the law firm, should be considered and examined in each individual case.

The circumstance that a company or a law firm are or were involved by a party to the proceedings or an affiliate of one of the parties shall not necessarily constitute a source of conflict of interests, or a reason for disclosure in the sense of the present compliance rules.

If a party is a legal person, any person that has a controlling influence on this legal person is to be considered to bear the identity of this party. This also applies when the legal person has a direct economic interest in the award of the arbitral tribunal

### **3.6 Additional obligations of the parties and the arbitrators**

A party shall inform an arbitrator, the Presidency of the Court of Arbitration and the other parties

- (i) of relationships that give rise to direct or indirect conflicts of interests between the arbitrator and the party or
- (ii) another company of the same group of companies or an individual having a controlling influence on the party in the arbitration or
- (iii) relationships between the arbitrator and a party or an entity with a direct economic interest in the award to be rendered by the Court of Arbitration.

The obligation exists without any need of notice by a third person and from the earliest possible moment. Each party also has the obligation to inform of the identity of its legal counsel in the arbitral proceedings.

Each party, in order to comply with the requirements of the present compliance rules, shall perform reasonable enquiries, as long as this affects its commercial relationships. Every arbitrator also has the obligation to perform reasonable enquiries in order to identify conflict of interests, especially facts and circumstances that might create doubts as to the impairment of his/her impartiality and independence.

### **3.7 Conduct before and during the arbitral proceedings**

3.7.1 Until the constitution of the arbitral tribunal conversations over the availability and the selection of an arbitrator by one of the parties shall be limited to general questions (concerning the identity of the parties to the dispute for the purpose of examining potential conflicts of interests). In these conversations the specific questions of the arbitral proceedings shall not be discussed. Conversations over the selection of the presiding arbitrator shall be made by the arbitrators, nominated by the parties. In order to prepare for such conversations, it is permitted for the arbitrator nominated by each of the parties to have conversations with the parties over the person they have nominated to act as a presiding arbitrator.

3.7.2 From the moment of constitution of the arbitral tribunal the following rules shall apply to every person participating in the arbitral proceedings:

a) the parties and their representatives shall have no conversations over the arbitral proceedings with one of the arbitrators without the participation of the other party and the co-arbitrators, except for organizational issues that are to be resolved by the sole arbitrator or the presiding arbitrator.

The same applies for communication of any other kind, including electronic communication.

b) the parties and their representatives shall not entrust or encourage third persons to have conversations and/or communication of any other kind, including electronic communication, with one of the arbitrators over the arbitral proceedings.

### **4. Termination condition (“arbitral sanction”)**

If a person in the sense of point 1 does not provide a Compliance declaration immediately or within the period of time provided by the law or subsequently granted to him/her, or if the Presidency establishes that the person violates this CCC, **the arbitral legal relationship** in the sense of point 1, on ground of which the said person is working for the PCA-GBCIC or is employed in the particular arbitral proceedings under the Rules of the PCA-GBCIC shall be terminated (“termination condition”). The Presidency of PCA-GBCIC has the power (on the ground of the Declaration of agreement of the person with this CCC), to establish the occurrence of the “termination

condition” for everyone and effective against everyone directly or indirectly participating or any interested person in the respective arbitral proceedings (“**declaratory establishment**”).

In particular, an arbitrator or a legal representative of the party who are directly affected by such declaratory establishment shall not perform their functions in the arbitral proceedings in question. When the termination condition occurs, the arbitrators are released of their term of office, irrespective of the stipulations in the arbitration contract (this is also established by the Presidency of PCA-GBCIC).

The Presidency of PCA-GBCIC can delegate to the President or another representative of the Presidency (when the President is prevented – the Vice-President, when the Vice-President is prevented – the oldest member of the Presidency) to rule on the declaratory establishment in the name of the Presidency. The President or the member of the Presidency issuing the declaratory establishment can delegate other persons to sign the declaration in order to speed up the establishment.

## **5. Liability for violation of the requirements set out in the “*black list*” and the “*grey list*” and exemptions of liability**

5.1 A person who accepts his/her nomination as an arbitrator in violation of the criteria set out in the “*black list*” in point 3.2.4 (1) or does not resign after acceptance of the appointment although justifiable doubts within the scope of the “*black list*” (Art. 3.2.4 (1)) arise out subsequently, is liable to the Court of Arbitration, the co-arbitrators and the other party (the one that has not nominated him/her) for all the damages suffered. The person is not liable if the arbitrator proves that he/she was not aware of the relevant circumstances for the criteria under the “*black list*”.

5.2 A person who accepts his/her nomination as an arbitrator in violation of the criteria set out in the “*grey list*” in point 3.2.4 (2) or does not resign after acceptance of the appointment although justifiable doubts within the scope of the “*grey list*” (point 3.2.4 (2)) arise out subsequently, is liable to the Court of Arbitration, the co-arbitrators and the other party (the one that has not nominated him/her) for the deliberately caused damages.

5.3 Any other possible claims for damages arising out of or in connection with the application of this CCC are excluded, except for the cases of deliberately caused



damages. Excluded, in particular, are all claims by parties or other persons that might have interest in the activity terminated by the “termination condition”, against the Presidency, the members of the Presidency, their representatives and/or the Secretariat of the Court of Arbitration and its members on the ground of declaratory establishment of the Presidency and/or the President or any other representative of the Presidency.

## **6. Special rules for members of the Presidency**

Members of the Presidency who are nominated to act as arbitrators by one of the parties or by both parties may accept the nomination as long as they fulfill all the other requirements of the CCC (e.g. independence). They shall be excluded from the flow of information over this arbitration case and shall not participate in decisions concerning this arbitration case.

As long as a “termination condition” in the sense of point 4 occurs for a member of the Presidency or he/she acts as an arbitrator in arbitral proceedings, this member of the Presidency is excluded from the procedure for establishing a termination condition that concerns him/her.

## **7. Competence to interpret**

The Presidium of the PCA-GBCIC has the power to interpret this CCC in accordance with the UNIDROIT Principles of International Commercial Contracts. The interpretative decisions are binding and final, except for deliberately wrong decisions.

## **8. Applicable law**

This CCC, as well as any claims based on point 5, are subject to the UNIDROIT Principles of International Commercial Contracts in their version effective at the time of submission of the Declaration of agreement.

## **9. Arbitration clause**

Any disputes arising out or in connection to the application of this CCC (including the issues of liability under point 6) are excluded from the jurisdiction of the courts and are to be resolved by the Court of Arbitration of the Hamburg Chamber of Commerce. The arbitral proceedings shall be resolved by a sole arbitrator, appointed by the Court of Arbitration of the Hamburg Chamber of Commerce. The arbitrator shall have significant experience in the field of international arbitration.