

Benchmarking of Codes of Conduct and complaint procedures

supplementing Chapter 2 – Arbitrators and mediators of
*Benchmarking of mediation and arbitration rules of institutions
comparable to the UPC's Patent Mediation and Arbitration Centre*

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Introduction

This document presents a benchmarking analysis of the code-of-conduct provisions of comparable ADR (alternative dispute resolution) institutions, examining both those outlined in dedicated Code of Conduct documents (CoC) and those incorporated in the centres' general arbitration and mediation rules as individual provisions. The benchmarking includes procedures established by the centres for when arbitrators and mediators (neutrals) fail to comply with their professional duties, leading the parties to challenge the neutrals or the centre to revoke their appointment.

The benchmarked institutions include:

- Hong Kong International Arbitration Centre (HKIAC)
- Singapore International Arbitration Centre (SIAC)
- Japan Intellectual Property Arbitration Centre (JIPAC)
- Singapore International Mediation Centre (SIMC)
- World Intellectual Property Organization (WIPO)
- European Union Intellectual Property Office (EUIPO)
- International Chamber of Commerce (ICC)
- Swiss Arbitration Centre (SAC)
- London Court of International Arbitration (LCIA)
- German Arbitration Institute (DIS)
- Judicial Arbitration and Mediation Services (JAMS)
- American Arbitration Association (AAA)
- United Nations Commission on International Trade Law (UNCITRAL)

Benchmarking of Codes of Conduct

Only some mediation (EUIPO, SAC, HKIAC, AAA, JAMS) and arbitration centres (HKIAC, SIAC, AAA, JAMS, UNCITRAL) have a separate CoC. The remaining centres address the matter only in their general mediation or arbitration rules.

All the benchmarked CoC are dedicated to either mediators or arbitrators. None of the benchmarked institutions have a general CoC that applies to both mediators and arbitrators. Therefore, the results of the benchmarking are presented separately for arbitration and mediation.

The purpose of a CoC is to provide guidance on ethical issues that may arise during the mediation or arbitration process (JAMS). The AAA states that individuals entrusted with the responsibilities of arbitration must accept high standards of ethics to maintain the quality of and confidence in ADR processes.

1. Mediation

All benchmarked mediation centres have conflict-of-interest and code-of-conduct provisions. Two centres (EUIPO, SAC) use the European Code of Conduct for Mediators (ECCM) as a separate CoC.¹ Three further centres (HKIAC, JAMS and AAA) have a separate CoC. The remaining centres (WIPO, ICC, LCIA, SIMC, DIS, JIPAC) have the code-of-conduct provisions integrated into the centre's mediation rules.

The separate CoC typically go into more detail on ethics and the conduct of mediators. There is typically no correlation between the extensiveness of the provision in the mediation rules and whether there is a separate CoC. For example, the EUIPO ethics provision in the mediation rules is extensive, and there is also a separate CoC. The provision in the WIPO rules is concise, but there is also no separate CoC. Nevertheless, CoC documents sometimes give longer definitions of principles such as fairness of process (AAA), conflict of interest (AAA), impartiality (JAMS) and independence (EUIPO, SAC). Confidentiality provisions in mediation rules typically apply to all participants of the mediation; the confidentiality rules in separate CoC documents address only the mediators (EUIPO, SAC, HKIAC, AAA, JAMS). These provisions

are more extensive than the general confidentiality provisions in the mediation rules of the centres.

Most centres' mediation rules and/or the CoC include a **provision on conflict of interest** (EUIPO, SAC, AAA, JAMS, ICC, LCIA, SIMC, DIS, JIPAC) and a procedure for declaring any conflict of interest (EUIPO, SAC, HKIAC, AAA, JAMS, ICC, LCIA, SIMC, DIS, JIPAC). Conflict-of-interest provisions cover the financial or personal interests of a mediator which could affect the outcome of the mediation.

In the mediation rules, there is typically a provision on how the disclosure of a conflict of interest should take place. Some centres (HKIAC, AAA, JAMS, DIS) state that the mediator should **disclose any conflict of interest** but provide no further explanation on how this should occur. Other centres (EUIPO, SAC, ICC, LCIA, SIMC) require a written confirmation of an absence of a conflict of interest by the mediator.

