

THE ARBITRAL TRIBUNAL

030403 VO Internationale
Handelsschiedsgerichtsbarkeit

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*“The arbitrator is the sine qua non
of the arbitral process.
The process cannot rise above
the quality of the arbitrator.”*

Key features of arbitration

Parties are free to appoint “their” arbitrator

Why is this important?

What are the potential downsides?

Article V(1)(d) New York Convention:

(1) Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

➤ parties' agreement concerning selection of the arbitrators
must be given effect

Who can be appointed?

- any natural person
- with full legal capacity
- function has to be performed personally
- national restrictions: e.g. no active judges (Austria)
- UNCITRAL ML: no person shall be excluded by reason of his nationality
- legal person ? E.g. accounting firms

Number of arbitrators

Sole arbitrator

- Less costly
- Better suitable for small and medium sized disputes
- Faster (no need to coordinate schedules of 3 for hearing dates etc)
- No danger of delaying
- No danger of “compromise decision”

Some institutional rules have preference or presumption in case no choice was made

Panel of three arbitrators

- Discussion of the case with each other improves quality award
- possible to have within the tribunal one or more arbitrators with the required scientific or technical knowledge
- if parties come from different cultural / legal backgrounds feel more comfortable in the presence of an arbitrator with a similar background
- Mix of cultures, languages etc

Number of arbitrators (cont.)

Five or more arbitrators

- Rather rare, only exceptional cases
- impracticable
- Cumbersome decision making
- expensive
- delays

- Iran-U.S. Claims Tribunal (9)
- PCA Croatian – Slovenian border dispute (5)

Even number

- Deadlock-situations
- Some jurisdictions mandatorily provide that number has to be odd
- May favor compromise

Consequence of even number?

- Arbitration agreement might be null and void or inoperable (BUT NYC!)
- Mandatory / presumptive appointment of chairman (Sec 15(2) Engl Arb Act, Sec 586 (1) ACPC, Art 1062 (3) NCPC)

Sec 21 English Arbitration Act: umpire system

Who determines number?

Parties

- Art V(1)(d) NYC
- In the arbitration agreement
 - Advantage: more likely to agree when dispute is still far away
 - Disadvantage: Parties do not know yet if dispute will be better suitable for one or three
- Later when the dispute has arisen

In ad hoc arbitration

- National courts
 - of place of arbitration
 - or other connecting factor to that country
- Other appointing authorities
 - Institution
 - Secretary General of Permanent Court in the Hague
 - Trade association
 - Professional association

In institutional arbitration

- Institution acts as appointing authority under its Rules and decides number
- Factors to be taken into account by institution (Art 17 Vienna Rules)
 - complexity of case
 - amount in dispute
 - parties' interest in expeditious and cost-efficient decision

Fall-back and presumptions

Parties

- Factors to be considered
 - Cost
 - Diversity
 - Speed
 - Expertise
 - Consistency

Emergency Arbitrator

- usually one (appointed by institution)

In ad hoc arbitration

- Fall-back: three
 - Art 10(2) ML
 - Art 7(1) UNCITRAL Rules
 - Sec 586 (2) ACPC
 - Sec 1034 (1) GCPC
- Fall-back: one
 - Art 15(3) Engl Arb Act
 - Art 12 Spanish Arb Act

