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# INTERNATIONAL BAR ASSOCIATION (IBA) GUIDELINES ON CONFLICT OF INTEREST IN INTERNATIONAL ARBITRATION AND AFRICAN SYSTEMS: ANOTHER LOOK

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## Abstract

This paper critically examines the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration and interrogates their application within African arbitral systems. Its central objective assesses whether the IBA's universal framework adequately reflects the legal, institutional, and cultural realities that underpin arbitration practice across African jurisdictions. The paper defines Conflict of Interest as any circumstance capable of undermining the impartiality or independence of arbitrators and other key actors in arbitral proceedings. It emphasizes the fundamental role of disclosure as a continuing obligation

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necessary to safeguard the integrity, and legitimacy of arbitration, noting that failure to disclose may result in the removal of arbitrators or setting aside of arbitral awards. It proceeds to provide a detailed analysis of the IBA Guidelines, tracing their development from 2004 to the 2024 revision, and highlighting their twofold structure: general standards on impartiality, independence, and disclosure, and practical application through the Red, Orange, and Green lists of conflict scenarios. While acknowledging the normative value of the IBA Guidelines, the paper evaluates their application within African contexts. It examines how African systems regulate conflicts of interest through a combination of international instruments, domestic legislation, and institutional practices. The paper argues that, although broadly aligned with international standards, African arbitration practice place greater emphasis on Party Autonomy and the trust reposed in arbitrators by disputing parties. It critiques IBA's reliance on the "reasonable third-party" standard as potentially restrictive and concludes by advocating a more flexible, context-sensitive approach while accommodating African legal and cultural peculiarities.

**Keywords:** Conflict of Interest, International Bar Association and Party Autonomy

## INTRODUCTION

Generally, conflict of interest connotes a situation where a person or organization has a personal or professional relationship with another or multiple persons, and this relationship could potentially influence their professional judgment or actions.[1]

[1] US Securities and Exchange Commission, 'What is a Conflict of Interest?' (2012)< https://www.sec.gov/news/speech/2012-spch103112cvdhtm>accessed 20 March 2026.

In Arbitration, conflict of interest refers to a clash between the private interests and the official responsibilities of the neutral third party who is in a position of trust. In this case, conflicts of interest may concern, arbitrators, committee members, counsel to parties, experts, third party funders and secretaries to the tribunal.

Conflict of interest can manifest in different ways and manners and includes situations where there is a connection between the arbitrator and a party; an arbitrator and a representative of a party; and, where there is an issue in the arbitration that arbitrator has already expressed an opinion on or about.

The existence of a conflict of interest in whatever form it manifests presupposes that the arbitrator would not be impartial or independent or that the arbitration process would be compromised.[2] Thus, it is fundamental for an arbitrator to disclose to parties at the outset of the arbitral proceedings whether there exists any form of conflict of interest as this can form grounds for the removal of the arbitrator; or the setting aside of the award.[3]

Over the years, many international arbitration institutions have attempted to provide for certain guidelines to tackle issues of conflict of interest as it is critical to the integrity of the entire arbitration process.[4] These include amongst others, the International Centre for the Settlement of Investment

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[2] David Caron, 'The 2014 IBA Guidelines on Conflicts of Interest in International Arbitration: A Commentary' (2015) 31(1) Arbitration International 7.

[3] *Halliburton Company v. Chubb Bermuda Insurance Ltd* [2020] UKSC 48, <https://www.casemine.com/judgement/uk/5b2897ed2c94e06b9e19dd78 >accessed 21 March 2026.

[4] American Arbitration Association, 'Arbitration Rules' (2019)<http://www.adr.org/Rules> accessed 20 March 2026.

