

# Ethical & Legal Codes For Arbitrator, Expert & Conciliator

- Introduction
- Caliph Umar Bin Faruq (Latter to Abu Musa Al Ash'ari when he appointed him the Governor of Kufa (Basra)
- The ethical and legal codes for the exercise of the duties of an "Assignee" are as follows:
  - Article (1): The Rule of Impartiality (independence)
  - Article (2): Disclosure Rules
  - Article (3): Rules of the Non-conflict of Interest
  - Article (4): Professional and Efficient Rules
  - Article (5): The Rules for Maintaining the Quality of Proceedings
  - Article (6): Communication Rules
  - Article (7): The Rules of Confidentiality
  - Article (8): Fees and Expenses Rules
  - Article (9): Rules of Propaganda and Mechanism and Offer of Services
  - Article (10): Rules of Educational Conduct
  - Article (11): Rules of the Secretary
  - Article (12): The Supreme Sharia Board

# Introduction

- The main objective of each Conciliator, Arbitrator and Expert task is to achieve justice and equality among people and this is a common goal with what the judge is aiming for.
- Each Conciliator, Arbitrator and Expert must comply with a high level of commitment to the ethical and Sharia Rules, a court of conscience that leads to achieve justice among people with honesty, sincerity and objectivity.
- The nobility of the status accorded Conciliator, Arbitrator and Expert who must abide by the ethical and legal rules to perform their duties and the violation of any of these rules may hold them accountable for their actions in the event of default or misconduct and they may be criminally liable if they deliberately breaches the rules and it results in harm to any party.
- Each Conciliator, Arbitrator and Expert are entrusted with the honesty of achieving justice between the parties, Therefore, any of them will be referred to, collectively or individually, as an "Assignee", except for a single description of the text.

# Caliph Umar Bin Farooq

## *Latter to Abu Musa Al Ash'ari when he appointed him the Governor of Kufa (Basra)*

Umar's (May Allah be pleased with him) legislation of ethical and legal codes on the judiciary which is presumed to be for each Conciliator, Arbitrator and Expert in his letter to Abu Musa al Ash'ari (May Allah be pleased with him) in which he said:

In the Name of Allah, the most Gracious, the most Merciful. From Umar Bin Al Khattab, the Commander of faithful , to 'Abdullah Ibn Qays (May Allah be pleased with him) (Abu Musa al Ash'ari ), peace be upon you.

Judging (the judicial system) is a confirmed obligation and a way to be followed. Try to understand when cases are presented to you, for there is no use in a person presenting his case if it is not understood. Treat people equally when you address them so that no noble man will hope that you side him unfairly and no weak man will despair of your justice. The burden of proof rests with the plaintiff and the oath is required of one who denies it. It is permissible to make a deal between Muslims, except a deal that permits something that is forbidden or forbids something that is permitted.

If you passed a judgment yesterday then examined it further in your mind and are guided to a different conclusion, then that should not prevent you from returning to the truth, for truth is eternal, and returning to the truth is better than persisting in falsehood. Examine carefully each issue which you are unsure about, where there is no text in the Qur'an and Sunnah, and try to find a similar case, draw analogies and see which is more likely to be pleasing to Allah and closest to the truth.

Whoever claims that someone owes him some dues, set a time limit for him to produce his evidence. If he provides evidence, then restore his rights to him; otherwise ask him to drop his claim. That is better so as to eliminate any doubt.

The Muslims are basically of good character, except one who has been lashed as a hard punishment or who is known for bearing false witness. Allah is in charge of what is hidden in people's hearts. Judgment must be based on evidence and oaths.

Beware of becoming impatient, because judging in accordance with the truth bring a great reward from Allah and stores a great deal of reward (in the Hereafter). Whoever has a good intention and checks himself, Allah will be sufficient for him (and he need not worry about people), but whoever shows an attitude to people which Allah knows is not his true attitude, Allah will expose him. Think of the reward of Allah in this world and the Hereafter. And peace (be upon you).

