

## SCHEDULE 6

### CODE OF CONDUCT FOR DISPUTE RESOLUTION PANELLISTS AND ARBITERS

#### ARTICLES 26(8) AND 37(2)

#### *NEW WEST PARTNERSHIP TRADE AGREEMENT*

##### **Part I - Preamble**

The Parties:

*Recalling* that in the Operating Principles of the Agreement they agreed to resolve disputes in an effective, inexpensive and timely manner;

*Recognizing* the prime importance of integrity and impartiality in all proceedings; and

*Affirming* that the operation of the proceedings would be strengthened by a code of conduct to maintain the integrity and impartiality of all proceedings, thereby enhancing confidence in them;

Hereby establish the following code of conduct.

##### **Part II - Interpretation**

In this code of conduct,

“**administrator**” means the administrator appointed pursuant Article 19 of the Agreement;

“**Agreement**” means the *New West Partnership Trade Agreement*;

“**candidate**” means any individual who is under consideration for an appointment as a member of a panel or as an arbiter pursuant to the Agreement;

“**disputants**” means a Party or person that has requested the establishment of a panel under the Agreement, and the responding Party;

“**member**” means a member of a panel constituted pursuant to the Agreement or an arbiter appointed pursuant to the Agreement;

“**Party**” means a party to the Agreement; and

“**proceeding**” means any proceeding under Part IV of the Agreement.

##### **Part III - General Responsibilities to the Process**

1. Every candidate, member and former member will avoid impropriety and the

appearance of impropriety and will observe high standards of conduct so that the integrity and impartiality of the dispute resolution process is preserved.

2. This code of conduct does not determine whether or under what circumstances the Parties will disqualify a candidate or member from being appointed to, or serving as, a member on the basis of disclosures made.
3. This code of conduct does not preclude the application of any other applicable rules, code or government policies related to conflict of interest.

#### **Part IV - Disclosure Obligations**

1. Candidates and members must disclose the existence of any interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an apprehension of bias or an appearance of impropriety. An apprehension of bias is created when a reasonable person, with knowledge of all of the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or member's ability to carry out the duties with integrity, impartiality and competence is impaired.
2. Throughout a proceeding, candidates and members have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.
3. Further to the general obligations of sections 1 and 2:
  - (a) Each candidate requested to serve, at the time of the request, will receive from the administrator a copy of this code of conduct, which includes an illustrative list of examples of matters which are subject to disclosure. (The illustrative list is attached as Annex 1 to this code of conduct.);
  - (b) A candidate will make all reasonable efforts to become aware of, and will disclose, any interest, relationship or matter that is likely to affect his or her independence or impartiality, or that might create a reasonable apprehension of bias or appearance of impropriety in proceedings;
  - (c) Each candidate will provide an initial disclosure to the administrator by completing the Disclosure Statement and submitting it to the administrator. (The form of required Disclosure Statement is attached as Annex 2 to this code of conduct.); and
  - (d) After appointment as a member, the member will continue to make all reasonable efforts to become aware of any material interests, relationships or matters and will promptly disclose them. Any such subsequent disclosures will be communicated forthwith in writing to the administrator for consideration by the disputants and the Parties.

## **Part V - The Performance of Duties by Candidates and Members**

1. A candidate who accepts an appointment as a member will be available to perform, and will perform, his or her duties thoroughly and expeditiously throughout the course of the proceeding.
2. A member will ensure that the administrator can, at all reasonable times, contact the member in order to conduct panel business.
3. A member will carry out all of his or her duties fairly and diligently.
4. A member will comply with all applicable provisions of the Agreement and the rules governing the proceeding.
5. A member will not deny other members the opportunity to participate fully in all aspects of the proceeding.
6. A member will consider only
  - (a) the issues raised; and
  - (b) the evidence presented

in the proceeding which is necessary to a decision and will not delegate the duty to decide to any other person except as permitted by the rules governing the proceeding.

7. A member will take all reasonable steps to ensure that the member's staff, if any, comply with Parts III, IV and VIII of this code of conduct.
8. A member will not engage in *ex parte* contacts concerning the proceeding.
9. Candidates and members will not communicate any matters concerning actual or potential violations of this code of conduct except with the administrator or as necessary to ascertain whether that candidate or member has violated or may violate the code of conduct.