Some centres allow for mediation to continue if a conflict of interest arises if both parties are aware of the conflict and agree to continue (SAC, HKIAC, AAA). Some centres also allow the parties to comment on the conflict (JAMS, ICC, LCIA, SIMC, JIPAC).

Regarding the characteristics of the mediators, the ECCM, HKIAC, JAMS and AAA CoC all provide that the mediator should be **competent to conduct the mediation**. This competence entails possessing the relevant knowledge, specialist training and education (ECCM, HKIAC, AAA). The provision of the JAMS focuses on the knowledge of procedural and substantive issues as well as the possibility for a mediator to withdrawal from mediation if they become mentally or physically unwell.

Key elements of provisions on the conduct of mediators in the rules of the benchmarked mediation centres include the following list of the principles applying to mediators:

- independence (SAC, WIPO, ICC, LCIA, SIMC, DIS, JIPAC)
- impartiality (EUIPO, SAC, AAA, WIPO, ICC, LCIA, SIMC, DIS)
- neutrality (EUIPO, WIPO, HKIAC)

The first relevant aspect described further in all the centres' CoC is the **independence of the mediator**. These provisions typically refer to

¹ Adopted by the European Commission in 2004 with the help of practicing mediators.

circumstances that the mediator should disclose before the mediation, including any personal or financial relationship to any of the parties and if the mediator previously acted in another capacity for a party (ECCM, HKIAC). The provisions of other centres (AAA, JAMS, HKIAC) highlight aspects such as the self-determination of the party and the **neutrality** of the mediator.

Another key aspect of the conduct of the mediators is **impartiality**, which requires that the mediator treat all parties equally (ECCM, HKIAC, JAMS, AAA). The JAMS and AAA documents also include rules on when the mediator may or must not accept gifts.

All the CoC mention **fairness of the process**. ECCM states that the mediator must ensure equal opportunities; HKIAC makes mention of fair terms to the parties; AAA and JAMS refer to other standards in the CoC.

ECCM, JAMS and AAA also provide provisions on circumstances when the mediator should **withdraw** from the mediation. ECCM, JAMS and AAA state that if the mediation is used to further criminal conduct, the mediator should withdraw. ECCM also stipulates that the mediator can end the mediation if it is not likely to result in a settlement. JAMS further explains that the mediator must withdraw in cases of problems with impartiality, a conflict of interest or unfairness.

Mediators may **promote their services** if they do so in a professional, truthful and dignified way (ECCM, HKIAC). This promotion should not be misleading or guarantee outcomes (AAA, JAMS). It should also not appear as not impartial to the process or to favour one party (AAA, JAMS).

Most institutions (EUIPO, SAC, HKIAC, AAA, JAMS, WIPO, ICC, SIMC, DIS, JIPAC) also include confidentiality provision(s) which apply to mediators. All the centres' CoC include a provision on **confidentiality** for mediators. Typically, the mediator must not disclose any information, including information given by a party in confidence, unless required by the applicable law.

Regarding the **mediation procedure**, the mediator must clearly explain the process as well as their own and the parties' roles and obligations in the mediation (EUIPO, HKIAC, AAA). Both parties signing (HKIAC) or generally

agreeing (ECCM) to the mediation agreement is a key aspect of the procedure.

In addition, provisions on **decision making** state that the mediator must make their best efforts to ensure that all parties have given informed consent to the mediation agreement (ECCM) and that accommodations are made for any issues that parties may have in the process (AAA).

2. Arbitration

Of the benchmarked centres, only HKIAC, UNCITRAL, SIAC, AAA and JAMS provide a specific CoC for arbitrators, while others include ethics provisions that are normally part of a CoC directly in the arbitration rules. These provisions cover the following ethical obligations for arbitrators:

- maintenance of impartiality and independence (WIPO, JIPAC, ICC, LCIA, DIS, SAC)
- fair treatment of parties (LCIA, ICC, JIPAC)
- disclosure of the circumstances that might cast doubt on the arbitrator's impartiality (WIPO, ICC, LCIA, DIS, JIPAC, SAC)
- declaration on availability, impartiality and independence, and competence upon acceptance of appointment (WIPO, ICC, DIS, LCIA)
- protection of confidentiality (WIPO, JIPAC, LCIA, DIS, SAC)
- regulation of *ex parte* communication (WIPO)