The ethical and legal codes  
for the exercise of the duties  
of an “Assignee” are as  
follows

## Article (1): The Rule of Impartiality (independence):

- 1- “Assignee” shall not accept his participation in the settlement of the dispute if he feels that he can’t perform it in a neutral manner. Neutrality means impartiality, non-favoritism or prejudice, and avoids the behavior that gives the impression of prejudice, lack of influence or bias during conflict resolution due to the personality, background, values and beliefs of the parties to the proceedings and their performance in conducting the dispute resolution proceedings or any other cause.
- 2- “Assignee” shall not give or accept a gift, service, loan or other benefits of value that raises doubts regarding his or her actual impartiality or impression of neutrality. He should also verify the parties' understanding of his role as a neutral intermediary, not a representative or defender of any of them.
- 3- An “Assignee” shall maintain the impartiality and fairness of the dispute resolution procedures by being neutral and independent of the parties to the conflict and shall not have an interest in disputed disputes where the neutral rule is prejudiced if an “assignee” tends to favor or has prejudice against a party to the dispute in relation to the subject matter of the dispute.
- 4- An “Assignee” shall be liable to the parties and procedures for resolving the dispute by adhering to the high ethical and legal standards that guarantee the integrity, efficiency, and fairness of the dispute resolution procedures, and to act fairly towards all parties and not to be affected by external pressures or personal interests and to avoid any conduct or statement that may suggest bias or prejudice towards one party or another.

- 5- The Arbitrator or Expert can't independently verify that each party has free choices in order to make certain decisions, while the Conciliator may inform the parties of the importance of consulting other professionals in order to help them make informed decisions, and Conciliator shall not limit the freedom of any party in making their decision.
- 6- During the Arbitral or Expert proceedings, the Arbitrator or Expert may not act as a defender of a party or advise them on the subject of the dispute or its outcome, either before or after his appointment while the Conciliator may give an advice to the parties as a part of his function in bringing closer the views of the parties to conflict resolution.
- 7- "Assignee" shall follow the standards of fairness, impartiality and neutrality in making arrangements related to the payment of fees for the services he provides, or to recover the expenses incurred. Therefore, the "Assignee" is prohibited from making individual arrangements with any of the parties or their agents for the payment of his original or additional fees or expenses provided that this is done through IICRA exclusively.
- 8- If "Assignee" is at any time unable to carry out his mission impartially, he must withdraw in writing.

## Article (2) Disclosure Rules:

- 1- An "Assignee" shall verify that he or she has the background and competence necessary to resolve the dispute in a particular case before accepting the appointment and shall disclose the relevant information to the parties regarding his or her background and expertise.

2- Since the commencement of the appointment proceedings and throughout the dispute resolution procedures, the “Assignee” shall inform the parties to the dispute in writing as soon as possible of any existing or potential circumstances that may raise reasonable questions about his neutrality and independence, including these circumstances:

- (A) Direct or indirect financial or personal interests of the outcomes of his arbitration, experience or reconciliation.
- (B) The professional and financial relations that an “Assignee” shall be aware of, whether current, previous or future, with any party or their representative.
- (C) Any other potential sources of bias or prejudices relating to a person or institution that may affect the independence or impartiality of an “Assignee” or make him sound neutral or biased.

3- An “Assignee” may continue to perform his duties after the disclosure of these circumstances if all parties agree in writing. In such a case, an “Assignee” shall accept the employment or continue to work if he is certain of his ability to carry out his task with complete independence and impartiality. The commitment to disclosure is a continuing obligation during dispute resolution procedures.

4- In all cases, an “Assignee” shall refrain from contributing to the dispute resolution if he has any direct or indirect personal interest in the outcome of the dispute, or if he feels prejudiced towards one of the parties to the proceedings or if he has a personal knowledge of the facts relating to the matters brought before him or has previously worked for one of the parties



to the dispute or with one of their legal representatives in the dispute presented. The provisions of this clause shall exclude the Conciliator which the parties agree to continue in the performance of his duty after the disclosure.

