



## **Schedule - Leading Arbitrators' Symposium 2017**

### **9:00 – 10:30 Working Session 1 - Initial Organization of the Arbitral Proceeding and Pre-Hearing Activities**

Moderator: Mark Baker

Panel: Jalal El Ahdab (Jil Ahdab), Robert B. Davidson, Stefan Riegler, Janet Walker

#### **Discussion Topics:**

- How important is it that the initial conference be held in person, rather than by telephone? Who should attend the conference? Counsel only? Or parties as well?
- What should be covered in the conference? What should arbitrators request or require that the parties consider, and possibly take positions on in the conference?
- Should the tribunal issue an order prior to the conference regarding the conference agenda? What should it contain? Any mandatory provisions? Are there disadvantages in issuing such an order?
- What consideration should be given to possible settlement or mediation, dispositive motions, the parties' position on damages, including theories of damages, experts to be required, possible bifurcation of proceedings; issues that will be dealt with by experts?
- How far into the future should the schedule that results from the initial conference go? Up to and including the hearing? Should it provide for post-hearing arguments and briefs? Should the arbitrators require the parties provide submissions and exhibits electronically, and, if so, in a specific format?
- When is bifurcation appropriate? Inappropriate? Should arbitrators always defer to parties joint requests for bifurcation? Are there circumstances in which requests for partial awards should not be entertained? Are oral hearings always necessary with respect to requests for partial awards?
- With ICC, and possibly other arbitrations, to what extent should terms of reference be specific as to issues to be dealt with in the case? What are best practices for making these documents most useful to the tribunal and parties?

### **10:30 – 11:00 Coffee/Tea Break**

### **11:00 – 12:30 Working Session 2 - Effective Presentation of Evidence – Including Witness Statements and Cross-Examination**

Moderator: Nikolaus Pitkowitz

Panel: Andrew Aglionby, Diana Droulers, Vladimir Khvalei, Prof. Dr. Stefan Kröll, Lawrence Newman

#### **Discussion Topics:**

- Is there a predominating style of taking evidence in international arbitration, i.e., have we arrived at a *Lex naturalis arbitri* void of cultural differences?

- Presentation of evidence by videoconference. Is this effective? The future?
- Is it always necessary to have an oral hearing? When is summary disposition permissible (or necessary)?
- Who controls the length of a hearing? Should arbitrators impose their views or defer to the parties?
- Are there too many witnesses, too many documents – is advocacy lost among the detail?
- How can the tribunal or parties control tactical decisions by parties not to cross-examine key witnesses?
- Is witness conferencing effective? Is this only for experts? Are there particular circumstances when it is most appropriate? Inappropriate?
- Should the tribunal-appointed expert always appear at a hearing and be subjected to questions about his or her conclusions?

**12:30 – 14:00 Networking Luncheon**

**14:00 – 15:30 Working Session 3 - Ethics and Counsel Behavior**

Moderator: Catherine A. Rogers

Panel: Omar M.H. Aljazy, Brian Casey, Ugo Draetta, Thomas D. Halket, Wulf Gordian Hauser

**Discussion Topics:**

- Applicable ethical codes, for arbitrators and attorneys – why are the IBA Guidelines on Party Representation less popular than other IBA arbitration “soft law”?
- Independence and impartiality of arbitrators; standards of impartiality
- Arbitrators’ duty to disclose – is there now a global standard?
- Arbitrators’ duty to investigate whether there are conflicts
- Preparation of witnesses; where goes the borderline to abuse?
- Do attorneys’ request for discovery have ulterior motives, e.g. to get access to business secrets, marketing methods, know-how or other information useful to his client but not necessary for the case?
- Remedies

**15:30 – 16:00 Coffee/Tea Break**

**16:00 – 17:30 Working Session 4 - Tribunal Deliberations and Dynamics**

Moderator: Christopher Newmark

Panel: Kaj Hobér, Martin Hunter, Doug Jones, Loukas Mistelis, Carita Wallgren-Lindholm

**Discussion Topics:**

- Are there best practices as to how a Tribunal should organize its work. Should the chairman be delegated all procedural responsibilities? Or, if less, what should the chairman have delegated to him or her? Does the efficiency of the arbitration as to the delivery of the award depend entirely on the chairman? What can the wing arbitrators do to increase efficiency and assure quality?
- To what extent are arbitrators using secretaries? Should, or must, arbitrators disclose that they are using secretaries? If the arbitrators want to use secretaries and disclose their identity and involvement, how should

they do it? Are arbitrators complying with the ICC's note applicable to arbitrators and secretaries? For non-ICC arbitrators, should there be rules? What can parties and counsel do if they are not aware of certain arbitrators' practices in this regard until after they appoint them? Or the chairman, whom they may not have appointed?

- What can be done if an arbitrator is not doing his or her work as the case proceeds or is not paying attention in the course of the proceedings? What if this is the chairman?
- Should the arbitrators deliberate on the award immediately after the final evidentiary hearing? After the receiving the post-hearing briefs? After post-hearing oral argument? Should the arbitrators meet in person? Or by telecommunication? Should arbitrators discuss among themselves the merits of the cases as they proceed? Should such discussions be mandatory? Avoided? Casual or structured (for example, "What did we learn today?")
- May two arbitrators ever meet without the other arbitrator? What should the third arbitrator do if the other arbitrators do meet without him?
- Compromises – how imperfect is a unanimous award? Should the tribunal accommodate the potential dissenting arbitrator? If so, how? For example, with respect to the award of legal fees? What does the dissent accomplish?
- When should, or may, the arbitrators rule on the basis of theories or arguments that the parties have not made? What if the arbitrators believe that parties have not understood the precedents they cite, or the facts they refer to, in the same way as the arbitrators do? When should the arbitrators go to the parties and ask for their comments? Should there be a difference between legal and factual issues?
- What should the arbitrators do if they do not understand certain expert testimony? For example, damage evidence? Should they ask the parties for comments? What if they are working under a deadline to get the award out? Or they don't want to confess their inability to understand the evidence?
- To what extent may arbitrators consult the Internet -- as Wikipedia, for example -- on factual matters, such as how certain machines in the case actually work? Or how certain financial investments function?