Austrian Yearbook on International Arbitration 2016

The Editors
Christian Klausegger, Peter Klein, Florian Kremslehner, Alexander Petsche, Nikolaus Pitkowitz, Jenny Power, Irene Welser, Gerold Zeiler

The Authors

Wien 2016
MANZ’sche Verlags- und Universitätsbuchhandlung
Verlag C.H. Beck, München
Stämpfli Verlag, Bern
Introduction

Since 2007, the Austrian Yearbook on International Arbitration has been a major source of information on current issues in international arbitration. Published under the guidance of the editors, the Yearbook provides an annual update on key developments in domestic and international arbitration.

The tenth edition addresses current issues discussed in the arbitration community and it mainly reflects topics addressed in the course of the Vienna Arbitration Days 2015 and the Dreiländer-Konferenz held in Vienna in 2015.

It includes Peter Rees' keynote speech "Does Arbitration Deliver" as well as other authoritative contributions prepared by leading arbitration practitioners and academics. We are particularly proud that the tenth issue of the Yearbook also contains the Bergsten Lecture "TTIP – Myths and Facts" delivered by John Beechy in 2015.

Due to the highly efficient work of the authors, the Yearbook also contains the first contribution addressing the new Vienna Mediation Rules 2016 which were adopted in November 2015.

To honour the outstanding contributions of numerous leading arbitrators, academics and practitioners over the past ten years, this tenth edition contains abstracts of all articles published in the Austrian Yearbook to date.

We are grateful for the present contributions from extraordinary arbitration experts from all over the world. We sincerely hope that this "Jubilee Edition" fulfils the expectations of academics and practitioners and serves to further develop international arbitration.

Vienna, January 2016

The Editors
Overview

Chapter I The Arbitration Agreement and Arbitrability

Dieter Hofmann/Pascale Koester
Consumers in Arbitration – From a Swiss Perspective

Nicolas W. Reithner/Gabriele Ehlich
Consumer Protection in Arbitration Proceedings in Liechtenstein:
Austrian and Liechtenstein Consumer Protection in Arbitration Proceedings – Differences and Similarities

Michael Swangard/Tamsyn Pickford
Commodity Arbitrations

Chapter II The Arbitrator and the Arbitration Procedure

Peter Rees

Ema Vidak-Gojkovic/Lucy Greenwood/Michael McIwrath
Puppies or Kittens? How to Better Match Arbitrators to Party Expectations

Catherine A. Rogers
Transparency in Arbitrator Selection

Irene Welser/Alexandra Stoffl
Calderbank Letters and Baseball Arbitratio – Effective Settlement Techniques?

Veit Ohlberger/Jarred Pinkston
Iura Novit Curia and the Non-Passive Arbitrator: A Question of Efficiency, Cultural Blinders and Misplaced Concerns About Impartiality

Chapter III The Award and the Courts

Markus Schifferl/Venus Valentina Wong
Decisions of the Austrian Supreme Court on Arbitration in 2014 and 2015

Georg Naegeli/Simon Vorburger
When a Party to an International Arbitration Goes Bankrupt: A Swiss Perspective
Chapter IV  Alternative Dispute Resolution
Alice Fremuth-Wolf/Anne-Karin Grill
Ulrike Gantenberg/Gustav Flecke-Giammarco
Dispute Boards Revival: Championing the Use of Dispute Adjudication Boards as a Project Management Tool That Helps to Avoid Disputes

Chapter V  Investment Arbitration
John Beechey
TTIP-Myths and Facts: 2015 Bergsten Lecture, Vienna
Boris Kasolowsky/Amanda Neil
Pre-Award Transparency in Investment Arbitration from the Perspective of Parties and Counsel
Constantin Eschlboeck
Repeal of Domestic Legislative Measures by Means of International Arbitration
N. Jansen Calamita/Ewa Zelazna
Andrea K. Bjorklund
NAFTA Chapter XI’s Contribution to Transparency in Investment Arbitration

Chapter VI  10 Years Austrian Yearbook on International Arbitration
Christian Klausegger/Ruth Mahfoozpour

Annex
Alfred Siwy
Recent Publications on Austrian Arbitration

Index 2007–2016
# Table of Contents

Introduction .......................................................... III
Overview .............................................................. V
The Editors and Authors .............................................. XVII

### Chapter I The Arbitration Agreement and Arbitrability

*Dieter Hofmann/Pascale Koester*

**Consumers in Arbitration – From a Swiss Perspective** .................................................. 1

I. Introduction .............................................. 3
II. Consumer Law in Switzerland – A Brief Overview .................................................. 3
   A. Development and State of Swiss Consumer Law .............................................. 3
   B. Definitions of Consumer in Swiss Law .................................................. 5
      1. No Uniform Definition of Consumer .............................................. 5
      2. Scope of Application in Practice not Always Clear .................................. 7
III. Arbitrability of Consumer Disputes .................................................. 7
   A. Definitions of Arbitrability .............................................. 7
   B. Other Limits to Arbitrability of Consumer Disputes? .................................. 10
IV. Agreement to Arbitrate .................................................. 12
   A. Formal Requirements .............................................. 12
   B. Substantive Validity pursuant to Swiss Law .............................................. 13
   C. Arbitration Agreements in General Commercial Conditions ................................ 14
      1. Valid Incorporation and Rule of Unusualness .............................................. 14
      2. Possible Review of Content .............................................. 16
V. Practicability Issues: Unilateral Withdrawal from the Arbitration Clause ................................ 17
VI. Recent discussion: FIDLEG .............................................. 18
VII. Conclusion .............................................. 20

*Nicolas W. Reithner/Gabriele Ehlich*

**Consumer Protection in Arbitration Proceedings in Liechtenstein** .................................................. 21

I. Introduction .............................................. 21
II. General Overview of Consumer Protection .................................................. 21
III. Consumer Protection in Arbitration Law .................................................. 22
IV. Consumer Protection in Company Law .................................................. 23
   A. Is a Legal Entity under Private Law an Entrepreneur or a Consumer? .................................................. 23
      1. Legal Situation in Austria .............................................. 23
      2. Legal Situation in Liechtenstein .............................................. 24
   B. Arbitration Clauses in Statutes and Articles of Association .................................................. 24
      1. Legal Situation in Austria .............................................. 25
      2. Legal Situation in Liechtenstein .............................................. 25
V. Law Reform in Liechtenstein .................................................. 26
   A. Consumers .............................................. 26
   B. Arbitrability of the Supervisory Proceedings for Foundations and Trusts .............................................. 27
# Commodity Arbitrations

## III. Introduction

### III. An Outline of the Leading Commodity Associations

- **A. The Grain and Feed Trade Association (GAFTA)**
- **B. The London Metal Exchange (LME)**
- **C. The Coffee Trade Federation (CTF)**
- **D. The Federation of Oils, Seeds and Fats Associations Limited (FOSFA)**
- **E. The Federation of Cocoa Commerce (FCC)**
- **F. The Refined Sugar Association (RSA) and the Sugar Association of London (SAL)**
- **G. International Cotton Association (ICA)**
- **H. The Combined Edible Nut Trade Association (CENTA)**

## III. Commodity Arbitration: Distinguishing Features

- **A. Commercial rather than legal tribunals**
- **B. Curtailed Time Limits for Initiating Arbitration**
- **C. Multi-tier Arbitrations Incorporating Appeal Procedures**
- **D. The Exclusion of Legal Practitioners From Oral Hearings**
- **E. String Arbitration/One Binding Award**
- **F. Defaulter Posting**

## IV. Current Trends in Commodity Arbitration and Outlook

---

### Chapter II The Arbitrator and the Arbitration Procedure

*Peter Rees*

**Does Arbitration Deliver?**

- **I. Introductory Examples**
  - The Boston Shoe Repairer
  - The Dublin Jeweller
- **II. The Seven Advantages**
- **III. Delivery**
  - DHL
  - UPS
  - Austrian Postal Service – Österreichische Post AG
  - Royal College of Midwives
- **IV. Speed, Quality, Price. Pick Three**
- **V. Albert Einstein**

---

### Ema Vidak-Gojkovic/Lucy Greenwood/Michael McIlwrath

**Puppies or Kittens? How to Better Match Arbitrators to Party Expectations**

- **III. How Uncertainty Over Arbitrator Soft Skills and Procedural Orientation Contributes to Dissatisfaction with International Arbitration**
- **III. The Current Approach to Arbitrator Selection is Fundamentally Flawed**
- **III. The Importance of Soft Skills and Knowing the Arbitrator’s Approach to Case Management**
- **IV. The Puppy or Kitten Test: A Proposal for Arbitrators to Declare Their Case Management Preferences, If Any**
  - Arbitrator Style and Preferences Questionnaire
B. Where Would This Information Be Available? .......................... 71
V. So Why Do It? Numerous Benefits of Making the Selection Process More Transparent ................................................................. 72
VI. Conclusion: An Opportunity for VIAC ........................................... 74

Catherine A. Rogers

Transparency in Arbitrator Selection .................................................. 75
I. The Steady March to Increased Transparency ................................. 75
   A. The IBA Guidelines on Conflicts of Interest in International Arbitration (IBA Guidelines) ................................................................. 76
   B. Other Transparency Innovations .................................................. 77
II. Information and Transparency in Arbitrator Selection ................. 79
   A. Information and Feedback About Arbitrators ............................... 79
   B. Arbitral Institutions and Limits on Information ........................... 80
   C. Arbitrator Intelligence ............................................................... 81
      1. Web-Based Information ............................................................ 81
      2. Arbitral Awards .................................................................. 82
      3. Feedback Questionnaires ....................................................... 82
III. A Final Note on Transparency and Diversity ............................... 84

Irene Welser/Alexandra Stoffl

Calderbank Letters and Baseball Arbitration – Effective Settlement Techniques? ... 87
I. The Importance of Special Settlement Techniques in International Arbitration ................................................................. 87
II. The Sealed Offer/Calderbank Letter .............................................. 88
   A. Origin and Underlying Principles ................................................. 88
   B. What is a Calderbank Letter or Sealed Offer? ......................... 89
   C. How to Make a Sealed Offer? .................................................... 90
   D. Advantages of Sealed Offer Arbitration .................................... 92
   E. Disadvantages of Sealed Offer Arbitration ............................... 92
III. Baseball Arbitration ................................................................. 94
   A. What is Baseball Arbitration? .................................................... 94
   B. How to Conduct Baseball Arbitration ....................................... 95
   C. Advantages of Baseball Arbitration .......................................... 96
   D. Disadvantages of Baseball Arbitration .................................... 97
IV. Conclusion ........................................................................ 98

