

Kluwer Arbitration Blog

Availability of Arbitrators: What About the Other Objective Data?

Lucy Reed (Freshfields Bruckhaus Deringer LLP) · Tuesday, May 11th, 2010 · Freshfields Bruckhaus Deringer

When it comes time to identify an arbitrator candidate, be it in the investor-state context or in an international commercial arbitration, there are many factors to consider. One such factor, however, that has been the focus of much attention recently by arbitration institutions, practitioners and commentators alike, is arbitrator availability. It is clearly a sore subject.

In August 2009 the ICC took a major step towards transparency with respect to arbitrators' availability and workload. As a result of these measures, the ICC now requires ICC arbitrators to complete an ICC Arbitrator Statement of Acceptance, Availability and Independence listing their "currently pending" cases, and confirming their ability to devote the necessary amount of time to the arbitration and to conduct the process "diligently, efficiently and in accordance with the time limits in the Rules". While the ICC's measures to increase transparency about arbitrator availability are certainly welcomed and commendable, they are only a first step. Aside from ascertaining the number of "currently pending" cases in which an arbitrator candidate is involved, either as tribunal chair, co-arbitrator or counsel, other objective data is relevant and ought to be available. This kind of data includes details about the calendar of an arbitrator candidate, and details about an arbitrator candidate's record for award drafting in past cases.

Calendar of an Arbitrator Candidate. Arbitral institutions should not be afraid to ask an arbitrator candidate for a calendar of his/her professional responsibilities for the upcoming 12 - 18 months. We obviously do not mean a calendar with case (or personal) details, but rather a calendar showing dates blacked-out for existing commitments: hearings, deadlines for the drafting of awards and time blocked for drafting (particularly if the candidate is acting as tribunal chair), and responsibilities as counsel.

An Arbitrator Candidate's Record on Awards. As we have said publicly before, why shouldn't institutions - and parties - ask arbitrator candidates to indicate on their disclosure statements information, from past cases as arbitrator, about the length of time (i) from the final hearing to the close of the proceedings, and (ii) from the close of the proceedings to the issuance of the award. Arbitrators would, of course, be able to

explain any particularly long delay, for instance, due to suspension of the proceedings by the parties for settlement purposes or illness of a tribunal member.

Although the number and type of arbitrations an arbitrator candidate has done is perhaps the most important piece of information for appointing parties and institutions, surely it would help those parties and institutions also to have information about the candidate's availability - real availability - and pattern of award issuance. If the first type of objective date is required on disclosure statements, why not the second?

By Lucy Reed and Noiana Marigo

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The infographic features a teal circle on the left containing the text '77%'. To its right, the text 'Increasing Volume and Complexity of Information' is written in a grey font. A solid teal arrow points from this text to a green circle on the right. Inside the green circle, the text 'Kluwer Arbitration' is written in white, with the subtitle 'World's essential online resource for international arbitration research' below it. At the bottom right of the infographic, the text 'SURVEY REPORT The 2021 Wolters Kluwer Future Ready Lawyer Moving Beyond the Pandemic Insights' is displayed. The Kluwer Arbitration logo is in the bottom left, and the Wolters Kluwer logo is in the bottom right.

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