

Management techniques in international arbitration

Opposing perspectives: Counsel and Arbitrator

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Introduction

- Arbitration today
- *“a process to lead to a resolution of the dispute which is binding and enforceable”*
- How to manage the legal and cultural expectations of the parties

Topic 1: Appointment process (JH)

- Methods of appointment
 - Methodology: Criteria and information gathering
 - Traditional and modern approaches
- Approaching prospective arbitrators
 - Risks and advantages
 - Best practices

Topic 1: Appointment process (KG)

- Approaches
 - Parties
 - Arms-length / “beauty parades”
 - Institutions
- Conflicts
 - To declare or not to declare
 - Guidelines – IBA, professional institutions
- Settling terms of appointment

Topic 2: Procedural Order No. 1 (JH)

- The 'pre-match chat'
- Procedural Order No. 1

Topic 2: Procedural Order No. 1 (KG)

- Organising the proceedings
 - Preliminary organisation Parties/Tribunal
 - Request and Reply to Request for Arbitration
 - Terms of Reference
 - Jurisdiction
 - Bifurcation, issues or liability/quantum
- Settling the First Procedural Order
 - To meet or not to meet...
 - Levelling the playing field

Topic 3: Pleadings (JH)

- Pleadings in arbitration
 - The shadows cast by civil and common law
- Submissions and Exhibits
 - Defensive pleading
- What is helpful to the Tribunal?

Topic 3: Pleadings (KG)

- Early management of the process
 - Less is more
 - Clarity is all
- Form of pleadings:
 - Statements of case and defences
 - Statements from witnesses of fact, now or later?
 - Documents/exhibits

Topic 4: Experts (JH)

- Expert evidence
 - Regulation of meeting and reports
 - Involvement of the parties
 - Role and effectiveness

- Presentation
 - Format?
 - Oral and written evidence

Topic 4: Experts (KG)

- What does the tribunal want from party appointed experts?
 - Meetings, statements, then reports, or
 - Reports, meetings, then statements?
 - Objectivity in opinion evidence
- Is there anything to fear from Tribunal appointed experts and assessors?

Topic 5: The hearing (JH)

- Oral submissions
 - Styles and effectiveness
 - What is effective advocacy?
 - For Counsel?
 - For fact witnesses?
 - For experts?

- What is helpful to the Tribunal?

Topic 5: The hearing (KG)

- Written opening statements
- Agreed lists of issues
- Witness statements as evidence in chief
- Cross examination / concurrent testimony
- Timetabling and time management
- Expert testimony:
 - Presentation of expert evidence, concurrent testimony.

Topic 6: Post-hearing (JH)

- Post-hearing submissions
- The Award
- *‘Due process paranoia’*

Topic 6: Post-hearing (KG)

- Closing submissions
 - Oral/Written: necessity / justification
- Ensuring all issues are covered in the award
- Paying attention to the requirements...
 - Of the rules governing the arbitration
 - Of the law of the Seat
 - Of the place of likely Enforcement