Veit Öhlberger/Jarred Pinkston

Iura Novit Curia and the Non-Passive Arbitrator: A Question of Efficiency, Cultural Blinders and Misplaced Concerns About Impartiality ............... 101
I. Introduction ........................................................................ 101
II. What is Iura Novit Curia in the Context of International Arbitration? ................................................................. 102
III. Authority/Discretion to Apply Iura Novit Curia .......................... 104
   A. Attempts to Extrapolate from Domestic Legal Regimes: Cultural Basis ................................................................. 104
   B. National Arbitration Laws ....................................................... 106
   C. International Tribunals ............................................................ 106
   D. Arbitral Rules .................................................................. 107
   E. General Discretion with Regard to Matters of Procedure ........ 107
   F. Conclusion on Authority ......................................................... 108
IV. Indirect Limitations to Apply Iura Novit Curia .............................. 108
Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Law Applicable to the Effects of an Insolvency on the Validity</td>
<td>146</td>
</tr>
<tr>
<td>of an Arbitration Agreement</td>
<td></td>
</tr>
<tr>
<td>2. The Effects of an Insolvency on the Validity of the Arbitration</td>
<td>147</td>
</tr>
<tr>
<td>Agreement under Swiss Law</td>
<td></td>
</tr>
<tr>
<td>B. The Effects of an Insolvency on the Capacity of a Party Subject</td>
<td>147</td>
</tr>
<tr>
<td>to Insolvency Proceedings</td>
<td></td>
</tr>
<tr>
<td>1. Law Applicable to the Capacity of a Party Subject to Insolvency</td>
<td>148</td>
</tr>
<tr>
<td>Proceedings</td>
<td></td>
</tr>
<tr>
<td>a) The Swiss Federal Supreme Court’s Approach in the Vivendi Case</td>
<td>148</td>
</tr>
<tr>
<td>b) The Swiss Federal Supreme Court’s New Approach in the Portuguese</td>
<td>149</td>
</tr>
<tr>
<td>Case</td>
<td></td>
</tr>
<tr>
<td>c) Remaining Issues Under the Swiss Federal Supreme Court’s New</td>
<td>151</td>
</tr>
<tr>
<td>Approach</td>
<td></td>
</tr>
<tr>
<td>2. The Effects of an Insolvency on the Capacity of a Party to an</td>
<td>152</td>
</tr>
<tr>
<td>Arbitration Under Swiss Law</td>
<td></td>
</tr>
<tr>
<td>C. The Scope Ratione Personae of the Arbitration Agreement in the</td>
<td>152</td>
</tr>
<tr>
<td>Insolvency Context</td>
<td></td>
</tr>
<tr>
<td>1. Law Applicable to the Scope Ratione Personae of the Arbitration</td>
<td>152</td>
</tr>
<tr>
<td>Agreement</td>
<td></td>
</tr>
<tr>
<td>2. Transfer of the Arbitration Agreement from the Debtor to the Insolvency Estate Under Swiss Law</td>
<td>154</td>
</tr>
<tr>
<td>D. The Scope Ratione Materiae of the Arbitration Agreement</td>
<td>156</td>
</tr>
<tr>
<td>1. Law Applicable to the Scope Ratione Materiae of the Arbitration</td>
<td>156</td>
</tr>
<tr>
<td>Agreement</td>
<td></td>
</tr>
<tr>
<td>2. Types of Insolvency Law Actions Covered by the Scope Ratione Materiae of an Arbitration Agreement</td>
<td>157</td>
</tr>
<tr>
<td>3. Actions Arising Out of a Swiss Insolvency Covered by an Arbitration Agreement</td>
<td>158</td>
</tr>
<tr>
<td>E. Objective Arbitrability of Insolvency Law Actions</td>
<td>159</td>
</tr>
<tr>
<td>1. Law Applicable to Objective Arbitrability and Its Standards</td>
<td>159</td>
</tr>
<tr>
<td>2. Objective Arbitrability of Actions Arising Out of a Swiss Insolvency</td>
<td>161</td>
</tr>
<tr>
<td>F. Suspension of Arbitral Proceedings Upon the Commencement of an</td>
<td>163</td>
</tr>
<tr>
<td>Insolvency</td>
<td></td>
</tr>
<tr>
<td>1. Law Applicable to A Suspension of the Arbitral Proceedings</td>
<td>163</td>
</tr>
<tr>
<td>2. Standards for a Suspension of the Arbitral Proceeding under the</td>
<td>164</td>
</tr>
<tr>
<td>Swiss Lex Arbitri</td>
<td></td>
</tr>
<tr>
<td>3. Applicability of the Automatic Stay Provision of Swiss Insolvency</td>
<td>164</td>
</tr>
<tr>
<td>Law to International Arbitration?</td>
<td></td>
</tr>
<tr>
<td>IV. Enforcement of an Arbitral Award in the Insolvency Context</td>
<td>166</td>
</tr>
<tr>
<td>A. Enforcement of an Arbitral Award Against a Party Subject to a Swiss</td>
<td>166</td>
</tr>
<tr>
<td>Insolvency Proceeding</td>
<td></td>
</tr>
<tr>
<td>B. Enforcement of an Arbitral Award Against Assets Located in</td>
<td>169</td>
</tr>
<tr>
<td>Switzerland Belonging to a Party Subject to Non-Swiss Insolvency</td>
<td></td>
</tr>
<tr>
<td>Proceedings</td>
<td></td>
</tr>
<tr>
<td>C. Enforcement of an Arbitral Award Against Assets Located in</td>
<td>170</td>
</tr>
<tr>
<td>Switzerland by the Foreign Trustee</td>
<td></td>
</tr>
</tbody>
</table>
Chapter IV  Alternative Dispute Resolution  

Alice Fremuth-Wolf/Anne-Karin Grill  

III. Introduction  

A. General Provisions (Articles 1, 2, 14)  
B. Commencing the Proceedings (Article 3)  
C. Appointment of the Mediator (Article 7)  
D. Costs (Articles 4 and 8)  

1. Registration Fee (Article 4)  
2. Administrative Fees (Article 8 para. 6)  
3. Mediator’s Fees (Article 8 para. 8)  
4. Use of Advance on Costs in Parallel Proceedings  
5. No Double-Charging (Articles 4 para. 3 and 8 para. 10)  
6. Award on Agreed Terms – Arbitrator’s Fees (Article 8 para. 11)  
7. Payment of the Advance on Costs (Article 8 para. 4)  
8. Final Cost Allocation (Article 8 para. 9)  
E. Place and Language of the Proceedings (Articles 5 and 6)  

1. Place of Meetings and Sessions (Article 5)  
2. Language of the Proceedings (Article 6)  
F. Conduct of the Proceedings (Article 9)  
G. Parallel Proceedings (Article 10)  
H. Termination of the Proceedings (Article 11)  
I. Confidentiality, Admissibility of Evidence and Subsequent Party Representation (Article 12)  
J. Disclaimer (Article 13)  

III. Draft NE-Guidelines  

IV. Conclusion  

ANNEX – VIAC Rules of Arbitration  

Ulrike Gantenberg/Gustav Flecke-Giammarco  
Dispute Boards Revival: Championing the Use of Dispute Adjudication Boards as a Project Management Tool That Helps to Avoid Disputes  

III. Introduction  

II. Salient Characteristics of DABs  

III. General Structure of DAB Proceedings  

IV. New ICC Dispute Board Rules  

V. Other Areas in Which DABs Could Become a Useful Practice Tool  

VI. Conclusion  

ANNEX – VIAC Rules of Arbitration  

John Beechey  
TTIP-Myths and Facts: 2015 Bergsten Lecture, Vienna  

I. The Myths and the Facts  

A. Myth 1: Arbitration Operates Outside the Legal System  

Chapter V  Investment Arbitration  

Table of Contents
B. Myth 2: Arbitration Constitutes an Undesirable Limit to the Power of Sovereign States to Regulate the Public Interest

C. Myth 3: Arbitration is an Exercise in Secrecy

D. Myth 4: States Never Win

E. Myth 5: Foreign Investors Benefit From Superior Protection

F. Myth 6: Inconsistency

G. Myth 7: Arbitrators are Biased Against States

II. What Next?

III. Postscript

Boris Kasolowsky/Amanda Neil
Pre-Award Transparency in Investment Arbitration from the Perspective of Parties and Counsel

I. Introduction

II. Distinguishing Post-Award Transparency and Pre-Award Transparency

III. The Push Towards Pre-Award Transparency

IV. The Cost of Pre-Award Transparency – The Loss of Efficiency and Effectiveness

A. Pre-Award Transparency Creates Lengthier, Costlier and More Complex Proceedings

1. Public Hearings

2. Amici Curiae

B. Pre-Award Transparency Makes Dispute Resolution More Difficult

1. Repoliticization of Disputes

2. Making Disputes Politically Unsettable

C. Differing Standards of Pre-Award Transparency Increase Confusion and a Lack of Coherence

V. Conclusion

Constantin Eschlboeck
Repeal of Domestic Legislative Measures by Means of International Arbitration

I. The Problem

II. Specific Performance as the (Only) Appropriate Remedy


IV. The Doctrine of Self-Limitation

V. The Idea of Pacta Sunt Servanda Under the VCLT

VI. Good Faith as the Most Important Principle of Law

VII. Termination

VIII. Material Breach and Impossibility

IX. Fundamental Change of Circumstances

X. The Fitzmaurice Examples on the Fundamental Change of Circumstances

XI. The Juridical and Academic Recognition of the Fundamental Change of Circumstances Principle

XII. Fundamental Change of Circumstances and the Parties’ Intention

XIII. Limits to the Rebus Sic Stantibus Principle

XIV. Primacy of International Law Over Domestic Law

XV. State Continuity

XVI. Conclusion: Pacta Sunt (Et Erunt) Servanda

XVII. The Real Problem: The Enforcement of an Award “Against Domestic Law”
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>XVIII. Public Policy</td>
<td>266</td>
</tr>
<tr>
<td>XIX. International Public Policy</td>
<td>266</td>
</tr>
<tr>
<td>XX. The Recommendations of the ILAC</td>
<td>267</td>
</tr>
<tr>
<td>XXI. Arbitral Award and Enforcement of Administrative Notices</td>
<td>269</td>
</tr>
<tr>
<td>XXII. Summary</td>
<td>270</td>
</tr>
</tbody>
</table>

N. Jansen Calamita/Ewa Zelazna


I. Introduction 271

II. Normative Arguments Driving Increased Transparency in Investment Treaty Arbitration 273
   A. Promotion of Good Governance 274
   B. Business and Human Rights 275
   C. Legitimacy of Investor-State Arbitration 276
   D. Regulatory Predictability 276
   E. Equality and Fairness in Arbitration 277
   F. State Treaty Development 277

III. Developments Relating to Transparency in Treaty-based Arbitration 278
   A. Dispute Settlement Transparency Provisions in Investment Treaties 278
   B. The Treatment of Transparency in Arbitral Rules 280

IV. The UNCITRAL Rules on Transparency 281
   A. Public Access to Documents and Hearings 281
   B. Exceptions to Public Access to Documents and Hearings under Art 7 282
   C. Participation by Third Persons and Non-disputing Parties to the Treaty 283
   D. UNCITRAL Rules on Transparency – Application 285

V. The Mauritius Convention 286

VI. Conclusion 288

Andrea K. Bjorklund

NAFTA Chapter XI's Contribution to Transparency in Investment Arbitration 291

I. Transparency Generally 292
   A. Substantive Transparency 293
   B. Procedural Transparency 294
   C. The Question of Amicus Curiae 294

II. Transparency Under NAFTA 294
   A. Access to Information Laws 295
   B. NAFTA Transparency Prior to Clarification 295
   C. Clarification Re Procedural Transparency 298
   D. NAFTA and Amicus Curiae Participation 299

III. Some Consequences of Transparency 303
   A. Settlement 303
   B. Complexity and Cost 304
   C. Contribution to the Development of the Law 306
   D. "Issue" and Other Conflicts 306

IV. Conclusion 309
## Table of Contents

### Chapter VI 10 Years Austrian Yearbook of International Arbitration

- Christian Klausegger/Ruth Mahfoozpoure
  

- I. The Arbitration Agreement and Arbitrability .......................... 313
- II. The Arbitrator and the Arbitration Proceeding ......................... 322
- III. The Award and the Courts ................................................. 340
- IV. Alternative Dispute Resolution ........................................... 348
- V. Investment Arbitration ......................................................... 350
- VI. Arbitration and Crime ......................................................... 355
- VII. Issues Specific to Arbitration in Europe ................................ 356

- Annex ................................................................. 359

### Alfred Siwy

- Recent Publications ......................................................... 361

- Index 2007–2016 .......................................................... 369
The Editors and Authors

John Beechey was President of the ICC International Court of Arbitration from January 2009 until June 2015. In the course of his term of office as President of the Court, he oversaw the introduction of the new ICC Arbitration and Mediation Rules and new Rules for Experts.

He was primarily responsible for the Court’s move to new premises and he proposed and implemented the establishment of the new Governing Body, which has the responsibility for long-term strategic planning for the Court. His term of office saw the opening of the Court’s operations in New York, the inception of the Jerusalem Arbitration Centre and many changes to the practices of the Court, the principal purpose of which has been to improve the efficiency of the Court and the quality of the service that it offers to its users.

Prior to his term at the ICC, he was founding partner of the Clifford Chance international arbitration practice and one of the first Solicitors to undertake the role of advocate before international arbitration tribunals. His practice included advising Governments, public sector entities, private sector Corporations, employers, contractors and consultants on dispute resolution procedures and in respect of proceedings relating to international commercial contracts and investor-state disputes in all parts of the world.