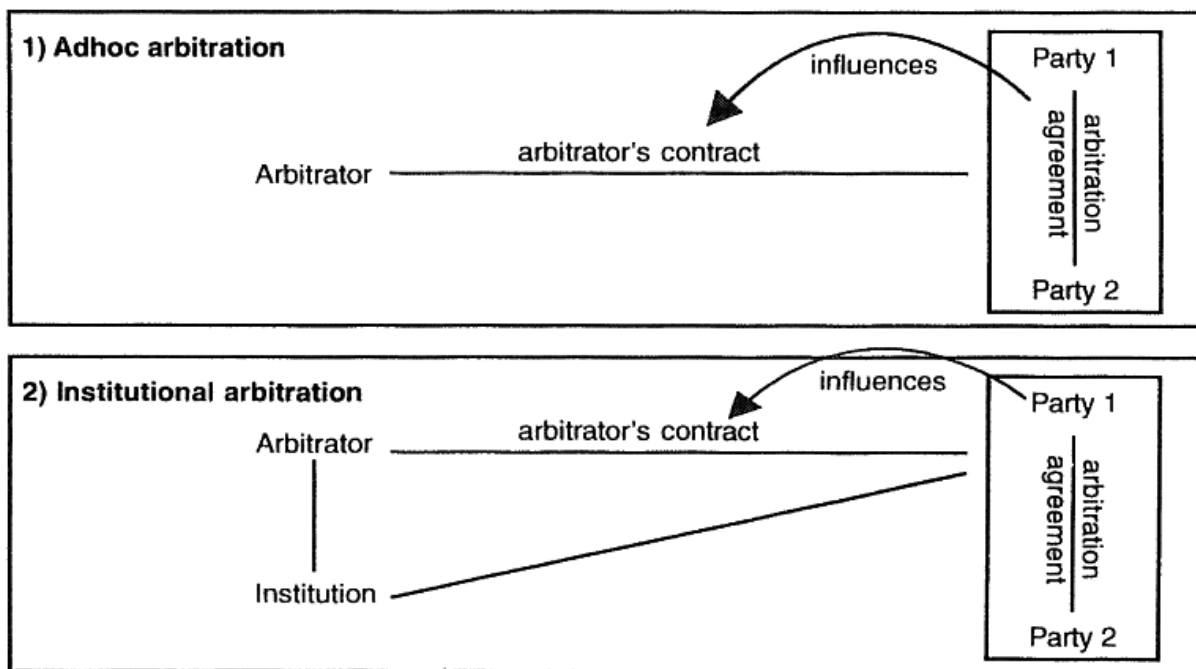
In institutional arbitration

- Fall-back three
 - § 3.1 DIS Rules
 - Art 23(2) CIETAC Rules
- Presumption one
 - 12(2) ICC Rules unless...
 - Art 5 ICDR Rules
 - Art 5(4)LCIA Rules
 - Art 6(2) Swiss Rules unless...
 - Art 15(4) CEPANI Rules
- Determined by inst.
 - Art 17 (2) Vienna Rules
 - Art 16 (2) SCC Rules

Choosing Mr/Mrs Right

- Nationality, culture, religion, diversity
- Neutrality (independence and impartiality)
- Competence and outlook
- Experience in the law and practice of arbitration
- Availability
- Language
- Additional requirements (professional knowledge, special legal training, “commercial men”)
- Interviewing potential arbitrators?

Arbitrator's contract



© Lew/Mistelis/Kröll, Comparative International Commercial Arbitration (2003) p 278

Classification of arb. contract

- arbitrator agrees to settle the dispute between the parties in return for a certain remuneration
- contract of agency
- contract for the provision of services
- contract sui generis
- Austria: contract for work and services with elements of an agency agreement
- no writing requirement

Applicable law to arb. contract

- Explicit choice or
- Law of closest connection
 - Place of arbitration (place of performance)
 - Seat of arbitral institution ?
 - Domicile of arbitrator ?
 - Law applicable to arbitral procedure = *lex arbitri*
- Why does it matter?

Duties and rights of arbitrators

- to act fair and with care
- to act with due diligence (“*justice delayed is justice denied*”)
- to act judicially
- to conduct arbitration in such a way that it leads to a valid award not open to challenge
- to render enforceable award (?)
- to be&stay impartial&independent
- to disclose
- not to exceed powers
- not to resign without good cause
- duty of confidentiality
- to settle the case ?

remuneration

- Hourly/daily rate to be negotiated (ad hoc arbitrations; LCIA Rules); or
- fixed rates depending on the amount in dispute (most institutional rules contain fee schedules)

Breach of duties by arbitrator

- Challenge or removal of arbitrator
- Reduction of fees
- Challenge of award
- Denial of enforcement
- Damage claim against arbitrator?

Liability of arbitrators

Total immunity

- arbitrators perform a quasi-judicial function
- Otherwise difficult to find skilled persons willing to take on the job if exposed to unlimited personal liability
- Losing party might seek to have case reheard by bringing a liability case against the arbitrator (influence arbitrators' decision)
- BUT: exceptions for e.g. fraud (Art 37(1) CEPANI Rules), bad faith
- Adopted by Sec 29 Engl Arb Act

Full Liability

- Arbitrators liable like any other professional selected for his expertise, obliged to apply skill and care in the exercise of his duties
- Adopted by Sec 594 ACPC but...

