Kluwer Arbitration Blog

Start-Ups and Arbitration: A Report From Helsinki International Arbitration Day (HIAD) 2021

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Helsinki International Arbitration Day (HIAD) is an arbitration conference organised by The Finland Arbitration Institute (FAI). HIAD brings together legal practitioners from Finland and abroad to hear from top experts on the latest developments in international arbitration and mediation. This year's event, held on 3 December 2021, was attended by more than 200 participants and focused on start-ups and arbitration.

Welcome Remarks

Petra Kiurunen (FAI Board Chair, Partner, Lindfors & Co) opened HIAD2021 by contemplating the meaning of 'starting up' and introducing the history of the FAI. Ms Kiurunen noted that the FAI celebrates its 110th anniversary in 2021. It was incepted in 1909 in Vaasa, Finland, when the local Vaasa Tradesmen's Association proposed the establishment of an arbitration board in Helsinki. The FAI started its operations in 1911.

Ms Kiurunen introduced the idea that start-ups and 'starting up' entail something more than changes caused by necessity. She noted that the topic of the conference was inspired by the world's leading start-up event Slush, which took place in Helsinki before HIAD2021. Quoting Slush's statement, she remarked that the difference between change and real development as perceived by the start-up community is as follows: *"Change and progress are not synonymous. While change is inevitable and erratic, true progress is deliberate and disciplined."*

Ms Kiurunen noted that the purpose of HIAD2021 was to bring together the progressive and innovative mindset of the start-up world with the established – yet flexible – arbitration practice, in the hopes that new thoughts and ideas could flow both ways.

Keynote Speech: Dispute Resolution And Start-Ups – Why Is Dispute Resolution Important And What Can Arbitration Offer?

The keynote speaker, Prof. Dr. Jörg Risse (Partner, Baker McKenzie), conveyed an inspiring and powerful message to the audience on what arbitration can offer to the start-up community. He shared his "9 dots" on how to succeed with the young, diverse, and vibrant start-up industry:

1. *If you want to gain interest, show interest* – show interest in the start-up community, and they will be interested in you.
2. *If you want to gain trust, offer more diversity* – be more like the start-up community; people like those who are alike.
3. *Justice delayed is justice denied* – start-ups are interested in speedy proceedings.
4. *Be solution-driven* – start-ups are interested in solutions, so talk to them about solutions.
5. *Forget about the money* – start-ups do not include 'dispute resolution' in their business plans. For start-up entrepreneurs, money is not the purpose, but only the ultimate result.
6. *Survival of the fittest* – arbitration must adjust to changing circumstances to survive.
7. *Be daring, be different, be first* – the future belongs to those who have this mindset.
8. *Have fun* – start-ups love what they do, and will only accept the arbitration community if they see that we have fun doing our job.
9. *'The good? There is none until it's done'* – a phrase coined by the German author, Erich Kästner, meaning that action is what counts. If arbitration wants to be innovative, it must walk the talk.

Riikka Tieaho (General Counsel, Wolt) gave comments to the keynote speech. She stated that dispute resolution should be considered before problems arise. Ms Tieaho concurred with Prof. Dr. Risse's message and highlighted that knowing your audience as a dispute resolution lawyer is key. She noted that start-ups come in different shapes and sizes, and dispute resolution services should scale to fit their needs. She further stated that "speed is simply everything."

Ms Tieaho summed up her comments by asking how arbitration could be made more relevant to start-ups. Her first proposal was to find ways to expedite the process. Furthermore, arbitration should be more accessible and easier to understand for start-ups and small businesses. She proposed that there could even be one international arbitration hub for start-ups.

Panel: Arbitration And Shareholders' Agreements (Investor's And Founder's Perspective)

The first panel, moderated by Robin Oldenstam (Member of the FAI Board, Partner, Mannheimer Swartling), discussed arbitration and shareholders' agreements. Timo Lappi (CEO, Heltti) and Ville Heikkinen (Partner, Butterfly Ventures) represented the founder's and investor's perspectives, whereas Anne-Karin Grill (Founder and Principal, AKG Advisory) and Prof. Dr. Antje Baumann (Founding Partner, BAUMANN Resolving Disputes) represented dispute resolution professional's viewpoint.

