

Selection of arbitrators in international commercial arbitration: general principles and restrictions

Main features for selection of arbitrators in Belarus and Germany

Autor: Elena Bezelgues¹

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The article aims to identify the criteria of selection of arbitrators in international commercial arbitration. The article reveals the contents of general grounds of selection stipulated by international law, compares the grounds foreseen in Belarussian and German legislation, and examines direct and indirect consequences of arbitrator's disqualification in international commercial arbitration.

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I. Introduction

Arbitration is a rapidly growing method for resolving disputes. It is used widely in the EU and non-EU countries to resolve private disputes arising under collective bargaining agreements and commercial contracts, to resolve certain types of civil disputes, and to set wages in the public sector. Arbitration systems tend to provide disputing parties with greater latitude in choosing arbitrators than do state court systems.

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¹ Elena Bezelgues, LL.M. is a Belarussian Attorney at Law (Advokat), authorized legal consultant in Belarussian law at the Court of Appeal in Berlin and Partner at Bezelgues Law Firm.

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The arbitrator is the *sine qua non* of the arbitral process or good arbitrators are the key to «good arbitration». The process cannot rise above the quality of the arbitrator². This statement describes the key role that the arbitrator plays in every arbitration. To a large extent the realization of the advantages of arbitration depends on the person appointed as arbitrator. Since arbitration is based on arbitration agreement, the parties are in principle free to choose their arbitrator. They can appoint any person with legal capacity to act as arbitrator. The diversity in the subject matter of potential disputes makes it impossible to identify the perfect arbitrator for all cases. There are, however, a number of issues the parties should consider in making their choice as certain qualifications are useful in the majority of cases. The parties or specific rules of law governing the arbitration may even determine conditions for any appointment.

This article provides criteria for arbitrator selection, independence and impartiality of arbitrators, restrictions and exclusions for selection of arbitrators with comparative analyse doctrine and case law.

II. General principles for arbitrator's selection

The parties autonomy to select arbitrators of their own choosing, who they consider appropriate to their particular dispute, is an essential characteristic of arbitration. That autonomy is recognized and given effect by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards³ (hereinafter – New York Convention) and most arbitration statutes. When parties are unable to agree upon the identities of the arbitrator(s) for their dispute, both international rules and national laws provide selection of the arbitrator(s) by the parties' agreed arbitral institution or a national court.

In many international arbitrations' legislation, the parties are able to agree, either directly or indirectly, on the identity of the arbitrator(s) who will decide their dispute. This process is usually the simplest, most direct and best means of selecting an arbitrator, although it involves delicate legal and tactical considerations. Agreement on the identity of the arbitrator(s) can occur either in the parties' original arbitration clause, before any dispute arises, or in post-dispute negotiations during the course of the arbitral proceedings. The parties' agreement can be reached in direct discussions between the parties themselves, or indirectly, through discussions between the parties' legal advisers or party-nominated arbitrators⁴. Moreover, most institutional rules grant parties broad autonomy to select the arbitrators in their arbitrations. For example, Model Law on International Commercial Arbitration⁵

2 Mehren Von, *Concluding Remarks, the Status of the Arbitrator*. // ICC (edition). Kluwer Law International. Netherlands, 2012, p. 129.

3 Convention on the Recognition and Enforcement of Foreign Arbitral Awards – New York, 1958. [Interactive. Viewed 21.03.2019]. Access through internet: <<http://www.newyorkconvention.org/>>.

4 Lew Judith M., Mistelis Loukas A., Kröll S., *Comparative International Commercial Arbitration* //Kluwer Law International. Netherlands 2003, p. 225.

5 The UNCITRAL Model Law on International Commercial Arbitration, 2016. [Interactive. Viewed 2019-03-21]. Access through internet: <<https://www.uncitral.org/uncitral/publications/publications.html>>.

(hereinafter – UNCITRAL) or International Chamber of Commerce⁶ (hereinafter – ICC) rules adopt the same general approach to selection of arbitrators.