Contractual limitations

- Art 46 Vienna Rules, Art 40 ICC Rules
“liability is excluded to the extent legally permissible”
- Art 45 Swiss Rules (~Art 44 DIS Rules)
“except for intentional wrongdoing or gross negligence”

Appointment procedure

Art 11 (2) ML “*The parties are free to agree on a procedure of appointing the arbitrator or arbitrators (...)*”

- Inclusion of a special appointing mechanism in arbitration agreement
- Parties agree on an appointment procedure by submitting their dispute to arbitration rules
- Fall-back *lex arbitri* provisions on appointment (national courts)

Limits to parties' agreement

- If appointment of tribunal/chairman is made by one party alone (BUT: see Sec 17(1) English Arb Act!)
- If one party has an unfair influence on the appointment of arbitrators
- Requirements for minimum qualifications
 - arbitration agreement becomes invalid for contravening good faith (at least, appointment mechanism)
 - Annulment of award rendered by such tribunal
 - other party may request appointment by the courts (e.g. Sec 1034 (2) GCPC, Sec 1028 NCPC)

Appointment

Ad hoc

- Importance of parties' agreement
- default mechanism in case parties cannot agree
- either (agreed) appointing authority
 - Trade association
 - Professional association
 - President of Chamber of Commerce of the defaulting party's home /seat (Art IV EC 1961)
 - "competent authority" (Paris Agreement)
 - President of Perm Arb Court in The Hague
- or national courts (Art 11(4) ML)

Danger: frustration of arbitral process if tribunal cannot be appointed

Institutional

- Provides fall-back appointment mechanism with appointing authority
- Ensures swift appointment
- Sometimes power to appoint sole arbitrator or chairman directly vested with the institution (Art 12(5) ICC Rules, Art 5(4) LCIA Rules, Art 17(4) SCC Rules)
- Prevention of delays
- Confirmation procedure available

BUT:

Strict list system

Limitations of nationality

Sole arbitrator (fall-back)

- Art 11 (3) b ML *“Failing an agreement (...) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.”*
- Art 17 (3) Vienna Rules: in case of a sole arbitrator *“the parties shall jointly nominate a person within 30 days after receiving the Secretary General’s request. If no such nomination is made within this time period, the sole arbitrator shall be appointed by the Board.”* (~ Art 12(3) ICC Rules, Art 15/2 CEPANI Rules, Art 14 DIS-Rules, Art 7(3) Swiss Rules, Art 13(2) SCC Rules)
- Time-limit for parties to reach an agreement!

Panel of three arbitrators (fall-back)

- Usually composed of two party-appointed arbitrators and a chairman
- Art 11 (3) b ML *“Failing an agreement (...) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6.”*
- Sec 17 English Arb Act: party which has nominated an arbitrator may require its nominee to act as a sole arbitrator if the other party fails to appoint its arbitrator within the agreed time period

Panel of three arbitrators (cont.)

- **Art 17 (4)(5) Vienna Rules** (Art 12 DIS-Rules, Art 18(2) Swiss Rules)
 - Each party shall nominate his/her arbitrator within 30 days after receiving Secretary General's Request
 - Otherwise: the Board appoints the arbitrator for the defaulting party
 - Co-arbitrators shall jointly nominate chairman
 - Otherwise: the Board appoints the chairman
- **Art 12 (5) ICC Rules** (Art 13(3) SCC Rules, Art 15(3) CEPANI Rules)
 - the third arbitrator (president) shall be appointed by the ICC Court, unless parties have agreed on another procedure

Multi-party proceedings

Problem with panel of three arbitrators

- Not every party involved may appoint its own arbitrator
- equal number of arbitrators for different number of parties
- French Dutco decision (award annulled)

Cour de cassation stated that *“the principle of the equality of the parties in the appointment of arbitrators is a matter of public order which can be waived only after the dispute has arisen”*.

Multi-party proceedings (cont.)

Different solutions adopted by institutions post-Dutco

- **Art 12 (8) ICC Rules** (Art 17(5) SCC Rules, Art 13(2) DIS Rules, Art 15(5) CEPANI Rules, Art 8(5) Swiss Rules) : In the absence of a joint nomination, the ICC Court may appoint each member of the arbitral tribunal and shall designate one of them to act as president.
- **Art 18 Vienna Rules**
 - Regular case: Each side of party shall jointly nominate their arbitrator otherwise Board appoints the arbitrator for the defaulting party
 - In exceptional cases: Appointment of (all) arbitrators by the Board (after granting the parties the opportunity to comment)

Confirmation of arbitrators

- Available only in institutional arbitration (e.g. Art 18 Vienna Rules, Art 13 ICC Rules, Art 17 DIS-Rules, Art 15 CEPANI Rules)
- Requirements: nomination by party
 - Acceptance of office
 - Declaration of impartiality and independence
 - Declaration of availability
 - No doubts as to impartiality or independence or ability of the arbitrator to carry out his mandate
- Granted /denied by Secretary General / Board / Court taking into account any objections raised by the parties