John Beechey served as both Counsel and Arbitrator whilst in private practice and he continues to be in demand as an arbitrator in both “ad hoc” (including UNCITRAL) arbitrations and institutional arbitrations under the Rules of, inter alia, the EDF, ICC, ICDR/AAA, ICSID, LCIA, PCA, SIAC and the Stockholm Chamber.

He was a member of two major IBA working groups, which produced the Rules on the Taking of Evidence in International Arbitration Proceedings and Guidelines on Conflicts of Interest. He is a former President of the International Arbitration Club.

Contact: John Beechey
T: +44 (0) 7785 700 171
E: john.beechey@beecheyarbitration.com
Andrea K. Bjorklund is the L. Yves Fortier Chair in International Arbitration and International Commercial Law at McGill University Faculty of Law. She is an adviser to the American Law Institute’s project on restating the U.S. law of international commercial arbitration. She is also a member of the Advisory Board of the Investment Treaty Forum of the British Institute for International and Comparative Law. Professor Bjorklund is the inaugural ICSID Scholar-in-Residence. She is on the panel of arbitrators of the International Center for Dispute Resolution of the American Arbitration Association. Professor Bjorklund is widely published in investment law and dispute resolution and transnational contracts.

Prior to entering the academy she was an attorney-adviser on the NAFTA arbitration team in the Office of the Legal Adviser of the U.S. Department of State.

Professor Bjorklund has a J.D. from Yale Law School, an M.A. in French Studies from New York University, and a B.A. (with High Honors) in History and French from the University of Nebraska, Lincoln.

Contact: McGill University Faculty of Law
3644 rue Peel, QC H3A 1W9 Montreal, United States
T: +1 514 398 5372
E: andrea.bjorklund@mcgill.ca
www.mcgill.ca/law/about/profs/bjorklund-andrea
N. Jansen Calamita is Senior Research Fellow and Director of the Investment Treaty Forum at the British Institute of International and Comparative Law. He has previously held posts at the University of Birmingham, the Faculty of Law at the University of Oxford, and George Mason University. He is a sometime visiting fellow of Mansfield College, Oxford, and the University of Vienna.

Prior to entering academics, Mr. Calamita served in the Office of the Legal Adviser in the U.S Department of State (International Claims and Investment Disputes Division) and as a member of the UNCITRAL Secretariat. He began his career in private practice in New York. He holds a Juris Doctor magna cum laude (Boston) and a Bachelor of Civil Law (Oxford). He continues to advise governments on matters relating to the law of foreign investment and international dispute resolution issues.

Mr. Calamita’s research is in general public international law, the international law of investment, and international dispute settlement. He is a Consultative Expert to the United Nations Conference on Trade and Development and a member of the editorial board of the Yearbook of International Law and Policy (Oxford University Press).

Contact: British Institute of International and Comparative Law
Charles Clore House, 17 Russell Square, London WC1B 5JP, United Kingdom
T: +44 (0)20 7862 5151
E: n.j.calamita@biicl.org
www.biicl.org
Gabriele Ehlich is an associate with Advocatur Seeger, Frick & Partner AG in 2014. She studied law at the University of Vienna School of Law where she graduated in 2011. Prior to joining Advocatur Seeger, Frick & Partner AG, she worked as a law clerk for the Higher Regional Court of Vienna, Austria, and was as an associate in a leading Austrian law firm in Vienna, Austria, where she gained extensive experience in the field of commercial real estate. During her studies, she already had a strong focus on alternative dispute resolution and arbitration.

Contact: Advocatur Seeger, Frick & Partner AG
Kirchstrasse 6, FL-9490 Vaduz
T: +423 265 22 22
E: Gabriele.Ehlich@sfplex.li
www.sfplex.li
Constantin Eschlboeck is a dispute resolution practitioner in Vienna. Before founding his law firm Eschlboeck Dispute Resolution in Summer 2012 he practised with the dispute resolution departments of various international law firms.

Constantin Eschlboeck is the Vice Chairman of the Forum for International Conciliation and Arbitration in Oxford, UK (www.ficacic.com), a Fellow of the Chartered Institute of Arbitrators, a Member of the Dispute Board Federation and Certified EFFAS Financial Analyst. He is also a member of the ethics council of the Vienna Bar.

Contact: Eschlboeck Dispute Resolution
Biberstraße 22, A-1010 Vienna, Austria
T: +43 1 512 92 74
E: constantin.eschlboeck@disputes.at
www.disputes.at
www.ficacic.com
Gustav Flecke-Giammarco is a senior associate at Heuking Kühn Lüer Wojtek, an independent law firm with about 300 lawyers. Heuking Kühn Lüer Wojtek is one of the major independent German law firms with offices in Berlin, Brussels, Chemnitz, Cologne, Düsseldorf, Frankfurt am Main, Hamburg, Munich, Stuttgart and Zurich. The law firm has a full-service approach including, in particular, general corporate and commercial, M&A and international arbitration. Mr. Flecke-Giammarco’s areas of practice are dispute resolution (litigation and international arbitration), corporate and M&A. He acts as counsel and arbitrator in international arbitration proceedings (ad hoc, DIS, ICC, VIAC, SCC, etc.) particularly on post-M&A, corporate/licence and construction disputes and as counsel in DAB proceedings regarding turn-key and energy projects. Before joining Heuking Kühn Lüer Wojtek, Mr. Flecke-Giammarco worked as Counsel at the ICC International Court of Arbitration in Paris. During this time at the ICC, he supervised more than 850 arbitrations, including several investment treaty and emergency arbitrator cases and was involved in the review of some 450 awards as part of the ICC Court’s scrutiny process. As a qualified German lawyer with experience of working in France and Italy, Gustav Flecke-Giammarco is particularly dedicated to international work. Besides German, he speaks English, Italian and French fluently.

He is a frequent speaker on issues of international arbitration and international private law at international events and conferences. He regularly publishes on arbitration and corporate issues and is a member of several arbitration organisations. He is a member of the editorial board of the Journal of International Arbitration and a Member of the ICC Commission on Arbitration and ADR.

Contact: Heuking Kühn Lüer Wojtek
Georg-Glock-Straße 4, D-40474 Düsseldorf, Germany
T: +49 211 600 550 71
E: g.flecke@heuking.de
www.heuking.de
Alice A. Fremuth-Wolf is Deputy-Secretary General of the International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC) in Vienna since January 2012. Having studied law at University of Vienna (Mag. iur. in 1995 and Dr. iur. in 2002) and at the London School of Economics and Political Science (LL.M. in 1998), Alice Fremuth-Wolf served as an assistant at the Institute of Civil Procedural Law at the Law Faculty of Vienna University and worked as an associate with Wolf Theiss (Vienna) and Baker & McKenzie (Vienna) before opening her own law firm in 2004. She has acted as arbitrator and party representative in international commercial arbitration proceedings in English and German and is also a trained mediator.

Alice Fremuth-Wolf has authored articles and books on arbitration and wrote her doctoral thesis on the assignment of arbitration agreements. She was a lecturer at the Law Faculty of Vienna University, coaching the team of Vienna University for the annual Willem C. Vis International Arbitration Moot from 2004–2009.

Besides being a founding member of the Young Austrian Arbitration Practitioners (YAAP), a sub-group of the Austrian Arbitration Association, she is member of several international arbitration associations.

She is a lecturer at Vienna University for international arbitration and coached the Vienna team for the annual Willem C. Vis International Moot from 2004–2009.

Contact: International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber
Wiedner Hauptstraße 63, A-1045 Vienna, P.O.Box 319, Austria
T: +43 (0)5 90 900-4400
E: alice.fremuth-wolf@viac.eu
www.viac.eu
Ulrike Gantenberg is a partner of Heuking Kühn Lüer Wojtek, an independent law firm with about 300 lawyers. Heuking Kühn Lüer Wojtek is one of the major independent German law firms with offices in Berlin, Brussels, Chemnitz, Cologne, Düsseldorf, Frankfurt am Main, Hamburg, Munich, Stuttgart and Zurich. The law firm has a full-service approach including, in particular, general corporate and commercial, M&A and international arbitration. Ulrike Gantenberg’s areas of practice are dispute resolution (litigation and international arbitration), corporate and M&A. She is one of the leading partners of the firm’s dispute resolution practice. She acts as counsel and arbitrator (sole arbitrator, chair and co-arbitrator) in international arbitration proceedings (ad hoc, DIS, ICC, VIAC, SCC, LCIA etc) particularly on post-M&A, corporate/licence and construction disputes, and as counsel in DAB proceedings regarding turn-key and energy projects. Ulrike Gantenberg has advised German and international clients in large numbers of M&A transactions, inter alia, relating to energy, telecommunication, automotive and service industries. As a qualified German lawyer with experience of working in France, Ulrike Gantenberg is particularly dedicated to international work. Besides German, she speaks English and French fluently.

She is a frequent speaker on issues of international arbitration and international private law at international events and conferences. She regularly publishes on arbitration and corporate issues and is a member of several arbitration organisations. She is a member of the board of directors of the German Institution of Arbitration (DIS) and chair of the working group for alternative dispute resolution of the German Bar Association (DAV).

Contact: Heuking Kühn Lüer Wojtek
Georg-Glock-Straße 4, D-40474 Düsseldorf, Germany
T: +49 211 600 55-208
E: u.gantenberg@heuking.de
www.heuking.de
Lucy Greenwood is a qualified solicitor in England and Wales and an accredited Foreign Legal Consultant in Texas with Norton Rose Fulbright. She has over fifteen years of experience in international arbitration and has served as counsel in cases under the major institutional arbitration rules, in relation to matters as diverse as oil and gas, electricity generation, joint ventures, exploration and development, motor-racing and telecommunications. Lucy received her BA, Law, Trinity Hall from Cambridge University in 1994, in 1995 completed a Legal Practice Course, College of Law, Chester; and in 1996 received her MA in Law, Trinity Hall from Cambridge University. Lucy became qualified in 1998 as Solicitor in England and Wales, in 2008 as a Foreign Legal Consultant through the State Bar of Texas and in 2011 was appointed a Fellow of the Chartered Institute of Arbitrators. She is a member of the faculty for the Chartered Institute of Arbitrator’s Fellowship training and a member of the ICDR Panel of Arbitrators. Lucy published a study of gender diversity: “Getting a Better Balance on International Arbitration Tribunals” in Arbitration International in 2012, which was nominated for an OGEMID award later that year, she subsequently published “Is the Balance Getting Better? An Update on Gender Diversity in International Arbitration?” in Arbitration International in 2015.

Contact: Norton Rose Fulbright US LLP
Fulbright Tower, 1301 McKinney Suite 5100,
TX-77010-3095 Houston, USA
T: +1 713 651 5308
E: lucy.greenwood@nortonrosefulbright.com
www.nortonrosefulbright.com
Anne-Karin Grill is a partner with schoenherr and a member of the Austrian Bar. She specializes in international dispute resolution and ADR. Anne-Karin Grill advises clients in both commercial litigation and arbitration proceedings. Also, she regularly serves as (sole) arbitrator in multi-jurisdictional arbitrations conducted under the VIAC, ICC and LCIA rules and acts as a CEDR accredited mediator in international commercial disputes. She earned her law degree (Mag. iur., 2001) from the University of Vienna and holds a Masters Degree from Georgetown University (M.A. in International Security Studies, Fulbright Fellow, 2004). Anne-Karin Grill serves as a lecturer at the University of Vienna and is a regular speaker on dispute resolution topics. She is also the author of number of publications on the subject. Anne-Karin Grill speaks German, English, French and Swedish.

Contact: Schönerr Rechtsanwaelte  
Schottenring 19, A-1010 Vienna, Austria  
T: +43 1 534 37 50144  
E: ak.grill@schoenherr.eu  
www.schoenherr.eu
Dieter A. Hofmann is a partner at Walder Wyss Ltd and heads the firm’s Litigation & Arbitration Team.