The freedom and responsibility for selecting the tribunal for every case are one of the distinguishing features of the arbitral process. Furthermore, critical issues in the selection and challenge of arbitrators are the arbitrators' independence and impartiality. Independence and impartiality are two different concepts. The terms are not interchangeable but are often used synonymously. It is possible to distinguish between independence and impartiality, for example, «an impartial arbitrator, by definition, is one who is not biased in favour of, or prejudiced against, a particular party or its case, while an independent arbitrator is one who has no close relationship—financial, professional, or personal—with a party or its counsel⁷. It is generally agreed that impartiality is primarily about an attitude of mind which as an abstract concept is difficult to measure, whereas independence is a necessary external manifestation of what is required as a prerequisite of that attitude and is an objective examination into the relationship between the parties and appointed arbitrators. This is summed up in Bishop and Reed's article: «an arbitrator who is impartial but not wholly independent may be qualified, while an independent arbitrator who is not impartial must be disqualified. In selecting party-appointed arbitrators in international arbitration, the absolutely inalienable and predominant standard should be impartiality»⁸.

Most arbitration statutes impose requirements of impartiality on arbitrators. Likewise, Article 11 (2) of the ICC Rules⁹ provides:

«[E]very arbitrator must be and remain impartial and independent of the parties involved in the arbitration».

The Rules also provide procedures for objections to proposed arbitrators and challenges to existing arbitrators to be submitted to, and decided by the ICC Court of Arbitration. Moreover, if party autonomy is the foundation of arbitration, then «justifiable doubts» standard adopted by most arbitral institutions should be respected. However, the question of independence and impartiality should not be left to the parties and the arbitral institutions to determine.

Inasmuch, the arbitrator in a contested challenge will be informed of the grounds for the challenge, it

6 ICC Rules of Arbitration, International Commercial Arbitration, 2017. [Interactive. Viewed 2019-03-21]. Access through internet: <<https://cdn.iccwbo.org/content/uploads/sites/3/2017/01/ICC-2017-Arbitration-and-2014-Mediation-Rules-english-version.pdf>>.

7 Redfern and Hunter M., *the Law and Practice of International Commercial Arbitration*// *Sweet & Maxwell*, p.220.

8 Bishop D. and Reed L., *Practical Guidelines for Interviewing, Selecting and Challenging Party-Appointed Arbitrators in International Commercial Arbitration*, *Arbitration International*. [Interactive. Viewed 2019-03-21]. Access through internet: <http://www.kluwerarbitration.com/arbitration/arb/home/ipn/default.asp?ipn=9633>>.

9 ICC Rules of Arbitration <...>, Art. 11 (2).

is also important to understand how the arbitral institutions decide such challenges. Unfortunately, there is little concrete guidance on this point, and as a practical matter, it is difficult to imagine how such guidance could be given—which is one reason why the arbitrators themselves should embrace a comprehensive investigation and disclosure obligation, coupled with a general willingness to withdraw when challenged on a matter that has been disclosed. This difficulty was expressly acknowledged by the IBA Ethics for Arbitrators in International Commercial Disputes¹⁰ (hereinafter – IBA Ethics) and the IBA Guidelines on Conflicts of Interest in International Arbitration¹¹ (hereinafter – IBA Guidelines). According to the Article 1 of the IBA Ethics arbitrators proceed diligently and efficiently to provide the parties with a just and effective resolution of their disputes, and shall be and shall remain free from bias¹². The IBA Ethics elaborate on the basic principle with relatively general provisions regarding substantive standards of impartiality, disclosure, communications with parties and fees¹³.

The fundamental rule of the IBA Guidelines is that: «every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so during to entire arbitration proceeding until the final award has been rendered...»¹⁴. This principle applies to every arbitrator, adopting the same standard for co-arbitrators and presiding arbitrators. Moreover, arbitrator's obligation to be impartial and independent should extend even during the period that the award may be challenged but has decided against this.

The is a general principle, which is provided in the Article 2 of the IBA Guidelines:

«[A]n arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator if he or she has any doubts as to his or her ability to be impartial or independent».

The same principle applies if facts or circumstances exist, or have arisen since the appointment, that, from a reasonable third person's point of view having knowledge of the relevant facts, give rise to justifiable doubts as to the arbitrator's impartiality or independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in General Standard.¹⁵

Analysing court practice, the issue of independence and impartiality of an arbitrator is a question

10 IBA Ethics for Arbitrators in International Commercial Disputes, 1987 [Interactive. Viewed 2019-03-21]. Access through internet: < https://www.trans-lex.org/701100/_/iba-rules-of-ethics-for-international-arbitrators-1987>.

11 IBA Guidelines on Conflicts of Interest in International Arbitration approved on 23 October 2014 by the Council of the International Bar Association [Interactive. Viewed 2019-03-21]. Access through internet: <http://www.ibanet.org/ENews_Archive/IBA_July_2008_ENews_ArbitrationMultipleLang>.

