No. XIII.3.5 - Early legal guidance by the tribunal

(a) The arbitral tribunal shall identify to the parties, as soon as it considers it to be appropriate, the issues that it may regard as relevant and material to the outcome of the case, including issues where a preliminary determination may be appropriate.

(b) An arbitrator may assist the parties in reaching a settlement of the dispute at any appropriate stage of the proceedings. However, before doing so, the arbitrator shall receive an express agreement by the parties that acting in such a manner shall not disqualify the arbitrator from continuing to serve as arbitrator ("informed consent"). Such express agreement shall be considered to be an effective waiver of any potential conflict of interest that may arise from the arbitrator's participation in such process or from information that the arbitrator may learn in the process. If the assistance by the arbitrator does not lead to final settlement of the case, the parties remain bound by their waiver. Notwithstanding such agreement, the arbitrator shall resign if, as a consequence of his involvement in the settlement process, the arbitrator develops doubts as to his ability to remain impartial or independent in the future course of the arbitration proceedings.

Commentary:

1 Subsection (a) reflects the international consensus enshrined in Art. 2 (3) IBA Rules on the Taking of Evidence in International Arbitration of May 2010.

2 Subsection (b) reflects the approach contained in the CEDR Rules for the Facilitation of Settlement in International Arbitration of November 2009.