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Book Review: Conflicts of Interest in International Arbitration

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Overall, this book is a practical and user-friendly guide aimed at lawyers who practise international arbitration and are familiar with the general principles, but who can only benefit from the consolidation of all of the relevant materials into a single volume. It has been endorsed with a foreword by the eminent former Court of Appeal Judge, Sir Bernard Rix, whose judgment in *FLS v Laker* [1999] EWHC B3 (Comm) is still the leading English decision on "same chambers" conflict of interest in international arbitration.

International arbitration is an essential mechanism for the resolution of international commercial disputes. With increasing globalisation and international trading relationships it has, if anything, become more familiar to, and popular with, companies, individuals and states who have international trading relationships. An important reason for the attraction of international arbitration is, of course, the neutrality of the arbitral tribunal. This enables parties from different nationalities and legal traditions to have confidence that their disputes will be resolved on a level playing-field, by a non-partisan tribunal. It is of fundamental importance to the integrity of the arbitral process that arbitrators are independent and impartial, and are seen to be so. The topic of conflicts of interest in international arbitration is therefore an increasingly important one, and a subject which has led to a large amount of academic literature, as well as numerous guidelines published by arbitration institutions and bodies such as the International Bar Association (IBA) and the Bar Council of England and Wales.

To the uninitiated (and who therefore need to buy this book) it may appear that there is such a plethora of guidance, it is difficult to know where to begin an analysis of the rules that might be applicable in any particular case. It is therefore very helpful for a single practitioner work, such as this, to gather together the most important rules, guidelines and so-called "soft law" on the subject, to set out the key principles applicable in each type of arbitration, and to provide illustrative cases from a number of different jurisdictions and legal traditions. It is a highly practical and helpful approach.

The first section of the book summarises how three different institutional rules (ICC, LCIA, ICSID) deal with issues of bias and conflict of interest, as well as the UNCITRAL Rules and the guidelines published by the IBA and Bar Council. The second section gives some extremely helpful illustrative examples of arbitral decisions made by application of those rules. In addition, the final part of this section addresses the topical issue of third party funding and how that might be relevant to an arbitrator's disclosure obligations. Although there do not appear to have been any publically available challenges to arbitrators based on the use of third party funding in an arbitration, the book does examine the recent decision in *Muhammet Cap & Sehil İnşaat Endüstri ve Ticaret Ltd Sti v Turkmenistan (Sehil)*, ICSID Case No ARB/12/6, where a procedural order held that the tribunal had an inherent power to order the disclosure of third party funding arrangements and their terms.

The rules relating to conflicts of interest and bias under the national arbitration laws of England, France, Switzerland and the US is set out in the third section of the book, again illustrated with numerous key cases decided in those jurisdictions by the national courts. Finally, the fourth section deals with conflicts of interest and counsel, and again provides a crucial

summary of institutional rules and guidelines, together with two well-known ICSID decisions on the subject.

The book's two lengthy annexes are also particularly useful from a practical perspective. The first annex, running to nearly 100 pages, contains legislative provisions, institutional rules and guidelines relating to conflicts of interest and challenges to arbitrators. The second annex contains an invaluable list of published decisions on challenges to arbitrators between 2005 and 2015 in tabular form. This user-friendly table gives details of the challenged arbitrator, the reasons for the challenge, and the outcome of the challenge and the grounds for the decision.

David Foster, head of O'Melvery's international dispute & arbitration practice group. This book has been published as part of a three-book series, the other texts dealing with public international law before the English courts and investment treaty claims. The author has donated all royalties to the Bar Benevolent Fund.