12 IBA Ethics for Arbitrators <...>, Article 1.

13 Born G., *International Commercial Arbitration 2348* // Kluwer Law International. Netherlands, 2012, p.132.

14 IBA Guidelines on Conflicts of Interest in International Arbitration<...>, Article 1.

15 IBA Guidelines on Conflicts of Interest in International Arbitration<...>, Article 2.

over which, courts enjoy full power of review. It is only possible to challenge an arbitrator on the reasonable grounds of lack impartiality or independence.

For example, in *AT&T* case, an eminent international lawyer and arbitrator was appointed tribunal chairman in an ICC arbitration. The tribunal issued two partial awards before *AT&T* became aware that the chairman was a non-executive director of a competitor company of *AT&T*. The competitor company also had been a disappointed bidder for the contract out of which the arbitration arose. *AT&T* lodged a challenge with the ICC based on the chairman's alleged lack of independence. The ICC rejected the challenge. The tribunal issued a third partial award. Since London was the seat of the arbitration, *AT&T* commenced legal proceedings pursuant to England's Arbitration Act to revoke the chairman's appointment and set aside the awards¹⁶.

The *Nidera v. Leplatre* judgment of the Paris Court of Appeal on December 16, 2010¹⁷, illustrates a widely known judgment that renders pointless the arbitrator's duty to disclose. The claimant argued that one co-arbitrator had not disclosed that he was the chairman of a professional association of which the defendant was a member. The Court of Appeal found that this situation was publicly known by all involved in agricultural trade, including the applicant, and underlined that the defendant was one among the eight hundred competing members of the professional association chaired by the co-arbitrator. As a consequence, claimant's objection to the regularity of the constitution of the arbitral tribunal as a ground for annulment of the award was rejected. The situation was close to giving rise to an estoppel as the Court of Appeal remarked that *Nidera* had not challenged the chairman of the tribunal during the arbitration proceedings in spite of this publicly known fact. Another example is when the relationship is trivial and no disclosure is needed, such as in *Tecso* case¹⁸, where the chairman of the Arbitral Tribunal was a friend on Facebook of the defendant's counsel. The Court of Appeal held that this circumstance had no bearing on the arbitrator's independence or impartiality.

III. General restrictions for selection of arbitrators

Many arbitration clauses provide restrictions concerning selection of arbitrators, such as nationality, age, qualifications, language requirements specific knowledge and others. These limits can arise from the arbitration agreement, international arbitration conventions and national law. For example, under the Swedish Arbitration Act 1999¹⁹. Anyone who enjoys full legal capacity in regard to his actions and

16 Kednall J., Barristers, Independence and Disclosure Revisited// *16 Arbitration International*, p. 235.

17 Paris Court of Appeal. *Nidera v. Leplatre judgment of the Paris Court of Appeal (16 December 2010)*// *D. Bensaude, Chronique en droit de l'arbitrage, Gazette du Palais*, 15-17 May 2011, p. 13.

18 Paris Court of Appeal. *Tecso v. Neoelectra Group. Cour d'appel [CA] [regional court of appeal] Paris, June 2, 1989, 1991 REV. ARB.* 87. [Interactive. Viewed 2019-03-21]. Access through internet: <<http://www.cabinet-castellane-avocats.fr/pdf/2011-10-01-french-case-law-annual-report.pdf>>.

19 Swedish Arbitration Act 1999 with revisions on 21 November 2018. [Interactive. Viewed 2019-03-21]. Access through internet: <<https://sccinstitute.com/about-the-scc/news/2018/revised-swedish-arbitration-act-in-2019/>>.

his property are capable of being an arbitrator, i.e. you must be at least 18 years old and you cannot have a trustee or be bankrupt. In addition, the arbitrator must be independent of the parties.

According to the Article 871 (2) of the Greek Code of Civil Procedure²⁰, as arbitrators may not be appointed (a) persons that have no legal capacity or have limited legal capacity, (b) persons deprived of their citizen right to vote and to be elected due to a prior criminal conviction, (c) legal entities. In addition, the Greek Code of Civil Procedure provides for certain conditions and limitations regarding the appointment of acting judges as arbitrators²¹. Further to said explicit restrictions it is unanimously accepted in case law and legal literature under the principle *nemo iudex in causa sua* and the maxim of fair trial that a person may not be validly appointed as arbitrator in a dispute involving his own interests.