Disputes (ICSID), the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for Dispute Resolution (ICDR) just to mention a few.[5] These institutions in their rules provide for how issues of conflict of interest are to be identified and addressed in order to preserve the independence, impartiality, transparency and integrity of the arbitrator and the arbitration process.[6]

Given the importance of the issues of conflict of interest in international arbitration, the International Bar Association IBA in 2004, published a set of Guidelines on Conflict of Interest in International Arbitration which was later revised in 2014.[7] The Guidelines focus on when an arbitrator should disclose potential conflicts, as well as when he or she should simply not accept an appointment.[8]

The IBA Guidelines are fundamental and very effective in handling the issues pertaining to conflict of interest in international arbitration and many surveys have shown increasing reference to them all around the world.[9]

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[5] London Court of International Arbitration, 'LCIA Arbitration Rules' (2020)< https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx> accessed 20 March 2026.

[6] International Bar Association, 'IBA Guides and Reports'<https://www.ibanet.org/resources> accessed 20 March 2026.

[7] Gary Born, 'The IBA Guidelines on Conflicts of Interest in International Arbitration: A New Era' (2005) 21(1) Arbitration International 5.

[8] International Bar Association, 'IBA Guidelines on Conflicts of Interest in International Arbitration' <https://www.ibanet.org/MediaHandler?id=e2fe5e72-eb14-4bba-b10d-d33dafee8918>accessed 22 March 2026.

[9] 'The Role of the IBA Guidelines on Conflicts of Interest in Arbitrator Challenges' (*Kluwer Arbitration Blog*, 23 November

However, the question that begs for answer is how fitting would they be in determining issues of conflict of interest in arbitrations within African systems.[10]

This paper thus considers the IBA Guidelines on Conflict of interest against the African perspective in tackling issues of conflict of interest. The paper highlights the peculiarities of the African systems and considers how these peculiarities can broaden the understanding of conflict of interest in international arbitration.[11]

## 2.0 IBA GUIDELINES ON CONFLICT OF INTEREST IN INTERNATIONAL ARBITRATION

The International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration were first published in 2004. The Guidelines were developed by a working group of the IBA Arbitration Committee, which comprised of arbitrators, practitioners, and academics from around the world.[12]

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2017) <https://arbitrationblog.kluwerarbitration.com/2017/11/23/role-iba-guidelines-conflicts-interest-arbitrator-challenges/> accessed 22 March 2026.

[10] 'Arbitration in Africa' (*Lexology*)<https://www.lexology.com/library/detail.aspx?g=89601f60-71a2-45fc-9f96-a489b911865c>accessed 2 April 2026.

[11] Adenike Aiyedun and Ada Ordor, 'Integrating the Traditional with the Contemporary in Dispute Resolution in Africa' (2016) 20 Law, Democracy and Development <http://www.scielo.org.za/scielo.php?pid=S2077-49072016000100009&script=sci_arttext> accessed 2 April 2026.

[12] International Bar Association, 'IBA Guidelines on Conflicts of Interest in International Arbitration: Brief Account of the Review Process and of Special Interest Issues' <https://www.ibanet.org/guidelines-conflicts-of-interest-revision-arias>accessed 22 March 2026.

The 2004 Guidelines were the first set of comprehensive guidelines on conflict of interest in international arbitration. They were based on the principles of impartiality, independence, and transparency. The Guidelines provided a list of factors that arbitrators should consider when assessing whether they have a conflict of interest, and they set out procedures for disclosing and managing conflicts of interest. [13]
In 2014, the IBA published a revised version of the Guidelines. The 2014 Guidelines were updated to reflect the changing landscape of international arbitration. For example, the Guidelines were updated to address the issue of third-party funding and to reflect the growing importance of multi-party arbitrations. [14]

The latest version now is the 2024 Guidelines which offers important guidance on conflicts of interest to all stakeholders in international arbitration. The IBA guidelines focuses on when an arbitrator should disclose potential conflicts, as well as when he or she should not accept an appointment. It further provides for general standards for identifying conflicts of interest, as well as practical guidance on how to apply those standards.