While arbitrators are expected to comply with a centre's CoC, none of the benchmarked centres requires a formal declaration of adherence to the CoC as they instead represent generally recognised standards and ethical duties of arbitrators. Nevertheless, before accepting appointment, prospective arbitrators must confirm their availability (HKIAC, SIAC, AAA, WIPO, ICC, LCIA, DIS), impartiality and independence (HKIAC, LCIA, DIS, SIAC, AAA, ICC), and competence (AAA, JAMS, LCIA, DIS) as well as disclose any potential conflict of interest (HKIAC, SIAC, AAA, JAMS, UNCITRAL, WIPO, ICC, DIS, SAC, JIPAC). The rules of ICC, LCIA, SIAC, DIS, WIPO and HKIAC require a written statement, whereas the rules of other centres do not prescribe a specific format. This obligation is, however, predominantly regulated in the arbitration rules, not in the CoC (ICC, HKIAC, WIPO, LCIA, DIS).

When it comes to the ethical standards covered by the CoC and the arbitration rules of the centres, JAMS, WIPO, ICC, DIS and LCIA include a provision on the **competence**

of the arbitrator. HKIAC and AAA include this provision in the appointment section.

Most centres include a provision on the **appointment of arbitrators** (SIAC, AAA, HKIAC, WIPO, ICC, DIS, LCIA). This provision typically specifies under what conditions the arbitrator should accept the appointment, e.g. suitable experience (HKIAC), qualifications (DIS), abilities (SIAC, AAA, LCIA), availability (LCIA, HKIAC, SIAC, WIPO, AAA, DIS), and impartiality and independence (SIAC, AAA, ICC, DIS, HKIAC). The SIAC CoC additionally obliges the arbitrator to disclose any potential non-availability in the following 12 months, and this can be a basis for the centre to not appoint the arbitrator. The AAA CoC further specifies that the arbitrator is bound by their ethical obligations for the duration of the proceedings.

Regarding the **arbitrators' fees**, most CoC stipulate that they should be reasonable (HKIAC), transparent (HKIAC) and agreed before the arbitrator's appointment (AAA). They also include the duty of the arbitrator to explain the basis of the fees and expenses to the parties (HKIAC, AAA). The CoC of JAMS, AAA and SIAC generally forbid arbitrators' *ex parte* communication on compensation.

The HKIAC, JAMS and AAA CoC all allow the **promotion of the arbitrators' services**. However, the HKIAC CoC prohibits active solicitation of appointment as an arbitrator. The AAA and JAMS CoC state that promotion should be truthful and not misleading.

HKIAC, AAA, WIPO, UNCITRAL and SIAC prohibit private **communication** between the arbitrator and a party. The arbitrator should avoid impropriety or the appearance of impropriety in all communications (HKIAC). Additionally, some CoC state that any communication prior to the commencement of proceedings must be kept general (SIAC, AAA). Under certain circumstances, communication between the arbitrators and parties is allowed, e.g. when considering the appointment of the arbitrator (HKIAC, AAA, UNCITRAL, WIPO), when the arbitrators are to appoint the third member of the arbitral tribunal (AAA, HKIAC) and pursuant to a court order (SIAC). The exceptions do not apply to candidates for the presiding arbitrator (HKIAC). Although *ex parte* communication is mostly covered by both the CoC and the arbitration rules, the following difference is observed. The provisions in the arbitration rules are directed at the parties and representatives, while in the CoC, the provisions focus on the arbitrator (HKIAC, JAMS, SIAC, AAA).

All benchmarked centres have provisions on the arbitrators' **independence** and **impartiality**. While some cover this matter exclusively in the arbitration rules, others also include it in the CoC. The impartiality and independence provisions in the arbitration rules, however, mostly consist of a general statement on the obligation of arbitrators to be impartial and independent, while the CoC describes what is normally considered partiality and bias (SIAC, AAA, JAMS).

