



SCC Policy

Disclosure of third parties with
an interest in the outcome of
the dispute

ADOPTED BY THE SCC BOARD ON 11 SEPTEMBER 2019

SCC Policy

A. Policy on Disclosure of Third Parties with an Interest in the Outcome of the Dispute

Each party is encouraged to disclose, in its first written submission in an SCC arbitration, the identity of any third party with a significant interest in the outcome of the dispute, including but not limited to funders, parent companies, and ultimate beneficial owners. Prospective or appointed arbitrators shall take the information disclosed into account in making any disclosure or statement of independence and impartiality pursuant to Article 18 of the SCC Rules. Parties are further encouraged, during the course of the arbitration, promptly to disclose the identity of any third party who acquires a significant interest in the outcome of the dispute.

B. Reasons for Adopting the Policy

1. Article 18 of the SCC Rules requires prospective arbitrators to disclose any circumstances that may give rise to justifiable doubts of their independence or impartiality. Once appointed, arbitrators must sign a statement of independence and impartiality, disclosing any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. Such justifiable doubts, or an actual conflict of interest, can arise from the existence of a relationship between an arbitrator and a person or entity with an interest in the outcome of the dispute. Arbitrators necessarily base their assessments on the information supplied by the parties in the request for arbitration and answer. These pleadings are brief and generally do not provide information on third parties with an interest in the dispute.
3. Third parties with a significant interest in the outcome of the dispute may include, among others, (a) ultimate beneficial owners; (b) persons obligated to pay an award under an indemnification or other agreement; (c) persons entitled to receive proceeds of an award under a third-party-funding or other agreement; and (d) ultimate parent companies of a party. The preceding list is only indicative.
4. Prospective and appointed arbitrators generally cannot identify, through usual due diligence, third parties with a significant interest in the outcome of dispute. Absent corrective measures, an arbitrator may be appointed who unwittingly has a relationship that would be considered a conflict of interest. This puts at risk the neutrality of the arbitral proceedings and gives rise to the possibility of eventual annulment of the award.
5. These risks lead the Board to adopt corrective measures limited to avoiding conflicts of interest and ensuring that the disclosures and statements of independence and impartiality contemplated by Article 18 are fully informed.