These Guidelines do not override any applicable national law, arbitral rules, codes of conduct, or other binding instruments chosen by the parties. It also advices that application should be with robust common sense and without undue formalistic interpretation. In the 2024 revision, both the General Standards and Application Lists have been further updated and improved considering their use in practice since 2014.[15]

[13] *Ibid*
[14] *Ibid*
[15] *Ibid*

The IBA Guidelines are divided into two parts: Part I sets out the general standards for identifying conflicts of interest, and Part II provides practical guidance on how to apply those standards.

**Part I of the Guidelines: General Standards Regarding Impartiality, Independence and Disclosure**:

I. General Standard 1(General Principle): An arbitrator shall decline to accept an appointment if he or she has any doubts as to his or her ability to be impartial and independent. An Arbitrator must be and must remain completely impartial and independent from the parties; when they accept the appointment and throughout the arbitration, until the process finally ends.

II. General Standard 2 (Conflict of Interest): An arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence. Even if the arbitrator believes they can be fair, they must decline to accept if the facts would lead a reasonable third person to have justifiable doubts about their impartiality, unless the parties expressly agree to keep them under the conditions set out in General Standard 4. Justifiable doubts exist when it appears that there is a real chance the arbitrator could be influenced by anything other than the factual merits of the case.

III. General Standard 3 (Disclosure by Arbitrator): An arbitrator has a continuing duty to disclose any facts or circumstances that could, in the eyes of the parties raise doubts about their impartiality or

independence. This obligation applies before accepting an appointment and continues throughout the proceedings, requiring prompt disclosure to the parties, the appointing authority (if any), and co-arbitrators whenever new relevant facts arise. Advance waivers by the parties regarding potential future conflicts do not remove this duty. A disclosure signifies that the arbitrator believes they remain impartial and independent; otherwise, they should have declined the appointment or resigned. Where uncertainty exists as to whether a fact should be disclosed, the matter should be resolved in favour of disclosure. If professional secrecy or other binding confidentiality rules prevent disclosure, the arbitrator must decline the appointment or resign. The stage of the arbitration is irrelevant in deciding whether to disclose, and a failure to disclose does not automatically establish the existence of a conflict of interest or require disqualification. This approach promotes transparency while respecting professional ethics. An arbitrator shall be impartial and independent throughout the arbitral proceedings.

IV. General Standard 4 (Waiver by Parties): An arbitrator shall inform the parties immediately of any circumstances that arise during the arbitral proceedings that may give rise to justifiable doubts as to his or her impartiality or independence. A party waives the right to challenge an arbitrator on potential conflict grounds if, within 30 days of a disclosure or learning of relevant facts (including through reasonable inquiry), no objection is made. This waiver does not apply to situations on the Non-Waivable Red List, while conflicts on the Waivable Red List require full disclosure and the express agreement of all parties and relevant authorities for the arbitrator to serve. An arbitrator may assist in settlement if all parties agree this

will not disqualify them but must resign if such involvement later compromises their impartiality.

V. General Standard 5 (Scope): These guidelines apply to all arbitrators, whether tribunal chair, sole arbitrators, or co-arbitrators, regardless of how they are appointed. Arbitral secretaries and assistants are also bound by the same duties of independence and impartiality, and the tribunal is responsible for ensuring these duties are upheld throughout the proceedings.

VI. General Standard 6 (Relationships): An arbitrator is generally regarded as sharing the identity of their law firm or employer, but whether a potential conflict or duty of disclosure exists depends on the firm's activities, structure, and its relationship with the arbitrator. The mere fact that the firm or employer has dealings with a party does not automatically create a conflict. The same applies if a party is part of a group connected to the arbitrator's firm. Each situation must be assessed individually. Additionally, any person or entity with controlling influence over a party, with a direct economic interest in the case or with a duty to indemnify a party for the award, may be treated as bearing that party's identity; likewise, entities or persons controlled by a party may also be considered to share its identity.

