

GAR - Milan gathering looks at emergency arbitration and diversity

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A gathering in Milan hosted by ArbitralWomen, DLA Piper and the Swiss Chambers Arbitration Institution considered evidence in emergency arbitration proceedings and the strides made towards diversity in the field.

The seminar took place early this morning in advance of the IBA Arbitration Day. It was introduced by Gabrielle Nater-Bass, vice president of ArbitralWomen and president of the arbitration court of the SCAI, who reflected that "diverse groups produce better results". **Wendy Miles QC** of Debevoise & Plimpton spoke about the success of the Equal Representation in Arbitration Pledge in making people think about diversity issues – which led to it being named "best development" at this year's GAR Awards two nights ago.

In a discussion moderated by Miles, the vice president of the SCAI Arbitration Institute, **Domitille Baizeau** of Lalive, secretary general of the German Institution of Arbitration Francesca Mazza and head of group litigation at Unicredit Shannon Lazzarini turned the focus to evidence in emergency arbitration. Notwithstanding the important time constraints placed on them, Baizeau challenged the view that emergency arbitrators are not afforded the opportunity to test the parties' evidence fully. Provided the emergency arbitrator is well prepared, it is perfectly possible to identify the evidence that really requires testing, including witness evidence, and conduct a rigorous examination of it, she said. In an important caveat, she said this is possible under ICC rules (15 days) but virtually impossible under SCC rules (five days).

In parallel, a targeted Q&A of counsel, the parties' representatives and any witnesses, can give the emergency arbitrator a real understanding of the commercial imperatives that led to the application for emergency arbitration, enabling them to assess whether it satisfies the test of urgency and risk of irreparable harm. These are normally the main factual issues for determination.

Lazzarini said her prime concern as in-house counsel is the effectiveness of emergency arbitration. The difficulty posed in respect of the enforcement of orders, decisions or awards of emergency arbitrators means that it is rare that she can recommend emergency arbitration over recourse to national courts, she said. In any event, it is not currently possible for arbitrators to order interim relief in Italian-seated cases or for Italian courts to enforce interim orders of tribunals seated outside Italy.

Miles closed the event by noting that this quirk of Italian law is shortly to be changed to bring the country in line with other pro-arbitration jurisdictions. **Federica Bocci** of DLA Piper added that the possible reform of the law to allow emergency arbitrations would be a significant development for the Italian arbitration community. Speaking afterwards, the head of DLA Piper's arbitration team in Milan Stefano Modenesi said "We were delighted to host this event and DLA Piper strongly supports initiatives which promote diversity in international arbitration".