
Kluwer Arbitration Blog

Tread Your Arbitral Path in Asia: Navigating the Promise and Perils of Your First Appointments

Hana Karawya · Wednesday, March 10th, 2021

On 23 February 2021, the [Rising Arbitrators Initiative](#) (RAI) and [HK45](#) co-hosted the third installment of the webinar series *The Rising Arbitrator's Challenge: Navigating the Promise and Perils of Your First Appointments*.

As the webinar series aims to shed light on different jurisdictions, the third installment focused on Asia. The overarching topic addressed the thorny issues that rising arbitrators encounter in their first appointments. Ms. Joanne Lau, who moderated the webinar, invited the panel, comprising of Professor Joongi Kim, Ms. Yoshimi Ohara, Mr. Andrew Pullen, and Dr. Ling Yang, to share their views on: their first appointment, conflict of interest issues, case management challenges and tips, as well as the impact of cultural differences in arbitration proceedings.

The panelists offered key insights and advice that are of vital importance for young practitioners who wish to begin their arbitrating career. This post provides a synopsis of the views discussed in the webinar.

Insights on the First Arbitral Appointment Experience

Ms. Joanne Lau opened the discussion with a retrospective question, asking the panelists to share their experience of their very first arbitral appointment. All panelists received their first appointments through arbitral institutions. Mr. Andrew Pullen began his quest by applying to the panel of arbitrators of SIAC, which in turn gave him his first appointment as a sole arbitrator. Following a similar path, Ms. Yoshimi Ohara was appointed by the JCAA as a sole arbitrator. As for Professor Joongi Kim, he coincidentally received two consecutive appointments within days, one through party appointment in an institution in Paris and the other by a local Korean institution; he sat as wing arbitrator in both instances.

However, obtaining their first appointments were not free of obstacles, as the majority of speakers encountered a number of challenges that would delay the process. Conflicts of interest were the first challenge, as may be expected for those practitioners in large firms. In fact, Mr. Pullen and Ms. Ohara were conflicted several times before they actually landed their first appointment. Other thorny issues tend to emerge during the proceedings, for example, if one of the parties is not experienced with international arbitration proceedings, or worse, if they are defaulting.

On the positive side, it was agreed that sitting as an arbitrator provides enriching insights. To name one, when acting as party advocate after serving as arbitrator, advocates become savvier about how to better persuade a tribunal.

The Role of HKIAC in Supporting Rising Arbitrators

Dr. Ling Yang discussed the various efforts exerted by HKIAC to support rising arbitrators. First, Dr. Yang explained that in 2020, 50% of the institution's appointments were arbitrators who had not been previously appointed in the past three years. This demonstrates the HKIAC's efforts in avoiding repeat institutional appointments, which in turn expands the pool of new arbitrators.

Second, besides having a panel of experienced arbitrators, HKIAC also has a list of arbitrators that includes practitioners who do not necessarily have achieved their first or multiple appointments. A prerequisite to being on the list, nevertheless, is to have significant experience in arbitration, such as party counsel.

Third, HKIAC is the first institution to offer a Tribunal Secretary Training Programme. It is well established that one of the paths to a career as an arbitrator stems from acting as a tribunal secretary on multiple cases. Thus, aspiring arbitrators may wish to participate in this assessed program which will qualify them to become tribunal secretaries worldwide.

You may find further discussions on the appointment procedure of HKIAC [here](#).

Conflicts of Interest Hindering Rising Arbitrators — What to Do?

While rising arbitrators are encouraged to widen their visibility by networking and by building relations with institutions, this, however, raises conflicts issues. First, they may be perceived as biased due to their closeness with the institution(s) or with arbitration practitioners. Second, when coming to disclose, rising arbitrators may not know how much should be disclosed; in this respect, the panelists suggest that it is better to disclose any matter that the arbitrator is hesitant of. Third, Professor Kim added that parties who lack the understanding of disclosure guidelines might exclude independent and impartial arbitrators.

What Are the Different Challenges Faced When Sitting as a Sole Arbitrator as Opposed to Sitting in a Three-Member Tribunal?

For rising arbitrators, sitting as a wing arbitrator in three-member tribunals may be easier to handle in the first appointments, yet, the panelists also argued that assuming the sole arbitrator hat can have its unique advantages.

Acting as wing arbitrator allows the person to benefit from the wisdom and experiences of the other members to overcome the complexities of the proceedings, as all panelists suggested. Professor Kim, particularly advised novice arbitrators not to be intimidated and to assist the other tribunal members as much as possible by being diligent, timely and meticulous and to try to create

a team effort.

Ironically enough, most of the first appointments are sole arbitrator positions as Dr. Yang indicated and as evident from Mr. Pullen and Ms. Ohara's experience. However, there is no cause for exaggerated worry, as a sole arbitrator often has special advantages. One apparent benefit is the amount of flexibility in determining the right decision whether on a substantive or a procedural level. Moreover, panelists strongly advised young arbitrators to regularly seek assistance from the institution, as they will clarify the application of the rules and the best practices in managing cases.

Cultural Differences and their Impact on Arbitration Proceedings.

The impact of cultural diversity and different legal regimes was addressed; concerning the differences in legal regimes, Dr. Yang offered interesting insights pertaining to proceedings in China.

According to her, the arbitral institutions handle the management of the case mainly; they deal with the procedural issues and then they provide the documents and evidence to the arbitrator(s) who only deals with substantive issues. Another unique trait is that hearings in China typically last for one day only, whereas in other countries they may continue for two weeks.

Conclusion

Focusing on Asia, this webinar comprehensively discussed the intricacies of receiving first arbitral appointments. It provided rising arbitrators with tools and insights on how to manage their first cases, whether as sole arbitrators or as part of a tribunal. Additionally, the webinar shed light on how to deal with the perils of conflicts of interest as well as on how to successfully navigate the proceedings in the face of cultural and legal differences.

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