Dieter Hofmann has more than 15 years of experience as counsel and arbitrator in international commercial arbitrations, under a variety of arbitration rules, including ICC, Swiss Chambers’ Arbitration Institution (Swiss Rules), UNCITRAL, etc. and in ad hoc proceedings. He also represents clients in court, in particular before the Commercial Court of Zurich, and often acts in matters related to arbitration, in particular with regard to interim relief from state courts, enforcement and challenge of arbitral awards.

He has considerable experience in complex disputes arising from joint venture and shareholders’ agreements, engineering and construction projects, post M&A disputes etc.

He is Chair of the Zurich Bar’s Litigation Practice Group and has presented papers at major international conferences and published on litigation and arbitration in Switzerland and abroad.

Dieter Hofmann obtained a law degree from Zurich University (lic. iur. 1991). He has worked as a District Court law clerk in Zurich and as an attorney with major law firms in Zurich and in London.

Dieter Hofmann is admitted to the Zurich and Swiss Bar (1994), and in 1999, he was also admitted as a Solicitor of the Supreme Court of England and Wales (not practising).

Contact: Walder Wyss Ltd.
Seefeldstrasse 123, P.O. Box 1236, CH-8034 Zürich, Switzerland
T: +41 58 658 58 58
E: dieter.hofmann@walderwyss.com
www.walderwyss.com
Boris Kasolowsky is a Partner in Freshfields Bruckhaus Deringer’s international arbitration group and leads the firm’s litigation and international arbitration practice in Germany, Austria and the CEE region. He is based in Frankfurt, having previously practised in Freshfields’ London and Vienna offices. His arbitration experience includes numerous ad hoc, DIS, ICC, ICSID, LCIA, Vienna Rules and UNCITRAL arbitrations. He also represents clients in cross-border, international litigation matters, including in the English High Court and the German courts.

Boris Kasolowsky regularly appears as counsel and sits as arbitrator in commercial arbitrations concerning long-term supply agreements, M&A transactions, infrastructure and oil and gas projects. He also represents and advises governments and commercial entities in relation to disputes under relevant bilateral and multilateral investment treaties, including under the Energy Charter Treaty.

Boris Kasolowsky holds a law degree from Oxford University (Christ Church College), a master’s degree from the School of Oriental and African Studies, London University, and a doctorate from Hamburg University. He is qualified as a solicitor (England and Wales) and German Rechtsanwalt. He speaks English, German, French and Arabic.

Contact: Freshfields Bruckhaus Deringer LLP
Bockenheimer Anlage 44, D-60322 Frankfurt am Main, Germany
T: +49 69 27 30 8-844
E: boris.kasolowsky@freshfields.com
www.freshfields.com
Christian Klausegger is a partner of Binder Grösswang Rechtsanwälte since 1997 and heads Binder Grösswang’s dispute resolution group.

He has more than 15 years experience as counsel in international arbitration proceedings, both in institutional proceedings under the VIAC, ICC and UNCITRAL rules and in ad-hoc-arbitration proceedings. Christian Klausegger regularly represents before Austrian courts in matters relating to arbitration, including the challenge and enforcement of arbitral awards.

Christian Klausegger is a member of the Austrian exam board for judges and a member of the board of the Austrian Arbitration Association (ArbAut). He publishes regularly on international litigation and arbitration.

He holds a doctorate in law (1987) and a degree in economics (1987), both from the University Vienna and was admitted to the Austrian Bar in 1992.

Contact: Binder Grösswang Rechtsanwälte GmbH
Sterngasse 13, A-1010 Vienna, Austria
T: +43 1 534 80-320
E: klausegger@bindergroesswang.at
www.bindergroesswang.at
Peter Klein is partner of Petsch Frosch Klein Arturo Rechtsanwälte with offices in Vienna and Milan. He has considerable experience in the field of mergers & acquisitions transactions (including share and asset acquisitions), joint ventures, and civil and commercial law in general.

Peter Klein has been involved in many international and domestic arbitrations either as co-arbitrator, sole arbitrator, chairman of arbitral tribunals or party counsel including proceedings under various rules (such as Vienna Rules, ICC, UNCITRAL and Milan Chamber of Commerce arbitration rules). Many of his transactions are with Italian and Austrian companies and clients having business relations with Austria and Italy.

Peter Klein was admitted to the Vienna Bar in 1993 and holds a Doctor of Laws (Dr. iur.) degree from the University of Vienna (1985).

Contact: Petsch Frosch Klein Arturo Rechtsanwälte
Esslinggasse 5, A-1010 Vienna, Austria
T: +43 1 586 21 80
Corso di Porta Romana 46, I-20122 Milan, Italy
T: +39 2 58 32 82 62
E: peter.klein@pfka.eu
www.pfka.eu
Florian Kremslehner has been a partner at Dorda Brugger Jordis since 1992 and leads the firm’s arbitration and litigation department. He is a graduate of the University of Vienna and was admitted to the Austrian Bar in 1990.

Florian Kremslehner has 20 years of experience in dispute resolution, advising clients in civil and criminal litigations as well as in international arbitrations. He also has extensive experience as arbitrator and counsel in institutional and adhoc arbitrations (ICC, UNCITRAL, Vienna Rules). Florian Kremslehner’s present practice as an arbitrator and party counsel covers all areas of commercial law, with a focus on telecom and investment disputes. His advocacy skills are complemented by many years of experience in banking and finance transactions.

Florian Kremslehner has a reputation for advising financial institutions in asset recovery and corporate liability cases. He advises a wide range of banking and industry clients, governments and international organisations and insurance companies.

**Contact:** Dorda Brugger Jordis Rechtsanwälte GmbH
Universitätsring 10, A-1010 Vienna, Austria
T: +43 1 533 47 95-18
E: florian.kremslehner@dbj.at
www.dbj.at
Pascale Koester is a junior lawyer (currently taking the final part of the bar exam) in the Litigation & Arbitration Team of Walder Wyss Ltd in Zurich. She graduated from the University of Berne (Master of Law 2013, Bachelor of Law 2011) with a specialization in European and international law. During her studies, she repeatedly acted as a coach of the Vienna Moot Court teams of the University of Bern (2011 to 2014).

Contact: Walder Wyss Ltd.
Seefeldstrasse 123, P.O. Box 1236, CH-8034 Zürich, Switzerland
T: +41 58 658 58 58
E: pascale.koester@walderwyss.com
www.walderwyss.com
Ruth Mahfoozpour has studied law at the University of Vienna. She has gained professional experience while working with international law firms in Austria and at the foreign trade office of the Austrian Chamber of Commerce in Strasbourg. Ms. Mahfoozpour has also worked at the University of Vienna (Department of Civil Procedure), where she is currently enrolled for her PhD studies.

Contact: Binder Grösswang Rechtsanwälte GmbH
Sterngasse 13, A-1010 Vienna, Austria
T: +43 1 534 80
E: mahfoozpour@bindergroesswang.at
www.bindergroesswang.at
Michael McIlwrath is Global Chief Litigation Counsel for GE Oil & Gas, a global division of the General Electric Company in Florence, Italy. Michael is co-author, with John Savage, of International Arbitration and Mediation: A Practical Guide (Kluwer Law International 2010), as well as a contributing editor to the Kluwer Arbitration Blog. Michael is a member of the board of directors (and past chairman) of the International Mediation Institute (IMI mediation.org), a non-profit based in the Netherlands that promotes quality, transparency, and ethics in mediation, and he is currently chair of the Global Organizing Committee for the Global Pound Conference Series 2016, a multi-city global conference held under the auspices of IMI to create a dialogue among stakeholders over the future of civil justice. Michael was also the host of International Dispute Negotiation, a podcast of the International Institute for Conflict Prevention and Resolution, featuring leading professionals and cutting-edge topics in dispute resolution (recipient of the CEDR Award for Innovation in ADR).

Contact: GE Infrastructure Oil & Gas
Via Felice Matteucci 2, I-50127 Firenze, Italy
T: +39 0554 238 445
E: michael.mcilwrath@np.ge.com
Georg Naegeli is a member of Homburger’s Litigation/Arbitration practice team. He knows how judges think because he served as one for ten years. In 2000, he joined Homburger’s litigation and arbitration practice team. He now represents clients in commercial disputes before state courts and in international arbitrations. Georg Naegeli has various assignments as chair or member of institutional and ad hoc arbitral tribunals. In addition, he is a member of Homburger’s Restructuring/Insolvency working group and advises clients on, and represents them in, insolvency and restructuring proceedings. From 2008–2012, Georg Naegeli was a member of the Court of Cassation of Zurich.

Georg Naegeli has published several articles on topics relating to international arbitration, jurisdiction, insolvency and enforcement. He is a co-author of commentaries on the Swiss Code of Civil Procedure, the Convention of Lugano and the Swiss Act on the Place of Jurisdiction in Civil Matters.

Contact: Homburger AG
Prime Tower, Hardstrasse 201, CH-8005 Zurich, Switzerland
T: +41 432 221 000
E: georg.naegeli@homburger.ch
www.homburger.ch
Amanda Neil is an associate in the Vienna office of Freshfields Bruckhaus Deringer. She is a member of the international arbitration and finance practice groups and specialises in international arbitration, with a specific focus on financial, corporate and commercial matters. She also acts in energy, major projects and telecommunications matters. Amanda advises international clients in arbitration proceedings and acts as administrative secretary to arbitral tribunals in both institutional and ad hoc proceedings.

Amanda was born in Sydney, Australia. She holds a law degree, with honours, and an arts degree, majoring in German, both from the University of Sydney. Before joining Freshfields Bruckhaus Deringer, she worked at a major Australian law firm and, prior to that, at Freshfields’ London office. She is qualified as a solicitor in New South Wales, Australia and England and Wales.

Amanda speaks English and German.

Contact: Freshfields Bruckhaus Deringer LLP
Seilergasse 16, A-1010 Vienna, Austria
T: +43 1 515 15 693
E: amanda.neil@freshfields.com
www.freshfields.com
Veit Öhlberger is a partner at Dorda Brugger Jordis. He specializes in international arbitration, trade and distribution, M&A/corporate law and legal aspects of doing business in China. He heads the firm’s China Desk. His arbitration experience includes working under the ICC, UNCITRAL, CIETAC and the Vienna Rules in a wide range of commercial disputes, with a particular focus on sale, supply, agency, distribution, franchise, post-M&A and joint venture disputes.

Veit Öhlberger holds a Master’s degree (Mag.iur.) and a Ph.D. (Dr.iur.) from the University of Vienna Law School and is also a graduate of the University of Oxford (Lincoln College), where he obtained a Master in European and Comparative Law (M.Jur.). He undertook additional legal studies at the London School of Economics and at the Renmin University of China.

Veit Öhlberger is Secretary of the International Arbitration Commission of the Union Internationale des Avocats (UIA) and an active member of the Young Austrian Arbitration Practitioners (YAAP), the ICC Young Arbitrators Forum (ICC YAC) and the Austrian-Chinese Legal Association. He publishes regularly on international arbitration and is a frequent speaker at conferences and seminars.

Contact: Dorda Brugger Jordis Rechtsanwaelte GmbH
Universitaetsring 10, A-1010 Vienna, Austria
T: +43 1 533 47 95 19
E: veit.ohlberger@dbj.at
www.dbj.at
Alexander Petsche is a partner of Baker & McKenzie Diwok Hermann Petsche Rechtsanwälte LLP & Co KG and heads its Litigation and Arbitration department in Vienna. He specializes in arbitration and compliance.

Alexander Petsche acts as party representative in arbitral proceedings under various rules and in *adhoc* arbitrations. Furthermore, he is regularly appointed as arbitrator in *adhoc* and institutional arbitrations. He also represents parties before Austrian courts in matters relating to arbitration, including the challenge and enforcement of arbitral awards. In addition, he regularly acts as accredited business mediator. He is a member of the Board of the International Arbitral Centre of the Austrian Federal Chamber of Commerce and President of the Austrian Arbitration Association.

He studied Law at the Universities of Vienna and Paris, and studied Business Administration at the University of Economics, Vienna, and the Lyon Graduate School of Business. He holds a doctorate in both disciplines. In 1995/96 he completed post-graduate studies at the College of Europe in Bruges.