Challenge of arbitrators

Independence

- relationship between an arbitrator and one of the parties whether financial or otherwise
- Objective: direct professional relationship with one of the parties or personal financial interest in the outcome of the case – “judge in own cause”
- Arbitrator and counsel of one of the parties from same chamber (?)
- Repeated appointments (?)
- Same arbitrator appointed for related matters (efficiency vs preconceived opinion)

Impartiality

- arbitrator is biased in favour of one of the parties or in relation to the issue in dispute
- State of mind (subj.)
- Party appointed arbitrators as “representatives” (?)
- Interviewing of arbitrators before appointment (?)
- Nationality of sole arbitrator / chairman

Qualifications

agreed by parties

- parties are free to agree on whatever qualifications they want
- they can also agree on what reasons justify a challenge

“While impartiality is needed to ensure that justice is done, independence is needed to ensure that justice is seen to be done.”

IBA Guidelines on conflict of interest

Green List

No disclosure required

- arbitrator has previously published general opinion (law review article / public lecture) concerning an issue which also arises in the arbitration (but this opinion is not focused on the case that is being arbitrated)
- arbitrator's law firm has acted against one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator
- arbitrator and counsel for one of the parties or another arbitrator have previously served together as arbitrators or as co-counsel

Orange List

Disclosure required

- arbitrator has within past 3 years been appointed as arbitrator on two or more occasions by one of the parties/affiliate
 - arbitrator currently serves / has served within past 2 years, as arbitrator in another arbitration on a related issue involving one of the parties / affiliate
 - arbitrator and another arbitrator are lawyers in the same law firm
 - lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties / same law firm
- The arbitrator has within past 3 years received more than 3 appointments by same
- The arbitrator has publicly advocated a specific position regarding the case (published paper / speech / otherwise)

Red List

Waivable – disclosure requ.

- arbitrator holds shares in one of the parties / affiliate (privately held)
- arbitrator currently represents or advises one of the parties / affiliate
- arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself
- arbitrator regularly advises the appointing party / affiliate, but neither arbitrator nor firm derives a significant financial income therefrom

Non-waivable despite discl.

- identity between party and arbitrator
- arbitrator is manager, director/member of the supervisory board /alike of party
- arbitrator has significant financial interest in one of the parties / outcome of the case

1. Non-Walvable Red List

- 1.1 There is an identity between a party and the arbitrator, or the arbitrator is a legal representative or employee of an entity that is a party in the arbitration.
- 1.2 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence on one of the parties or an entity that has a direct economic interest in the award to be rendered in the arbitration.
- 1.3 The arbitrator has a significant financial or personal interest in one of the parties, or the outcome of the case.
- 1.4 The arbitrator or his or her firm regularly advises the party, or an affiliate of the party, and the arbitrator or his or her firm derives significant financial income therefrom.

2. Walvable Red List

- 2.1 Relationship of the arbitrator to the dispute
 - 2.1.1 The arbitrator has given legal advice, or provided an expert opinion, on the dispute to a party or an affiliate of one of the parties.
 - 2.1.2 The arbitrator had a prior involvement in the dispute.

2.2 Arbitrator's direct or indirect interest in the dispute

- 2.2.1 The arbitrator holds shares, either directly or indirectly, in one of the parties, or an affiliate of one of the parties, this party or an affiliate being privately held.
- 2.2.2 A close family member³ of the arbitrator has a significant financial interest in the outcome of the dispute.
- 2.2.3 The arbitrator, or a close family member of the arbitrator, has a close relationship with a non-party who may be liable to recourse on the part of the unsuccessful party in the dispute.

2.3 Arbitrator's relationship with the parties or counsel

- 2.3.1 The arbitrator currently represents or advises one of the parties, or an affiliate of one of the parties.
- 2.3.2 The arbitrator currently represents or advises the lawyer or law firm acting as counsel for one of the parties.
- 2.3.3 The arbitrator is a lawyer in the same law firm as the counsel to one of the parties.
- 2.3.4 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence in an affiliate⁴ of one of the parties, if the affiliate is directly involved in the matters in dispute in the arbitration.

2.3.5 The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

2.3.6 The arbitrator's law firm currently has a significant commercial relationship with one of the parties, or an affiliate of one of the parties.

