

# KIEV ARBITRATION DAYS 2013: THINK BIG! THE EXPERT IN INTERNATIONAL ARBITRATION: ROLE ON THE CHESSBOARD

*EXPERT-ARBITRATOR CONFLICTS: AN ICC PERSPECTIVE*

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ICC International Court of Arbitration



# NORMATIVE FRAMEWORK

# ARBITRATORS' DUTIES UNDER THE ICC RULES

## The General Rule

- Every arbitrator must be and remain **independent of the parties** involved in the arbitration (Article 11(1))

## The Forms

- Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, **availability, impartiality and independence**. (Article 11(2))

## Disclosure by prospective arbitrators

- The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to **call into question the arbitrator's independence in the eyes of the parties**, as well as any circumstances that could **give rise to reasonable doubts as to the arbitrator's impartiality**. (Article 11(2))

## Continuing disclosure

- An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the **arbitrator's impartiality or independence** which **may arise during the arbitration**. (Article 11(3))

## Appointment of experts

- The arbitral tribunal may decide to hear [...] **experts appointed by the parties** [...] (Article 25(3))
- The arbitral tribunal after having consulted the parties, **may appoint one or more experts, define their terms of reference** and receive their reports (Article 25(4))

# IBA RULES AND GUIDELINES

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## Guidelines on Conflict of Interest

- **A close personal friendship exists between an arbitrator and a** manager or director or a member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or a **witness or expert**, as demonstrated by the fact that the arbitrator and such director, manager, other person, witness or expert regularly spend considerable time together unrelated to professional work commitments or the activities of professional associations or social organizations.

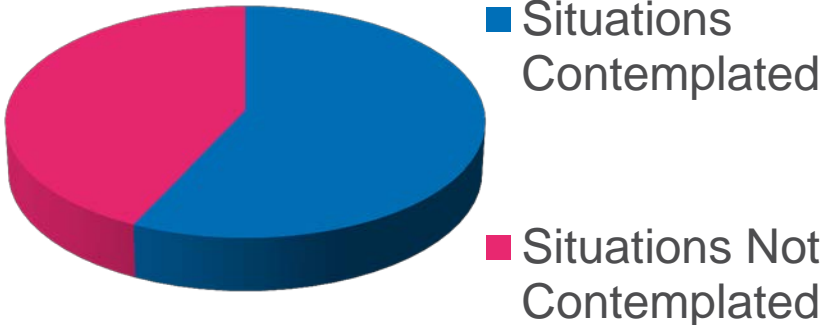
## Rules on the Taking of Evidence

- **The Expert Report shall contain:** (a) the full name and address of the Party-Appointed Expert, **a statement regarding his or her present and past relationship (if any) with** any of the Parties, their legal advisors and **the Arbitral Tribunal**, and a description of his or her background, qualifications, training and experience [...]

