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Selection of Arbitrators in International Commercial Arbitration

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Abstract: This article describes the concept of international commercial law, several important aspects of international commercial arbitration, and analyzes Karabelkov's views on the main features of the listed arbitration. In addition, the important factors, reasons and procedures for appointing arbitrators are explored. In addition, the criteria for selection of a sole or presiding arbitrator are considered in the selection of an arbitrator. The article also discusses five important factors to consider when appointing an Arbitrator. Claudia Salmon's thoughts on this are reviewed. The requirements and factors for appointing an arbitrator are reviewed, several studies are conducted, and suggestions are made about the mechanism of appointing an arbitrator.

Keywords: International commercial arbitration, arbitrators, Karalbekov, Claudia Salmon, LCIA, the New York convention, the Recognition and Enforcement of Foreign Arbitral Awards, co-arbitrators, neutrality, Redfern and Hunter, five factors.

What is the international commercial arbitration? International commercial arbitration is a process of resolving disputes between parties in different countries through an arbitrator or a panel of arbitrators. It involves submitting the dispute to arbitration instead of pursuing litigation in a court of law. The arbitrator or panel of arbitrators will make a binding decision on the dispute. In international commercial arbitration[1], parties agree to submit their disputes to an arbitrator or a panel of arbitrators, chosen by mutual consent or through predetermined procedures. The arbitration process is governed by a set of rules agreed upon by the parties, which may include institutional rules [2] (such as those provided by organizations like the International Chamber of Commerce or the London Court of International Arbitration (LCIA) or ad hoc rules.

Arbitration offers several potential advantages over traditional litigation, including flexibility, neutrality, enforceability of awards across borders, and confidentiality. It allows parties to choose arbitrators with expertise in the subject matter of the dispute and to tailor procedures to fit the specific needs of their case. Additionally, arbitration awards are generally final and binding, with limited avenues for appeal, which can lead to quicker and more efficient resolution of disputes compared to litigation in national courts.

Several important aspects characterize international commercial arbitration[3]:

- Parties have the freedom to choose arbitration as the method for resolving their disputes, as well as the autonomy to select arbitrators, determine the procedural rules, and specify the governing law.
- Arbitration provides a neutral forum for resolving disputes between parties from different jurisdictions. This helps to mitigate concerns about bias or unfair treatment that may arise in national courts.

- One of the key advantages of arbitration is the enforceability of arbitral awards across national borders. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards facilitates the recognition and enforcement of arbitral awards in over 160 countries.
- Arbitration proceedings can offer a higher degree of confidentiality compared to court proceedings, which may be important for businesses seeking to protect sensitive information or avoid negative publicity.
- Parties can choose arbitrators with expertise in the subject matter of the dispute, ensuring that the decision-makers have the necessary knowledge and experience to understand complex commercial issues.
- Arbitration allows parties to tailor procedures to suit the specific needs of their dispute. This flexibility can lead to more efficient and cost-effective resolution compared to litigation in national courts.
- Arbitration awards are generally final and binding, with limited grounds for appeal. This finality provides parties with certainty and closure, allowing them to move forward with their business activities.
- While arbitration can be expensive, it often offers a quicker and more cost-effective means of resolving disputes compared to litigation in national courts, particularly for complex international matters.
- International commercial arbitration often involves parties from different cultural and legal backgrounds. Arbitrators must be sensitive to these differences and ensure fair treatment and effective communication throughout the process.
- Effective international commercial arbitration requires a supportive legal framework, including arbitration laws that facilitate the conduct of proceedings and the enforcement of awards, as well as institutional support from organizations such as arbitral institutions and professional associations.

On the other hand, as **Boris Romanovich KARABELNIKOV**[1] said, International commercial arbitration is a method of resolving disputes complicated by a foreign element, which is an alternative to proceedings in state courts. The essential features of this method are as follows:

1. The presence of an arbitration agreement signed by the parties or another document of a legal nature (for example, an international treaty) on which the right of arbitrators (arbitrators) to consider the dispute is based;
2. Appointment of arbitrators (arbitrators) from among persons independent of the parties involved in the case;
3. Finality and bindingness of the decision made by the arbitrators for the parties to the dispute;
4. Interaction of international commercial arbitrations (arbitration courts) with state courts, and at the same time international commercial arbitrations cannot in any way be considered as an authority subordinate to state courts [4]

It can be seen from this that the main features of international commercial arbitration include the appointment of an arbitrator, and it is proof that the appointment and selection of an arbitrator are important. The right selection of the arbitrator presiding over the arbitration and making the decisions is the most important help of the lawyer's client in resolving the dispute case.[5] The skills, experience and knowledge of the arbitrators affect the correct, fair and legal decisions. In addition, arbitrators have more authority than judges because, unlike judges, their decisions

[1] Specialist in civil and international private law, international commercial arbitration, candidate of legal sciences, associate professor. From May 2008 to May 2013 - a member of the London Court of International Arbitration (LCIA).

generally cannot be overturned on any basis of fact or law. An arbitrator may err in his interpretation of the law or in his reliance on the facts of the case, but these decisions are generally not overturned. In conclusion, we can say that lawyers protecting the interests of the trustee should pay great attention to the selection of arbitrators.

