

# SINGAPORE INTERNATIONAL ARBITRATION CENTRE

## PRACTICE NOTE PN – 01/17 (31 March 2017)

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### ADMINISTERED CASES UNDER THE ARBITRATION RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE

#### ON ARBITRATOR CONDUCT IN CASES INVOLVING EXTERNAL FUNDING

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#### Introduction

1. This Practice Note sets out standards of practice and conduct to be observed by arbitrators in respect of arbitration proceedings administered by the Singapore International Arbitration Centre (“**SIAC**”) under the Arbitration Rules of the Singapore International Arbitration Centre (“**SIAC Rules**”) where the involvement of an External Funder in arbitration proceedings is permissible.
2. This Practice Note shall not be construed as an endorsement or approval, by implication or otherwise, of the involvement of an External Funder in arbitration proceedings. This Practice Note is meant to supplement an arbitrator’s obligations under the SIAC Rules, and is not intended to replace any existing ethical standard or code of conduct which may apply to arbitrators under any applicable arbitration agreement, professional or disciplinary rules, or mandatory laws and regulations.
3. In this Practice Note –
  - a. “Direct Economic Interest” means an interest in the arbitration proceedings resulting from the provision by a non-Disputant Party to a Disputant Party of funding for or indemnity against the award to be rendered in the arbitration proceedings;
  - b. “Disputant Party” means a party, whether Claimant or Respondent, who is a party to the arbitration proceedings;
  - c. “External Funder” means any person, either legal or natural, who has a Direct Economic Interest in the outcome of the arbitration proceedings;
  - d. “Registrar” means the Registrar of the Court of Arbitration of SIAC and includes any Deputy Registrar; and
  - e. “Tribunal” includes (i) a sole arbitrator or all the arbitrators where more than one is appointed; and/or (ii) an emergency arbitrator.

#### Impartiality and Independence

4. Any potential candidate for appointment as an arbitrator shall disclose to the Registrar and the Disputant Parties, any circumstances that may give rise to justifiable doubts as to

his impartiality or independence, including any relationship whether direct or indirect, with an External Funder, as soon as reasonably practicable and in any event before his appointment.

### **Disclosure**

5. Unless otherwise agreed by the Disputant Parties, the Tribunal shall have the power to conduct such enquiries as may appear to the Tribunal to be necessary or expedient, which shall include ordering the disclosure of the existence of any funding relationship with an External Funder and/or the identity of the External Funder and, where appropriate, details of the External Funder's interest in the outcome of the proceedings, and/or whether or not the External Funder has committed to undertake adverse costs liability.
6. An arbitrator shall immediately disclose to the Disputant Parties, to the other arbitrators and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence, including any relationship whether direct or indirect, with an External Funder, that may be discovered or arise during the arbitration proceedings.
7. The Tribunal may request that the Disputant Parties agree to inform the Tribunal and the Registrar, at the earliest opportunity, of the involvement of an External Funder in the arbitration proceedings or any withdrawal or change of External Funder.
8. The Tribunal shall inform the Disputant Parties of their continuing obligation to inform the Tribunal and the Registrar, at the earliest opportunity, of the involvement of an External Funder in the arbitration proceedings or any withdrawal or change of External Funder.

### **Costs**

9. The involvement of an External Funder alone shall not be taken as an indication of the financial status of a Disputant Party. The Tribunal may take into account factors other than the involvement of an External Funder in an order for security for legal or other costs.
10. The Tribunal may take into account the existence of any External Funder in apportioning the costs of the arbitration.
11. The Tribunal may take into account the involvement of an External Funder in ordering in its award that all or a part of the legal or other costs of a Disputant Party be paid by another Disputant Party.

**Issued by:**

**Registrar, SIAC**

**31 March 2017**