

THE ERA PLEDGE WITHIN YOUR ORGANISATION

GUIDELINES FOR IMPLEMENTATION

In recognition of the under-representation of women on international arbitral tribunals, in 2015 members of the arbitration community drew up the ERA Pledge (or 'Pledge') to take action. The Pledge seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve a fair representation as soon as practically possible, with the ultimate goal of full gender parity.

DIVERSITY IN ARBITRATION MATTERS TO CORPORATES

In the same way that diversity is a critical lever for business success, diversity in tribunals is key to ensuring the integrity and efficacy of arbitral proceedings. In addition to considerations of equality, increased diversity improves the effectiveness of tribunals and quality of outcomes by bringing a greater range of perspectives to bear on the decision-making process. The Pledge aspires to be a first step in the direction of achieving more equal representation of all under-represented groups in the arbitration community.

While there are many well-qualified female arbitrator candidates, they often lack visibility, with tribunals constituted from a relatively small pool of mostly male arbitrator candidates based on their prior experience sitting as arbitrators. Constituting tribunals on the basis of this small pool results in a perception of a

lack of legitimacy, as well as in procedural inefficiencies including: (i) a lack of availability of arbitrators; (ii) delays in arbitral awards; and (iii) an increased potential for conflicts of interest. The Pledge seeks to address these issues by broadening the pool of arbitrators and paving the way for greater diversity in the international arbitration system.

While arbitral institutions may have a broad and balanced view of all available arbitrator candidates, by contrast the view of parties, some of whom may rely on lists provided by external counsel, may be narrower. By signing the Pledge, a corporate can demonstrate its support, including to its external counsel, for ensuring a broader and more gender-balanced arbitrator selection process, ideally achieving equal opportunity for equally qualified female candidates.

Between 2015 and 2019, the percentage of female arbitrators sitting on tribunals increased from **10% to 21.5%***

Although **34%** of institutional appointments were female in 2019, only **13.9%** of party appointments were of women*

Over **4,000** signatories, including over **780** organisations

THE PLEDGE

As a group of counsel, arbitrators, representatives of corporates, states, arbitral institutions, academics and others involved in the practice of international arbitration, we are committed to improving the profile and representation of women in arbitration. In particular, we consider that women should be appointed as arbitrators on an equal opportunity basis. To achieve this, we will take the steps reasonably available to us – and we will encourage other participants in the arbitral process to do likewise – to ensure that, wherever possible:

- committees, governing bodies and conference panels in the field of arbitration include a fair representation of women;
- lists of potential arbitrators or tribunal chairs provided to or considered by parties, counsel, in-house counsel or otherwise include a fair representation of female candidates;
- states, arbitral institutions and national committees include a fair representation of female candidates on rosters and lists of potential arbitrator appointees, where maintained by them;
- where they have the power to do so, counsel, arbitrators, representatives of corporates, states and arbitral institutions appoint a fair representation of female arbitrators;
- gender statistics for appointments (split by party and other appointment) are collated and made publicly available; and
- senior and experienced arbitration practitioners support, mentor/sponsor and encourage women to pursue arbitrator appointments and otherwise enhance their profiles and practice.

*2019 statistics taken from the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings.

OUR COMMITMENT TO THE ERA PLEDGE

As an organisation, we promote and encourage diversity and inclusion at all levels. We acknowledge diversity is good for business and we understand that plurality of thought in arbitration is important. By signing the ERA Pledge, we have committed to take positive actions to further its objectives:

In order to implement the ERA Pledge within our organisation, we will be intentional about bringing diversity into our discussions around arbitrator appointments and take specific steps to encourage diversity in those appointments. In practical terms, we will, wherever possible, individually and collectively:

WHEN INVOLVED IN THE APPOINTMENT OF ARBITRATORS

- Consider appointing women as arbitrators on an equal opportunity basis.
- Try to request at the outset of the arbitrator selection process that external counsel apply the principles embodied in the ERA Pledge when drawing up a list of potential candidates.
- Try to ensure any list of potential arbitrator candidates includes a fair representation of women.
- Endeavour to call out any non-diverse list and encourage further consideration be given to equally qualified female candidates who could be included in the list.
- Consider using the Pledge Arbitrator Search function (and other available search tools) to help identify female arbitrator candidates with the required criteria: www.arbitrationpledge.com/arbitration-search
- Try to include a fair representation of women when proposing candidates for Chair. We will also request that the nominated arbitrators and our counterparty bear the aims of the ERA Pledge in mind when considering the appointment of the Chair.

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1
to improve the profile and representation of women in international arbitration; and

2
to increase the appointment of women on arbitral tribunals on an equal opportunity basis.

- Make efforts to track and report the proportion of female arbitrators we appoint and, where appropriate, share this diversity data internally.
- Consider adopting internal targets, where necessary, to increase the proportion of women we are appointing to improve the diversity of our arbitrator appointments. These targets should be communicated to the teams involved in appointing arbitrators and performance against these targets tracked at regular intervals to monitor progress.

WHEN INVOLVED IN SELECTING EXTERNAL COUNSEL TEAMS FOR ARBITRATIONS

- Consistent with each organisation's internal diversity and inclusion policies or practices, endeavour to select external counsel teams that are diverse.

ARBITRATION - IN THE WORKPLACE

- Read and familiarise ourselves with the ERA Pledge and these Guidelines and share them with colleagues involved with the appointment of arbitrators encouraging them to do the same.
- Endeavour to provide female colleagues equal opportunities with respect to speaking at external arbitration events/conferences and consider other ways to help them to raise their profile.

These guidelines are intended to provide a framework for concrete steps to assist corporates wishing to implement the ERA Pledge. They can be adopted as and when appropriate, and to the extent appropriate, for each corporate signatory. These guidelines do not, however, purport to form any binding commitment on signatories nor do they establish any liability. They are 'best practice' principles.

More information can be found at arbitrationpledge.com