Alexander Petsche publishes regularly on international litigation and arbitration and has written more than 100 publications on various business law topics. He is co-editor and co-author of “Austria: Arbitration Law and Practice” (Juris Publishing 2007). He is a member of the ICC Commission on Arbitration and lectures Professional Dispute Resolution at the Vienna University of Business Administration and Economics. He is member of the Austrian and Czech Bar.

Contact: Baker & McKenzie Diwok Hermann Petsche Rechtsanwälte LLP & Co KG

Schottenring 25, A-1010 Vienna, Austria
T: +43 1 242 50
E: alexander.petsche@bakermckenzie.com
www.bakermckenzie.com
Tamsyn Pickford is a Senior Associate at Clyde & Co. She has worked with a number of hard and soft commodity companies and traders, advising particularly on trade disputes. Her experience includes claims relating to trade contracts, sale of goods and commodities, charterparties and bills of lading and trade finance documentation.

Tamsyn has significant experience of High Court proceedings and complex arbitration work, particularly within the spheres of the LME, LMAA, LCIA and ICC. Most of her work is of a cross border nature, with clients based in a large number of different jurisdictions.

Contact: Clyde & Co
St Botolph Building, 138 Houndsditch, UK-EC3A 7AR London, United Kingdom
T: +44 20 7876 4476
E: tamsyn.pickford@clydeco.com
www.clydeco.com
Jarred Pinkston is Of Counsel at Dorda Brugger Jordis and his practice focuses on international dispute resolution across a wide range of industries and jurisdictions. As an American lawyer based in Vienna, he has been navigating the intersection of common and civil law for most of his career.

Jarred Pinkston has studied at the University of Missouri (B.S., B.A., and B.A.), Brooklyn Law school (J.D.), University of Vienna, Bucerius Law School in Hamburg, and Karl-Franzens University in Graz. He is admitted to practice law in New York, New Jersey and England/Wales.

Contact: Dorda Brugger Jordis Rechtsanwaelte GmbH
Universitaetsring 10, A-1010 Vienna, Austria
T: +43 1 533 47 95-62
E: jarred.pinkston@dbj.at
www.dbj.at
**Nikolaus Pitkowitz** is founding partner and head of dispute resolution at Graf & Pitkowitz, Vienna. He holds law degrees from University of Vienna (JD and PhD) and University of Sankt Gallen, Switzerland (MBL) and is also qualified and certified as a Mediator.

Dr. Pitkowitz has been practising law since 1985. His practice, which has always been very international with a strong focus on CEE, initially mainly comprised transactional work in the fields of Real Estate and M&A and soon expanded to international dispute resolution. Nikolaus Pitkowitz is considered one of the preeminent Austrian dispute resolution practitioners. He acted as counsel and arbitrator in a multitude of international arbitrations, including several high profile disputes most notably as counsel in the largest ever pending Austrian arbitration (a multibillion telecom dispute). Dr. Pitkowitz is Vice-President of VIAC (Vienna International Arbitral Centre). He is arbitrator and panel member of several arbitration institutions including ICC, ICDR, SIAC, CIETAC, HKIAC, KCAB and KLRCA. Dr. Pitkowitz is further a Fellow of the Chartered Institute of Arbitrators (FCIArb), Vice-chair of the International Arbitration Committee of the Section of International law of the American Bar Association (ABA) and past Co-chair of the Mediation Techniques Committee of the International Bar Association (IBA).

Nikolaus Pitkowitz frequently speaks at seminars and is author of numerous publications on international dispute resolution as well as CEE related themes. Among others he is author on the leading treatise on setting aside arbitral awards under Austrian law. Dr. Pitkowitz is a co-editor of the Austrian Yearbook on International Arbitration and co-organiser of the Vienna Arbitration Days.

**Contact:** Graf & Pitkowitz  
Stadiongasse 2, A-1010 Vienna, Austria  
T: +43 1 401 17-0  
E: pitkowitz@gpp.at  
www.gpp.at
Jenny W. T. Power specializes in international commercial arbitration. The primary focus of her practice is the representation of clients as counsel in international arbitration including those conducted under the auspices of the ICC and the Vienna International Arbitral Centre (VIAC) as well as in ad hoc proceedings. She also acts as arbitrator and as counsel in complex mediation proceedings.

Jenny Power is resident in the firm’s Vienna office. She joined the firm in 1988 and speaks English and German. Jenny Power holds a J.D. (juris doctor) degree from the University of Miami School of Law and is a member of the Florida and American Bar Associations.

Jenny Power is the co-author of Austrian Business Law. She has also published The Austrian Arbitration Act – A Practitioner’s Guide to Sections 577–618 of the Austrian Code of Civil Procedure and is co-author of Costs in International Arbitration – A Central Eastern and Southern Eastern European Perspective. She is a co-editor of the Austrian Yearbook on International Arbitration.

Contact: Freshfields Bruckhaus Deringer LLP
Seilergasse 16, A-1010 Vienna, Austria
T: +43 1 515 15-210
E: jenny.power@freshfields.com
www.freshfields.com
Peter Rees QC is an arbitrator, mediator and counsel based at 39 Essex Chambers. He specialises in international commercial arbitration and litigation and is widely recognised as one of the leading disputes lawyers in the world. He has been recommended as a leading expert in commercial arbitration and litigation by, amongst others, the Euromoney Guides to the World’s Leading Litigation Lawyers and Experts in Commercial Arbitration and in the Legal Business Report on Legal Experts as an Expert in Arbitration, Commercial Litigation and Construction and in the Chambers “Leaders in their Field” as an expert in construction.

Peter is a Member of the Court of the London Court of International Arbitration, Chair of the ICC UK Nominations Sub-Committee, a Member of the Board of the International Institute for Conflict Prevention and Resolution, a Member of the Board of Trustees of the Chartered Institute of Arbitrators, and a Member of the International Advisory Board of the Vienna International Arbitration Centre.

Contact:  Peter Rees QC
39 Essex Street, UK-WC2R 3AT London, United Kingdom
T: +44 20 7634 9030
E: peter.rees@39essex.com
Nicolas W. Reithner has been a lawyer since 1999 and in 2003 became a partner in a Liechtenstein law firm before joining the Advocatur Seeger, Frick & Partner AG in 2013. He regularly takes on complex national and international civil and white collar crime cases before courts and arbitration tribunals.

He is a co-author of the first guide to the Liechtenstein Arbitration Rules and member of the Board of the Liechtenstein Arbitration Association. Nicolas Reithner is a Lecturer at the University of Lucerne on off-shore, finance and the Liechtenstein tax system and regularly publishes on a wide range of topics.

He holds a Law Diploma in Legal Studies (Cardiff, 1998), a Business Management Degree (University of Innsbruck, 2000), a qualification as Solicitor of England and Wales (2011) and was admitted to the Liechtenstein Bar in 2001 and the Austrian Bar in 2005. He is also a Liechtenstein trust expert and professional trustee since 2004.

Contact: Advocatur Seeger, Frick & Partner AG
Kirchstrasse 6, FL-9490 Vaduz, Liechtenstein
T: +42 3 265 22 22
E: Nicolas.Reithner@sfplex.li
www.sfplex.li
Catherine A. Rogers is a Professor of Law and the Paul & Marjorie Price Faculty Scholar at Penn State Law, and the Professor of Ethics, Regulation, and the Rule of Law at Queen Mary, University of London, where she Co-Director of the Institute on Ethics and Regulation. Professor Rogers is a Reporter for the American Law Institute’s Restatement of the U.S. Law (Third) of International Commercial Arbitration, and a co-chair, together with William W. “Rusty” Park, of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration. Professor Rogers is a Member of the Court of Arbitration for the Jerusalem Arbitration Center appointed by the ICC Palestine, and a member of the Board of Directors of the International Judicial Academy.

Professor Rogers is the founder and Executive Director of Arbitrator Intelligence, a non-profit initiative that aims at increasing transparency, equal access to information and accountability in the arbitrator selection process. She is also regularly engaged in capacity-building activities to promote arbitration and the rule of law in developing and emerging economies.

Her books include Ethics in International Arbitration (Oxford University Press 2014) and The Future of Investment Arbitration (editor, with Roger Alford) (Oxford University Press 2009).

Contact: Paul & Marjorie Price Faculty Scholar, Penn State Law
324 Katz Building, State College, Pennsylvania 16801, USA
T: +1 814 321 7300/+1 814 863 3513
F: +1 814 865 9042
E: car36@psu.edu
www.arbitratorintelligence.org/
Markus Schifferl, born 1977, is a partner of zeiler:partners Attorneys at Law. His principal areas of practice include international arbitration and corporate/commercial litigation.

He has acted as arbitrator, counsel and secretary to the arbitral tribunal in more than 30 arbitrations, among others under the ICC, UNCITRAL and Vienna Rules. Markus regularly acts as party representative in corporate and commercial proceedings before Austrian courts.

Markus received his legal education at the University of Graz (Mag. iur. 2002), Sciences-Po Paris, University College London (LL.M in Dispute Resolution 2004) and the University of Vienna (Dr. iur. 2006).

Markus is fluent in German (native) and English and has a basic knowledge of French.

Contact: Torggler Rechtsanwälte GmbH
Universitätsring 10/5, A-1010 Vienna, Austria
T: +43 1 532 31 70-73
E: m.schifferl@torggler.at
www.torggler.at
Alfred Siwy is a partner of zeiler.partners Rechtsanwälte GmbH since 2014. He focuses on international commercial arbitration and litigation and investment arbitration. Alfred Siwy frequently acts as counsel and arbitrator under the ICC, Vienna and UNCITRAL Rules.

He obtained his law degrees from the University of Vienna (Master’s degree 2003, doctorate 2011) and King’s College London (LL.M. 2006).

Contact: zeiler.partners Rechtsanwälte GmbH
Stubenbastei 2, A-1010 Vienna, Austria
T: +43 1 8901087-84
E: alfred.siwy@zeiler.partners
www.zeiler.partners
Alexandra Stoffl is an Associate at CHSH Cerha Hempel Spiegelfeld Hlawati, Partnerschaft von Rechtsanwälten, and a part of the dispute resolution team. Her focus is on international arbitration, litigation and compliance. Despite her young age, she has already acted as counsel in international arbitration cases under the ICC, the VIAC and UNCITRAL Rules as well as in ad hoc arbitrations. Alexandra Stoffl studied Law and Political Sciences at the University of Vienna and at Macquarie University, Sydney. Before becoming an Associate at CHSH, she was a University Assistant at the Institute for Political Science at the University of Vienna, performing scientific research primarily on constitutional law issues. She speaks German, English, Spanish and French.

Contact: CHSH Cerha Hempel Spiegelfeld Hlawati
Partnerschaft von Rechtsanwälten
Parkring 2, A-1010 Vienna, Austria
T: +43 1 514 35 121
E: alexandra.stoffl@chsh.com
www.chsh.com
Michael Swangard is a Partner at Clyde & Co and a recognised international disputes and arbitration specialist.

With a focus on international trade he specialises in international dispute resolution governed by arbitration bodies including ICSID, UNCITRAL, LCIA, and ICC as well as trade association tribunals such as GAFTA, FOSFA, CTF, LME, SAL and RSA. He has considerable experience advising on arbitrations across Eastern Europe including Austria, Russia and Ukraine.

In addition to arbitration work, Michael advises clients on disputes before the English High Court and in the context of private mediations. His remit also covers advising on international sanction regimes as well as issues arising out of the OECD bribery and corruption convention.


Contact: Clyde & Co
St Botolph Building, 138 Houndsditch,
UK- EC3A 7AR London, United Kingdom
T: +44 20 7876 4708
E: michael.swangard@clydeco.com
www.clydeco.com
Ema Vidak-Gojkovic works as an associate with Baker & McKenzie LLP, Vienna. She holds an LL.M. degree from Harvard Law School, as well as a Master’s Degree in Law from the University of Zagreb. Ms. Vidak has practiced and was trained in both civil and common law jurisdictions. She is a dual-qualified lawyer in New York and Croatia.

