THE CHALLENGE OF TAKING EVIDENCE IN INTERNATIONAL ARBITRATION

The taking of evidence is at the heart of essentially every international arbitration. Yet it remains a challenge for both arbitrators and counsel, having to deal with the diversity of legal cultures, the lack of universally accepted principles, the ever increasing technological possibilities and, in each case, the adverse interests of the parties.

This year, the Swedish Arbitration Days will bring together some of the most renowned arbitration practitioners from around the world to debate the many issues arising out of the taking of evidence in international arbitration.

We look forward to seeing you in Stockholm.

Organising Committee
Robin Oldenstam, Domitille Baizeau, Richard Kreindler, Gisela Knuts, James Hope, Tore Wiwen-Nilsson and Fredrik Norburg

Click here to go to registration page
THURSDAY 13 SEPTEMBER

08.30—09.00 Registration

09.00—09.10 Opening of Conference — SAA Chair, Robin Oldenstam

09.10—09.25 Key Note Address — Karl-Heinz Böckstiegel

09.25—11.00 Session 1 — Theories, rules, burdens of proof and thresholds of evidence

Moderator: Richard Kreindler
Panelists: Sophie Lamb, Torsten Lörcher, Alexis Mourre and Bo G H Nilsson

What is the fundamental purpose of evidence — to ascertain the truth or simply to resolve the dispute? Is there an international “best practice” or “worst practice” when it comes to allocating the burden of proof? What role do the arbitration rules play? How helpful are the IBA Rules on the Taking of Evidence in effectively bridging existing cultural gaps? What standard should be applied — preponderance of the evidence or something else? When should arbitrator’s “mistakes” on the burden or threshold of evidence constitute grounds to contest the enforceability of the underlying award?

11.00—11.30 Coffee break

11.30—13.00 Session 2 — Admissibility and weighing of evidence, adverse inferences

Moderator: Sophie Nappert
Panelists: Simon Greenberg, Claes Lundblad, Klaus Reichert and Nathalie Voser

What weight do arbitrators assign to different kinds of evidence and are there cultural differences in this regard? How “immune” are arbitrators to techniques of persuasion? What has forensic science to say about the weighing of evidence and is it even a scientific exercise or rather an art? Is it always appropriate to allow evidence to be presented? What standards of admissibility do arbitrators typically apply? When do arbitrators customarily draw adverse inferences and are there cultural differences in this regard? Can adverse inferences, expressly or impliedly made, constitute grounds to contest the enforceability of the underlying award?

13.00—14.00 Lunch

14.00—15.00 Session 3 — Presentation of Evidence

Moderator: Karyl Nairn
Technical demonstrations
Panelists: James Hope, Vladimir Khvalei and Ank Santens

How can complex and detailed evidence be presented effectively? Best and worst practices in preparing “trial bundles”, etc. Pros and cons of different trial presentations and advanced graphics. What is most effective — digital films and models vs. on-site inspections and physical samples? Should “equality of arms” play a role where parties employ dramatically different levels of sophistication of technological presentations? Should arbitrators refuse to entertain certain requests by counsel for the use of technology — if so, when and why?
15.00 — 16.00  Session 4 — Documentary and electronic evidence

Moderator: Hans Bagner
Panelists: Pierre-Yves Gunter, Steven P. Finizio and Carita Wallgren-Lindholm

Is documentary evidence typically more reliable than oral evidence? Should arbitrators impose limits on the volume and types of documents submitted? How should documentary evidence best be organized and presented? Is paper evidence more reliable than electronic evidence or is it the other way around? What best practices may be identified regarding the admissibility and assessment of documentary evidence suspected or alleged to have been "doctored"?

16.00 — 16.30 Coffee break

16.30 — 17.30 Session 5 — Production of Documents

Moderator: Jason Fry
Panelists: Jakob Ragnwaldh, John Rhie and Tatyana Slipachuk

Arbitrator and counsel perspectives on the permissible breadth of requests vs. justified refusals to produce. When are objections as to privilege and confidentiality legitimate? How helpful are the IBA Rules on the Taking of Evidence in this regard? How should requirements of "undue burden" and "proportionality" be applied? To what extent should the lex arbitri and practice of the seat be taken into account? Can a party ask for documents to be produced only if they are relevant to prove a fact for which that same party has the burden of proof?

18.00 — Reception and dinner at the Grand Hôtel

FRIDAY 14 SEPTEMBER

09.00—10.30 Session 6 — Witnesses of Fact

Moderator: Michael Schneider
Panelists: Phillip Capper, Francesca Albert, Gisela Knuts and Sabine Konrad

Arbitrator and counsel perspectives on the role of witnesses and do's and don'ts with regard to written witness statements and oral testimony. Should there be more room for direct examinations in international arbitration? Which styles and methods of direct and cross-examination are acceptable and which are not? Are common law barristers more efficient than civil-law practitioners in examining witnesses before international tribunals? Preparation of witnesses and ethical considerations — how far can you go? Issues with remote examination by videolink or telephone and examinations via interpreters.

10.30 — 11.00 Coffee break

11.00 — 12.30 Session 7 — Expert Evidence

Moderator: Tore Wiwen-Nilsson
Panelists: Mark McNeill, Reza Mothasami, Joerg Risse and Patricia Shaughnessy

Arbitrator and counsel perspectives on the role of experts, party- vs. tribunal-appointed experts and do's and don'ts with regard to expert reports and examination. Do we need a code of conduct for experts? Independence of experts: how far may the expert go in assisting the instructing counsel? Expert conferencing — good or bad and how should it be done? Expert evidence on applicable law — is it different than other expert evidence and when is it useful? Should an expert on law apply that law to the contested/uncontested facts?

12.30 — Closing of Conference — SAA Chair, Robin Oldenstam
Fee: Early bird rate of SEK 6000 (approximately € 700) for registrations made before 30 June 2012. Ordinary rate thereafter of SEK 7000 (approximately € 800). The registration fee includes attendance at the conference at the Grand Hôtel, documentation, refreshments during breaks, lunch on the first day of the conference, and the reception and dinner on the first day of the conference.

Registrations may be made through the SAA website – www.swedisharbitration.se – under Swedish Arbitration Days or by following the link below.

Click here to register

Accommodation is not included. Participants are asked to make their own hotel arrangements. Preferred Hotel Partner for the Swedish Arbitration Days is Grand Hôtel in Stockholm. It is a five star hotel and also the conference venue. Preferred rates will be available until 12 August 2012 and reservations should be made online at Hotel Reservation Grand Hôtel.

Alternatively, you may choose Scandic Hotel Anglais at Humlegårds gatan 23 in Stockholm. It is a four star hotel and preferred rates will be available until 12 August 2012. Reservations should be made by e-mail to anglais@scandichotels.com with reference to code No. 4607393.
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