## **Part VI - Independence and Impartiality of Members**

1. A member will be independent and impartial. A member will act in a fair manner and will avoid creating an appearance of impropriety or an apprehension of bias. A member will make an objective assessment of the matter before it, including an objective assessment of the facts presented.
2. A member will not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

3. A member will not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.
4. A member will not use his or her position to advance any personal or private interests. A member will avoid actions that may create the impression that others are in a special position to influence the member. A member will make every effort to prevent or discourage others from representing themselves as being in such a position.
5. A member will not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgment.
6. A member will avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an apprehension of bias or an appearance of impropriety.

#### **Part VII - Post-Proceeding Conduct**

1. For a period of two years after the completion of any proceeding, a former Member will not personally advise or represent any disputant from the proceeding with respect to the same matter(s) that arose in the proceeding.
2. A former member will avoid any actions that may create the appearance that the member was biased in carrying out the member's duties or that the member benefitted from the decision of the panel.

#### **Part VIII - Maintenance of Confidentiality**

1. A member or former member will not at any time disclose or use any confidential information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding, nor will he or she disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interests of another.
2. A member will not disclose a panel report or panel decision prior to its release by the administrator. A member or former member will not at any time disclose the deliberations of a panel or any member's individual views, except as required by law.

#### **Part IX - Responsibilities of the Administrator**

1. The administrator will take all steps necessary to protect the confidentiality of Disclosure Statements and any subsequent disclosures received by it from candidates and members.

## **Part X – Complaints Concerning Alleged Breaches of the Code of Conduct**

1. With respect to disputants, if, at any time prior to the issuance of a final report, a disputant believes that a member is in violation of this code of conduct it shall immediately advise the other disputant in writing, with a copy to the administrator and all other Parties. Unless otherwise requested by the advising disputant, the administrator must treat the communication in confidence and shall not disclose to the panel the content of the communication or its source. Within seven days of receiving notice of the alleged violation from a disputant, the Parties will conduct an investigation if they consider it necessary and will, by consensus, determine what action to take, if any, considering all of the circumstances, up to and including dismissal of the applicable member.
2. If a member is dismissed or voluntarily withdraws as a result of any investigation under this Part X, a replacement member will be appointed in accordance with the applicable appointment procedures provided for in the Agreement.

## ANNEX 1

### ILLUSTRATIVE LIST OF INFORMATION TO BE DISCLOSED

*This Annex contains examples of the type of information that candidates and members are required to disclose pursuant to the code of conduct.*

Each candidate and member has a continuing duty to disclose the type of information generally described in Part IV of the code of conduct, which may include the following:

- (a) financial interests (for example, investments, loans, shares, interests, other debts); business interests (for example, directorship or other contractual interests); and property interests relevant to the dispute in question;
- (b) professional interests (for example, a past or present relationship with governmental or private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);
- (c) other active interests (for example, active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);
- (d) considered statements of personal opinion on issues relevant to the dispute in question (for example, publications, public statements); and
- (e) employment or family interests (for example, the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, partners, business associates or immediate family members).

**ANNEX 2**

**NEW WEST PARTNERSHIP TRADE AGREEMENT**

**IN THE MATTER OF:** \_\_\_\_\_ **(title of proceeding)**

**Administration File No:** \_\_\_\_\_

**INITIAL DISCLOSURE STATEMENT**

1. I have read the code of conduct established under the *New West Partnership Trade Agreement* (the "**NWPTA**") which governs the conduct of members of a panel constituted pursuant to Part IV(A) of the NWPTA and arbiters appointed pursuant to Part IV(B) of the NWPTA ("**members**") and individuals under consideration for an appointment as a member ("**candidates**").
2. (Check, as appropriate, and, if required, attach the disclosure list.)
  - There are no interests, relationships or matters that, as of the date hereof, I am required to disclose under the code of conduct; or
  - Attached is a list of all interests, relationships and matters that, as of the date hereof, I am required to disclose under the code of conduct.
3. I understand my continuing obligation while participating in the NWPTA dispute resolution process as a candidate or member to disclose to the administrator any interest, relationship or matter that is likely to affect my independence or impartiality, or that might create a reasonable apprehension of bias or an appearance of impropriety in the matter cited above, and I will make all required disclosures forthwith upon becoming aware of any such interest, relationship or matter.

\_\_\_\_\_  
**Signed**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Candidate's Name**