Ms. Vidak focuses on international arbitration and mediation. Her practice is concentrated on disputes related to the ex Yugoslav countries, including before the local arbitration institutions. Ms. Vidak’s recent experience includes ICSID arbitrations of foreign investors against an ex Yugoslav country.

Ms. Vidak works as an external lecturer for mediation and negotiation at the University of Vienna. She is an active member of ArbitralWomen and International Mediation Institute’s YMI section. She also serves as a delegate at the UNCITRAL Working Group II (Arbitration and Conciliation) for Florence International Mediation Chamber (FIMC).

Contact: Baker & McKenzie Diwok Hermann Petsche Rechtsanwälte LLP & Co. KG Schottenring 25, A-1010 Vienna, Austria T: +43 1 2 42 50 251, +43 664 6 06 46 251 E: Vidak-Gojkovic@bakermckenzie.com www.bakermckenzie.com
Simon Vorburger, Senior Associate at Homburger, acts as counsel in international commercial arbitrations and advises and represents clients with respect to investment treaty claims as well as cross-border litigation. Moreover, he is a member of Homburger’s Restructuring | Insolvency working group. He is admitted to practice in both Switzerland and in New York and holds a law degree and PhD from the University of Zurich and an LLM from New York University School of Law. Prior to joining Homburger, Simon Vorburger was a Visiting Researcher at Harvard Law School and a Visiting Scholar at the Columbia University Law School Center for International Commercial and Investment Arbitration, where he also contributed to the drafting of the American Law Institute’s US Restatement on International Commercial Arbitration. Simon Vorburger regularly publishes and speaks on topics related to arbitration.

Contact: Homburger AG
Prime Tower, Hardstrasse 201, CH-8005 Zurich, Switzerland
T: +41 432 221 000
E: simon.vorburger@homburger.ch
www.homburger.ch
Irene Welser, is partner at CHSH Cerha Hempel Spiegelfeld Hlawati, Partnerschaft von Rechtsanwälten, heads the Contentious Business Department of the firm, a team of 20 lawyers. She is very active in national and international arbitration, and sits as an arbitrator and as parties’ representative. As of 2015, she is the first female board member of the Vienna International Arbitral Centre. Irene is also a passionate litigator and advises domestic and international clients in commercial and civil law. She has very extremely busy during the past years as chairman or arbitrator in ICC, Vienna Rules, UNCITRAL and other ad-hoc arbitrations. Construction and building law, liability law, M&A disputes, contract law, aviation law, energy law and oil and gas disputes are key areas of her practice. She is also general counsel to corporate clients and so combines her litigation and arbitration skills with a firm understanding of how to avoid or settle disputes.

Irene Welser was admitted to the Vienna Bar in 1992. She holds a Doctor’s degree and in 2003 became the youngest Honorary Professor at the University of Vienna, lecturing in business and civil law. She frequently speaks at seminars and conferences and has been co-organising the Vienna Arbitration Days. Her first main publication, Warranties in Contracts on Works and Services (1989), has become a standard text in this field. She is co-editor of the Austrian Yearbook on International Arbitration and author and co-author of several further books and publications dealing with contract law, warranty and liability questions as well as arbitration issues, and has published more than 80 articles in Austrian and International law magazines. She is a examiner for the Bar Exam at the Vienna Bar and an IBA member. She is on the list of arbitrators of the VIAC and is also member of ASA, LCIA, Arbitral Women and is member of the board of the Chinese European Legal Association. The last years have seen her lecturing on international arbitration in Istanbul, in California, in Hong-Kong, Beijing, Seoul and Tokyo, in Brussels, in Romania, in Slovakia and at the Düsseldorf Arbitration School as well as in the LL.M Programme International Dispute Resolution of Danube University Krems.

Irene Welser speaks German, English, French and Italian.

Contact: CHSH Cerha Hempel Spiegelfeld Hlawati Partnerschaft von Rechtsanwälten Parkring 2, A-1010 Vienna, Austria
T: +43 1 514 35-121
E: irene.welser@chsh.com
www.chsh.com
**Venus Valentina Wong** is an attorney-at-law with Torggler Rechtsanwälte specialising in international arbitration and international litigation with a focus on China-related matters. She has served as counsel, arbitrator (sole arbitrator, party-appointed arbitrator and chairperson) and administrative secretary in more than 50 cases in institutional and ad hoc arbitral proceedings (ICC, VIAC, LCIA, Swiss Rules, CCIR, CAS, UNCITRAL).

Valentina Wong studied law and sinology in Vienna, Amsterdam and Taipei. She worked as a university assistant at the Institute of Austrian and European Public Law of the Vienna University of Economics and Business. After her court practice, Valentina Wong joined a boutique law firm in Vienna focusing on international dispute resolution in 2004. She was admitted to the Vienna Bar in 2007 and has been working with Torggler Rechtsanwälte since 2012.

Valentina Wong completed internships with CIETAC in Beijing and with the ICC International Court of Arbitration in Paris. She is a regular speaker at international conferences and author of numerous publications on various topics including Chinese law and sports law as well as official translator of several institutional arbitration rules (VIAC, CIETAC, LAC). Valentina Wong was the YIAG Regional Representative for Central and Eastern Europe in 2010/2011 and has been a member of the YAAP Advisory Board since 2008. Her working languages are German, English, Chinese (Mandarin and Cantonese) and French.

**Contact:** Torggler Rechtsanwälte GmbH
Universitätsring 10/5, A-1010 Vienna, Austria
T: +43 1 532 31 70
E: v.wong@torggler.at
www.torggler.at
Gerold Zeiler's practice focuses on International Commercial Arbitration, Investment Arbitration and International Litigation. He regularly sits as arbitrator and acts as counsel of parties in both ad hoc arbitration proceedings as well as administered arbitration proceedings, including proceedings under the VIAC, ICC, UNCITRAL and ICSID Rules.

Gerold Zeiler is a partner of zeiler.partners Rechtsanwälte GmbH. He obtained his doctorate in law from the University of Vienna (1996). He is a Fellow of the Chartered Institute of Arbitrators (FCIArb) and a member of the ICC Commission on Arbitration.

In addition to his arbitration and litigation practice, Gerold Zeiler is the author of numerous articles and books on international litigation and arbitration, including Pre-emptive Remedies in International Litigation (Internationales Sicherungsverfahren, 1996), The Brussels and Lugano Convention (Die Übereinkommen von Brüssel und Lugano, 1997, co-editor), Arbitration in the Infrastructure Sector (Schiedsverfahren im Infrastrukturbereich, in: Liberalisierung österreichischer Infrastrukturmärkte 2003, co-author), and A Basic Primer to Arbitration in Austria (2nd edition, 2007, co-author). He is also the author of the first commentary on the new Austrian Arbitration law (Arbitration [Schiedsverfahren] 2nd ed. 2014).

Contact: zeiler.partners Rechtsanwälte GmbH
Stubenbastei 2, A-1010 Vienna, Austria
T: +43 1 890 1087 80
E: gerold.zeiler@zeiler.partners
www.zeiler.partners
Ewa Zelazna is a doctoral candidate at the University of Leicester. In her doctoral thesis entitled: “The EU’s International Investment Policy after the Treaty of Lisbon. A Legal Analysis of the Development Opportunities” Ewa evaluates the impact that the implementation of the EU’s international investment policy is likely to have on the EU’s internal market and the process of EU integration. She is also interested in recent developments in international investment law, in particular in the area of treaty-based investor-State arbitration.

Ewa works as a Graduate Teaching Assistant in Land Law at the University of Leicester, where she also coordinates activities of Leicester Legal Research Forum.

Ewa has an LLM (distinction) in International Commercial Law (2012) and a degree in Economic and Law (2010), both from the University of Leicester.

Contact: University of Leicester
University Road, UK-LE1 7RH Leicester, United Kingdom
T: +44 0116 252 7318
E: ewa.zelazna@le.ac.uk
www.le.ac.uk
I. How Uncertainty Over Arbiter Soft Skills and Procedural Orientation Contributes to Dissatisfaction with International Arbitration

We often hear that international arbitration’s primary advantage is its procedural flexibility. The parties are theoretically able to make informed choices about the type of proceeding they wish to have, and tailor the proceeding to their needs and strategic goals. While this flexibility easily allows for a dispute to be resolved in a manner consistent with parties’ expectations, this article proposes a means to address a serious flaw in the mechanism for choosing the right arbitrators to deliver such procedure.

For the last several years, international arbitration has faced continued expressions of user discontent.1) Most of the criticism—expressed at conferences, articles, and in surveys—has presumed that user dissatisfaction is primarily with the time and cost of proceedings.2) But not everyone agrees that procedural efficiency should be the primary goal of international arbitration. In an eloquent departure from the popular criticism of arbitration, Prof. Rusty Park argued that parties and tribunals ultimately place the greatest value on the truth-seeking function of the arbitral process even

1) The Queen Mary School of Arbitration attempted to approach the topic empirically, and came back with discouraging numbers: half of the respondents to the 2010 International Arbitration Survey—Choices in International Arbitration stated that they had been disappointed by the performance of an arbitrator, available at www.arbitration.qmul.ac.uk/docs/123290.pdf, last visited on September 6, 2015.

if it may occasionally be at the expense of the time and cost required to arrive at a quality decision.\(^3\)

Many institutions have taken the criticisms to heart, and devoted considerable efforts to developing innovative techniques to control the time and cost of international arbitration. Despite this, user dissatisfaction remains. This could perhaps be, as Douglas Horton noted, simply that “change occurs in direct proportion to dissatisfaction, but dissatisfaction never changes”\(^4\). But it could also be that the various initiatives have approached the problem from the wrong angle, or on the mistaken assumption that all users expect the same things from all arbitrators.

The authors of this article consider that this assumption is wrong—that party satisfaction is not correlated exclusively with time and cost in arbitration. We suggest that user dissatisfaction is the product of something more basic—the absence of reliable selection criteria that would enable parties to make a truly informed choice between the available options—be it those that are likely to result in a shorter proceeding or those which might even lengthen it.

One may wonder whether this distinction is purely theoretical. And indeed, in the experience of the authors, users will often prefer a swift proceeding, a limited number of submissions and a narrowly-tailored hearing: less time, lower costs, regardless of the side of the table on which they sit, as claimant or respondent. But there are also cases where users will prefer to have an in-depth issue assessment, ample time to build their argument, and arbitrators who will allow a more comprehensive investigation of documents and other evidence—even if that means investing more time and cost in the proceeding.\(^5\)

Neither of these choices is inherently better or worse and it is likely that each choice will satisfy some parties, but not all.

The trouble, we find, is the difficulty parties face in making this choice by relying on imperfect and scarce information about how arbitrators actually conduct proceedings. As far as the authors are aware, there is no equivalent of Yelp or TripAdvisor or Amazon Reviews for international arbitrators. Parties have no forum to express or debate desired characteristics of candidates.

---


What is lacking is easily accessible information about the procedural preferences and soft skills of the people that parties may consider appointing as arbitrators. As a result, parties tend to rely on two proxies for these qualities: the arbitrator’s nationality and the arbitrator’s legal qualification.

Both of these, however, may be based on inaccurate assumptions that may disappoint the parties’ expectations. While it would be unrealistic to expect that basic legal training would not influence the arbitrator’s preference in establishing procedure and assessing evidence, it should not be taken as a substitute for proper research into arbitrators’ preferences.

Similarly, arbitrators will rarely know what it was about them that led the parties to appoint them in a particular case, and thus may make their procedural decisions based on their own assumptions of how the parties see them.

The guessing game is therefore a two-way street. Parties (and institutions) will attempt to guess how the arbitrators will behave before appointing them, while the arbitrators, once appointed, will rarely know how they were perceived by the parties or what they expected at the time of the appointments.6)

With such a situation, the fact that there is dissatisfaction with international arbitration should not be surprising. On the contrary, it is remarkable that the other half of all parties queried by the Queen Mary survey takers did not feel the need to complain to the about arbitrator performance.

