

Arbitrator Independence – where are the problems?
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## Survey by ICC Deputy Secretary Generals Greenberg and Feris

- 2004-2009 a total of 187 challenges
- 106 specific references to IBA Guidelines
- Significant number of cases with no reference to the Guidelines, in many of these the situation was not covered by any specific provision in the Guidelines
- Not all cases resolved exactly as per Guidelines
  - some green list cases not accepted

#### Waivable red list

| • | 2.1.1 advice or opinion on dispute       | (5) |
|---|--|-----|
| • | 2.1.2 previous involvement in case       | (7) |
| • | 2.3.1 current representation of party    | (3) |
| • | 2.3.2 current representation of counsel  | (1) |
| • | 2.3.3 lawyer in the same firm as counsel | (3) |
| • | 2.3.5 previous lawfirm involvement       | (4) |
| • | 2.3.6 significant commecial relations    | (3) |
| • | 2.3.8 close family relations             | (1) |

## Orange list; previous services

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→ 3.1.1 Within 3yrs counsel for party (13)
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- → 3.1.2 Within 3yrs opposing counsel (8)
- 3.1.3 Within 3yrs two appointments (5)
- 3.1.4 Within 3yrs lawfirm involvement (14)
- 3.1.5 Within 3yrs arbitrator in related case (18)

### Orange list; current services

- 3.2.1 current not significant lawfirm services (9)
- 3.2.3 regular representation unrelated (1)

# Orange list; relations with colleague (arbitrator or counsel)

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3.3.2 same chambers (2)
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- 3.3.3 previous partners (2)
- → 3.3.4 colleague arbitrator in other dispute (1)
- 3.3.6 close personal friendship (4)
- → 3.3.7 within 3yrs > 3 appointments (1)

### Orange list; other circumstances

- 3.4.1 lawfirm currently adverse to party (2)
- 3.4.2 arbitrator within 3yrs associated (1)
- → 3.5.2 publicly advocated position (1)
- 3.5.4 director of affiliate (1)

#### Green list

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- 4.4.2 previously co-counsel or co-arbs (12)
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# Some similar situations in ICC practice

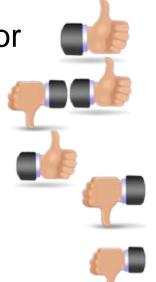
- Currently co-counsel in unrelated matter
- Currently co-arbitrators in unrelated matter
- Arbitrator's partner married to counsel
- Commercial ties with both parties

#### Issues not covered

Indirect employment e.g State-professor



- Nominated by other side
- Bad social relationship
- Regular references to counsel



### LCIA practice –Arb Int'l 3/2011, decisions on familiar issues plus a few new ones

- Nationality not simply formal
- Cultural bias
- Conduct during proceedings

