



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
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# 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 commercial relations (3)
  - ▶ 2.3.8 close family relations (1)
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## Orange list; previous services

- ▶ 3.1.1 Within 3yrs counsel for party (13)
  - ▶ 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)
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# Orange list; current services

- ▶ 3.2.1 current not significant lawfirm services (9)
  - ▶ 3.2.3 regular representation unrelated (1)
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## Orange list; relations with colleague (arbitrator or counsel)

- ▶ 3.3.2 same chambers (2)
  - ▶ 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)
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# 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)
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# Green list

- ▶ -----
  - ▶ 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
- ▶ Ties of family members
- ▶ 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
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**THANK YOU FOR YOUR  
ATTENTION!**