Although all benchmarked centres address independence and impartiality jointly in the same article, these principles should be differentiated. Impartiality refers to the duty to treat all parties equally and without any prejudice or bias, while independence generally addresses any existing relationship between the arbitrator and the parties or the subject of the dispute. In the CoC, impartiality and independence are either mentioned together (SIAC, UNCITRAL) or are both implicitly addressed in the same provision on both impartiality and independence as one broader concept (AAA, HKIAC). As an exception, JAMS refers only to impartiality and not to independence.

The principles of impartiality and independence are expressed by several general obligations. These include the obligations:

- to conduct arbitration proceedings in a fair and impartial manner (HKIAC, ICC, AAA, JAMS, LCIA, JIPAC)
- for arbitrators' judgement to always be impartial and remain unaffected by outside pressure or any form of self-interest (UNCITRAL, HKIAC, AAA, JAMS)
- for arbitrators not to be influenced by any financial or business advantages (UNCITRAL)
- for arbitrators not to give advice to any party on the dispute or the conduct or outcome of the arbitration (LCIA)
- for arbitrators to guarantee their independence by not accepting substantial gifts from the parties (HKIAC, JAMS)
- for arbitrators to generally not have the same nationality as the parties (HKIAC)
- for arbitrators to disclose any past or present interest, relationship, fact or circumstance that could raise doubts as to their impartiality and independence (HKIAC, SIAC, ICC, AAA, JAMS)

The JAMS and AAA arbitration rules additionally allow for parties to appoint non-neutral arbitrators.

In addition, all benchmarked centres include a separate provision on **conflict of interest**, requiring the arbitrators to disclose any conflict of interest to all parties. Any

such disclosure must be made prior to the arbitrator's appointment (SIAC, HKIAC, ICC, LCIA, SAC) or acceptance of the appointment (DIS, ICC, HKIAC, WIPO) or within ten days after appointment (JAMS). Matters that should be disclosed include any past or present interest or relationship (whether personal or a direct or indirect business interest or relationship) with any party, representative or witness (SIAC, AAA), or with their family members or professional associates (AAA). These interests and relationships are to be disclosed if they are likely to compromise impartiality or create an appearance of partiality (HKIAC, SIAC). Any prior knowledge of the dispute also needs to be disclosed (SIAC). The obligation to disclose any of these circumstances applies for the duration of proceedings (UNCITRAL, DIS, ICC, WIPO, LCIA, HKIAC, AAA, JAMS). If a conflict of interest exists, the arbitrator must decline the appointment (SIAC, AAA, JAMS), except if the parties are informed and still want the arbitrator to serve (AAA, JAMS). The parties' consent needs to be specified in writing (SIAC). A failure to disclose this information is ground for disqualification (HKIAC). If the disclosure encompasses confidential or privileged information, the prospective arbitrator must either secure consent for the disclosure or withdraw from the arbitration (AAA). Regarding the legislative approach, where provisions on conflict of interest are included in the CoC and the arbitration rules of the centre, the latter provide for a general duty of arbitrators to disclose certain circumstances, whereas the CoC focuses on concrete examples of circumstances to be disclosed (SIAC, JAMS, UNCITRAL, HKIAC).

If the above-mentioned elements are present and the arbitrator's impartiality or the **process's fairness and integrity** are undermined, the arbitrator must **withdraw** from the proceedings (JAMS). Otherwise, as a general rule, the AAA and JAMS CoC set out that once the arbitrator has accepted an appointment, they must continue to serve on this matter. In case of an early withdrawal, the arbitrator should take reasonable measures to protect the parties' interests (AAA).

Arbitrators should **conduct the proceedings** in an efficient manner to avoid any delay (JAMS, AAA). Arbitrators must not abuse their authority (AAA). They need to make sure that all parties understand their roles and the rules governing the proceedings (JAMS) and demonstrate integrity (AAA, JAMS) and fairness, ensuring that all parties are presented with equal opportunities (AAA, ICC, LCIA).

Arbitrators can suggest the transition to mediation proceedings, but they **must not act as a mediator** if it is decided that **the dispute is** to be **mediated** (AAA, JAMS).

Arbitrators should **decide all issues submitted for determination** (AAA, JAMS). If a settlement is embodied in the award, this must be stated in the award (AAA). Arbitrators should inform the parties if they consider the settlement to be unlawful or problematic with regard to the proceedings (JAMS).

