

# Kluwer Arbitration Blog

## The Rising Arbitrator's Challenge in Latam: Navigating the Promise and Perils of Your First Appointments

Ana Toimil Cervantes (Von Wobeser y Sierra, S.C.) · Saturday, April 17th, 2021 · Rising Arbitrators Initiative (RAI)

On 24 March 2021, the [Rising Arbitrators Initiative \(RAI\)](#) held the fourth session of its webinar series “*The Rising Arbitrator's Challenge: Navigating the Promise and Perils of Your First Appointments*”. This fourth conference focused on the challenges that first appointments bring to arbitrators in Latin America and has brought together both young and more seasoned arbitrators from the most active jurisdictions in the region, as well as representatives from arbitral institutions.

With [Martín Rosati](#) (Ferrere, Uruguay) as host and [Renato Stephan Grion](#) (Pinheiro Neto Advogados, Brazil) delivering the opening remarks, the panel was comprised of [Valeria Galíndez](#) (Galíndez Arb., Brazil), [Juan Felipe Merizalde](#) (JFM Abogados, Colombia), and [Sylvia Sámano Beristain](#) (CAM, Mexico). The panellists started by tackling the general *do's* and *don'ts* for arbitrators seeking their first appointments, and shared valuable advice and insights for young practitioners facing common but seldom discussed aspects of the arbitration's dynamics: deliberations and disagreements within the arbitral tribunal, uncooperative arbitrators, *gravitas*, and other scenarios for which university and academic training do not prepare future practitioners.

### With great power comes great responsibility

Renato Stephan Grion opened the forum stressing the appropriateness of the title of RAI's webinar series: being an arbitrator, especially for the first time, is no easy task. He stressed that first appointments come with great opportunity for young arbitrators, but also with challenges and responsibilities.

Although it is common that arbitrators will have come a long way in their professional careers before receiving their first appointment, he considered that it is rather paradoxical that first-time appointed arbitrators usually sit as sole arbitrators in very complex cases, where there are frequently several incidental requests from the outset. To better prepare and equip starting practitioners for future challenges, he encouraged attendees to check RAI's website and take part in RAI's debates and initiatives, which offer them an insight into day-to-day arbitration practice.

### RAI and mentoring in the development of starting arbitrators' careers

Valeria Galíndez remarked upon the importance of initiatives such as RAI and similar communication channels in the development of young arbitration practitioners and young arbitrators. She explained that even if the arbitration practice has changed drastically in the last ten years, the role of safe environments to exchange ideas and experiences, as well as mentoring, are as crucial now as they were before.

On this point, Juan Felipe Merizalde questioned the lack of training for starting arbitrators on key aspects of the arbitral process, such as on how to effectively participate in the deliberation process, how to deal with a problematic arbitrator, and the scope of a president's duties when drafting the award. As such, the development of soft skills is usually neglected.”.

The panel agreed that it was precisely due to the lack of training in such areas, that initiatives and organizations such as RAI are crucial to international arbitration practice.

### **The right combination of elements: opportunities, skills and the role of administering institutions**

The panel went on to discuss *do's* and *don'ts* when looking to receive, and when ultimately receiving, a first appointment. Valeria Galíndez commented on how working as counsel for parties and acting as administrative secretary of tribunals allowed her to build strong connections which would later serve as a steppingstone into her career as an arbitrator. In the same vein, Juan Felipe Merizalde agreed that having worked as counsel before accepting arbitrator appointments is valuable and elaborated on the importance of being an active member in the arbitration community. He shared that a key feature of his personal development was in participating in conferences to gain visibility, an invaluable asset in the competitive arbitration arena.

In this respect, he stressed the crucial role of arbitral institutions as inclusive platforms that seek to open forums and offer opportunities to starting arbitrators, that range from inviting them as speakers at conferences to appointing them as arbitrators for the first time. However, he believes that earning the trust and recognition of other important actors in arbitration, such as the counsel for the parties and co-arbitrators, remains a challenge for starting practitioners.

On this point, Sylvia Sámano Beristain noted that administering institutions are aware of users' needs: to have professional, committed arbitrators. To be able to cover those needs, arbitral institutions must identify profiles matching those expectations. However, the role of arbitral institutions goes far beyond simply identifying potential arbitrators. Sylvia Sámano explained that administering institutions play an important supporting role, especially for starting arbitrators, since they provide guidance on procedural matters. In addition, she pointed out that advocacy for the inclusion of younger practitioners as arbitrators has led administering institutions to act and advance initiatives that promote their participation.

### **The importance of domestic arbitration in an international career**

As an area of open discussion, Martín Rosati invited the panel to address what, in their opinion and experience, is the role of domestic arbitration in the journey to becoming an international arbitrator, and the extent to which having a domestic arbitration background represents an

advantage for achieving that goal.

In Juan Felipe Merizalde's view, a robust domestic arbitration practice is the perfect training ground for a rising arbitrator and an excellent opportunity for starting arbitrators to break into the international sphere. Valeria Galíndez agreed, and went on to note that in addition to opening the door for beginners to enhance their skills by exposing them to real-life situations, domestic arbitration remains an important market even for experienced international arbitrators. In her opinion, international arbitrators in domestic cases play a fundamental role in contributing to the introduction and development of new, more sophisticated arbitral practices in such fora and ensure that domestic arbitration is not erroneously treated as akin to local litigation.

### **To appoint new arbitrators or not to appoint new arbitrators?**

Despite the common ground among the panellists that offering opportunities to newcomers is vital, it remained less clear how party appointments of starting practitioners can be achieved.

Sylvia Sámano Beristain highlighted some advantages of appointing new arbitrators, such as their availability and enthusiasm to diligently study and resolve the dispute. Renato Stephan Grion noted that while a solid and consistent career is an important factor for the appointment of new arbitrators, the courage to decide a case is the decisive characteristic that tips the scale. It is challenging to determine whether the potential arbitrator possesses that quality before appointing them, but he suggested that having a look at their professional experience may be revealing.

A common concern raised by Martín Rosati in this respect was how to strike a balance between the parties' expectations regarding first-appointed arbitrators being courageous in tribunal deliberations, with possible concerns by first-appointed arbitrators of risking being labelled as a "problematic arbitrator", especially when dealing with more experienced arbitrators. The panel agreed that first-appointed arbitrators should never hold back on expressing their views and that their voice on the tribunal will usually be better received if they have detailed knowledge and understanding of the case and manage to establish personal bonds with their co-arbitrators.

In concluding the webinar, Sylvia Sámano Beristain reminded starting arbitrators that any relevant experience in the field –such as acting as administrative secretary of tribunals or working for an administering institution– provides first-hand experience from an arbitrators' perspective, which is most valuable when searching for a young arbitrator's first appointments. She therefore encouraged young practitioners to seek out and seize such opportunities.

### **Conclusion**

This webinar addressed shared challenges among starting practitioners and provided attendees with valuable practical insights and advice. An exposure to real arbitration practice is crucial for enhancing rising arbitrators' skill sets and providing them with such opportunities requires the collaboration of established and young practitioners, institutions, and initiatives such as RAI.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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