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*Who can (and who should)
sanction the arbitrator?*

Sanctionable conduct

Arbitrators might:

- Fail to act, render an award, or do so with due dispatch.
- Improperly delegate tasks.
- Fail to disclose conflicts.
- Be negligent in the discharge of their function.
- Act in bad faith.
- Engage in acts of bribery or corruption.
- Resign from office without good grounds.
- Charge excessive fees.

Who can sanction the arbitrator?

1. Institutions
2. Courts
3. Parties
4. Professional bodies

The Institutions

- **Removal** (e.g. Arts 15(2) ICC, 10.2 LCIA, 16(1)(iii) SIAC)
- **Fees** (e.g. Art 58 NAI)
- **Refusal to confirm / no repeat appointments** (e.g. Art 11(4) ICC)
- **Disciplinary procedures** (e.g. CIArb Bye-Laws)
- **Measures to avoid the need for sanctions altogether?**
(e.g. SAAll under Art 11(2) ICC Rules)

Institutions (cont'd)

Could they be doing more?

- Build financial sanctions into scales?
- Financial incentives for timely performance?
- Routine extensions of time limits (e.g. ICC). Reconsider?

The Courts

As supporter of the arbitral process

- Power to remove arbitrators
(e.g. Arts 14(1) Model Law, 1456 CPC (FR), s24 AA (UK))

As reviewer and enforcer of awards

- Setting aside awards
- Refusal to enforce
- A greater sanction for the parties than the arbitrator?

The Courts (cont'd)

And as the institution empowered to administer criminal law

- Bribery & Corruption
- Money laundering

See,

- Spanish Criminal Code (2011), Art. 423
- Proceeds of Crime Act 2002 (UK)
- Bribery Act 2000 (UK)

The Parties

‘Soft’ sanctions

- Joint pressure by parties.
- Party agreement to remove arbitrator.
(e.g. s23 AA (UK); Art 1458 CPC (FR))
- Fees (ad hoc).
- What about incorporating bodies of ethical or professional rules in arbitration agreement (or appointment agreement)?

The Parties (cont'd)

Civil liability of arbitrators for breach of duty.

- Rarely features in arbitration laws (But see Austrian CPC, Art. 584(2))
- Arbitral laws (and rules) tend to focus on immunity.
 - Absolute (United States)
 - Qualified (UK, Singapore, Hong Kong)
 - None (France, Sweden)

The Parties (cont'd)

Institutional rules frequently address immunity. Compare:

- Full immunity to the extent permitted by applicable law.
e.g. Arts. 16 UNCITRAL Rules, 40 ICC Rules.

- Immunity subject to 'materiality' of breach.
e.g. "deliberate wrongdoing", Art. 77 WIPO Rules; "conscious and deliberate wrongdoing", Art. 31.1 LCIA Rules and Art. 35 ICDR Rules; "save where the act or omission is fraudulent", Art. 44, ACICA Rules; "wilful misconduct or gross negligence", Art. 28, SCC Rules.

- No *express* exceptions to immunity.
e.g. Art. 34, SIAC Rules ("not liable to any person").

Articulation of immunity under rules and the law of the seat?

The Parties (cont'd)

Is immunity a good idea?

– For ?

– Against ?

Professional bodies

Complaints to professional bodies.

- By parties?
- By institutions?

Possible sanctions

- Depends on the arbitrator's profession (not all are lawyers!)

Discussion...

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