2.3.7 The arbitrator regularly advises one of the parties, or an affiliate of one of the parties, but neither the arbitrator nor his or her firm derives a significant financial income therefrom.

2.3.8 The arbitrator has a close family relationship with one of the parties, or with a manager, director or member of the supervisory board, or any person having a controlling influence in one of the parties, or an affiliate of one of the parties, or with a counsel representing a party.

2.3.9 A close family member of the arbitrator has a significant financial or personal interest in one of the parties, or an affiliate of one of the parties.

3. Orange List

- 3.1 Previous services for one of the parties or other involvement in the case
- 3.1.1 The arbitrator has, within the past three years, served as counsel for one of the parties, or an affiliate of one of the parties, or has previously advised or been consulted by the party, or an affiliate of the party, making the appointment in an unrelated matter, but the arbitrator and the party, or the affiliate of the party, have no ongoing relationship.
- 3.1.2 The arbitrator has, within the past three years, served as counsel against one of the parties, or an affiliate of one of the parties, in an unrelated matter.
- 3.1.3 The arbitrator has, within the past three years, been appointed as arbitrator on two or more occasions by one of the parties, or an affiliate of one of the parties.⁵
- 3.1.4 The arbitrator's law firm has, within the past three years, acted for or against one of the parties, or an affiliate of one of the parties, in an unrelated matter without the involvement of the arbitrator.
- 3.1.5 The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties, or an affiliate of one of the parties.
- 3.2 Current services for one of the parties
- 3.2.1 The arbitrator's law firm is currently rendering services to one of the parties, or to an affiliate of one of the parties, without creating a significant commercial relationship for the law firm and without the involvement of the arbitrator.
- 3.2.2 A law firm or other legal organisation that shares significant fees or other revenues with the arbitrator's law firm renders services to one of the parties, or an affiliate of one of the parties, before the Arbitral Tribunal.
- 3.2.3 The arbitrator or his or her firm represents a party, or an affiliate of one of the parties to the arbitration, on a regular basis, but such representation does not concern the current dispute.
- 3.3 Relationship between an arbitrator and another arbitrator or counsel
- 3.3.1 The arbitrator and another arbitrator are lawyers in the same law firm.
- 3.3.2 The arbitrator and another arbitrator, or the counsel for one of the parties, are members of the same barristers' chambers.
- 3.3.3 The arbitrator was, within the past three years, a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the arbitration.
- 3.3.4 A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties, or an affiliate of one of the parties.
- 3.3.5 A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.
- 3.3.6 A close personal friendship exists between an arbitrator and a counsel of a party.
- 3.3.7 Enmity exists between an arbitrator and counsel appearing in the arbitration.
- 3.3.8 The arbitrator has, within the past three years, been appointed on more than three occasions by the same counsel, or the same law firm.
- 3.3.9 The arbitrator and another arbitrator, or counsel for one of the parties in the arbitration, currently act or have acted together within the past three years as co-counsel.
- 3.4 Relationship between arbitrator and party and others involved in the arbitration
- 3.4.1 The arbitrator's law firm is currently acting adversely to one of the parties, or an affiliate of one of the parties.
- 3.4.2 The arbitrator has been associated with a party, or an affiliate of one of the parties, in a professional capacity, such as a former employee or partner.

3.4.3A A close personal friendship exists between an arbitrator and a manager or director or a member of the supervisory board of a party; an entity that has a direct economic interest in the award to be rendered in the arbitration; or any person having a controlling influence, such as a controlling shareholder interest, on one of the parties or an affiliate of one of the parties or a witness or expert.

3.4.4 Enmity exists between an arbitrator and a manager or director or a member of the supervisory board of a party; an entity that has a direct economic interest in the award; or any person having a controlling influence in one of the parties or an affiliate of one of the parties or a witness or expert.

3.4.5 If the arbitrator is a former judge, he or she has, within the past three years, heard a significant case involving one of the parties, or an affiliate of one of the parties.

3.5 Other circumstances

3.5.1 The arbitrator holds shares, either directly or indirectly, that by reason of number or denomination constitute a material holding in one of the parties, or an affiliate of one of the parties, this party or affiliate being publicly listed.

3.5.2 The arbitrator has publicly advocated a position on the case, whether in a published paper, or speech, or otherwise.