French law imposes few requirements on arbitrators, none of which relate to the arbitrators' nationality or professional qualifications. Specifically, the Article 1450 of the French Code of Civil Procedure²² provides that only natural persons having full capacity can act as arbitrators in domestic arbitration proceedings. However, legal persons, if designated in the arbitration agreement, can only administer the arbitration. The French Code of Civil Procedure also lays down a requirement of independence and impartiality, applicable in both domestic and international arbitration²³.

In view of the foregoing, the principle of party autonomy enables the parties to choose persons with relevant expert knowledge and experience as arbitrators. Or, if they do not have time or lack willingness to act, they may let an arbitration tribunal decide for them²⁴. Additionally, arbitrators shall have a good knowledge of the language of the arbitration proceedings. Arbitrators shall have appropriate expertise, education and experience. Besides these qualifications, arbitrators must be independent and impartial during arbitration. In the case that arbitrators are not independent and impartial during the arbitration proceedings, they may be challenged by the parties.

IV. Number of Arbitrators

Many international arbitration agreements provide for arbitration by three arbitrators. Typically, each party (in a two-party dispute) nominates an arbitrator and the two party-nominated arbitrators (or «co-arbitrators») endeavour to agree upon a presiding arbitrator. Where the co-arbitrators are unable to reach agreement, an «appointing authority» is delegated authority to select the presiding

20Greek Code of Civil Procedure, Book VII. Amended by Law 2331/1995. [Interactive. Viewed 2019-03-21]. Access through internet: <<https://www.uv.es/medarb/observatorio/leyes-arbitraje/europa-resto/grecia-ccp-domestic-arbitration.pdf>>.

21Greek Code of Civil Procedure <...>, Article 871A.

22French Code of Civil Procedure, 14 May 1981. [Interactive. Viewed 2019-03-21]. Access through internet: <<https://www.jus.uio.no/lm/france.arbitration.code.of.civil.procedure.1981/doc.html>>.

23French Code of Civil Procedure <...>, Article 1456.

24Redfern A., Hunter M. *International Arbitration*. Oxford: Oxford University Press, 2015, p.34.

arbitrator. In practice, other numbers of arbitrators are extremely rare in international arbitration since they are invariably impractical and unsuitable for most cases.

As a rule of thumb, it can be said that in common law countries there exists a certain preference for a sole arbitrator while in civil law countries a three-member tribunal is the preferred method. Sole arbitrators have the major advantage of costing less than a three-member tribunal. The parties only have to pay for one arbitrator instead of three. This is an important consideration in small and medium sized cases. Moreover, a sole arbitrator is potentially faster than a three-member tribunal. It is not necessary to co-ordinate the busy schedules of three arbitrators to find time for a hearing and there is no danger of a party appointed arbitrator trying to delay the proceedings. More importantly, a sole arbitrator will undoubtedly avoid the natural tendency of a tribunal with arbitrators appointed by the parties to reach a compromise solution²⁵.

In institutional rules this is often only a presumption from which the institution may deviate where it is appropriate. For example, the ICC Rules provide in Article 12 (2):

«[W]here the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators»²⁶.

Thus, in roughly 40% of ICC arbitrations, the parties' arbitration agreement provides for a sole arbitrator²⁷.

However, the decision-making process in tribunals with five or more members is cumbersome and expensive. Co-ordinating the busy schedule of five or more arbitrators, who all have to be paid for by the parties, involves considerable administrative effort and inevitable delays. Therefore, tribunals with more than three arbitrators are only appropriate in very exceptional circumstance where the number or type of parties involved and the amount in dispute justify such efforts.

Furthermore, the corollary of the parties' autonomy to agree upon an arbitrator, or on mechanisms for selecting an arbitrator, is that these mechanisms must then be complied with. If an arbitrator is selected in a way that does not comply with the parties' contractual procedures, then his or her appointment is potentially invalid, subjecting the arbitrator to challenge and resulting award to possible annulment and non-recognition²⁸.

V. Main features for selection of arbitrators in Belarus

There are no restrictions with regard to the parties' autonomy to select arbitrators. Any person can be

²⁵Lew Judith M., Mistelis Loukas A., Kröll S., Comparative <...>, p. 228.

²⁶ ICC Rules of Arbitration <...>, Art. 12 (2).

²⁷Lew Judith M., Mistelis Loukas A., Kröll S., Comparative <...>, p. 230.