### **Article (3) Rules of the Non-conflict of Interest:**

- 1- An “Assignee” shall avoid the conflict of interest or he may be held accountable for the conflict of interest during or after the dispute resolution proceedings. The conflict of interest may arise upon resuming his duty, or because of any relationship between “Assignee” and former or current participants in dispute resolution, both on a personal and professional level which raises reasonable doubts about the impartiality an “Assignee”.
- 2- An “Assignee” must investigate reasonably whether there are facts that the usual person considers most likely the possibility of an existing or potential conflict for an “Assignee” but the actions of an “Assignee” necessary for reasonably investigating potential conflicts of interest may vary depending on the practical circumstances.
- 3- If there is doubt about the integrity of an “Assignee” and it’s reasonably considered to be his conflict of interest, An “Assignee” shall withdraw or refuse to pursue his participation in dispute resolution, regardless of the parties' will or their express agreement otherwise.
- 4- An “Assignee” may not, after the acceptance of the appointment until the completion of the dispute resolution proceedings’, enter into a business

relationship or a professional or family relationship with the parties or request a personal or financial interest most likely to affect a conflict of interest, or bias or favoritism or give a reasonable impression regarding the same without disclosing such matters to the parties in advance and obtaining their express consent to continue.

5- Within 12 months following the end of his assignment, an “Assignee” may not represent any of the parties to the dispute in an advisory capacity on the subject matter of the dispute itself, or a matter substantially related thereto, unless all parties to the dispute expressly consent to such representation after a full disclosure.

6- An “Assignee” may not, at any time after the end of his assignment, present evidence or testify on behalf of a party when its defense is filed in a proceeding against another party in the settlement of the dispute through which they have access to confidential information from the other party, unless such information is not confidential, or that the Party under the protection of confidential information accepts so.

#### **Article (4): Professional and Efficient Rules:**

1- An “Assignee” may not exercise his duties in a particular case unless he has the appropriate scientific and practical competence to meet the reasonable expectations of the parties, including his understanding of the legal, technical and Sharia aspects of the Islamic financial transactions.

- 2- Any person may be appointed as an “Assignee” provided that the parties are satisfied with his competence and qualifications. The training and expertise in conflict resolution, skills, cultural abilities and other attributes are usually necessary to demonstrate the efficiency of an “Assignee”, and the person offering the role of an “Assignee” is expected to be competent to work effectively.
- 3- An “Assignee” shall exercise his functions within its specified range without default or exaggeration.
- 4- The Arbitrator shall keep in mind IICRA mission of settling disputes in a manner not contrary to the provisions of the Islamic Sharia and he had to be absolutely sure of his legitimate reading of the dispute details and proceedings of the Arbitral Award. In this regard, he shall consult with Sharia Board of IICRA, to which the draft of the judgment is presented prior to its issuance, in order to clarify the legal opinion, while the arbitral tribunal has asked him for interpretations, explanations and provisions, he shall not find it difficult to amend what the Supreme Sharia Board has pointed out to him.
- 5- Each Conciliator, Arbitrator and Expert shall draw sufficient amount of attention in taking note of all the facts and arguments presented, and all relevant discussions of the proceedings to realize the reality of the conflict and the positions of the parties, without procrastination or delay.
- 6- Both the Arbitrator Expert shall not delegate another person to take decisions on their behalf, while the Conciliator may seek assistance from others to bring the views closer and to conclude the reconciliation.

7- The Arbitrator shall not exert pressure on any party for the settlement of dispute or use any other method of dispute resolution. He also shall not attend or participate in the discussions of dispute resolution in any form or act as a mediator unless all parties request so.

8- The members of the Arbitral Tribunal shall be permitted to fully participate in all aspects of the arbitral proceedings. The arbitrator shall, after the issuance of award, be prohibited, directly or indirectly, from assisting in any proceeding for the enforcement or appeal of the Arbitral Award.

The members of the arbitral tribunal shall be allowed to participate fully in all aspects of the arbitration proceedings. The arbitrator shall be prohibited, from assisting in any arbitral proceedings to enforce or challenge the award.

### **Article (5) The Rules for Maintaining the Quality of Proceedings:**

1- An “Assignee” must perform his duties in a manner that ensures the quality and fairness of the proceedings between all parties.

2- An “Assignee” shall accept the performance of the task assigned to him only when he is prepared enough to give the necessary commitment and attention to resolve the dispute in an effective manner and in accordance with transparent and fair procedures for the parties and within the specified deadlines.