All matters relating to arbitration proceedings are to remain **confidential** (LCIA, HKIAC, SIAC, AAA, JAMS, SAC, WIPO, UNCITRAL, JIPAC, ICC), and arbitrators must honour their relationship of trust with the parties (HKIAC, SIAC, AAA). No information acquired during the proceedings can be used for the arbitrator's personal advantage (HKIAC, AAA), and any assistants of the arbitrator are bound by the same confidentiality provisions (AAA). Arbitrators should not discuss the case with any person external to arbitration, but they may discuss it with any member of the arbitral tribunal individually (JAMS). The deliberations of the tribunal are confidential (HKIAC). Confidentiality may be waived by mutual agreement of the parties (SAC, JIPAC, SIAC, AAA, WIPO). Confidentiality is another matter usually covered by both the CoC and the arbitration rules, with the latter usually setting out the provisions applicable to all participants in the proceedings, and the CoC exclusively being applicable to arbitrators (SIAC, AAA). This is similar to the approach taken by the mediation rules.

Arbitrators should not participate in **post-award proceedings**, except in specific cases listed in the CoC (JAMS). After an award or decision is rendered, arbitrators should refrain from any conduct involving a party, insurer or counsel in the arbitration proceedings that would undermine the integrity of the arbitration. This is, however, permitted upon full disclosure and consent of the parties (JAMS). Arbitrators can serve as neutrals in a new matter involving a party, insurer or counsel involved in the prior arbitration upon full disclosure about the prior arbitration to the parties to the new matter (JAMS).

Benchmarking of complaint procedures

1. Mediation

Only one benchmarked mediation centre (HKIAC) has specific rules for handling complaints for mediators. The rules provide for a two-stage process. In the first stage, the complaint is made in writing to the Secretary General of the HKIAC and must include evidence. The Secretary General contacts the mediator and asks them for comments on the complaint. The mediator has 21 days to respond. The Secretary General then sends all the documents to the Mediator Accreditation Committee (MAC). The MAC reviews the case and determines if there is a *prima facie* case of improper conduct. If no improper conduct is identified, the case is dismissed. If a case exists, the complaint is referred to the Complaint Disciplinary Committee (CDC). At the second stage, the CDC conducts a detailed investigation of the case, reviewing the evidence, information and representations. If the CDC finds a case of improper conduct, it notifies and advises the MAC, which then asks the Secretary General to remove the mediator from all the panels they served on.

Some centre mediation rules provide for replacing the mediator but have no procedure on complaint handling (SAC, SIMC, AAA). The provisions stipulate that if the mediator is no longer in a position to fulfil their duties or is no longer accepted by the parties, the parties may jointly request their replacement (SAC). Under the AAA mediation rules, a conflict of interest may be a ground for replacement of the mediator, whereas the SIMC rules allow for replacement by the centre in case of conflict or exceptional circumstances raised by the mediator or any of the parties. The standard procedure for appointing a mediator is used when appointing a new mediator.

2. Arbitration

None of the benchmarked arbitration centres has a dedicated set of rules for the management of complaints against arbitrators. Instead, the arbitration rules provide for some particularities with regards to challenges to arbitrators. However, HKIAC has a section on its website dedicated to complaints against arbitrators in addition to the usual provisions on the challenge of arbitrators in its arbitration rules.

Most centres and the UNCITRAL arbitration rules allow parties to **challenge an arbitrator** owing to doubts about

their independence and impartiality (SAC, JIPAC, AAA, DIS, HKIAC, SIAC, WIPO, ICC, LCIA). The JAMS, UNCITRAL, LCIA and WIPO arbitration rules allow for a challenge of an arbitrator by the parties only if it is based on information that was not available to them at the time of appointment of the arbitrator.