Procedures for selecting arbitrators

The most frequently used manner to regulate the procedure for selection of the arbitrators is through the arbitration agreement (including the institutional arbitration rules that it incorporates). In case neither the parties, by means of arbitration agreement, nor the institutional arbitration rules do not provide for a proper mechanism for arbitrators' appointment, generally, national laws provide for default procedures. There are many aspects to take into consideration in selecting an arbitrator. Whether some disputes require for specific languages skills, technical expertise, legal qualifications or personal abilities, there is no such thing as a suitable arbitrator for any arbitration.[6]

This is why parties, starting with drafting the arbitration agreement, should take into consideration the specifications of their case and providing a suitable mechanism of selection of arbitrators in case of dispute. The most common method used for constitution of the arbitral tribunal is the appointment of the two co-arbitrators by each party and the nomination of the presiding arbitrator by the two co-arbitrators. In case of sole arbitrator, the mechanism of selection is, most commonly, by agreement of the parties.

Criteria for selecting sole or presiding arbitrator

Commercial arbitrations usually have one or three arbitrators[7] One or three arbitrators are selected because there is likely to be multiple judgments. The advantage of having a single arbitrator is that the costs of arbitration are lower and the timing of the arbitration process is more convenient.

Also, the Arbitration does not take long because the sole arbitrator does not consult with anyone before making the decision. In international arbitrations, it is generally preferable to consider cases with a panel of 3 arbitrators, if the amount of the claim in dispute is sufficient to cover the costs involved. A panel consisting of three arbitrators is slightly more expensive to try, but is superior in experience and excellence to a panel consisting of a single arbitrator. In addition, the arbitration decisions issued in connection with the cases considered by three-person arbitrators are distinguished by the fact that they cover the demands of the parties as much as possible and are understandable. If the dispute is complex and extensive, a panel of three arbitrators may conduct a fuller, more comprehensive review than a single arbitrator. In addition, in cases where the disputing parties are of different nationalities and cultures, each of them chooses an arbitrator close to his own nationality, culture, and legal system.

Although it is convenient for the parties to choose the composition of the arbitrators, the parties may not have accurate information about the scope, amount, complexity and scope of the dispute before the commencement of arbitration proceedings. One of the proposed options for this issue is that if the amount in dispute in the arbitration agreement exceeds a certain amount, three it is desirable to have an agreement to be an arbitrator, otherwise there should be only one. If the parties are unable to agree on the number of arbitrators, the arbitration will be conducted under different arbitration rules. According to some rules, the case is considered by a single arbitrator, unless extremely complex aspects are identified. [8] According to other rules, it is considered by three arbitrators, regardless of the situation. [9]

General requirements agreed by the parties to arbitration must be written in the agreement.[10] The parties may agree, for example, that all arbitrators speak French, that they all have experience in the construction industry, and that the language of arbitration be in French. However, there is a downside to this, if the arbitration agreement specifies a list of qualifications for an arbitrator, it may be difficult to find an arbitrator who meets those requirements. Arbitrators are required to be completely independent and impartial.[11] In addition, arbitrators,

regardless of nationality, language or religion, are required to be impartial in their impartial and independent consideration of the case. In general, the chairman the arbitrator or sole arbitrator must not belong to the same nationality as the parties. Because institutional rules should ensure neutrality. [12]

Selecting an International arbitrator: Five factors to consider

An international arbitration's success turns largely on the quality of the arbitrators. Arbitrators make binding decisions, and they wield broad discretion to fashion remedies. Yet, the parties have a limited ability to challenge or appeal an arbitration decision if the arbitrators do not do their jobs. An arbitrator's credibility is therefore crucial to maintaining the parties' faith in the overall process and to securing those benefits that make arbitration so attractive in the first place, such as cost, efficiency, neutral forum and enforceability.

A variety of methods may be selected for appointing the arbitrators. Typically, however, when an arbitration is to be decided by a sole arbitrator, the parties have the opportunity to try to reach an agreement regarding who should be appointed. When an arbitration is to be decided by three arbitrators, each side typically selects one arbitrator, and the two party-appointed arbitrators select the chairman. In the case of a three member tribunal, the very first responsibility of a party-appointed arbitrator is to negotiate with the other party-appointed arbitrator for the selection of a chairman.

Simply put, the selection of the party-appointed arbitrator may be the most critical decision in an international arbitral proceeding. Claudia T. Salomon[2] argues that these five factors should be considered when selecting an arbitrator in international arbitration.

- Choose an arbitrator with legal and professional experience;
- Choose an Impartial but known party-appointed arbitrator and a neutral presiding arbitrator;
- Choose an arbitrator who manages people well;
- Choose an arbitrator who demonstrates communicative proficiency and juridical open-mindedness;
- Choose an arbitrator with a manageable caseload;[13]

Claudia T. Salomon states that Professional knowledge is one of the factors to be considered in the selection of an arbitrator in international arbitration. A referee's presence, communication style, management skills and ethical behavior also require careful consideration. If the arbitrator or arbitrators possess these five characteristics, international arbitration is off to a promising start. I agree with her that choosing a good arbitrator is a key factor in the success of an arbitration.

Conclusion

In appointing arbitrators, parties have to take into consideration the national law applicable to the matter, the international guidelines and rules regulating the selection of arbitrators and the factual aspects of the case. The ideal arbitrator is the one that meets both the criteria of opportunity and legality with regard to the specific case at hand. An objective assessment of the case and the needs of the parties is essential in selecting an arbitrator. As correctly authors Redfern and Hunter[14] summarize the issue of selection of arbitrators, "it is, above all, the quality of the arbitral tribunal that makes or breaks the process".

[2] Claudia T. Salomon is an attorney with Squire, Sanders & Dempsey in Prague, Czech Republic. She is Coordinator of the firm's international arbitration and litigation practice in Central Europe.

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