

ANNEX 20-B

CODE OF CONDUCT FOR PANELLISTS AND OTHERS ENGAGED IN DISPUTE SETTLEMENT PROCEEDINGS UNDER THIS AGREEMENT¹

Definitions

1. For the purposes of this Annex:

assistant means a person who, under the terms of appointment of a panellist, conducts research or provides support for the panellist, works under the direction and control of a panellist to assist with case-specific task;

candidate means a person who is under consideration for selection as a panellist;

panellist means a member of a panel established under Article 20.8 (Establishment of a Panel);

proceeding, unless otherwise specified, means the proceeding of a panel under this Chapter; and

staff, in respect of a panellist, means persons under the direction and control of the panellist, other than assistants.

Responsibilities to the Process

2. In order to preserve the integrity and impartiality of the dispute settlement process, each candidate and panellist shall:

- (a) avoid impropriety or the appearance of impropriety;
- (b) be independent and impartial;
- (c) avoid direct or indirect conflicts of interest; and
- (d) observe high standards of conduct.

Disclosure Obligations

3. Prior to confirmation of their selection as a panellist under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of

¹ For greater certainty, Annex 20-B, Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings Under this Agreement, is applicable for the purpose of Article 20.6 (Good Offices, Conciliation or Mediation), unless otherwise provided by the instruments of good offices, conciliation and mediation.

impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. Once selected, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 3 and shall disclose them by communicating them in writing to the Parties for their consideration. The obligation to disclose is a continuing duty, which requires a panellist to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

Performance of Duties by Panellists

5. A panellist shall comply with the provisions of Chapter 20 (Dispute Settlement) and its Annexes.

6. On selection, a panellist shall be available to perform and shall perform their duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

7. A panellist shall not deny other panellists the opportunity to participate in all aspects of the proceeding.

8. A panellist shall consider only those issues raised in the proceeding and necessary to make a decision and shall not delegate the duty to decide to any other person.

9. A panellist shall take all appropriate steps to ensure that the panellist's assistant and staff are aware of, and comply with, paragraphs 2, 3, 4, 20, 21, 22 and 23 of this Annex.

10. A panellist shall not engage in ex parte contacts concerning the proceeding.

11. A panellist shall not communicate matters concerning actual or potential violations of this Annex by another panellist unless the communication is to both Parties or is necessary to ascertain whether that panellist has violated or may violate this Annex.

12. Each panellist shall keep a record and render a final account of the time devoted to the panel proceedings and of their expenses, as well as the time and expenses of their assistants.

Independence and Impartiality of Panellists

13. A panellist shall act in a fair manner.

14. A panellist shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

15. A panellist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the panellist's duties.

16. A panellist shall not use his or her position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence the panellist. A panellist shall make every effort to prevent or discourage others from representing themselves as being in such a position.

17. A panellist shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the panellist's conduct or judgment.

18. A panellist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panellist's impartiality or that might reasonably create an appearance of impropriety or bias.

Duties in Certain Situations

19. A former panellist shall avoid actions that may create the appearance that the panellist was biased in carrying out the panellist's duties or would benefit from the decision or report of the panel.

Maintenance of Confidentiality

20. A panellist or former panellist shall not at any time disclose or use any confidential or non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage, or advantage for others, or to affect adversely the interest of others.

21. A panellist shall not disclose a panel report, or parts thereof, prior to its publication.

22. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view, except as required by legal or constitutional requirements.

23. A panellist or former panellist shall not at any time disclose which panellist's are associated with majority or minority opinions in a proceeding.

24. A panellist shall not make a public statement regarding the panel proceeding.