The authors propose a simple, obvious means of taking the guesswork out of arbitrator selection: ask the arbitrators to publicly declare their procedural preferences and soft skills.

If arbitrators themselves provided some of the information necessary for parties to make an educated choice – an informed, strategic decision – this would facilitate the fulfillment of party expectations. It would be an important step to increasing the parties’ satisfaction with the proceeding, and enhance the overall reputation of international arbitration.

II. The Current Approach to Arbitrator Selection is Fundamentally Flawed

The selection of both party-appointed and institutionally-appointed arbitrators is a painfully inexact process. Whilst in recent years arbitrators have embraced modern technology and e-disclosure, considered the use of innovative methods of case management, and acknowledged the importance of soft skills, none of this information about an individual arbitrator is generally available to parties at the time of selection.

6) Obviously, once proceedings are underway, arbitrators and parties have the opportunity to confer about the conduct of the case, but this generally occurs in a formal context where parties and tribunal must react to positions being advanced and compromise, such as in negotiating a procedural timetable. These circumstances may provide little or no information about what the party expected of the arbitrator at the time of appointment.
In appointing an arbitrator a party is seeking, as much as possible, to identify an individual with an approach to procedural issues, case management, handling of evidence and settlement, that aligns as closely as possible with the party’s view on how the arbitration should be conducted. Yet, there is a dearth of available information as to how an arbitrator is likely to conduct a case. Obtaining this information can be the single most difficult challenge when identifying candidates for nomination.\(^7\)

In the absence of alternatives, parties are forced to rely on anecdotal information transmitted by word-of-mouth, unreliable channels and dubious filters. Limited and often unverified information is given in secrecy, supplemented by information that is often sterile or simply gleaned from a curriculum vitae.

The flaws of such an approach are less apparent in a profession that shares a relatively small pool of arbitrators, in which all participants have worked together at some point in time, and there is a high degree of personal familiarity. A close-knit community allows sufficient information sharing. But with the growth of international arbitrations and expansion of parties involved, this picture has not been an accurate one for several years. Word of mouth is rarely a sufficient means of obtaining accurate, relevant information about an arbitrator candidate.\(^8\)

The pool is widening, and the system must evolve alongside it, in order to allow the parties to access all appropriate candidates.

III. The Importance of Soft Skills and Knowing the Arbitrator’s Approach to Case Management

The generally-accepted qualities an international arbitrator should possess are described by Gary Born as “personal competence, intelligence, diligence, availability, nationality, and integrity of an individual, as well as the individual’s arbitration experience, linguistic abilities, knowledge of a particular industry or type of contract, and legal qualifications”.\(^9\) No-one is going to argue with that list of attributes. In fact, they could be considered the core requirements of any arbitrator a party would consider appointing.


\(^8\) For a fuller discussion of the problem as it exists only in the oil & gas industry, see McIlwrath, supra note 7, available at www.arbitrationlaw.com, last visited on September 6, 2015 (“even a highly connected and informed party cannot possibly be familiar with all potential candidates who may be considered or proposed for an international arbitration; nor will they always have access to colleagues who have had meaningful experiences with a particular arbitrator in the past”).

But how to distinguish among candidates who all possess these personal attributes?

Parties are generally driven by practical considerations that are not found in Born’s list. There are many differences in the approaches the arbitrators can take towards matters of procedure. For example, does the arbitrator do all the work themselves or delegate the work to a junior lawyer? Do they routinely appoint a tribunal secretary? What is their availability to devote sufficient time to the dispute? Will they actively suggest settlement to the parties or remain silent on the issue? How do they manage cases? Have they ever used innovative case management techniques?10)

The real difficulty lies in identifying whether an arbitrator under consideration possesses the skills a party is really looking for. In the 2010 International Arbitration Survey: Choices in International Arbitration conducted by the Queen Mary School of International Arbitration,11) respondents emphasized the importance of arbitrators’ soft skills, which they categorized as the “ability to work well with the other members of the panel, the parties and their lawyers and generally adopt a helpful and friendly demeanour”. Interviewees said that in their experience good soft skills had a positive impact on the efficiency (and hence cost) and the overall experience of conducting an arbitration.

Before we consider how an arbitrator might communicate more detailed information to her or his potential appointers, we address what an arbitrator might want to communicate. Some of the information is obvious, such as availability and the arbitrator’s use of tribunal secretaries. Other information could be far more illuminating, in particular, the arbitrator’s approach to whether or not it is appropriate to suggest that the parties consider settling the dispute. This is a highly divisive issue.12) It has been said that the settlement of a dispute through agreement of the parties “is of the essence of the spirit of arbitration”, but others are not so convinced.13) Being aware of a potential arbitrator’s view prior to appointment could prove to be invaluable.

10) We credit N. Pitkowitz for creating a list of arbitrator selection criteria for discussion purposes at the 2015 Vienna Arbitration Days.

11) Available at www.arbitration.qmul.ac.uk/docs/123290.pdf, last visited on September 7, 2015.

12) See, in particular, L. Greenwood, A Window of Opportunity? Building a Short Period of Time into Arbitral Rules in Order for Parties to Explore Settlement, Arbitration International 2011 and Arthur Marriott, QC “Breaking the Deadlock”, Arbitration International 2006 Vol 22 No 3 at 411. See also B. Cremades, Overcoming the Clash of Legal Cultures, the role of Interactive Arbitration, Arbitration International 1998 Vol 14 No 2 157 at 160: “Traditionally, it was an agreed doctrine within the world of arbitration that an arbitrator’s duty should not be mixed with any mediating activity or intent to reconcile. This was one of the greatest dangers widely highlighted in arbitration seminars as it was stated clearly that an arbitrator who initiated conciliation or mediation was exposed to the risk of an eventual challenge.”

Other information provided by the arbitrator could be more pragmatic, for example, a new entrant to the market could supply references to counter the assumption that an experienced arbitrator is always preferable or disclose his or her average turnaround time for publication of an award following the close of proceedings in order to emphasize his or her availability and diligence.

A more experienced (and sought-after) arbitrator may also want to disclose their award turnaround time, in order to dispel the belief that a busy schedule means a delay. There are arbitrators who manage their schedules well, despite being constantly in demand. There are also arbitrators who do not deliver on time, even though they are significantly less busy.

Another interesting set of questions would be the arbitrator’s approach to evidence gathering and document production. How much weight does the arbitrator give to oral testimony as opposed to documentary evidence? What is the expectation for presentation of evidence? Is it likely that the tribunal would set aside several weeks for hearings in order to allow for witnesses to be heard or are they more likely to provide a truncated hearing schedule? These considerations may form crucial points of the party’s overall strategy.

The arbitrator may also want to disclose what case management philosophy the arbitrator employs. Which skills does the arbitrator have for managing parties and procedure? What are the mechanisms the arbitrator uses for time management – is the arbitrator fond of sharp deadlines that compel focused work, or does the arbitrator prefer to afford the parties a little extra time to deliver? How tolerant of the parties’ dilatory tactics is the arbitrator? Does the arbitrator actively work to prevent tactics that would be unreasonably wasteful or disproportionate to the amount in dispute? Does the arbitrator use allocation of costs to sanction inefficient handling of proceedings?

A desirable skill in a tripartite tribunal may be an arbitrator’s ability to keep the panel on track and ensure that the other arbitrators provide full attention to the law and applicable facts. In other words, can the arbitrator mediate between the other two arbitrators? Does the arbitrator play well with others? Does the arbitrator play too well with others, and in fact does not challenge a perspective offered by other members? How likely is the arbitrator to involve other arbitrators in extensive discussions on facts or law? And instead of just considering the quality of a certain arbitrator, consider how likely is the arbitrator to increase the quality of the entire panel?

The authors of this article do not seek to set out an exhaustive list of questions the parties may find useful, or the arbitrators may wish to address. Instead we merely provide an example of what should be considered a widening, but in no way limiting, measure to more transparency.

“until the resolution of a dispute by settlement is considered once again to be a constituent function of arbitration, ADR will take over and displace it as a pragmatic and workable alternative”.
C. Koch & E. Schafer, Can it be Sinful for an Arbitrator Actively to Promote Settlement? The Arbitration and Dispute Resolution Law Journal 1999 153 at 184 et seq.
Parties, on the other hand, should feel comfortable demanding answers to all these questions, even though at present the only known means is via direct interview of an arbitrator. It is inefficient – and effectively impossible – to personally conduct exhaustive interviews with all the available candidates across the globe. Hence it is crucial that a part of the drive for higher transparency fall to the arbitrators themselves.

IV. The Puppy or Kitten Test: A Proposal for Arbitrators to Declare Their Case Management Preferences, If Any

Real growth of international arbitration will introduce new parties to the practice, and an increase in party diversity coupled with an increased number of cases will generate a need for new faces to sit as arbitrators.14) The inexorable trend is towards a practice that looks nothing like the situation often lamented today, with a limited number of parties and counsel who appoint the same handful of arbitrators whom they know to be reliable. With growth will come diverse parties and counsel around the world who must frequently appoint arbitrators about whom parties will demand as much information as can be made available.

In fact, the authors believe that, for all but the highest-value disputes, this moment has already arrived. The practice of international arbitration is one where there is high demand for information about the soft skills of arbitrators, but availability of that information has yet to catch up.

There are some promising projects afoot that aim to shed light on how arbitrators actually conduct proceedings and decide cases. Notable among them is Arbitrator Intelligence,15) a publicly-accessible database that will make available both published and unpublished arbitral awards and feedback from users. Once the database is populated, parties will have access to information about how arbitrators (or tribunals on which they sat) conducted cases in which they put their name on arbitral awards, and as such is likely to be applicable where parties are considering candidates with an established track record.

Other publicly accessible databases provide only very rough indications of arbitrator soft skills. Among these are the Energy Arbitrators List (EAL),16) a database that lists arbitrators vetted by users and counsel practicing in various energy-related fields. The EAL allows arbitrators to declare their specific industry experi-

14) The awkward mix of metaphors did not escape the authors’ attention.
15) Available at www.arbitratorintelligence.org/ (“In addition to arbitral Awards and other independently developed resources, Arbitrator Intelligence will collect quantitative feedback from users and counsel about key features of arbitrator decision making. Information will be collected through surveys that allow users to provide feedback on specific questions such as case management, evidence taking, and Award rendering. When fully developed, Arbitrator Intelligence will allow Members to search accumulated information to aid in their arbitrator selection process”).
ence and whether it was acquired as counsel, arbitrator, or expert, as well as their nationality and country of residence. The public database offered by Arbitral Women allows parties to search for arbitrators based on what the arbitrator claims is their “Legal System of Expertise” and “Legal Expertise”.

These declarations by arbitrators are useful to parties, but at best they offer only rudimentary guidance to the soft skills as to how the arbitrators will actually conduct the proceedings. For example, a party may find a candidate in the Arbitral Women database who claims “Legal System Expertise” in France but has “Legal Expertise” in English law, from having practiced in London for several years. A party might infer from this that the arbitrator is likely to have the styles and preferences of a civil-law trained lawyer, but will be experienced and open to common-law style procedures. But this would be at best an inference, generalization, or even just stereotyping.

In the adjacent dispute resolution field of international mediation, however, the International Mediation Institute (IMI) has taken this notion of “self declaration” a step further. In addition to listing user feedback about performance, IMI also publishes mediator statements about their soft skills of their “style” of mediation, and how they typically approach disputes. For example, if a party is looking for a mediator who can conduct both “evaluative” and “facilitative” type mediations, the database provides a number of certified mediators who claim to do both. The database goes further by publishing detailed statements from mediators about how they handle cases.