3- An “Assignee” shall make the necessary and reasonable efforts to prevent any party from resorting to methods aimed at procrastinating in the

resolution of dispute or harassment of its parties, or the abuse or disruption of the proceedings in any form of procrastination and in ill intent.

4- Except for the resolution of the dispute by arbitration requiring the presence of all parties to the dispute, the presence or absence of any party depends on the decision of the Conciliator or Expert when conciliation or experience meetings are held.

5- The Conciliator shall recommend to the parties, whenever it's appropriate, to consider the possibility of settling their disputes through Arbitration, or provide impartial advice or assessment or other means.

6- The Expert can't advise the parties as his task is limited to preparing the expertise report required of him in the light of the preliminary ruling leading to his appointment and the nature of the task required of him, and however he may prepare an impartial assessment or recommend to the parties to settle their dispute through Arbitration if not.

7- An "Assignee" shall not change his status in the settlement of the dispute itself without the consent of the parties (such as an arbitrator of reconciliation, or an expert of reconciliation ... etc.) and he before accepting the other role, shall inform the parties of the consequences of the change in procedures and obtain their prior consent.

8- If Conciliation, Arbitration or Experience in a particular matter are used to facilitate criminal action or any domestic assault or violence between the parties, an "Assignee" shall take an appropriate steps, including, if necessary, deferment, withdrawal or termination of the dispute.

- 9- If a party finds it difficult to understand the options for resolving the dispute or the difficulty in participating in its proceedings, an “Assignee” shall investigate the possible circumstances, solutions, modifications or arrangements in order to enable that party to understand, participate and decide freely to resolve the dispute.
- 10- If the conciliation reached by the parties appears to the Conciliator to be unenforceable or unlawful, taking into account the circumstances of the case and the degree of qualification of the mediator in conducting such assessment, the Conciliator shall inform the parties accordingly and may terminate the conciliation.

#### **Article (6) Communication Rules:**

- 1- If one of the parties fails to attend the hearings despite being properly informed, the Arbitrator may discuss the case with any party present at the meetings, and may also do so under the express consent of all parties.
- 2- The Arbitrator, whenever communicating with one of the parties in writing, shall send at the same time a copy of the same communication to the other parties. Accordingly, whenever a written communication from a party is received on the case and has not yet been sent to the rest of the parties – he shall send or ensure that it has already been sent to them.
- 3- The Arbitrator and Expert shall properly inform all parties of the date and venue of any hearing and shall give each party a fair opportunity to present their evidence and arguments.

4-The Arbitrator shall not communicate on the subject of the dispute individually with any party or his representative, except in the following cases:

(A) During the consideration of the appointment of a nominated arbitrator, he or she may question the identity of the parties, counsel or witnesses and the general nature of the dispute.

(B) Responds to the inquiries that may be received from a party or his or her counsel as to the relevance and devotion of the performance of task. In the context of such communication, the nominated Arbitrator may obtain information from that party or his or her counsel that reveals the general nature of the dispute, provided that this does not permit the discussion of the subject of Arbitration Case.

(C) The Arbitrator may hold the discussions with one of the parties to the Arbitration on logistical matters, such as the timing and venue of the hearings or other arrangements with respect to the administration of the arbitral proceedings, the Arbitrator in such case shall promptly inform all other parties of such discussions, and no final decision on the issues discussed should be taken before giving all the absent parties an opportunity to express their point of views and opinions.

5- If the agreement of the parties to the dispute includes the rules of communication with the arbitrator, he shall then comply with such regulations and procedures exclusively.

## Article (7) The Rules of Confidentiality:

- 1- An “Assignee” shall maintain the confidentiality of the information obtained in the dispute resolution proceedings, unless the parties agree, or the applicable law says it otherwise.
- 2- The Arbitrator shall maintain the confidentiality of all matters relating to the Arbitral proceedings and its decisions; however, he may obtain assistance from a researcher or an assistant, or any other persons in connection with regard to reach a decision and the Arbitrator shall inform all parties of the same to ensure that such persons comply with the provisions contained in Rules.
- 3- If the parties agree that an “Assignee” may disclose the information obtained during the resolution of the dispute, he may do so. However the Arbitrator may not at any time inform any person of any decision before the time specified to inform all parties. In Arbitral proceedings involving more than one Arbitrator, the Arbitrator may not at anytime inform any person of the content of the deliberations of the Arbitrators.
- 4- An “Assignee” may not inform a person other than a party of the information of dispute regarding the conduct of the parties to the dispute.
- 5- If an “Assignee” participates in the teaching, research, study or training of an assessment regarding conflict resolution, he shall not disclose the names of the parties and comply with their reasonable expectations regarding confidentiality.



