

THE ERA PLEDGE

CONSTITUTION OF THE ARBITRAL TRIBUNAL:

CHECKLIST OF BEST PRACTICES FOR THE SELECTION OF ARBITRATORS

An arbitration is only as good as its arbitrators. Whether one is counsel, in-house lawyer, co-arbitrator or party to the arbitration, choosing arbitrators is a critical step in the procedure. Yet, this choice is not always based on a well-planned strategy taking into account the specific features of the case.

Moreover, practitioners observe a lack of diversity in the

appointment of arbitrators by parties, co-arbitrators or to a lesser extent arbitral institutions, which impacts the efficient conduct of the proceedings.

The following checklist outlines the best practices, methods and tools available for selecting arbitrators, relying on objective criteria that promote both efficiency and diversity in arbitration.

1

Preliminary considerations once a dispute has arisen: what does the clause negotiated prior to the dispute provide for in relation to the constitution of the arbitral tribunal and how does it influence the selection of arbitrators?

- The type of arbitration: institutional, *ad hoc* (an *ad hoc* arbitration typically requires more management than an institutional arbitration)
- The number of arbitrators: one or three (should the number of arbitrators be reviewed once the full scope of the dispute has become apparent?)
- The qualifications of the arbitrator(s) to be appointed (as expressed in the clause, or arising from the nature of the dispute)
- Whether the clause designates specific arbitrators
- Other methods provided in the clause for the appointment of arbitrators
- Any possibility for the co-arbitrators to consult with the parties to select the president of the arbitral tribunal
- The parties may modify the provisions of the clause to take account of the amount at stake/complexity of the dispute and, where appropriate, may review the number of arbitrators

2

Designation of the co-arbitrator by the party:

- Who chooses: party/in-house lawyer or counsel? Role of the in-house lawyer in the selection of the co-arbitrator: conduct conflict checks, gather feedback on arbitrators
 - Selection criteria: language, culture, professional profile (former judge, academic, lawyer, expert), applicable law, nature of the contract, availability, diversity of arbitrators in accordance with the Pledge, expertise, diligence, efficiency
 - Searching for candidates: consult with arbitration lawyers, conduct research on websites containing directories of arbitration practitioners/arbitrators, such as those of the [IAI Paris](#), [ASA Profiles](#), [JAMS](#), [Energy Arbitrators List](#), [ArbitralWomen](#), [ICCA](#), [VIAC](#), or paying websites (such as Arbitrator Intelligence, GAR ART), consult the published lists of arbitrators appointed in institutional arbitrations
 - Method of appointment: contact with the potential arbitrator to:
 - assess the arbitrator's qualifications and attributes
 - check for conflicts in accordance with the *IBA Guidelines on Conflicts of Interest* and availability before officially proposing the arbitrator
- Any contact by the parties with a potential arbitrator should be carefully considered with counsel and limited to these two points.

3

Designation of the President of the Arbitral Tribunal by the parties:

- Who chooses: the institution, the co-arbitrators, and/or the parties (it may be useful to specify in the clause the possibility for the co-arbitrators to consult with the parties)
- Selection criteria similar to those applicable to the selection of the co-arbitrator (with the addition of management skills)
- Searching for candidates: similar methods to those used for the co-arbitrator
- Methods of appointment: exchange lists with or without order of preference (see, eg, the process under Article 8(2) of the UNCITRAL Rules); contact with a potential arbitrator limited to assessing the arbitrator's qualifications and attributes, absence of conflicts and availability

4

Appointment of an arbitrator by arbitral institutions or a judge: possibility for parties to submit names or to express preferences regarding the arbitrator's qualifications or the method of appointment (eg, list system)

5

Take into consideration the personality and experience of the co-arbitrators to ensure balance and good dynamics within the tribunal.