For example, a mediator who self-identifies as both evaluative and facilitative is Bennett Picker, a US-based mediator whose own “description of mediation style” includes the following:

*I begin my work with parties and counsel by asking them what they expect of me and then affirmatively explore important issues such as any need for exchanged submissions, the substance of ex parte submissions which permit me to identify the underlying issues, the identity of the participants and issues of authority.*

In his statement in the IMI database, Picker goes on to describe his views of mediation and how he works with parties to settle their disputes. From a user perspective, this takes much of the guesswork out of the appointing process. A party does not have to ask a colleague for information about how Picker is likely to con-

---

18) See imimediation.org, last visited on September 7, 2015.
19) Very broadly, “evaluative” and “facilitative” are two very different approaches to mediating disputes. The first approach involves helping the parties understand the strengths and weakness of their cases (evaluation) and the other that focuses on identifying a resolution of the parties’ underlying interests in resolving their conflict, and which is not limited to the strengths of their cases.
20) See imimediation.org/bennett-picker, last visited on September 7, 2015.
duct a mediation – they can get this directly from Picker himself. Consultation with a colleague who has used Picker in the past is likely to be more informed, for example about whether this particular style is a good fit for the case at hand.

In this note, we put forward a genuinely modest proposal that builds on the limited notions of soft skills found in both the EAL and Arbitral Women databases, and to a greater (but still limited) extent IMI’s database of certified mediators. The proposition is simple: that arbitrators themselves should state their soft skill preferences – or their lack of a desire to state them – for very specific categories relevant to the conduct of proceedings.

This is the equivalent of a “do you like puppies or kittens?” test. In responding, arbitrators are not given the opportunity to say whether “it depends on the case”, in order to make themselves appealing to as many different parties as possible, but to take a position, even a neutral one, on the criteria. We credit our friend Nikolaus Pitkowitz for creating a list of arbitrator selection criteria for discussion purposes at the 2015 Vienna Arbitration Days.

A. Arbitrator Style and Preferences Questionnaire

1. Delegation: do you believe it is acceptable for an arbitrator to delegate work to a junior lawyer who is not a member of the tribunal?
   1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

2. Tribunal secretaries: do you believe that it is acceptable for a tribunal to appoint a secretary to assist it with the administrative tasks relating to the proceedings?
   1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

3. Preliminary or early decisions: do you believe it is appropriate for tribunals to attempt to identify and decide potentially dispositive issues early in a case, even if one of the parties does not consent to this?
   1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

4. Settlement facilitation: do you believe arbitral tribunals should offer to assist parties in reaching a settlement, and actively look for opportunities to do so?
   1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

5. Early views of strengths and weaknesses of claims and defenses: do you believe arbitrators should provide parties with their preliminary views of the strengths and weaknesses of their claims and defenses?
   1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

6. IBA Rules of Evidence: do you believe international tribunals should apply the rules in proceedings even if one of the parties objects to their application?
   1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)
7. Document disclosure: do you believe it is appropriate for international tribunals to grant a party’s request for e-discovery?
1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

8. Skeleton arguments: do you prefer for parties to provide a summary of their arguments to the tribunal before the hearing?
1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

9. Chair nominations: do you believe co-arbitrators should consult with the parties who appointed them before proposing names for a chair to the other co-arbitrator?
1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

10. Arbitrator interviews: are you available to be interviewed by the parties before being appointed (in accordance, for example, with the Guidelines for Arbitrator Interviews published by the Chartered Institute of Arbitrators)?
1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

11. Arbitrator interviews: if you are appointed as a co-arbitrator, do you think parties should interview a prospective chair that you and the other co-arbitrator have identified, before agreeing the appointment?
1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

12. Counsel misconduct: for a counsel that has engaged in misconduct, do you generally take steps while the proceedings are underway, or include consideration of the misconduct in a subsequent award of costs, or do you believe it is not within the responsibility of the arbitral tribunal? (choose only one)
   (a) Discipline during proceedings, immediately when misconduct occurs
   (b) Discipline both during proceedings and in subsequent award on costs
   (c) Take misconduct into consideration in cost award
   (d) Do not believe counsel misconduct is responsibility of the tribunal

13. Costs: do you believe it is appropriate for a party to recover all of its reasonable costs (including counsel fees) if it has prevailed on its claims or defenses?
1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)

14. Costs: do you believe it is appropriate for a party to recover the reasonable costs of any in-house counsel who conducted or assisted the party’s conduct of the arbitration?
1 (always) 2 (sometimes) 3 (it depends) 4 (rarely) 5 (never)
15. Do you view yourself as conducting proceedings more in the style of the common law, the civil law, or no preference/depends on situation?
1 (common law) 2 (more common than civil) 3 (no preference/it depend) 4 (more civil than common law) 5 (civil law)

16. Please provide a statement of how you prefer to conduct arbitration proceedings in cases in which you have been, or could be, appointed:

The above questions are suggested merely as examples of what might be asked, and the authors do not claim they represent a definitive list of areas of interest, soft skills, or arbitrator preferences.

When the idea of such a list was first floated during a session at the Vienna Arbitration Days 2015, the reaction from the audience was mixed. A number of those present expressed strong opposition and said they would never provide such information about themselves. This reaction, we must note, appeared mainly from more senior arbitrators in the room. It may be that younger practitioners, who seemed much more open to the proposal, are simply more accustomed to having information about service providers readily accessible on the internet. Or it may be that they view information as a means of gaining access to arbitration appointments.

In any event, there is utility for parties in knowing which arbitrators refuse to provide this sort of information, just as it will be useful to know which arbitrators consistently answer that they are neutral or non-committal as to any particular style or preference. The lack of a response – or a neutral response – is something that parties can use to differentiate arbitrators during the selection process. A party seeking an arbitrator with a strong civil-law preference, for example, will not put high in its rankings an arbitrator who claims to be neutral as to which type of procedure they prefer.

B. Where Would This Information Be Available?

A concise list of arbitrator soft skills and preferences could be made available in individual web pages of arbitrators, in a stand-alone database, or adopted by any of the existing databases, such as ArbitratorIntelligence, Arbitral Women or the EAL.

It could also be adopted by arbitral institutions, as a means of distinguishing themselves from other institutions. Indeed, why shouldn’t arbitral institutions get in front of the transparency trend by just asking arbitrators to self-declare their styles and procedural preferences? In any event, the change is already underway – the only question is who will take the lead, and who will be left behind.
V. So Why Do It? Numerous Benefits of Making the Selection Process More Transparent

Whenever an idea of publishing information on arbitrator performance is introduced, the criticism most often heard is one about the objectivity and accuracy of data collected, since the assumption is that this information will be shared by parties and their counsel. It is not unreasonable to be concerned about whether satisfaction with outcomes may unfairly influence how parties perceive the arbitrator’s handling of a case. Obviously, this concern is not present when it is the arbitrators themselves who will provide the information about how they conduct proceedings.

Some arbitrators may feel that publicly declaring their own preferences and soft skills may actually inject additional confusion for parties, since many important questions seem to call for an “it depends” answer. Some arbitrators perhaps feel that not disclosing their preference may allow for more appointments, because not having classified oneself – not expressing a preference for puppies or kittens – might lead parties to appoint them on the assumption that they will like whatever it is best to like for a particular case.

However this may not be the safest bet. The 21st century flow of information renders it inevitable that parties will have some information and assumptions about their preferences. The question is only whether these are accurate assessments and whether the next party who appoints the arbitrator on the basis of such assumptions will be satisfied or dissatisfied with an unexpected performance.

The current system of relying on word-of-mouth information perpetuates bias, inequality, stereotyping, imperfect information flow, and users’ dissatisfaction. However if the entire process of arbitrator selection is made more transparent, there will be numerous benefits to both the parties and the arbitrators.

Firstly, it will lead to greater party satisfaction. By being aware of an arbitrator’s preferred approach to issues such as case management and settlement, a party can make a more informed choice as to the appropriate arbitrator for the dispute in question. Increasing a party’s “buy-in” to the process naturally reduces the likelihood that a party will feel that they have not got what they bargained for. This should increase the predictability of the arbitral proceeding, and lead to greater satisfaction with the arbitration process.

Secondly, it will counter the imperfect information flow. A proper understanding of an arbitrator’s soft skills will be a far better predictor of his or her approach to an arbitration than nationality. This should reduce the often flawed assumption that where an arbitrator was legally trained will automatically dictate the manner in which he or she will approach the conduct of an arbitration. A superficial assessment that a dispute “requires” a civil or common lawyer should become a thing of the past. An arbitrator’s soft skills, including their legal reasoning skills, will affect the outcome of an arbitration more than specialist knowledge of the subject matter of the dispute or qualification in the governing law of the contract. In fact, “a tribunal is more likely to get the law right with a good arbitrator ap-
plying a foreign law than with a mediocre arbitrator applying her or his domestic law”

Moreover, providing more information at an early stage is a chance for the arbitrators to set the record straight about their preferences and build their reputation on facts and not assumptions. An arbitrator would then also have a better understanding of why they were appointed for the dispute, together with a greater awareness of the key drivers for the parties. This will grant the arbitrators an added layer of confidence that the way they conduct the case is in line with parties’ expectations.

Thirdly, it will create more diversity. The current way in which arbitrators are selected is exclusive and highly susceptible to bias and stereotyping. The manner in which parties initially identify potential candidates for a tribunal is inherently biased against the appointment of new entrants to the market and diverse candidates generally. Choosing familiarity is a human trait, especially for parties engaging in risk mitigation. And it is well known that in arbitration parties continue to appoint from a small pool of supposedly “known” candidates, even in the face of dissatisfaction with the way in which arbitrations are ultimately conducted. Improving transparency will also promote diversity by allowing parties to better assess newer entrants and consider them alongside arbitrators whose soft skills they know through reputation and word of mouth.

Fourthly, improved diversity should improve quality. It is well known that diverse groups produce better outcomes.

Fifthly, if the arbitrators distinguished themselves by providing potential appointers with more detailed information as to the type of arbitrator they are, particularly with regards to “soft”, i.e. more practical skills, this would permit a party to make a more informed decision as to the best arbitrator for the dispute. Better information on arbitrators would hence promise to enhance the quality of the proceeding and the reputation of international arbitration.


23) For example, In relation to gender diversity there are numerous studies showing that gender-balanced leadership: 1) improves corporate governance; 2) lessens unnecessary risk-taking; and 3) reduces so-called “group-think”. Two McKinsey studies have found that companies with 3 or more women in senior management functions scored more highly for each organizational criterion (such as direction, motivation, leadership, work environment) than companies with no women in senior positions and concluded that there was “no doubt” that the companies with greater gender diversity in leadership outperformed their sector in terms of return on equity and stock price growth. McKinsey & Company, Women Matter: Gender diversity, a corporate performance driver (2007), available at www.europeanpwn.net/files/mckinsey_2007_gender_matters.pdf, last visited on September 7, 2015.
Sixthly, if the arbitrator discloses from the outset their preferences, that increases the legitimacy of the entire process. For example, if from the outset it is disclosed to the parties that the tribunal’s opinion on the *ex officio* powers of the tribunal is fairly liberal, and the parties do not express disagreement with this, then the arbitrators may rightfully assume that the parties are expecting the proceeding to be conducted in a proactive way towards finding the truth. Of course, this would not take the parties’ choice to simply state from the outset that this is not something they would favor. As previously mentioned, such conduct would afford the arbitrators an additional confidence that they are conducting the case in a way the parties wished and expected.

Without a doubt, there are numerous benefits to improving the selection process of the arbitrators by increasing the transparency of arbitrators’ soft skills and procedural preferences. In fact, the authors believe that benefits of such improvement would be so great, they would by far outweigh any potential critique or legitimate concerns.

VI. Conclusion: An Opportunity for VIAC

With each arbitrator actually declaring their preferences and style, the flow of inaccurate information will be lessened. It will give the arbitrator a chance to set the record straight, and be appointed on the basis of characteristics in accordance with parties’ expectation. And there is no better way to assure parties’ satisfaction than to honestly and transparently respond to their expectations.

While the authors believe that our proposal will help resolve some of the problems of international arbitration, we recognize that innovation is difficult in the conservative field of dispute resolution. Still, innovation that will provide more satisfied users is bound to have its rewards.

The Vienna International Arbitration Centre (VIAC) is well-placed to take this proposal from idea to reality. VIAC is no stranger to innovation. The institution was founded 40 years ago principally in response to problems companies based in eastern and western European countries were facing in the settlement of their disputes. In the 21st century, users are even more in need of this willingness to make a bold step in their direction.