²⁸Lew Judith M., Mistelis Loukas A., Kröll S., Comparative <...>, p. 231.

selected as an arbitrator. The general rule is that an arbitrator has to be impartial and independent. According to the Article 17 of the IAC Rules²⁹, an arbitrator must be a capable person, chosen by the parties to the dispute with their agreement or appointed in by means of an established process to resolve the dispute. No one may be deprived of the right to become an arbitrator because of his nationality or citizenship, unless the parties agreed otherwise.

However, Article 13 of the Law «On arbitration courts»³⁰ establishes the following restrictions in regard to the arbitrators in domestic arbitration:

«[T]he sole arbitrator must have a law degree and at least three years' experience in the legal profession. When there is a panel of arbitrators, however, the Chairman of the arbitral tribunal must have a law degree and at least three years' experience in the legal profession, while the other arbitrators must have completed higher education and at least three years' work experience».

Furthermore, the following persons cannot be arbitrators³¹: a) public servants, including those who exercise powers of a judge in court; b) persons who are incapable or partially capable; c) persons with a criminal record; and d) former judges of the court, prosecutors, members of the Internal Affairs bodies, members of the Investigative Committee of the Republic of Belarus, members of State Security agencies, members of State Security bodies, employees of the State Control Committee of Belarus, tax and customs authorities, other public servants, private notaries or lawyers who were withdrawn from their positions on the grounds that they were incompatible with their professional activities – within three years from the date of the relevant decision – unless otherwise stipulated by legislative acts of the Republic of Belarus.

Additional requirements for the arbitrators may be determined by the regulations of the permanent court of arbitration and the arbitration agreement. Such additional requirements to the arbitrators are established in the Article 5 (2) of the IAC Rules³²: only capable persons (with consent) who have sufficient training and the necessary personal qualities can be selected (appointed) as arbitrators .

If the parties' chosen method for selecting arbitrators fails, such appointment of arbitrators has to be made by the Chairman of the permanent court of arbitration. Upon appointment of an arbitrator, the Chairman of the permanent acting international arbitration court or the President of the Belarusian

29Rules of The International Arbitration Court at the BelCCI Approved by the Resolution of the BCCI on 17 March 17 2011 as amended and added on 10 November 2017. [Interactive. Viewed 2019-03-21]. Access through internet: <<https://iac.by/en/rules/>>.

30Law of the Republic of Belarus «On arbitration courts» №279-3 on 9 July 1999 as amended and added on 01 July 2014. [Interactive. Viewed 2019-03-21]. Access through internet: <<https://iac.by/en/lawonarbitrationcourt>>.

31Sysouev T.,Khrapoutski A., *Belarus: International Arbitration 2018*. The ICLG to: International Arbitration Laws and Regulations. Global Legal Group Ltd, London, p. 115.

32Rules of The International Arbitration Court at the BelCCI <...>, Art. 5 (2).

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Chamber of Commerce and Industry takes into account all the requirements for appointing an arbitrator, including that the arbitrator be qualified, independent and impartial. Such decision is not subject to appeal³³.

An arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to his/her impartiality or independence. A challenge to an arbitrator may be declared only if there are circumstances causing grounded doubts in respect of his/her impartiality or independence, or when he/she does not possess a qualification stipulated by the agreement between the parties. The party may declare a challenge to an arbitrator, appointed by such party or with participation of such party in his/her appointment, only in connection with the circumstances which have become known to it after his/her appointment³⁴.

VI. Key aspects for selection of arbitrators in Germany

The parties are free to agree on a procedure of appointing the arbitrator(s) and there are hardly any restrictions as to the person of the arbitrator unless circumstances exist that give rise to justifiable doubts as to his impartiality or independence or if he/she does not possess qualifications agreed to by the parties. Furthermore, Article 1036 of the German Code of Civil Procedure (hereinafter - ZPO) obliges the arbitrator to disclose without delay any circumstances likely to give rise to doubts as to his impartiality or independence³⁵. This duty applies during the whole arbitral process, from his appointment until the rendering of the award.

The DIS Rules 2018 provide for a similar obligation as detailed in Article 9.1. Also, according to this provision³⁶:

«[E]very arbitrator shall be impartial and independent of the parties throughout the entire arbitration and shall have all of the qualifications, if any, that have been agreed upon the parties».

Article 1035 (2) ZPO provides for a default procedure in case the parties' chosen method for selecting arbitrators fails or in the absence of any agreement on the appointment of the arbitrators³⁷. Lacking an agreement on the number of arbitrators, the arbitral tribunal shall consist of three arbitrators, whereby each party shall appoint one arbitrator, and the two arbitrators shall appoint the third

33Rules of The International Arbitration Court at the BelCCI <...>, Art. 17.

