

Secondments in International Arbitration

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Despite the heavy workload, practicing international arbitration can be fun; you are always challenged by disputes arising from a diversity of issues that test your ability to design the best strategy to achieve the best possible outcome for your client, combined with the complexity that a single case can reach and the many instances in which a sovereign State is involved, as in investment and State-to-State arbitration. At the same time, practicing international arbitration can be a major source of headache: the client itself.

In many occasions, counsel does not get the client's full cooperation for a variety of reasons. In international arbitration it often is the same. But this does not mean that the client is unwilling to cooperate; it just means that counsel and client are not the same, do not think alike because they are not in the same business, and very possibly they do not share similar cultures and backgrounds. This is routine in international arbitration, where different cultures, backgrounds, and legal systems often collide.

To close -or at least bridge- this counsel-client cooperation gap, the practice of secondment can be of great help in the field of international arbitration.

Definition and Possible Benefits in International Arbitration

A secondment is the practice in which a law firm lends an associate to a client for anywhere from a few months to a year or more. As a consequence, the law firm attorney works full time for the client's legal department for a limited duration. The benefits of this practice can be viewed from three perspectives: (i) the client, which will benefit from having a highly specialized attorney in its legal department; (ii) the seconded lawyer, who will learn a great deal from the client's business and culture, as well as create strong relations with the clients' legal team; and (iii) the law firm, which will have a unique opportunity to strengthen its relationship with its client and gain a more comprehensive understanding of the issues the client faces on a daily basis.

While any practice area can benefit from this practice, secondments can most make a difference in an area where the client lacks specialists. Given that international arbitration is a highly specialized area of law and that corporations rarely have a legal department specialized in international arbitration or even an in-house international arbitration lawyer, corporations often have to heavily rely on outside counsel when faced with an arbitration.

In light of the above, a secondment can greatly facilitate the relationship between the client and the arbitration team of a law firm. Through a secondment, an associate in the international arbitration practice of a law firm, preferably a senior one, can add value to the client's legal department by working closely with in-house counsel during the initial steps of an arbitration in which the client is

involved by training in-house counsel of the nuts and bolts of international arbitration or by teaching how the law firm manages an arbitration to ensure that the client and law firm are on the same page.

Each arbitration is different and unique and therefore requires different approaches. While specialists in law firms may know how to deal with these various situations, clients might not be so comfortable. The seconded lawyer can provide great utility in these circumstances serving as an important link between the law firm and the client's legal department to achieve optimal cooperation in building a strong case. Many aspects related to the arbitration are linked to strong cooperation between law firm and client, such as case strategy, document production, and factual and expert witnesses. To avoid unpleasant surprises during the development of the arbitration, minds must be tuned to the same frequency.

Concerning case strategy, having a clear path to follow is fundamental for the arbitration practice of a law firm. This can take several weeks of meetings between the lawyers that will handle the case, in which the in-house counsel likely will not attend. During this phase, it would be highly beneficial to bridge any gaps between the law firm and the client's legal department, and a seconded attorney can help achieve this goal.

Document production is another sensitive and critical part of any arbitration that, as Peter Ashford has written, "serves as part of a process towards a final determination on the merits." As William W. Park suggests, document production works as a "pre-hearing information exchange" between the parties, and it can take time and money. Efficient cooperation between counsel and client accordingly is crucial in this phase of the arbitration. Cases are won on the basis of efficient document production. In this context, a seconded attorney with a better understanding of the client's business may play an important role by providing efficient counseling on preparing the list of documents to be requested from the opposing party, as well as responding to the opposing party's requests.

Expert witnesses can also play a critical role in an arbitration, particularly in cases involving highly technical issues. And very often - if not always - a party's counsel will work closely with the expert, reviewing the expert report and discussing important substantive points. The seconded attorney, who has a better understanding of how the client's business works and runs, will certainly have a better background to discuss these issues with the expert and reach a higher quality final product.

Final Words

This article has reviewed a non-exhaustive list of how a seconded attorney might improve the cooperation between a law firm and a client's legal department in the field of international arbitration. As arbitration becomes more and more the ordinary means for dispute resolution in international commerce, efficient cooperation between in-house and outside counsel in an arbitral proceeding will become more necessary.