VII. General Standard 7 (Duty of the Parties and the Arbitrator): Parties must promptly inform the Arbitrator, Tribunal, other parties, and any appointing authority of any direct or indirect relationship between the arbitrator and the party, its group of companies, entities or persons with controlling influence over it, those it controls, or anyone with a direct economic interest in or duty to indemnify the party for the award. They must also identify any other person or entity they believe the arbitrator should consider when making

disclosures and must do so proactively after making reasonable enquiries. Both the parties to an arbitration and the arbitrators have an ongoing duty to make reasonable enquiries to identify conflicts of interests that could raise doubts about their impartiality or independence and cannot rely on ignorance if they have not made such enquiries. [16]

**Part II of The Guidelines: Practical Application of the General Standards Set Out in Part I:**

The practical application section provides examples of specific situations that do, or do not, warrant disclosure by an arbitrator or the disqualification of an arbitrator. These situations are separated into four lists:

i. A non-waivable red list: Circumstances that objectively present a conflict of interest, and in which an arbitrator cannot act, even with the consent of all parties. In these circumstances, an objective conflict of interest exists from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances. This flows from the overriding principle that no person can be a judge in his or her own cause. For instances, where the arbitrator is a legal representative, or an employee of the entity that is a party in the arbitration.

ii. A waivable red list: Serious but not severe situations, whereby the parties can knowingly agree to waive the conflict. This involves cases where the arbitrator had prior involvement in the dispute-as a mediator, or the arbitrator has given legal opinion on the disputes or holds a significant economic interest, such as shares in a privately held party, a financial stake in the outcome, or ties to someone who

[16] *Ibid*

may be liable in the case. They also occur if the arbitrator works in the same firm as the party's counsel; holds a controlling role in an affiliate directly involved in the dispute; works in a firm with prior or ongoing significant business with a party; or has close personal and financial ties to a party, affiliate or their counsel.

iii. An orange list: matters which, depending on the facts, may lead to justifiable doubts regarding the arbitrator's impartiality and independence. Conflicts may arise where, within the past 3 years, an arbitrator has acted as counsel for or against a party or its affiliate, advised them, been repeatedly appointed by them or their counsel, or served as arbitrator, expert, or in mock trial preparation for them. They also exist if the arbitrators firm provides non-significant but ongoing services to a party or if related entities share fees from such services. Relationships with other arbitrators or counsel can create conflicts, such as working in the same firm, past partnerships, repeated appointments, co-counsel roles, close friendship, or enmity.

iv. A green list: matters where there is, objectively, no apparent or actual conflict of interest, and therefore no duty to disclose. This involves cases where the arbitrator has relationship with another arbitrator, or the legal representative of a party through membership of the same professional body, the arbitrator and counsel to the party have previously served together as arbitrators, etc. Though the list of possible scenarios is inexhaustible, there ought to be a limit to disclosures to avoid mundane and unreasonableness. Disclosures do not necessarily imply the existence of a conflict of interest, nor

> should they by themselves result in disqualification of the arbitrator. It just helps the parties make an informed and objective decision. [17]

The IBA guidelines apply equally to investment arbitration and to international commercial arbitration, as well as to legal and non-legal conflicts of interest. Courts and arbitral institutions frequently view the guidelines as providing relevant criteria for assessing the impartiality and independence of arbitrators.[18]

Conclusively, the IBA Guidelines on Conflicts of Interest in International Arbitration provide a comprehensive framework for identifying and addressing conflicts of interest in international arbitration. They offer general standards for identifying conflicts of interest and practical guidance on how to apply those standards, and they are widely accepted within the international arbitration community.

