



## VISHLAW GLOBAL

(a Registered Trust)

Center of Excellence for Alternative Dispute Resolution

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### THE ORANGE LIST

The **Orange List** represents a category of situations in arbitration that might raise doubts about an arbitrator's impartiality or independence in the eyes of the parties. Unlike the conflicts in the Red Lists, these situations are not severe enough to automatically disqualify an arbitrator, nor do they require mandatory waiver. However, they do warrant disclosure, allowing the parties to consider the potential conflict and decide whether to raise an objection.

#### **Key Characteristics of the Orange List:**

##### **1. Situations Requiring Disclosure:**

The Orange List contains scenarios that might give rise to doubts about the arbitrator's impartiality or independence. These situations require the arbitrator to make a disclosure, but they do not automatically disqualify the arbitrator. The disclosure provides transparency, enabling the parties to make an informed decision on whether to object to the arbitrator's appointment or continued service.

##### **2. "Doubts in the Eyes of the Parties" Test:**

The standard applied in the Orange List is whether the situation could cause doubts in the eyes of the parties, as opposed to justifiable doubts that would arise under the Red Lists. This subjective test focuses on the perspective of the parties rather than an objective standard, emphasizing the importance of party autonomy in the arbitration process.

##### **3. Flexibility and Party Autonomy:**

The Orange List reflects the principle of party autonomy in arbitration. It allows parties the flexibility to assess the potential conflict after disclosure and decide whether they are comfortable proceeding with the arbitrator. The arbitrator's disclosure does not preclude them from serving unless the parties object.

##### **4. Potential for Challenge:**

If a party, upon disclosure, believes that the situation affects the arbitrator's impartiality or independence, they may raise an objection and seek to have the arbitrator removed. The Orange List, therefore, plays a critical role in providing a mechanism for parties to challenge an arbitrator based on disclosed information.

## 5. Illustrative Rather Than Exhaustive:

The Orange List provides illustrative examples of situations that might give rise to doubts about an arbitrator's impartiality or independence. However, it is not exhaustive. Arbitrators and parties are encouraged to consider similar situations not explicitly listed and disclose them if they might cause doubts in the eyes of the parties.

### SAMPLE SCENARIOS

Below is not an exhaustive list, but it includes some of the most common conflicts of interest scenarios, provided for illustrative purposes only. In practice, parties and arbitrators should carefully consider each situation, make appropriate disclosures, and assess the nature and extent of any conflicts of interest.

#### Examples of Orange List Situations:

##### Scenario 1: Previous Involvement with One of the Parties:

- An arbitrator who has previously been involved with one of the parties, such as having acted as counsel for the party in unrelated matters, would fall under the Orange List. This prior relationship could raise doubts about impartiality, but it does not automatically disqualify the arbitrator. Disclosure is necessary to allow the parties to decide whether they are comfortable with the arbitrator's involvement.

##### Scenario 2: Professional or Social Relationships:

- An arbitrator who has a professional or social relationship with a party's representative or counsel, such as having worked together on a committee or being part of the same professional network, is included on the Orange List. While these relationships do not constitute a direct conflict, they could lead to concerns about impartiality that should be disclosed.

##### Scenario 3: Multiple Appointments by the Same Party or Counsel:

- If an arbitrator has been appointed by the same party or counsel in multiple arbitrations within a certain time frame, this situation would be on the Orange List. The repeated appointments might suggest a relationship that could impact the arbitrator's independence, requiring disclosure to the parties.

##### Scenario 4: Prior Expert or Witness Role in Related Matters:

- An arbitrator who has previously served as an expert witness or provided testimony in a related matter involving one of the parties would fall under the Orange List. This prior involvement might influence the arbitrator's views, necessitating disclosure to allow the parties to evaluate the potential impact.

**Scenario 5: Family or Close Associates of Arbitrator:**

- If a close family member or associate of the arbitrator has a significant connection to one of the parties, such as being employed by the party or having a financial interest in the outcome, this situation is included on the Orange List. The arbitrator should disclose this relationship to ensure transparency.

**Scenario 6: Public Advocacy or Published Opinions on Relevant Issues:**

- An arbitrator who has publicly advocated a legal position or published opinions on issues that are central to the arbitration, such as through articles, social media, or speeches, would fall under the Orange List. While these views might not constitute a direct conflict, they could cause doubts about impartiality that require disclosure.

**Scenario 7: Concurrent Arbitrations with Common Parties or Issues:**

- If an arbitrator is currently serving in another arbitration involving one of the same parties or similar legal issues, this situation would be on the Orange List. The concurrent role could create a perception of bias, which should be disclosed to the parties.

**Scenario 8: Professional or Business Relationships of Arbitrator's Employer:**

- An arbitrator whose law firm or employer has ongoing business relationships with one of the parties, such as providing unrelated legal services, is included on the Orange List. Although the arbitrator may not be directly involved, the relationship could raise concerns about independence that should be disclosed.

**Scenario 9: Recent Prior Relationship with the Administering Institution:**

- An arbitrator who recently held a position within the institution administering the arbitration, such as serving on a committee or advisory board, would fall under the Orange List. The past involvement with the institution could raise doubts about the arbitrator's neutrality, requiring disclosure.

**Scenario 10: Involvement in a Related Industry:**

- An arbitrator who has significant involvement in an industry related to the dispute, such as serving on the board of a trade association or holding shares in a company within the industry, would be on the Orange List. This involvement could influence the arbitrator's perspective and should be disclosed.

The Orange List serves as a key tool for ensuring transparency in arbitration by identifying situations that might raise doubts about an arbitrator's impartiality or independence in the eyes of the parties. These situations require disclosure but do not automatically disqualify the arbitrator, allowing parties to make informed decisions about whether to object or proceed. By emphasizing the importance of disclosure and party autonomy, the Orange List helps maintain the fairness and integrity of the arbitration process while providing flexibility to address potential conflicts on a case-by-case basis.