# IBA GUIDELINES ON CONFLICT OF INTEREST

## References to the IBA Guidelines when Deciding on Arbitrator Independence in ICC Cases

S. Greenberg / J. Feris  
ICC Int. Court of Arbitration Bulletin Vol. 20/2 - 2009



Cases Researched: 187

Years: 2006-2009

Top References: Orange List: 3.1.5 / 3.1.4 / 3.1.1 / 4.4.2 / 3.2.1

Red List: 2.1.2 / 2.1.1 / 2.3.5

Situations not contemplated

State as a party

Family Ties

Issue Conflict

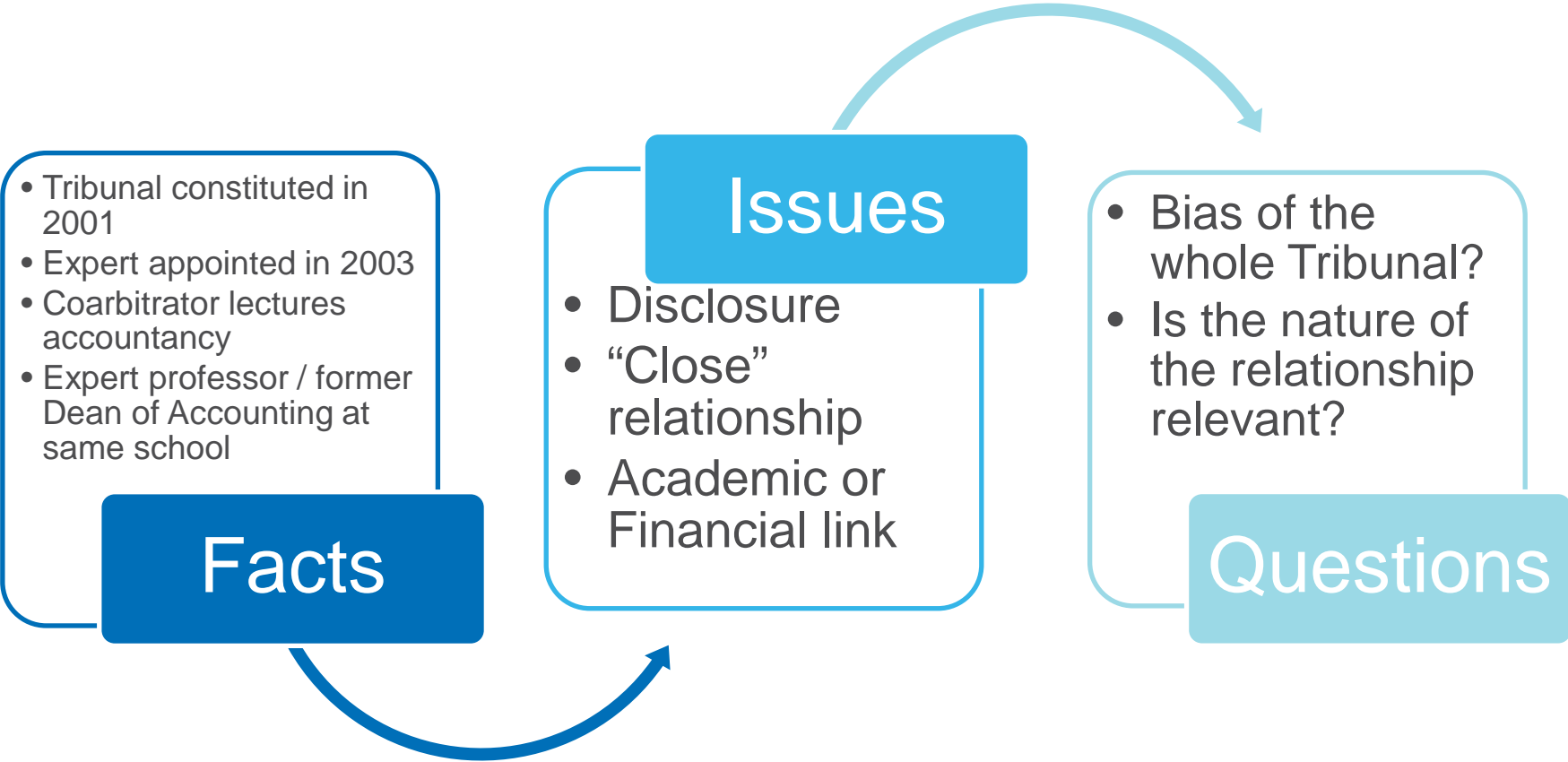
Past experiences between counsel and arbitrator

