



## **RULES AND CODE OF CONDUCT FOR QUALIFIED ARBITRATORS AND QUALIFIED MEDIATORS**

### **INTRODUCTION**

The object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal, without unnecessary delay or expense. Mediation is an alternative dispute resolution procedure to facilitate the parties in settling their differences or disputes.

These Rules and this Code of Conduct are issued specifically for Qualified Arbitrators and Qualified Mediators who may be members of Gafta under Category D (as individuals) or under Category I (as employees of other Gafta Members acting with their employer's consent). These rules apply to arbitrations, appeals and mediations as appropriate.

For the purposes of these Rules and this Code of Conduct, the term "Arbitrator" shall unless the contrary intention appears, include all Qualified Arbitrators and Qualified Mediators, whether acting as Arbitrators, Mediators or Appeal Board members.

An Arbitrator, who is found to have acted contrary to any provision of these Rules or this Code of Conduct, or to their spirit, may be subject to disciplinary action.

### **RULES**

#### **1. GENERAL ELIGIBILITY AND QUALIFICATION**

1.1 Gafta's Arbitration Rules require the appointment of Qualified Arbitrators. Its Mediation Rules require the appointment of Qualified Mediators. All Qualified Arbitrators (including Appeal Board members) and Qualified Mediators must be either individual Members of the Association under Category D, or Associate Members under Category I, employed by Members in other categories and acting with the consent of their employers.

1.2 Any Member or employee of a Member wishing to become a Gafta Qualified Arbitrator or Qualified Mediator must comply with the Association's Criteria and the Gafta Professional Development (GPD) programme as published by the Council from time to time. Applicants appearing on other grounds to be eligible will be elected to a "waiting room" pending their successful completion and/or compliance with the Association's GPD Programme.

1.3 If, at any time, a Qualified Arbitrator or a Qualified Mediator ceases to be eligible under the Association's Criteria or fails to comply with the on-going requirements of the Association's GPD

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Programme, as published from time to time, he shall cease to be a Qualified Arbitrator or Qualified Mediator and his membership shall lapse. He may, however, re-apply at any time.

### **2. COMMITTEE OF APPEAL**

2.1 There shall be a Committee of Appeal appointed by the Council which shall comprise Qualified Arbitrators and Qualified Mediators who are Members of the Association (under Category D), or employees of Members of the Association acting with the consent of their employers (under Category I).

2.2 At the Annual General Meeting in each year, the members of the Committee of Appeal shall retire but shall be eligible for re-election at the first meeting of the Council thereafter.

### **3. BOARDS OF APPEAL**

3.1 An Appeal under Gafta's Arbitration Rules shall be heard by a Board of Appeal. Each Board of Appeal shall comprise three or five members of the Committee of Appeal as required by the Arbitration Rules, duly elected in such manner as shall be prescribed by the Council.

### **4. COSTS, FEES AND EXPENSES**

4.1 Any costs, fees and expenses incurred by an Arbitrator in relation to the dispute should be shown on the award of arbitration. Settlement of any costs, fees and expenses should be made through the Association and not to an Arbitrator direct.

4.2 If an Arbitrator decides to request the Association to call for a deposit under the Arbitration Rules, this deposit shall be sent to the Association by the party called on to be held on account of the costs, fees and expenses of the arbitration.

4.3 The Council shall from time to time determine the charges to be made by the Association in respect of its costs and fees.

### **5. CONFIDENTIALITY**

Arbitrators must not disclose or discuss, either with the disputing parties or with third parties, details of their arbitration awards, nor any documents or submissions put in by the parties, prior to and after the publication and issue of, such awards by the Association.

### **6. ELIGIBILITY TO ACT IN PARTICULAR CASES**

6.1 Qualified Arbitrators and Qualified Mediators shall be ineligible to act in arbitrations, mediations and appeals in the following cases:

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6.1.1 Where they have an interest in the transaction being the subject of the reference, including but not limited to, an interest arising from being a party thereto, or as a broker, agent, consultant, or superintendent acting in the transaction.

6.1.2 Where they have involvement in any other capacity which links them to either of the disputing parties, including but not limited to, an involvement arising from being a member of an organisation named as party to the arbitration or mediation, or from being financially retained by any such party, or from being a member of or being financially retained by any organization financially associated with any such party.

6.1.3 Where they are so closely associated with a party as to cast doubt on their ability to conduct the reference impartially.

6.1.4 At appeal hearings, as either party's representative or as a board member where they participated as an arbitrator in the arbitration against which the appeal has been lodged.

6.1.5 Where another employee of the same organisation or associated organisation or firm, as that of the Qualified Arbitrator or Qualified Mediator is appointed to act as Arbitrator, Appeal Board Member or Mediator in the same case.

