



2 APRIL 2012

## Schedule

**8:30 - 9:00 Registration** Coffee and Tea upon arrival

**9:00 - 10:30 Working Session 1 - Effective Presentation of Evidence**

**Sophie Nappert-Discussion Leader** Vladimir Khvalei, W. Laurence Craig, Wulf G. Hauser, Michael Polkinghorne, Kaj Hobér

### Discussion Topics:

- Different presentation styles in various legal systems: emphasis on oral or written evidence; 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?
- Are Powerpoints good advocacy?
- Presentation of evidence by videoconference. Is this the future?
- Is it always necessary to have an oral hearing?
- 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?
- Are post-hearing briefs disappearing from the scene? Their strengths and weaknesses.
- Should there be page limits to written submissions?

**10:30 - 11:00 Coffee / Tea Break**

**11:00 - 12:30 Session 2 - Ethics and Behavior**

**Catherine Rodgers-Discussion Leader** Michael Bühler, Bob Davidson, Franz Schwarz, Klaus Reichert, Alexander Bělohávek

### Discussion Topics:

- Applicable ethical codes, for arbitrator and attorneys
- Independence and impartiality of arbitrators; standards of impartiality
- Arbitrators' duty to disclose
- 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
- Ethical issues versus cultural differences, have we arrived at a global standard?

**12:30 - 14:00 Networking Luncheon**

**14:00 - 15:30 Session 3 - Expert Witnesses**

**Lawrence Newman-Discussion Leader** Alexander Petsche, Klaus Sachs, Nikolaus Pitkowitz, Philippe Pinsolle, Christopher Newmark

### Discussion Topics:

- Is it efficient for a tribunal to appoint experts? When should the tribunal appoint an expert?
- The parties' role in the tribunal's appointment of an expert
- What access should the parties have to the tribunal expert while he or she formulates his or her report
- Should the tribunal-appointed expert always appear at a hearing and be subjected to questions about his or her conclusions
- What makes an effective party-appointed expert?
- Are there certain common characteristics of ineffective experts?
- Is witness conferencing effective? Are there particular circumstances when it is most appropriate? Inappropriate?

**15:30 - 16:00 Coffee / Tea Break**

**16:00 - 17:30 Working Session 4 - Effective and Efficient Management of Proceedings**

**Stephen Bond-Discussion Leader** Teresa Giovannini, Michael Hwang, Hilmar Raeschke-Kessler, George Bermann, Pierre Karrer

### Discussion Topics:

- Whose arbitration is it anyway: the extent of control the parties can expect to have over the way in which arbitrations are conducted; is it ever appropriate for arbitrators to impose their views regarding extent of discovery and time allowed for cross-examination
- Disconnects between the approaches parties and their lawyers may assume will be taken to the management of proceedings, whether arising from cultural differences or from idiosyncratic approaches taken by some arbitrators
- Expectations and realities as to time and cost; best practices for reducing time and costs
- How do arbitrators encourage parties to comply with the procedural directions? Using costs as a weapon?
- When a witness testifies in his own language but clearly is comfortable in the language of the arbitration - should the tribunal direct the witness to use that language in order to speed up the proceedings and avoid unfair advantages?
- When the arbitrators are too busy; has the new order introduced by the ICC, that arbitrators must indicate availability before accepting an appointment, achieved its purpose of speeding up the arbitrations?
- When is it justified to reopen the proceedings after they have been closed?"

**17:30 - 19:00 Drinks Reception**