



Fifteenth Annual Leading Arbitrators' Symposium

Monday 15 April 2019
Grand Hotel Wien
Vienna, Austria

Program

8:00 – 9:00 Registration Tea/Coffee

9:00 – 10:30 Working Session 1: Initial Organization of the Arbitral Proceeding and Pre-Hearing Activities

Klaus Reichert (Discussion Leader) – Brick Court Chambers

Vladimir Khvalei – Baker McKenzie

Nicholas Pitkowitz – Graf & Pitkowitz

Thomas D. Halket – Halket Chambers

Hillary Heilbron – Brick Court Chambers

Domitille Baizeau – LALIVE

Discussion Topics:

- How important is it that the initial conference be held in person, rather than by telephone? Who should attend the conference? Counsel only? Or parties as well?
- What should be covered in the conference? What should arbitrators request or require that the parties consider, and possibly take positions on in the conference?
- When, if ever, should arbitrators raise the IBA Rules on Evidence? IBA Guidelines on Party Representation? Prague Rules?
- Should arbitrators require disclosure of Third Party Funding?
- Should the tribunal issue an order, or draft order, prior to the conference regarding the conference agenda? What should it contain? Any mandatory provisions? Are there disadvantages in issuing such an order?
- What consideration should be given to possible settlement or mediation, dispositive motions, the parties' position on damages, including theories of damages, experts to be required, possible bifurcation of proceedings; issues that will be dealt with by experts?

- When is bifurcation appropriate? Should arbitrators always defer to parties joint requests for bifurcation? Are there circumstances in which requests for partial awards should not be entertained? Are oral hearings always necessary with respect to requests for partial awards?
- To what extent should terms of reference be specific as to issues to be dealt with in the case? What are best practices for making these documents most useful to the tribunal and parties?

10:30 – 11:00 Coffee/Tea Break

11:00 – 12:30 Working Session 2: Recent Developments, Arbitration in Asia – Is it Different?

Michael Moser (Discussion Leader) – 20 Essex Street

Chiann Bao – Arbitration Chambers

Tai-Heng Cheng – Sidley Austin

Sarah Grimmer – HKIAC

Christopher Lau – Chartered Arbitrator

Kim Rooney – Gilt Chambers

Discussion Topics:

- The last decade has seen an explosion in the number of arbitration cases seated in Asia. What are some of the reasons for this development? Does arbitration in Asia present a challenge to the traditional position of European seats and institutions?
- What kinds of disputes and parties are we seeing in arbitrations in Asia? Why do parties want to arbitrate in Asia?
- New Arbitral Institutions and Rules have emerged throughout the region in recent years. Anything Really New? Faster, Cheaper, Better?
- Procedural Issues: Language: How important is language in choosing an Asian situs for arbitration? Are bilingual arbitrations on the rise in Asia? Arbitrators: How deep is the pool of local arbitrators in Asia?
- Cultural Issues: Are there distinctive cultural approaches to arbitration in Asia? E.g., “med-arb”, arbitrator “independence.”
- China—the elephant in the room? More arbitrations are conducted in China than any other jurisdiction. But is “China arbitration” compatible with “international arbitration” norms and standards?
- Belt and Road: China’s massive infrastructure investment policy is expected to generate large numbers of new disputes. Will this be a game for All Players or will China press to have disputes heard at home?
- Local Courts in Asia: Do they play a supporting Role for arbitration in Asia or are they Competitors? Update on the Singapore International Investment Court.

12:30 – 13:30 Networking Luncheon

13:30 – 15:00 Working Session 3: Effective Presentation of Evidence – Including Witness Statements and Cross-Examination Third Session – evidence

Todd Wetmore (Discussion Leader) – Three Crowns

Yas Banifatemi – Shearman & Sterling, replaced by **Domitille Baizeau** – LALIVE

Filip Boras – Baker McKenzie

Carlos Forbes – Forbes, Kozan & Gasparetti and president of CAM-CCBC

Lawrence Newman – Baker McKenzie

Malgorzata Surdek – CMS Cameron McKenna Nabarro Olswang

Discussion Topics:

- Do the Prague Rules add anything, or is there a predominating style of taking evidence in international arbitration, i.e., have we arrived at a Lex naturalis arbitri void of cultural differences?
- Presentation of evidence by videoconference. Is this effective? The future?
- Is it always necessary to have an oral hearing? When is summary disposition permissible (or necessary)?
- Who controls the length of a hearing? Should arbitrators impose their views or defer to the parties?
- Are there too many witnesses, too many documents – is advocacy lost among the detail?
- How can the tribunal or parties control tactical decisions by parties not to cross-examine key witnesses?
- Is witness conferencing effective? Is this only for experts? Are there particular circumstances when it is most appropriate? Inappropriate?
- Should the tribunal-appointed expert always appear at a hearing and be subjected to questions about his or her conclusions?

15:00 – 15:30 Coffee/Tea Break

15:30 – 17:00 Working Session 4: Tribunal Deliberations and Dynamics

Grant Hanessian (Discussion Leader) – Baker McKenzie

Wulf Gordian Hauser – Hauser Partners

Glenn P. Hendrix – Arnall Golden Gregory

Catherine Kessedjian – University of Panthéon-Assas

Alexis Mourre – Independent Arbitrator

Janet Walker – Independent Arbitrator

Discussion Topics:

- Are there best practices as to how a Tribunal should organize its work. Should the chairman be delegated all procedural responsibilities? Or, if less, what should the chairman have delegated to him or her? Does the efficiency of the arbitration as to the delivery of the award depend entirely on the chairman? What can the wing arbitrators do to increase efficiency and assure quality?
- To what extent should, or must, arbitrators disclose that they are using secretaries? If the arbitrators want to use secretaries and disclose their identity and involvement, how should they do it? Are arbitrators complying with the ICC's note applicable to arbitrators and secretaries? What can parties and counsel do if they are not aware of certain arbitrators' practices in this regard until after they appoint them? Or the chairman, whom they may not have appointed?
- What can be done if an arbitrator is not doing his or her work as the case proceeds or is not paying attention in the course of the proceedings? What if this is the chairman?
- Should the arbitrators deliberate on the award immediately after the final evidentiary hearing? After the receiving the post-hearing briefs? After post-hearing oral argument? Should the arbitrators meet in person? Or by telecommunication? Should arbitrators discuss among themselves the merits of the cases as they proceed? Should such discussions be mandatory? Avoided? Casual or structured (for example, "What did we learn today?")
- What should the third arbitrator do if the other arbitrators discuss the case or meet without him or her?

- Compromises – how imperfect is a unanimous award? Should the tribunal accommodate the potential dissenting arbitrator? If so, how? For example, with respect to the award of legal fees? What does a dissent accomplish?
- When should, or may, the arbitrators rule on the basis of theories or arguments that the parties have not made? What if the arbitrators believe that parties have not understood the precedents they cite, or the facts they refer to, in the same way as the arbitrators do? When should the arbitrators go to the parties and ask for their comments? Should there be a difference between legal and factual issues?
- What should the arbitrators do if they do not understand certain expert testimony? For example, damage evidence? Should they ask the parties for comments? What if they are working under a deadline to get the award out? Or they don't want to confess their inability to understand the evidence?
- To what extent may arbitrators do their own research on matters of general knowledge, such as how certain machines in the case actually work? Or how certain financial investments function?

17:15 – 20:00 Cocktail Reception compliments of
Hauser Partners in the rooms of the
Jockey Club for Austria
Schubertring 4, 1010 Wien