3.5.3 The arbitrator holds a position with the appointing authority with respect to the dispute.

3.5.4 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence on an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

4. Green List

- 4.1 Previously expressed legal opinions
- 4.1.1 The arbitrator has previously expressed a legal opinion (such as in a law review article or public lecture) concerning an issue that also arises in the arbitration (but this opinion is not focused on the case).
- 4.2 Current services for one of the parties
- 4.2.1 A firm, in association or in alliance with the arbitrator's law firm, but that does not share significant fees or other revenues with the arbitrator's law firm, renders services to one of the parties, or an affiliate of one of the parties, in an unrelated matter.
- 4.3 Contacts with another arbitrator, or with counsel for one of the parties
- 4.3.1 The arbitrator has a relationship with another arbitrator, or with the counsel for one of the parties, through membership in the same professional association, or social or charitable organisation, or through a social media network.
- 4.3.2 The arbitrator and counsel for one of the parties have previously served together as arbitrators.
- 4.3.3 The arbitrator teaches in the same faculty or school as another arbitrator or counsel to one of the parties, or serves as an officer of a professional association or social or charitable organisation with another arbitrator or counsel for one of the parties.
- 4.3.4 The arbitrator was a speaker, moderator or organiser in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organisation, with another arbitrator or counsel to the parties.
- 4.4 Contacts between the arbitrator and one of the parties
- 4.4.1 The arbitrator has had an initial contact with a party, or an affiliate of a party (or their counsel) prior to appointment, if this contact is limited to the arbitrator's availability and qualifications to serve, or to the names of possible candidates for a chairperson, and did not address the merits or procedural aspects of the dispute, other than to provide the arbitrator with a basic understanding of the case.
- 4.4.2 The arbitrator holds an insignificant amount of shares in one of the parties, or an affiliate of one of the parties, which is publicly listed.
- 4.4.3 The arbitrator and a manager, director or member of the supervisory board, or any person having a controlling influence on one of the parties, or an affiliate of one of the parties, have worked together as joint experts, or in another professional capacity, including as arbitrators in the same case.
- 4.4.4 The arbitrator has a relationship with one of the parties or its affiliates through a social media network.

Disclosure obligation

- to ensure compliance with the requirements of independence and impartiality
- requires an arbitrator to make enquiries as to whether any relationships exist which have to be disclosed (principle of reasonableness)
- When?
 - At the beginning before appointment
 - Ongoing obligation throughout the proceedings
- How?

Consequence of non-disclosure

- Is non-disclosure in itself a reason for a challenge?
- Challenge of arbitrator by the parties
- Art 12 (2) ML “ *An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.”*
- “reasonable suspicion / impression” or “real possibility” of partiality
- Party cannot renounce right to challenge arbitrator in advance
- Annulment / non-enforcement of award Art 34(2)a(iv) and 36(1)a(iv)ML

Challenge procedure

Ad hoc

Art 13 (2) ML *“Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.”* (similar Art 13 UNCITRAL Rules)

Appeal to national courts (Art 13(3) ML)

Institutional

- Reasoned submission sent to institution with certain time limit
- Requests comments from the other party and the challenged arbitrator
- Parties can jointly agree on removal of arbitrator or arbitrator may voluntarily resign
- If not, institution decides
- Decision is final and binding
- Depending on lex arbitri, appeal to national courts in case challenge is rejected (e.g. Sec 589 (3) ACPC)
- Arbitration may continue / award

Premature termination of office

- Successful challenge
- Removal from office if arbitrator
 - is permanently prevented from exercising his tasks
 - fails to perform his duties
- application of one of the parties / own initiative of institution
- Death
- Parties' agreement
- Resignation by the arbitrator

Consequences of such termination

- Replacement (Art 15 ML) (Art 22 Vienna Rules, Art 13 Swiss Rules)
 - Sole arbitrator: parties
 - Chairman: co-arbitrators
 - Party-appointed arbitrator: nominating party
 - proceedings (partly) to be repeated?
- Damage claim?
- Reduction of fees

Truncated Tribunal

One partisan arbitrator

- refuses to take part in arbitrators' deliberations
- unilaterally withdraws from tribunal (resignation)
- remaining arbitrators shall/may continue the arbitration and render an award (Art 15(5) ICC Rules, Art 21(2) SCC Rules, Art 33(4) DIS Rules)
- mandatory replacement of arbitrator (Art 22 Vienna Rules, Art 13 Swiss Rules)
- refuses to sign award (Art 36(3) Vienna Rules, Art 34(1) DIS Rules)

Tribunal Secretary

- appointment by tribunal (agreement of parties necessary?)
- disclosure obligation (impartiality & independence)
- challenge
- duties (solely administrative matters)
 - no delegation of decision making power!
- remuneration & disbursements

Any Questions?



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