

Women in Arbitration Are on the Rise

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Victoria Pernt (Schoenherr)

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The numbers are in, and they are encouraging.

In the past decade, female arbitrator appointments have more than tripled.

Last year alone, arbitral institutions appointed a third more female arbitrators than the year before. Driving this trend is the Equal Representation in Arbitration Pledge (the “Pledge”), a global initiative addressing the gender imbalance in arbitration. Launched in May 2016, the Pledge quickly garnered support. Over 1,800 signatories committed to promoting the fair representation of women in international arbitration.

The Pledge has led to a considerable rise in female arbitrator appointments in a single year. According to research published by Lucy Greenwood to mark the one-year anniversary of the Pledge (featured by GAR), institutional appointments of female arbitrators increased by over a third, from about 12 % in 2015 to about 17 % in 2016.

The success of the Pledge has so far rested on the shoulders of the arbitral institutions.

Four institutions revealed how they put their commitments to the Pledge into practice. At the “Not in the Rules” seminar this May in Vienna, Stefano Azzali (Milan Chamber of Arbitration), Annette Magnusson (Arbitration Institute of the Stockholm Chamber of Commerce), Manfred Heider (Vienna International Arbitral Centre) and Francesca Mazza (Deutsche Institution für Schiedsgerichtsbarkeit, the “DIS”) gave participants a glimpse behind the curtains of institutional arbitrator appointments. The DIS, for example, has introduced an extra step in the appointment process in order to increase its female arbitrator appointments to 30 %: whenever a shortlist of four to five candidates does not include at least one woman, a separate shortlist is compiled only including female candidates. This extra step ensures that the DIS proactively searches for equally suitable female arbitrators.

But let’s not pat ourselves on the back just yet. It is still a long way to parity.

While arbitral institutions may proactively appoint female arbitrators, they are often not involved in the appointments. The ICC, for example, makes direct appointments in only 25 % of its cases. Notably, the ICC Rules provide for the appointment of presiding arbitrators by the institution. Under the DIS Rules, on the other hand, chairmen are appointed by the party-appointed arbitrators. This leaves little room for the DIS to appoint arbitrators itself, and it does so in only 10 % of the cases.

Most arbitrator appointments are therefore made by the parties – and those lag far behind the institutions in appointing women.

The reason may be that female arbitrators often lack visibility: Mirèze Philippe and Noor Dahim

observed that “[t]alented female practitioners in dispute resolution are numerous”, yet women do not promote themselves in the same way men do. Ms Philippe notes that it is “everyone’s responsibility to promote each other”, and recommends search services for female arbitrators such as those offered by ArbitralWomen and the Pledge.

Law firms should provide more opportunities for women internally. This solution to the lack of visibility is put forward by White & Case partner Andrew de Lotbinière McDougall and attorney Fiona Candy, who believe in the snowball effect of good female counsel being appointed as arbitrators.

The Pledge also plays an important role in increasing the visibility of talented female lawyers: it reminds them to promote themselves, and it calls upon organisations, law firms, and arbitral institutions to actually offer them opportunities to do so. After all, even the most suitable female arbitrator candidate is unlikely to be appointed if unknown to the appointing party.

To truly achieve fair representation of women in arbitration, increasing their visibility is key. Only then may the Pledge achieve its “ultimate goal of full parity”.