Other

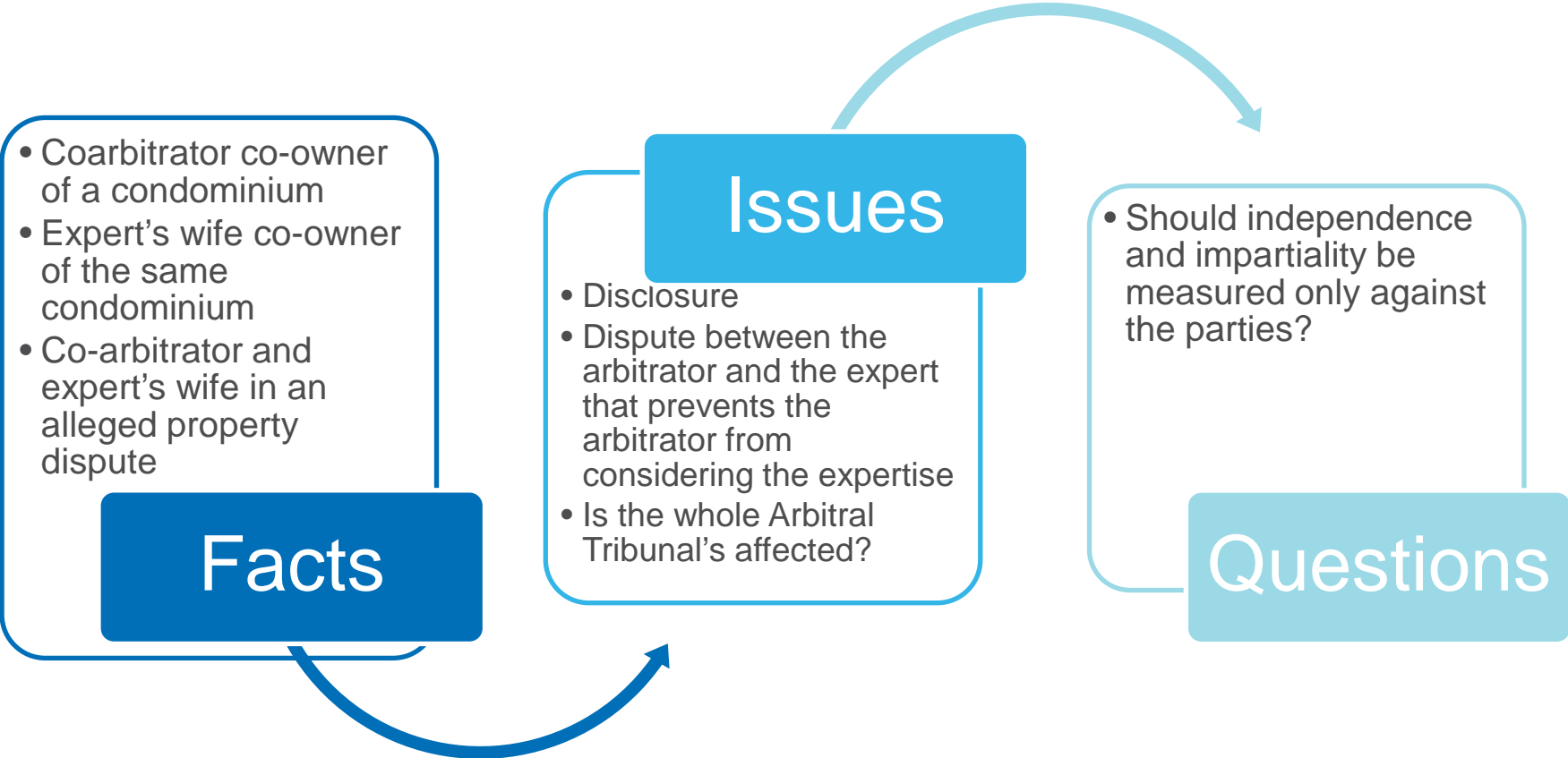
# PRACTICAL EXPERIENCE

# SCENARIO 1: “THE FELLOW PROFESSOR”

