

# How to Draft Persuasive Briefs

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# Introduction

- The importance of written submissions: briefs are what remains in the arbitrators' file and where counsel can set out their case without surprises
- Are written submissions more important in civil law systems than in common law systems ?
- Opening submissions vs. closing submissions: is it necessary to distinguish ?

# The functions of written submissions

- Briefs identify the parties' claims/defences
- Briefs identify the facts and the legal arguments relied on by the parties (civil law vs. common law systems)

# The claimant's position (the "burden of persuasiveness")

- The claimant's briefs have to provide the evidence relied on by the claimant in support of its claim
- The claimant's briefs must set out the legal bases of the claim

# The respondent's position

- The respondent is in an easier position. The respondent's briefs must
  - a) either be more persuasive than the claimants' briefs
  - b) or demonstrate that the claimants' briefs are not persuasive enough

# Things to bear in mind before drafting

- Before drafting counsel should
  - a) obtain all relevant evidence and information from their client
  - b) prepare a clear procedural strategy

# Things to bear in mind during drafting

- A persuasive brief should
  - a) respond to the arbitral tribunal's expectations in terms of both its object and its format
  - b) be complete, contain all pleadings of fact and law on which the party wishes to rely
  - c) be clear, arbitrator-friendly
  - d) select the party's arguments

# Dos and...

- Do

- a) draw up an outline of your brief
- b) start by indicating the content and structure of your brief
- c) summarise the content of long chapters/sections
- d) have the final version of your brief drafted by one single drafter



# Dont's

- Don't
  - a) try to hide your weak points (unless you can hide them very well...)
  - b) rely on the other party's weak points, don't restrict yourself to rebutting the other party's arguments: follow your own consistent and self-standing reasoning in your presentation