Shareholder agreements are central documents for start-ups, especially when the first

round of external investors joins the company. They typically deal with three main areas: 1) decision making; 2) transfer of shares; and 3) non-compete provisions. Shareholders' agreements, no matter how carefully drafted, may not always work as anticipated in the dynamics of real life.

Mr Lappi described a founder's mindset in negotiating shareholder agreements. The first financing round is a major goal for start-ups and the founder is likely negotiating a shareholders' agreement for the first time, whereas investors tend to be more experienced and informed. His advice to any founder was to pay attention to the negotiations – they often foreshadow what the future collaboration will be like. Mr Lappi noted that founders sometimes consider an arbitration clause a "scary" provision as arbitration may be viewed as formal and expensive.

Mr Heikkinen pointed out that it is good practice for investors to share knowledge on contractual provisions with founders and explain their rationale. For example, he typically explains to the founders that agreeing on an arbitration clause is, in his view, in both parties' interests because professionals will decide the dispute and it is a faster and a confidential process.

Ms Grill discussed how dispute resolution counsel usually enter the stage when the "champagne has dried up and the house is burning." In her experience, mediation may be a fruitful alternative to arbitration in such situation. While arbitration and mediation are often promoted by highlighting similar qualities, the distinction is that in mediation parties craft their own solution which fits well with the mindset of start-up entrepreneurs.

Prof. Dr. Baumann shared her experiences as arbitrator. Provisions concerning transfer of shares (tag-along or drag-along) aim to prevent disputes. However, disputes do arise regarding the exercise of such rights, typically regarding valuation. Arbitration provides parties with an opportunity to choose arbitrators with appropriate skills and allows them to set expectations for a speedy resolution.

Interview: What Could Lawyers Learn From The Start-Up Community? How Does The Start-Up Way Affect Customers' Expectations Of Dispute Resolution Services?

In an interview with Jaakko Lindgren (Partner, Dottir), Risto Siilasmaa (Founder and Chairman of F-Secure Corporation, former Chair of the Board of Nokia and Elisa Corporations) shared his insights on what lawyers could learn from the start-up community and client expectations.

Mr Siilasmaa shared takeaways from his exceptional career and entrepreneurship. He reminded the audience that lawyers and other advisors are not the ones who do the client's deals, and that the clients themselves should remain in the driver's seat. According to Mr Siilasmaa, lawyers should keep in mind that the absolute scale of a legal issue or transaction may not equal the scale to those individuals involved, e.g., to start-up founders. He noted that advisors should always have sensitivity and respect to the founders' life's work.

Mr Siilasmaa voiced his concern that customer satisfaction does not seem to be a key factor for arbitral institutions and service providers when they develop their offering. He noted that asking for, and even publishing, more feedback from the users of arbitration and dispute resolution services could offer a fruitful starting point for development towards increased customer satisfaction.

Panel: Start-Ups And Innovation In Arbitration

In a session led by Prof. Dr. Stefan Kröll (Member of the FAI Board, Professor for International Dispute Resolution, Bucerius Law School), three legal innovators competed for a hypothetical investment. The role of the investor was assumed by Daniel Hochstrasser (Member of the FAI Board, Partner, Bär & Karrer), who was presented with ‘elevator pitch’ speeches about the potential investment targets.

Jean-Rémi de Maistre (CEO, Jus Mundi) presented an elevator pitch about Jus Mundi, a search engine for international law and arbitration, and the company’s offering. Jus Mundi, as Mr de Maistre put it, is a tech company that makes legal information accessible to its users for the benefit of building the global rule of law by democratizing access to global legal resources.

Sebastiaan Bos (Director Solution Consulting Group, Thomson Reuters) made the second pitch. He introduced Thomson Reuter’s digital Arbitration Platform and the company’s services for document handling. The audience, consisting of many counsel and arbitrators, seemed to relate to Mr Bos’ presentation of the practical problems with non-digital hearing bundles.

Catherine Rogers (Founder and CEO of Arbitrator Intelligence) pitched Arbitrator Intelligence, a platform enabling parties and counsel to share information and feedback about arbitrators. The platform connects parties and counsel who have information about arbitrators with users who need it.

Following the elevator pitches, Mr Hochstrasser walked through a mock investment decision-making process, contemplating the presentations and providing feedback to the innovators. The consensus was that all pitches had considerable merit in earning an investment.

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This entry was posted on Friday, December 24th, 2021 at 8:00 am and is filed under Finland, Innovation, Shareholders Agreement, Start-up
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