In the final analysis, it is important to state that the duty to disclose is an ongoing one and runs throughout the proceedings. A person who has been considered for appointment and has been so appointed has a duty to ensure that he or she always maintains this duty.[19]

## A LOOK AT HOW AFRICAN SYSTEMS ADDRESS CONFLICT OF INTEREST IN INTERNATIONAL ARBITRATION

The African systems for dealing with conflict of interest in international arbitration are based on a combination of international law, domestic law,

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[17] *Ibid*
[18] David Caron, 'The 2014 IBA Guidelines on Conflicts of Interest in International Arbitration: A Commentary' (2015) 31(1) Arbitration International 7.
[19] *Merck Sharpe & Dohme (I.A.) LLC v Republic of Ecuador* (PCA Case No 2012-10).

rules of arbitration institution and some customary practices. These frameworks are what regulates and provide guidelines for the practice of International Arbitration in the African International Arbitration community. [20]

**INTERNATIONAL LAW**

The main international sources for guidelines on dealing with conflict of interest for the African arbitration community are the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Arbitration (2006), and the IBA Guidelines on Conflicts of Interest in International Arbitration (2014).[21]

i. The UNCITRAL Model Law on International Arbitration is a model law that has been adopted by many countries around the world, including many African countries. Article 12(2) of the Model Law states that

"An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence…"

ii. The IBA Guidelines on Conflicts of Interest in International Arbitration provide a more detailed list of potential conflicts of interest that arbitrators should disclose. Such as personal relationships, professional relationships, financial interest, and personal interests. These have been extensively discussed in the section above.

[20] *Ibid*

[21] UNCITRAL, 'Model Law on International Commercial Arbitration' (2006) <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration> accessed 2 April 2026.

**DOMESTIC LAW**

The domestic laws of individual African countries vary in the way they treat conflict of interest. However, most African countries have laws that require arbitrators to disclose circumstances or relationships that are likely to create conflict of interest in respect of an arbitral reference. It is a matter of practice for arbitrators to disclose whether there exists any form of conflict of interest at the preliminary meeting with parties.

In Nigeria, the Arbitration and Mediation Act 2023 of Nigeria recognize the importance of impartiality and independence of arbitrators in the arbitration process, and it contains several provisions that deal with conflict of interest in arbitration. These include the following:

a) Section 8 of the Act imposes a duty on arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, whether it arises before or during the arbitration proceedings.
b) Section 8 (3) further provides that an arbitrator may only be challenged where circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence.
c) Section 11 addresses what happens when an arbitrator's mandate ends, whether due to withdrawal, termination, death, or other reasons. In such cases, a substitute arbitrator must be appointed. Crucially, this replacement must be made according to the same rules that governed the appointment of the original arbitrator.
d) Section 12 provides guidance for scenarios where an arbitrator's mandate ends, whether due to withdrawal or other circumstances. It allows parties to agree on the consequences of such event. However, note that any liability an arbitrator incurs because of their withdrawal under section 12 is not exempted from obligations that

may flow with it, even though arbitrators generally enjoy immunity, provided they have not acted in bad faith. That means, if an arbitrator resigns or is otherwise removed, they remain responsible for any consequences arising from the withdrawal.

e) Section 13 of the Act introduces immunity for arbitrators, appointing authorities, and arbitral institutions, provided they have not acted in bad faith. This provision by implication suggests liabilities where it can be proven that the arbitrator failed to disclose a conflict of interest in bad faith.

f) Section 62 imposes a crucial disclosure requirement on parties benefitting from third party funding arrangements. This obligation mandates that parties disclose fundamental information about the funding agreement to the other parties involved, the arbitral tribunal, and, if applicable, the arbitral institution. By enabling such disclosure, the Act ensures that the arbitral tribunal can effectively manage any potential conflicts of interest that may arise in funded arbitrations.[22]

Some other African Countries have domestic laws with provisions that are like Section 8 of the Nigerian Arbitration and Mediation Act 2023. These include:

i. Ghana - Arbitration Act 2016 (Section 15- Impartiality and challenge of arbitrator)[23]
ii. Kenya - Arbitration Act [2010] Revised 2012 (Sections 13 - Grounds for challenge)[24]

