

President's message

Conflicts of interests are the talk of the arbitration community these days. They are a major concern because they go to independence, which is at the heart of due process. They are a concern to the users of arbitration, who are entitled to independent justice. They are also a concern to prospective arbitrators who currently lack clearcut rules on questions such as when to refuse to serve or what to disclose. As law firms expand and merge and companies resorting to arbitration spin-off certain activities, acquire others or are acquired themselves, these questions are often increasingly difficult to answer.

Given this background, the IBA's initiative of forming a working group to review the present position on conflicts of interests in international arbitration and the advisability of drafting guidelines is most welcome. On the basis of detailed national reports, the working group came to the conclusion that guidelines setting transnational standards would indeed serve a useful purpose for the arbitration community. It thus engaged in a drafting process, which in October 2002 resulted in a set of draft 'Guidelines regarding the Standard of Bias and Disclosure in International Commercial Arbitration'. As many readers will know, this draft was discussed at the IBA Annual Conference in Durban, and is presently under consultation, after which it will be revised and finalised.

The major breakthrough of these Guidelines is the proposal for the so-called red, yellow, and green lists. The green lists means 'go', the red one 'stop', and the yellow one 'watch out'. In other words, the green list sets out specific situations in which no conflict or appearance of conflict arises. As opposed to this, the red list sets out fact situations where a conflict exists and the arbitrator should decline appointment. In the middle ground, the yellow list specifies situations where a conflict appears to exist but can be cured by disclosure.

For the Guidelines to develop into true transnational standards, they must gain widespread acceptance not only among arbitrators, but also by counsel, parties, arbitral institutions and national courts. A broad consultation process, which includes all interested parties and gives serious consideration to their suggestions, will significantly contribute to such acceptance. In this context, ASA is pleased that a debate on the draft Guidelines has already

taken place within the ASA Zurich group, and will be pursued in other local groups shortly, while the consultation process continues abroad.

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Gabrielle Kaufmann-Kohler