

# How to Overcome "Obstructive" Behaviour in International Arbitration

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## Fifteen Ways to Annoy in Arbitral Proceedings

- do not pay any advances, except those for the counterclaim
- do not offer any help in appointing the tribunal
- chose an obstructing arbitrator and challenge the other arbitrators for whatsoever insignificant reasons; if your challenge is unsuccessful, try to bribe the chairman
- change lawyers in mid-stream or do not pay your lawyers, so that they refuse to do work
- frustrate the service of documents; act as if you were insolvent/dissolved/in coma/dead
- do not sign the Terms of Reference
- submit an unsolicited 20-page telefax with 5 procedural motions every Friday
- do not adhere to any procedural orders
- ask for extensions on a regular basis
- file your submissions late
- refuse to produce documents
- present documents/witnesses at the very last moment
- try to postpone hearings (if necessary by injunctions); do not appear for a hearing; walk out from a hearing
- sue the arbitrators/arbitral institutions

## Remedies for Arbitrators

- be well prepared and convincing
- anticipate obstruction
- apply a forward-looking approach by creating value for the parties
- do not fear enforcement threats
- keep the obstructing party informed
- give warnings
- announce and impose cost sanctions

## Literature

DONAHEY M. Scott, Defending the Arbitration against Sabotage, *Journal of International Arbitration* 1/1996, 93-110

GAILLARD Emmanuel, Les manœuvres dilatoires des parties et des arbitres dans l'arbitrage commercial international, *Revue de l'arbitrage* 4/1990, 759-796

HANOTIAU Bernard, Quand l'arbitrage s'en va-t-en guerre: les perturbations par l'état de la procédure arbitrale - Les états dans le contentieux économique international, *Revue de l'arbitrage* 3/2003, 805-826

HARRIS Cedric, Abuse of the Arbitration Process - Delaying Tactics and Disruptions: A Respondent's Guide, *Journal of International Arbitration* 2/1992, 87-96

KERR Michael, Concord and Conflict in International Arbitration, *Arbitration International* 2/1997, 121-144

LEUENBERGER Christoph, Das Verhalten der Parteien im Prozess und die Folgen für das Urteil, in: Aktuelle Rechtsfragen zum Zivilprozessrecht, Institut für Rechtswissenschaft und Rechtspraxis der Universität St. Gallen, Seminar of 3 June 2005 in Zurich

LEVY Laurent, Les astreintes et l'arbitrage international en Suisse, *ASA Bulletin* 1/2001, 21-36

MNOOKIN Robert, Creating Value through Process Design, *Journal of International Arbitration* 1/1994, 125-132

PARK William, Arbitration's Discontents: Of Elephants and Pornography, *Arbitration International* 3/2001, 263-274

SCOTT David, Practical Options when Faced with an Injunction Against Arbitration, *Arbitration International* 3/2002, 327-336

STEYN Johan, Remedies Against the Reluctant Respondent: The Position Under English Law, *Arbitration International* 3/1989, 294-299

THOMAS D. Rhidian, Default Powers of Arbitrators, London/New York/Hong Kong 1996

TUNIK Daniel, Default Proceedings in International Commercial Arbitration, *International Arbitration Law Review* 1/1998, 86

WENGER Werner, Säumnis und Säumnisfolgen im internationalen Schiedsverfahren, in: Reymond/Bucher (eds.), *Swiss Essays on International Arbitration*, ICCA Congress Lausanne 1984, Zurich 1984, 245-254

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