[22] Arbitration and Mediation Act 2023 (Nigeria).
[23] Arbitration Act 2016 (Ghana).
[24] Arbitration Act 2010 (Kenya) (revised 2012).

iii. Tanzania - Arbitration Act 2020 (Sections 26(1)- Power of the Centre to remove arbitrator)[25]
iv. Zimbabwe - Arbitration Act 2006 (Section 3 Law applicable to arbitrations)[26]
v. Zambia - The Arbitration (Code of Conduct and Standards) Regulations, 2007 (Sections 1-3)

This legislation generally requires arbitrators to disclose any potential conflicts of interest to the parties before accepting an appointment, and they allow the parties to challenge an arbitrator's appointment on the grounds of conflict of interest. Some of this legislation also imposes liability on arbitrators who fail to disclose a conflict of interest.

## LESSONS FOR THE IBA FROM THE AFRICAN SYSTEMS

The African systems for tackling conflict of interest in international arbitration are similar in various ways to the IBA Guidelines on Conflict of Interest in International Arbitration. What makes for any difference is the fact that while they are similar, the circumstances under which conflict of interest can be said to have arisen are liberal within the African context when placed side by side with the IBA Guidelines. For the typical African, a lot revolves around trust and faith in the capacity of the neutral. Such trust is most of the time exercised to the exclusion of any other person or factors.

The IBA Guidelines cuts across various circumstances that might interfere with the party's rights to resolution of their dispute(s) especially in appointing an arbitrator. The Guidelines, in some areas may view conflict of interest beyond the purview of the parties directly involved in the arbitral

[25] Arbitration Act 2020 (Tanzania).
[26] Arbitration Act 2006 (Zimbabwe).

process, to the perception of a reasonable third party. Some of such areas are where it sets the principle that even where parties consent to the appointed arbitrator, such an arbitrator cannot function because a reasonable third party would judge the arbitrator to be partial or lacking independence depending on the circumstances.[27]

Thus, the point of divergence between the IBA Guidelines and the peculiar African system is as it relates to the issue the "perception of a reasonable third party." The question that begs for answers is, how do we determine what governs the perception of the reasonable third party. It is submitted that this is a very subjective test which can only be determined based on who is exercising that opinion at the material time and based on the information available to them. Interestingly, it is to address such subjectivity that the IBA Guidelines exists in the first place.

The goal is to determine the standard of bias or appearance of it. Thus, what the IBA guidelines on conflict of interest, and other soft laws promote is that the arbitrator or arbitrators must avoid any bias or appearance thereof. It is interesting to note that the standard here is not only absence of actual bias but also that there should be no appearance of bias. Thus, in applying this test, the court or tribunal must ensure that it is above board otherwise the integrity of the proceedings or the award will be undermined. This was the position taken by the UK Supreme Court in the case of Halliburton Co. v. Chubb Bermuda Insurance Ltd.[28]

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[27] Adenike Aiyedun and Ada Ordor, 'Integrating the Traditional with the Contemporary in Dispute Resolution in Africa' (2016) 20 Law, Democracy and Development<http://www.scielo.org.za/scielo.php?pid=S2077-49072016000100009&script=sci_arttext> accessed 2 April 2026.
[28] *Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48.

On the other hand, African system of dealing with conflict of interest, bias or appearance of bias, by nature operate in such a way that the trust of the parties in the tribunal gives the arbitrator or tribunal greater freedom to facilitate the resolution of the dispute. It is worthy of note that such freehand or latitude rides on the confidence of the parties in the tribunal and is fundamental to arbitral proceedings. Because of such trust, once parties submit to the jurisdiction of the arbitrator or tribunal, such trust then empowers the effective resolution of any issue of conflict of interest regardless of what a third party who is not connected to the dispute might perceive. This protects the sacredness of arbitration as private litigation.[29] In sum, only the parties to the dispute are considered to be in the position to determine whether they have faith in the tribunal and not an independent third party.