6.1.6 In cases involving a former employer who is a party to the arbitration, for a period of 5 years from leaving their employment. Retired employees shall always be ineligible to serve on any case where their last employer is a party to the arbitration. For avoidance of doubt a law firm shall not be considered to be a party to the arbitration.

## 7. COMPLAINTS

### 7.1 COMPLAINTS RELATING TO ELIGIBILITY TO ACT IN A PARTICULAR CASE

7.1.1 Any person may make a complaint to the Director General regarding an Arbitrator's eligibility to act in a particular case, on any of the following grounds:

- (a) that he is not impartial or there are doubts as to his impartiality;
- (b) that he does not possess the qualifications required by the arbitration agreement;
- (c) that he has failed or refused to conduct the proceedings properly;
- (d) that he is incapable of acting;
- (e) that he has acted or proposes to act in excess of his jurisdiction;
- (f) that he has failed or refused to use all reasonable dispatch in conducting the arbitration or making an award;
- (g) that he has failed to comply with the requirements of the Continuing Professional Development Programme as decided by the Council.

7.1.2 Prior to making any such complaint the complainant shall use all reasonable endeavours to resolve the matter informally with the Arbitrator.

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7.1.3 If the matter cannot be resolved by the Director General, or such other person as the Director General shall nominate, the complainant will be required to submit a written complaint which will be referred to an Arbitration Complaints Committee ('The Committee').

7.1.4 The Committee shall normally consist of 3 Council Members of the Association. However, from time to time and at the discretion of the Council, The Committee may consist of such other Members of the Association that the Council deems appropriate.

7.1.5 The Committee shall investigate the matter as it sees fit.

7.1.6 The Committee shall use its reasonable endeavours to reach a determination of the complaint within 14 working days of the date on which the complaint has been referred to it.

7.1.7 At any time, The Committee may, at its discretion, seek legal advice from the Association's General Counsel. Such advice shall be confidential and privileged to The Committee and/or the Council.

7.1.8 The decision of The Committee shall be in writing and shall be sent to the parties to the complaint.

7.1.9 Provided that The Committee is satisfied that there are no issues of possible unprofessional conduct (as defined in the Association's Complaints and Disciplinary Regulations), it may:

- (a) dismiss the complaint; or
- (b) seek to resolve the matter by agreement between the parties; or
- (c) revoke the Arbitrator's authority to act in the particular case or in any specified future category of cases.

7.1.10 Where The Committee considers that there may be issues of possible unprofessional conduct, it shall refer the matter for consideration under the Association's Disciplinary Regulations.

7.1.11 If, in the reasonable opinion of The Committee, the complaint is believed to be without foundation, The Committee reserves the right to impose a fee on the Complainant. Amongst other things, any such fee shall take into account the time and resource which has unnecessarily been expended by The Committee and/or The Association in considering the complaint. The fee shall be payable by the complainant within 21 days of being requested.

7.1.12 The decision of The Committee shall be final and binding on the parties to the complaint.

7.1.13 For the avoidance of doubt, any complaint which relates to an Award of arbitration, whether at First Tier or on Appeal, will not be considered.

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### **7.2 COMPLAINTS RELATING TO AN ARBITRATOR'S FEE**

7.2.1 In the event of a complaint as to the reasonableness of an arbitrator's fee, Gafta shall use its reasonable endeavours to resolve the complaint directly with the arbitrator.

7.2.2 If the complaint cannot be resolved, Gafta shall appoint an external independent assessor of its choice who shall determine the complaint.

7.2.3 The external independent assessor's determination shall be final and binding on the parties.

7.2.4 The cost of the referral to the external independent assessor shall be met equally by the parties.

### **7.3 COMPLAINTS RELATING TO UNPROFESSIONAL CONDUCT**

7.3.1 Arbitrators may be subject to disciplinary action if they are deemed to be guilty of unprofessional conduct as defined in the Association's Complaints and Disciplinary Regulations. They should be aware that upon a finding of unprofessional conduct, they may be subject to one or more of the various forms of disciplinary action in accordance with the Regulations including expulsion or suspension from membership or revocation of their authority to act as a Qualified Arbitrator or Qualified Mediator either generally or in an instance reference or in any future category or references.

7.3.2 In determining whether there are grounds for disciplinary action, regard shall be had to the Association's General Rules, Regulations and Code of Conduct and to any other relevant Rules, Regulations and Codes of Conduct including those set out herein.

## **8. CODE OF CONDUCT**

8.1 This Code deals specifically with standards of conduct required to be adopted by Arbitrators.

8.2 Arbitrators must always remember that they are acting in a judicial capacity and that there are basic requirements of justice which they must observe. These requirements will usually be satisfied if the Arbitrators have acted with fairness towards both the parties.

8.3 Arbitrators must always act with impartiality between the parties and avoid saying or doing anything which even gives the impression that they are not or may not be impartial.

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