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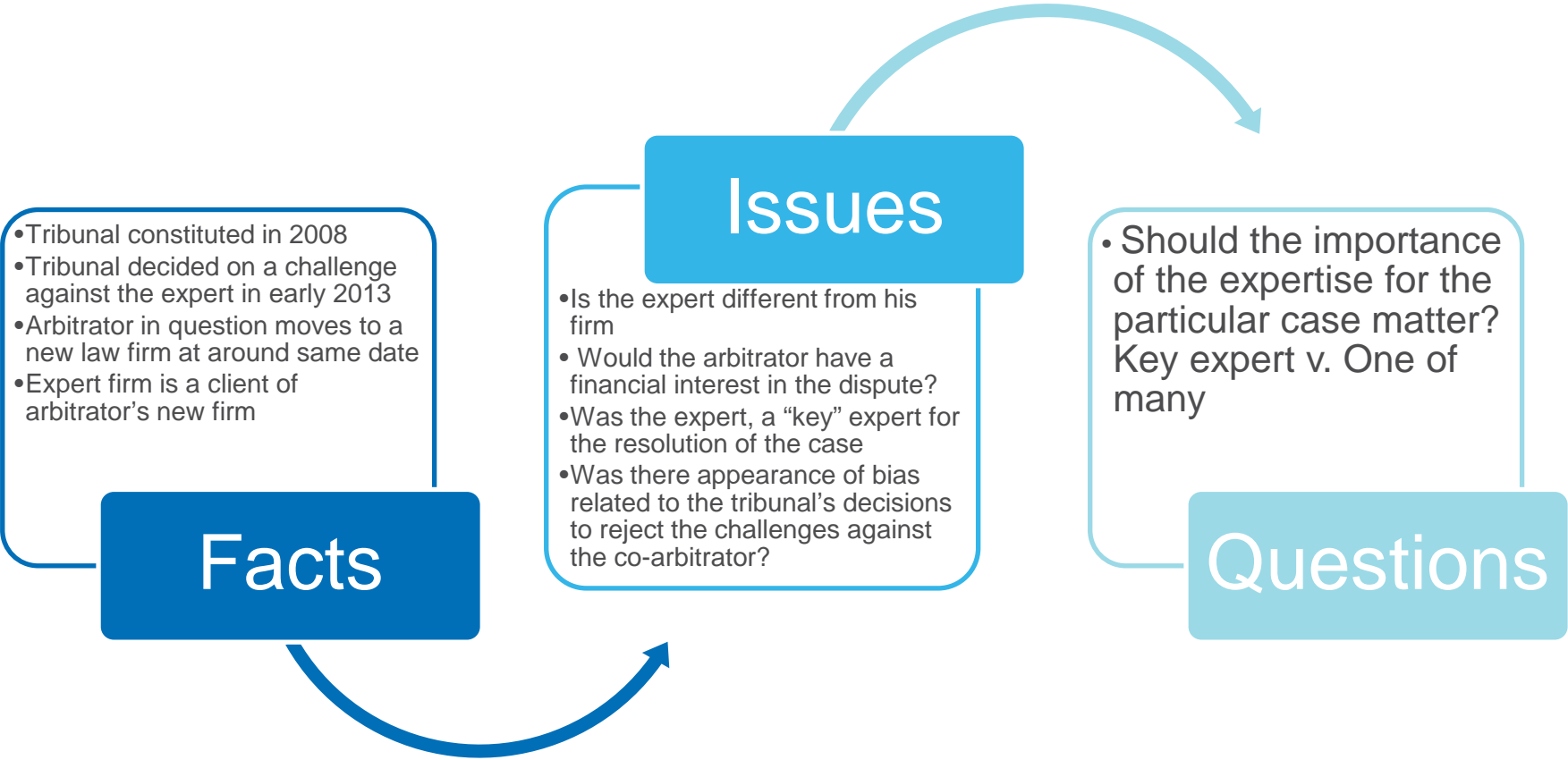
# SCENARIO 2: “THE ANGRY NEIGHBOR”



