

Swiss Arbitration Association



29 September 2023

ASA Town Hall 2023 Conflicts of Interest and Disclosure

ASA Town Hall – New Format



Nadja Jaisli,
Partner, Bär & Karrer



Christian Oetiker,
Partner, Vischer

Join at
[slido.com](https://www.slido.com)
#ASA



Programme



12:15 – 13:20

Lunch

13:20 – 13:30

Welcome and introduction to the new format

Nadja Jaisli Kull, Partner at Bär & Karrer
Christian Oetiker, Managing Partner at
Vischer

13:30 – 13:45

Conflicts of interest and disclosure – conflicting
rules all over the place?

Marieke Van Hooijdonk, Partner at Allen &
Overy

13:45 – 14:00

The Revision of the 2014 IBA Guidelines on
Conflicts of Interest in International Arbitration

Xavier Favre-Bulle, President of the
Arbitration Court of the Swiss Arbitration
Centre and Partner at Lenz & Staehelin

14:00 – 15:15

Roundtables

15:15 – 15:45

Networking break

15:45 – 16:45

Plenary wrap-up

Nadja Jaisli Kull, Partner at Bär & Karrer
Christian Oetiker, Managing Partner at
Vischer

16:45 – 17:00

Closing

Felix Dasser

17:00 – 18:00

Network drinks

Today's topic: Conflicts of Interest and Disclosure

Presentation #1:

Conflicts of interest and disclosure –
conflicting rules all over the place?



Marieke Van Hooijdonk,
Partner, Allen & Overy

Presentation #2:

The Revision of the 2014 IBA Guidelines on Conflicts of Interest in International Arbitration



Xavier Favre-Bulle,
Partner, Lenz & Staehelin



Roundtables

14:00 – 15:15

Roundtable #1

Arbitrators' disclosure (Part 1)



Simon Gabriel,
Partner, Gabriel
Arbitration AG



Friederike Schäfer,
Partner, Zeiler
Floyd Zadkovich

Polling Question #1

Answer the following questions. Ticking a box means "yes".

- The arbitrator is currently sitting with one of the other arbitrators in an unrelated arbitration (both as co-arbitrators). Is disclosure required?
- The arbitrator is currently sitting with one of counsel in an unrelated arbitration. Is disclosure required?
- The arbitrator is currently working with an expert, who appears as expert witness, in capacity as counsel in an unrelated matter. Is disclosure required?
- Is a challenged arbitrator free to withdraw or is she/he required to stay as long as he/she feels impartial and independent (Yes means: "free to withdraw")?

Roundtable #2

Arbitrators' disclosure (Part 2)



Jean Marguerat,
Partner, MLL



Olena Perepelynska,
Partner, Integrites

Polling Question #2

(Choose one option). With regard to the circumstances to disclose in relation to the parties, is the discretion currently given to the arbitrator:

- Too wide (i.e., the applicable rules should be more comprehensive);
- Just about right;
- Too narrow (i.e., the applicable rules should be loosened)?
- I do not have an opinion on this question.

Roundtable #3

Issue conflicts



Christopher Harris,
King's Counsel,
3 Verulam Buildings



Tilman Niedermaier,
Partner, CMS
Germany

Polling Question #3

(Choose one or several options). Which of the following facts raises an issue conflict in a commercial arbitration:

- The arbitrator has previously arbitrated a case involving identical legal issues (but different parties);
- The arbitrator concurrently acts as counsel in a case involving similar issues of law (but different parties);
- The arbitrator has publicly expressed an opinion or issued a publication on a disputed legal question relevant to the case;
- None of the above.

Roundtable #4

Third-party funding



Sarah Ganz,
Special Counsel,
Wilmer Cutler
Pickering Hale & Dorr



Benjamin Gottlieb,
Partner, Schellenberg
Wittmer Ltd

Polling Question #4

(You may choose several options). In cases involving a third-party funder, what information should the party supported by the third-party funder disclose:

- The fact that a third-party funder is involved;
- The identity of the third-party funder;
- The terms of the agreement with the third-party funder (without the financial terms);
- The financial terms.

Roundtable #5

Social media



Catherine Kunz,
Partner, LALIVE



Shirin Saif,
Partner, Roschier

Polling Question #5

(Choose one or several options). Which of the following social media activities are in your view generally unproblematic for an arbitrator during an arbitration:

- "Like" one of counsel's social media posts (unrelated to the case);
- "Like" one of counsel's social media posts and add a comment (unrelated to the case);
- Accept a counsel's invitation to connect;
- Actively invite a counsel to connect;
- Newly connect with one of the parties or party representatives on social media;
- None of the above.

Roundtable #6

Regulation



Diana Akikol,
Partner, Walder
Wyss Ltd



Thomas Stouten,
Partner, Houthoff

Polling Question #6

(Choose one option). The various regulations have different approaches to conflicts and disclosures. With which of the following statements do you agree most:

- The IBA Guidelines should remain the gold standard. Instead of issuing their own rules, all actors should work towards a unified standard;
- There is no need for a gold standard. Rather, every institution should issue the rules appropriate for its users;
- There is no need for private guidelines or rules. Rather, the question should be left to the courts at the seat of the arbitration.



Thank you