

## **ANNEX 31B**

### **CODE OF CONDUCT**

#### **Section A Provision of Code of Conduct**

1. The Parties shall provide this Code of Conduct and the Initial Disclosure Statement set out in Appendix 31B-a (Initial Disclosure Statement) to a candidate when they are requested to serve as an arbitrator under Article 31.7 (Composition of a Panel), an expert when they are requested to provide information or technical advice under Rule 38 of the Rules of Procedure, and an ADR provider when they are requested to provide their services under Article 31.20 (Good Offices, Conciliation, and Mediation).

#### **Section B Governing Principles**

2. In order to preserve the integrity and impartiality of the dispute settlement process, each candidate and arbitrator shall:
  - (a) avoid impropriety or the appearance of impropriety;
  - (b) be independent and impartial;
  - (c) avoid direct or indirect conflicts of interest; and
  - (d) observe high standards of conduct.

#### **Section C Disclosure Obligations**

3. Prior to confirmation of their appointment as an arbitrator in a dispute under this Agreement, a candidate requested to serve as an arbitrator shall disclose any interest, relationship, or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships, and matters.
4. Without limiting paragraph 3, candidates shall disclose, at a minimum, the following interests, relationships, and matters:
  - (a) any financial interest of the candidate in:
    - (i) the proceeding or its outcome; and

- (ii) an administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
  - (b) any financial interest of the candidate's employer, business partner, business associate, or family member in:
    - (i) the proceeding or in its outcome; and
    - (ii) an administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
  - (c) any past or existing financial, business, professional, family, or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, business partner, business associate, or family member; and
  - (d) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same matters.
5. A candidate shall communicate matters concerning actual or potential violations of this Code of Conduct for consideration by the Parties by submitting the Initial Disclosure Statement to the Parties' designated offices no later than five days after they have been contacted to serve as an arbitrator.
  6. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 4 and shall disclose them promptly, in writing, to the Parties for their consideration. The obligation to disclose is a continuing obligation, which requires an arbitrator to disclose any such interests, relationships, and matters that may arise during any stages of the proceeding.
  7. In the event of any uncertainty regarding whether an interest, relationship, or matter must be disclosed under paragraphs 3 to 6, a candidate or arbitrator should err in favour of disclosure.

**Section D**  
**Performance of Duties**

8. Once appointed, an arbitrator shall be available to perform and shall perform their duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

9. An arbitrator shall consider only those issues raised in the proceeding and necessary to make a decision and shall not delegate the duty to decide to any other person.
10. An arbitrator shall take all appropriate steps to ensure that their assistants and staff are aware of this Code of Conduct and comply with paragraph 24 of Section H (Responsibilities of Experts, Assistants, Staff, and ADR Providers).
11. An arbitrator shall not engage in *ex parte* contact concerning the proceeding.
12. A candidate or arbitrator shall not communicate matters concerning actual or potential violations of this Code of Conduct, unless the communication is to the Parties or is necessary to ascertain whether that candidate or arbitrator has violated or may violate the Code of Conduct.

**Section E**  
**Independence and Impartiality of Arbitrators**

13. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an appearance of impropriety or an apprehension of bias.
14. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, or loyalty to a Party.
15. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of their duties.
16. An arbitrator shall not use their position on the panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence them. An arbitrator shall endeavour to prevent or discourage others from representing themselves as being in such a position.
17. An arbitrator shall not allow past or existing financial, business, professional, family, or social relationships or responsibilities to influence their conduct or judgment.
18. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.

**Section F**  
**Duties of Former Arbitrators**

19. All former arbitrators shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision of the panel.

**Section G**  
**Maintenance of Confidentiality**

20. An arbitrator or former arbitrator shall not at any time disclose or use any confidential or non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another.
21. An arbitrator shall not disclose a panel report or parts thereof issued under Chapter 31 (Dispute Settlement) prior to release of the final report by the Parties. An arbitrator or former arbitrator shall not at any time disclose which arbitrators are associated with majority or minority opinions in a proceeding.
22. An arbitrator or former arbitrator shall not at any time disclose the deliberations of a panel, or any arbitrator's view.
23. An arbitrator shall not make a public statement regarding the merits of a pending proceeding.

**Section H**  
**Responsibilities of Experts, Assistants, Staff, and ADR Providers**

24. Section B (Governing Principles), Section C (Disclosure Obligations), and Section G (Maintenance of Confidentiality) of this Code of Conduct shall also apply to experts, assistants, and staff, *mutatis mutandis*.
25. Section B (Governing Principles), Section C (Disclosure Obligations), paragraphs 9 to 12 of Section D (Performance of Duties), Section E (Independence and Impartiality of Arbitrators), Section F (Duties of Former Arbitrators), and Section G (Maintenance of Confidentiality) of this Code of Conduct shall also apply to ADR providers, *mutatis mutandis*.

## APPENDIX 31B-a

### INITIAL DISCLOSURE STATEMENT

1. I acknowledge having received a copy of the Code of Conduct for dispute settlement under Chapter 31 (Dispute Settlement) of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand.
2. I acknowledge having read and understood the Code of Conduct.
3. I understand that I have a continuing obligation, while participating in the proceeding, to disclose interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process. As a part of this continuing obligation, I am making the following initial disclosures:
  - (a) My financial interest in the proceeding for which I am under consideration or in its outcome is as follows:
  - (b) My financial interest in any administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding is as follows:
  - (c) The financial interest that any employer, business partner, business associate, or family member of mine may have in the proceeding or in its outcome are as follows:
  - (d) The financial interest that any employer, business partner, business associate, or family member of mine may have in any administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding are as follows:
  - (e) My past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, are as follows:
  - (f) The past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, involving any employer, business partner, business associate, or family member of mine are as follows:
  - (g) My public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same matters is as follows:

- (h) My other interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process and that are not disclosed in subparagraphs (a) to (g) are as follows:

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By:

Signature \_\_\_\_\_

Name \_\_\_\_\_