The arbitration rules of the centres include the following provisions on the challenge procedure. The notice of challenge should be submitted within 15 days after the underlying circumstances became known to the party (UNCITRAL, SAC, HKIAC, SIAC, WIPO) or within 15 days after the arbitrator's confirmation or appointment (HKIAC, SIAC, WIPO). The time limit for a challenge under ICC rules is 30 days after either of the above events; under LCIA and DIS rules, it is 14 days. The notice should be supported by the underlying facts and legal basis for the challenge (DIS, UNCITRAL, HKIAC, SIAC, WIPO, LCIA) and accompanied by payment of the Challenge Filing Fee (SIAC). The notice should be communicated not only to the parties but also to the challenged arbitrator and the rest of the tribunal (DIS, UNCITRAL, HKIAC, WIPO). SAC arbitration rules also add the Secretariat.

The other parties can respond to the challenge within 7 (JAMS) or 15 days (WIPO). LCIA also provides for the revocation of the arbitrator without reason if the parties agree in writing within 14 days after the challenge. If within seven days (SIAC) all the parties agree to the challenge or the challenged arbitrator steps down, a substitute arbitrator is appointed according to the general procedure (SIAC, WIPO). If none of those conditions are met within 15 days (14 days for LCIA), the challenging party may decide whether it wishes to pursue the challenge (UNCITRAL, DIS, HKIAC, LCIA). In that case, within 30 days (UNCITRAL, DIS), the party must seek a decision on the challenge by the appointing authority (UNCITRAL, DIS, HKIAC).

The respective centres (JIPAC, SAC, HKIAC, WIPO) or their courts (SIAC, LCIA, ICC) are responsible for deciding on the matter. This decision is final (AAA, JAMS, SIAC, WIPO) and does not need to be reasoned (WIPO). The UNCITRAL rules entrust the appointing authority with this task, whereas challenges under DIS rules are decided by the Arbitration Council. Before the challenge is decided, the deciding authority must set the time limit for submission of comments (DIS, ICC, LCIA). The LCIA Court may require

at any time additional information from the challenging party. In general, the suspension or continuation of the arbitration while the determination of the challenge is pending is at the discretion of the deciding authority (SIAC, WIPO, HKIAC).

In addition to the relevant provisions in the arbitration rules, HKIAC is the only centre that also provides a procedure for handling complaints against arbitrators described in a dedicated section of its website. Unlike with the challenge of an arbitrator, it is a more general procedure that can offer a broader range of consequences than just removal, such as sanctions against or warnings to the arbitrator. Pursuant to the HKIAC complaint-handling procedure, anyone dissatisfied with the conduct of an arbitrator on the HKIAC panel can file a written complaint with the HKIAC Secretariat. The Secretariat acknowledges receipt and forwards the complaint to the Appointments Committee. The Committee reviews the complaint and may seek comments from the arbitrator or other parties. The Committee then decides whether the complaint is valid and may impose sanctions, such as warnings, suspension, or removal from the panel or list of arbitrators. Moreover, if no formal complaint is made but the Appointments Committee becomes aware of issues regarding an arbitrator's conduct, it can review the situation and impose sanctions after considering comments from the arbitrator. The Committee's decisions are final and not subject to appeal.

DIS arbitration rules provide for an alternative procedure to the challenge, namely request for removal. While both can be initiated by any party, the procedures differ in the basis for their initiation – a challenge can be based on non-compliance of the arbitrator with their duty of impartiality and independence or the arbitrator not possessing the required qualifications, while a request for removal can be grounded in the fact that the arbitrator is not fulfilling their duties pursuant to the rules or is not or will not be in a position to fulfil those duties in the future. The course of both procedures is the same, except for the deciding authority. A challenge is decided by the Arbitration Council, whereas a request for removal is decided by the Case Committee. The official act of removal is still performed by the Arbitration Council.

Some centre rules stipulate that the centre may also **disqualify an arbitrator** (AAA), remove (SIAC) or revoke the arbitrator's appointment (LCIA), or replace the arbitrator (ICC) if the arbitrator fails to comply with the rules and the CoC (SIAC, ICC). This procedure may be initiated by the centre (ICC, AAA, LCIA) or the other members of the tribunal (LCIA). The ICC rules provide that the parties and other members of the tribunal are given the opportunity to provide comments in writing, within a suitable time limit, before the Court's decision on the replacement. When appointing the replacement arbitrator in such cases, it is at the discretion of the centre to decide whether to follow the general rules on appointment (LCIA, ICC).

