



Selection and appointment of arbitrators

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Current and future issues

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Topic 1 – Busy arbitrators (1)

■ ICC Statements of Availability

- Arbitrators should “make available the time and effort necessary for prompt and efficient conduct of the case”
- Arbitrators must “indicate the number of cases in which they are already involved and any foreseeable competing demands upon their time in the following 12-18 months”

■ Similar views shared by other institutions

Topic 1 – Busy arbitrators (2)

- **Stated goal: accelerating arbitration**
- **Unwanted consequences:**
 - Restricting the parties' choice
 - Penalising efficient arbitrators
- **Opening the door to young arbitrators?**

Topic 2 – Provoking conflict of interest (1)

- **HEP v. Slovenia (ICSID)**
 - Barrister appointed as counsel late in the case was from same chambers as Presiding Arbitrator
 - Tribunal decided to exclude the barrister from the case (ICSID Case No. ARB/05124, Ruling of the 6 May 2008)

Topic 2 – Provoking conflict of interest (2)

- Freedom of appointment v. freedom to choose counsel
- Timing: “ *Had HEP know at the outset that [they] were members of the same Chambers, the Claimant would not have consented to [the President’s appointment]”*
- Can a party disrupt appointments?

Topic 3 – Grading arbitrators (1)

- **Current data:**
 - Institutional lists of arbitrators
 - “Best arbitrator” commercial rankings
- **Proposal: “Tripadvisor.com” for arbitrators**
- **Already exists in mediation**

Topic 3 – Grading arbitrators (2)

- How do you define a good arbitrator?
- Confidentiality in arbitration?
- Opt-in or Opt-out database?
- And again: would this promote young arbitrators?

THANK YOU

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