

Madrid Superior Court of Justice sets guidance on arbitrators' duty to disclose circumstances that may affect their independence and impartiality

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In *Iberpistas and Bankia vs. Desarrollo de Concesiones Viarias Uno and Sacyr* (Judgment of 2 June 2016) the Madrid Superior Court of Justice considered an application to set aside an award on the basis of the chairman's failure to disclose circumstances that could affect his independence and impartiality.

The Madrid Superior Court of Justice has dismissed an action to set aside an award in excess of €300 million resolving disputes between four companies listed on the Spanish Ibex 35.

During the constitution of the tribunal, the arbitrators were required to disclose any conflicts of interest with the parties as well as with entities within the group of companies to which each party belonged. Following issuance of the award, the claimants discovered that the chairman of the tribunal had failed to disclose that he was an external director of a company within a group of companies which was third party to the arbitration, which regularly contracted with a subsidiary of a group of companies to which one of the defendants belonged but which was not itself a party to the arbitration.

The court reaffirmed that none of the grounds for annulment set out in Article 41 of the Spanish Arbitration Act 2003 allowed the court to review the merits of the dispute or decide whether the arbitrators had erred in their fact finding or application of the law. Most interestingly, the court applied the International Bar Association Guidelines on Conflicts of Interest to conclude that the chairman had remained independent and impartial, and acted with due diligence when satisfying his duty of disclosure. Furthermore, the court decided that, acting with due diligence, the chairman could not have known that the two companies, which were not parties to the arbitration, had been involved in common business. Therefore, his failure to disclose this fact did not undermine his independence and impartiality.

Indeed, the court stressed that a failure to disclose does not necessarily entail nullity of the award. To justify annulment, the undisclosed circumstance must have affected the arbitrator's independence and impartiality (however not all disclosures justify a challenge).

This judgment demonstrates that Spanish judges are aware of best practices, and are willing to accept them as standards in both domestic and international arbitration.

Case: [Iberpistas and Bankia vs. Desarrollo de Concesiones Viarias Uno and Sacyr](#) (Judgment of 2 June 2016) (Madrid Superior Court of Justice).

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