Conclusion

The benchmarking study shows that ADR institutions adopt comparable approaches to the code-of-conduct provisions and complaint procedures. Five out of eleven benchmarked mediation centres have CoC as dedicated standalone documents, while others embed the ethical obligations of mediators in the mediation rules. The same is true for the benchmarked arbitration centres. Generally, centres that have a CoC for mediators also have one for arbitrators. It follows that CoC of all centres that have them are mediator or arbitrator specific.

Each mediation centre includes provisions on independence and impartiality, fairness of the process/equality and confidentiality. Most centres furthermore include rules on the competence of the mediator and the promotion of their services. In comparison, all arbitration centre provisions on the conduct of the arbitrators overlap on independence and impartiality, confidentiality, and the obligation to disclose a conflict of interest. Additionally, the arbitrator's communication with the parties is covered in all CoC, although not all arbitration rules address this.

The following differences are observed for the centres that provide separate CoC for arbitrators and mediators. The HKIAC CoC for mediators appears to be more detailed than their CoC for arbitrators. Namely, the CoC for mediators includes provisions on the promotion of services, the duty of mediators to provide information about the procedure, the fairness of the procedure and withdrawal, while the CoC for arbitrators does not include similar provisions. On the other hand, the CoC for arbitrators includes a provision on the communication between the arbitrator and the parties, while the CoC for mediators does not. Conversely, the AAA CoC for arbitrators goes more into detail than the CoC for mediators since it includes provisions on the appointment of arbitrators, the communication between the arbitrator and the parties, and the authority of the arbitrator, whereas the CoC for mediators does not have comparable provisions. Nevertheless, the appointment of arbitrators is covered by the mediation rules. The AAA CoC for mediators, however, contains much more detailed provisions on independence and impartiality than the CoC for arbitrators and addresses the competence of the mediator, which the CoC for arbitrators does not.

Lastly, most matters covered by the JAMS CoC for mediators and arbitrators overlap, with the following differences. The JAMS CoC for mediators includes provisions on independence that the CoC for arbitrators does not explicitly address. While the latter regulates the arbitrator's obligation to inform the parties of their role and the rules of the procedure as well as their obligations in the decision-making process, the CoC for mediators does not. The CoC for arbitrators also describes in more detail the arbitrator's duties for conflicts of interest, while the CoC for mediators only vaguely mentions these under the impartiality of the mediator.

With regards to service of the mediators and arbitrators, the misconduct of arbitrators is mainly addressed through challenge procedures set out in the arbitration rules rather than dedicated complaint-handling frameworks. Similarly, only one mediation centre has a structured complainthandling mechanism, while three other centres provide for mediator replacement. Among the benchmarked institutions, HKIAC stands out in that it has specific procedures for handling complaints against both mediators and arbitrators. At HKIAC, the alleged breaches are decided by dedicated internal bodies. Arbitrators may also receive warnings or be sanctioned in ways other than removal. Under the rules of the arbitration centres on challenges, a typical ground for the challenge of an arbitrator is non-compliance with the duty of independence and impartiality. Under mediation rules, a mediator can be replaced for different reasons (e.g. the lack of parties' acceptance or a conflict of interest). The challenge can usually be initiated by any of the parties within a prescribed time limit. Regarding arbitrators, it is normally the centre or its court that decides on the challenge with a final decision. Apart from party-initiated challenges, the rules of some arbitration centres also provide for procedures to remove arbitrators on the initiative of the centres or other members of the tribunals.

Overall, apart from the clear distinction between rules for mediators and arbitrators, the analysis reveals common ethical rules that form a part of every CoC – independence, impartiality and confidentiality, supplemented by provisions on the fairness of the process and the equal treatment of the parties for mediators and on conflict of interest for arbitrators. Furthermore, the

benchmarking shows the lack of regulation of complaint-handling procedures for both mediators and arbitrators, with the exception of one centre. Instead, parties can express their dissatisfaction with the arbitrator by challenging their appointment and getting them replaced if the centre decides that the challenge is justified. Apart from in the case of three centres, the mediation rules do not provide detailed rules on the replacement of a mediator. Thus, the parties tend to be more involved and flexible in the entire process when compared to arbitration.

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