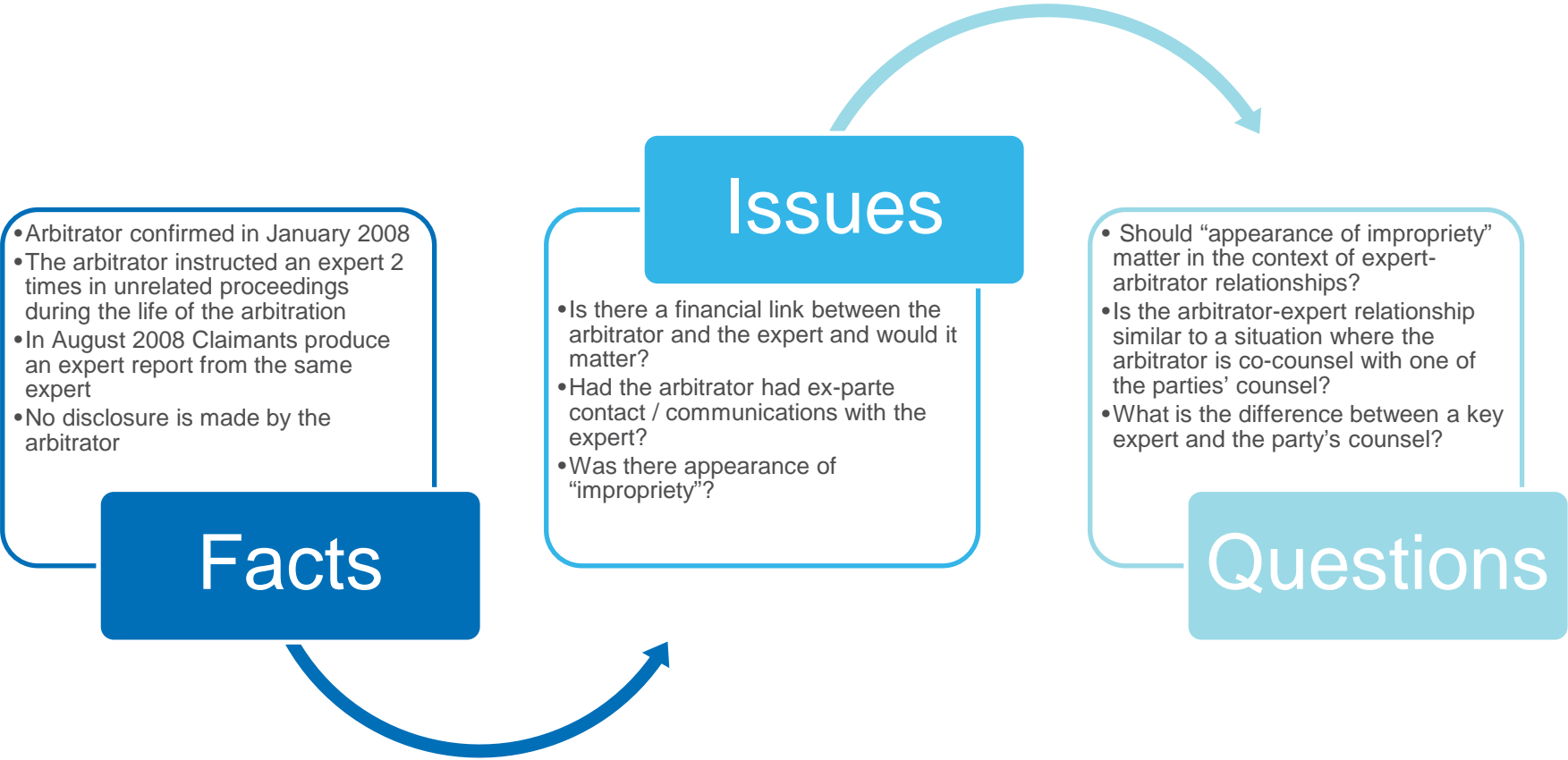


# SCENARIO 3: “THE CLIENT”

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# SCENARIO 4: “THE FAVORITE EXPERT”



# CONCLUSIONS



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**Arbitration Rules not prescriptive: General principles regarding independence and impartiality**

**Situations to be decided on a case by case basis**

**Publication of challenge decisions / Guidelines  
(ICC Commission on Arbitration Report 2010)**

**Reform of the IBA Guidelines on Conflict of Interest**

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