- 6- An “Assignee” if he meets with persons individually during the resolution of the dispute, he shall not transmit directly or indirectly to the other parties any information obtained during that meeting without obtaining the consent of the person who disclosed the information.
- 7- An “Assignee” shall work to enhance the parties' understanding of their obligation to maintain the confidentiality of the information obtained during the dispute resolution proceedings.
- 8- The parties' expectations regarding the confidentiality of dispute resolution may vary depending on their circumstances, and an “Assignee” shall take this into account. Parties may establish their own confidentiality or mitigation rules and the parties may establish their own confidentiality or mitigation rules.

#### **Article (8): Fees and Expenses Rules:**

- 1- An “Assignee” shall, in the event of his activity within a body, assess the additional effort of the Chairman of the Commission, and shall take into consideration the fees of each member of the Commission, for example: 40% for the President and 30% for the other two members.
- 2- An “Assignee” shall give each party or its representative the complete and precise information regarding the fees and expenses of the task or mission and any other actual or potential burdens associated with it.
- 3- In the event of determination of his / her fees by IICRA, an “Assignee” shall take into account all the relevant circumstances, including the type of

case, its complexity, qualifications, time and fees customary for this type of dispute resolution service.

4- Arrangements for the fees of an “Assignee” shall be in writing and based on the rules and regulations of IICRA and shall be provided to the parties before the dispute is settled by IICRA.

5- An “Assignee” shall not enter into a fee agreement, which shall be conditional on the outcome of his functions or the settlement amount.

6- IICRA may, therefore, accept the payment by the parties of unequal portions of the fees for an “Assignee”, and this should not affect the integrity and impartiality of an “Assignee”.

#### **Article (9) Rules of Propaganda and Mechanism and Offer of Services:**

1- An “Assignee” shall be honest and not misleading when announcing or seeking new tasks or otherwise.

2- An “Assignee” shall not make any promises regarding the outcomes of his duties in all means of communication with the parties, including identification cards, office advertising papers and electronic correspondence.

3- An “Assignee” shall not offer his services in such a way that render him prejudicial to or against one of the parties or in any manner that limits the integrity of the dispute resolution procedures.

4- An “Assignee” when using promotional materials or other advertisements, shall not mention the names of the persons to whom he has provided his services without their permission.

### **Article (10) Rules of Educational Conduct:**

- 1- The pursuit of conflict resolution is available to those who can activate alternative dispute resolution mechanisms in return for symbolic or voluntary payment whenever appropriate.
- 2- To participate in the preparation of research related to the settlement of disputes whenever the opportunity arises including document of experiences in resolving Islamic financial industry disputes.
- 3- To assist in disseminating the culture of alternative dispute resolution (ADR) in order to help parties in understand those methods and recognize their benefits.
- 4- To help youth through training, mentoring and communication.
- 5- An “Assignee” should respect the differences of opinion of his colleagues and seek to learn from them and work with them in order to promote alternative mechanisms for resolving disputes, specifically through Reconciliation and Arbitration with an aim to better serve the parties to the dispute.

**Article (11): Rules of the Secretary:**

The secretary of Arbitral tribunal shall be subject to all the provisions imposed on the Arbitrator in accordance with these regulations, in addition to doubling responsibility with regard to the professional aspects of his mission in terms of keeping documents, confidentiality of information and ensuring the integrity of the procedures prescribed for resolving the dispute.

**Article (12) The Supreme Sharia Board:**

The Supreme Sharia Board shall be formed that shall regulate its working mechanism, the nature of its decisions under its own regulations, and in all cases, the services of the Supreme Sharia Board shall be available for an “Assignee” requesting legal support in a specific matter through a written request addressed to the Executive Director of IICRA detailing the matter and its contents.

- The End -