Table of Contents

MAIN ABBREVATIONS		
§ 1	. Introduction	23
I.	Research Question	23
II.	Methodology	27
	Structure	29
§ 2.	Legal foundations, definition and interpretation of the concepts of arbitrator impartiality and independence	31
T	- · · · · · · · · · · · · · · · · · · ·	
1.	Foundations	31
	 The fair trial principle National arbitration laws 	38
	3. Institutional rules	42 45
T T	The IBA Guidelines on Conflicts of Interest in International	45
11.	Arbitration as interpretation aid	46
III.	Concepts of arbitrator impartiality and independence	53
	1. The concept of impartiality	53
	2. The concept of independence	55
	3. Impartiality applied to arbitrators	60
IV.	The question of 'justifiable doubts'	65
§ 3.	Instances of arbitrator's lack of impartiality	68
I.	General remarks	68
II.	Arbitrator's relationship with the dispute	69
	1. Significant direct or indirect financial interest in the dispute	70
	2. Personal interest in the dispute	71
	3. Prior involvement in the dispute	71
	4. Arbitrator's appointment in a related matter	72
	5. Publicly expressed legal opinion	76
III.	Arbitrator's relationship with one of the parties or counsel	77
	1 General remarks	77



	2. Arbitrator's professional relationship with one of the parties	79
	a) Arbitrator's employment by one of the parties	79
	b) Arbitrator acting as manager, director or member of the	
	supervisory board of one of the parties	80
	3. Arbitrator's business or financial relationship with one of the	
	parties	81
	a) Direct relationship	81
	b) Indirect relationship	82
	c) Prior business or financial relationship	84
	d) 'Repeat arbitrator'	85
	4. Arbitrator's family or personal relationship or any other non-	
	trivial ex parte contact with one of the parties (or its counsel)	90
	a) Close family relationship	90
	b) Close personal relationship	92
	c) Remote and insignificant social relationship	93
	d) Ex parte contacts	94
	5. Common nationality of presiding arbitrator with one of the	
	parties	99
	6. Arbitrator representing one of the parties	100
	7. Arbitrator's relationship with counsel representing one of the	
	parties	103
IV.	Arbitrator's relationship with another arbitrator, witness or	
	arbitral secretary	112
17	•	
٧.	Arbitrator's law firm relationship with one of the parties or counsel	115
		113
VI.	Arbitrator's conduct and expressions of opinion during	
	arbitration	118
§ 4.	. Controlling lack of impartiality before and after rendering	
	award	121
I.	Arbitrator's duty of disclosure	121
	1. Nature of the duty of disclosure	124
	2. Timing of the duty of disclosure	126
	3. Arbitrator's investigation duty	127
	4. Scope of the duty of disclosure	130
	a) The applicable law to arbitrator's disclosure duty	131
	b) The subjective and objective standards of the duty of	
	disclosure	122

	c) The interface between parties' investigation duty and	
	arbitrator's disclosure duty	138
	5. Consequences of breach of the duty of disclosure	149
II.	Challenge of the arbitrator during arbitration proceedings on grounds of lack of impartiality	156
	1. The interplay between the principle of party autonomy and	
	fair trial	157
	2. Challenge procedure and time limit	159
	3. Subsidiary competence of the judge at the seat of the arbitral tribunal	160
	4. Legal remedies against the decision on the challenge of the arbitrator	162
	5. The objective standard of the disqualification of an arbitrator	166
III.	Annulment of an arbitral award or non-recognition and non-enforcement of a foreign arbitral award on grounds of	
	arbitrator's lack of impartiality	167
	1. Grounds for annulment of an arbitral award, non-recognition or non-enforcement of a foreign arbitral award based on	
	arbitrator's lack of impartiality	168
	a) The violation of due process	169
	b) The irregular composition of the arbitral tribunal or violation of parties' agreed arbitral proceedings	171
	c) The violation of public policy	176
	2. Effect of bias on the arbitral award	179
§ 5.	. The institution of waiver	183
I.	The object of waiver: the right to an impartial tribunal versus the right to contest arbitrator's lack of impartiality	183
П.	The mechanism of waiver as an aspect of good faith	187
	Preconditions of implicit waiver	189
	1. Knowledge of facts or circumstances giving rise to arbitrator's	-07
	lack of impartiality	189
	2. Failure to object to arbitrator's lack of impartiality within set	
	time limit	195
	a) The specification and compliance with the set time limit	195
	b) The preclusive effect of waiver of the right to contest arbitrator's lack of impartiality at different stages	199
IV/	Advance waiver	204
iv.	AUVAIICE WAIVEI	407

§ 6. Conclusions	212
BIBLIOGRAPHY	219
LIST OF CASES	251
Biography	265
Index	267