It is important to protect the trust of the parties in the capacity of the arbitrator of their choice as it makes for acceptance of the arbitral process and the resulting arbitral award. This also gives arbitrators in this position the opportunity to show expertise and integrity in their arbitration practice. It is submitted that taking the issues of conflict of interest beyond the borders of those directly involved in the reference or that may by impacted by the outcome maybe going beyond reasonableness/practicability of these Guidelines.

This trust attitude of parties also has its downside in the sense that, once the parties demonstrate a lack of trust or confidence in the tribunal, the

[29] Lagos Chamber of Commerce International Arbitration Centre, 'Rules of Arbitration' (2020).

implication is that the tribunal will be unable to serve not minding whether an independent third party or observer would ordinarily not consider that there is actual bias or an appearance of bias. This is evident in the fact that once a party or the parties challenge the impartiality or independence of the tribunal, they expect the arbitrator or tribunal to step aside or recuse itself. This also appears to form the African attitude to conflict of interest.

It is worthy of note that the Arbitration and Mediation Act 2023[30] provides for the duty of disclosure. For emphasis, Section 8(1) and (2) are reproduced herein:
*8(1) Where a person is approached in connection with possible appointment as an arbitrator, the person shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.*
*(2) An arbitrator shall from the time appointed and throughout the arbitral proceedings, disclose to the parties any relevant circumstances not within the knowledge of the parties.*
*(3) An arbitrator may only be challenged where circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties.*
*(4) A party may only challenge an arbitrator it appointed, or in whose appointment it has participated for reasons of which it becomes aware after the appointment has been made.*

The import of these provisions is that whilst a duty of disclosure exists, parties can also exercise a right to challenge. It is worthy of note that whilst

[30] Arbitration and Mediation Act 2023, s 8; Lagos Chamber of Commerce International Arbitration Centre Rules 2020, First Sch art 11.

parties may exercise the right of challenge, the same Act[31] empowers the arbitrator or the tribunal to determine such challenge to the competence of the tribunal or with regard to its jurisdiction. Thus, whilst the Tribunal can determine its own jurisdiction the attitude of most practicing arbitrators is to step down or recuse themselves once they have been challenged. Another African mentality? Interestingly, this attitude of practitioners has received the endorsement of the court in the case of Global Gas and Refinery v. Shell Petroleum Development Company of Nigeria Limited (2020) High Court of Lagos State (Unreported).

It is instructive to note that the African perspective whilst riding on trust appears to be as subjective as the IBA guidelines in the sense that, when the chips are down, it will always depend on the perspective of the person who is viewing the act as biased or giving an appearance of bias. Thus, whilst there is the perception of the independent third party or bystander, such perception is essentially subjective. Thus, in the final analysis it is how the parties to the dispute perceive their third-party neutral that matters. If they repose trust in the neutral, that is entirely their choice.

## CONCLUSION

The IBA Guidelines on Conflict of Interest in International Arbitration is commendable for helping to set uniform standards for handling issues of conflict of interest in International Arbitration. They remain an invaluable tool especially in the sphere of international arbitration. However, these standards seem to be far from practicable when placed within the African context as they relate to the African spirit of trust in the neutral third party facilitating the resolution of the dispute. Parties should always be able to

[31] Arbitration and Mediation Act 2023, s 14.

determine who they want to arbitrate their disputes and should be allowed to waive whatever conflict of interest may arise whether acceptable to the public or not, so long as public policy is not offended. Thus, from an African perspective, it would appear that the strict application of the traffic light system may not be very effective. The jury is still out on this and we await further guidance as the jurisprudence of disclosure in arbitral proceedings and the right of parties to accept or reject such disclosure continues to develop. What is certain is that it will always depend on the parties. This underscores the whole essence of Party Autonomy.