34Sysouev T., Khrapoutski A., *Belarus: International Arbitration 2018* <...>, p. 116.

35Code of Civil Procedure on 5 December 2005 with amendments dated 10 October 2013. Bundesgesetzblatt (BGBl., Federal Law Gazette). [Interactive. Viewed 2019-03-21]. Access through internet: <https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html>, Art. 1036.

36DIS Arbitration Rules of the German Arbitration Institute, 2018. [Interactive. Viewed 2019-03-21]. Access through internet: <http://www.disarb.org/upload/varia/180119_DIS_NewRules_EN.PDF>, Art. 9.1.

37Code of Civil Procedure <...>, Art. 1035(2).

arbitrator who shall preside over the arbitral tribunal³⁸.

According to the Article 10.2 of the DIS Rules ³⁹if the parties have not agreed upon the number of arbitrators, any party may submit a request to the DIS that the arbitral tribunal be comprised of a sole arbitrator. The Arbitration Council of the DIS shall decide on such request after the consultation with the other party. If no such request has been made, the arbitral tribunal shall be comprised of three arbitrators.

Moreover, every arbitrator shall be appointed by the DIS even when such arbitrator has been nominated by a party or by co-arbitrators⁴⁰.

It is notable that Article 1035 (5) ZPO ⁴¹states that in case of appointment of a sole or third arbitrator by the court, it shall take into account the advisability of appointing an arbitrator of a nationality other than those of the parties. Without explicitly referring to international arbitration proceedings, this rule is only expedient if the parties have different nationalities.

Moreover, the courts decide upon request of a party on the challenge of an arbitrator unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, and provided that any procedure agreed upon by the parties or the arbitral tribunal's obligation to decide on the challenge is not successful⁴².

VII. Conclusion

Choosing the «right arbitrator» is critical, not just for the interests of the parties but also as regards the efficiency and legitimacy of the whole arbitration system. Arbitrators are decision-makers charged with settling disputes that are complex and multi-layered.

Parties are free to select the arbitrators, and in doing so, they will consider not only their technical expertise but also scrutinize any visible predispositions towards certain types of interests. Most institutional rules grant parties broad autonomy to select the arbitrators in their arbitrations, such as UNCITRAL or ICC. Furthermore, they impose requirements of impartiality and independence on arbitrators. Moreover, there are similar provisions in Belarussian and German legislation, which provide that an arbitrator has to be impartial and independent.

Analysing court practice, the issue of independence and impartiality of an arbitrator is a question over which, courts enjoy full power of review. It is only possible to challenge an arbitrator on the reasonable grounds of lack impartiality or independence.

38Code of Civil Procedure <...>, Art. 1034 (1).

39DIS Arbitration Rules <...>, Art. 10.2.

40DIS Arbitration Rules <...>, Art. 13.1.

41Code of Civil Procedure <...>, Art. 1035(5).

42Code of Civil Procedure <...>, Art. 1037(2).

However, the selection of arbitrators is not an easy process. Parties draw details about an arbitrator from a range of sources, of varying reliability, in an attempt to understand that arbitrator's suitability for the dispute. Although there are limits to the parties' autonomy to the selection of arbitrators. These limits can arise from the arbitration agreement, international arbitration conventions and national law. Such restrictions concern the arbitrators' impartiality, nationality, qualifications, legal experience, as well as requirements for disclosure regarding the arbitrator's independence and impartiality. For example, in Belarussian legislation the sole arbitrator must have a law degree and at least three years' experience in the legal profession. Moreover, Belarussian law provides restrictions on persons, who might be appointed as arbitrators, such as former judges of the court, prosecutors, members of the Internal Affairs bodies, etc. Conversely, there are unlikely any restrictions under the German legislation of arbitrators.

Additionally, parties decisions include number of arbitrators on a tribunal, the method of selecting the arbitrator (s) and other issues. In general, the number of arbitrators can be determined by the parties, but many international arbitration statutes provide for arbitration by three arbitrators. Therefore, tribunals with more than three arbitrators are only appropriate in very exceptional circumstance where the number or type of parties involved and the amount in dispute justify such efforts. If the parties chosen method for selecting arbitrators fails, such appointment of arbitrators has to be made by arbitral instution.

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Redaktion:
Prof. Dr. Otto Luchterhandt,
Dimitri Olejnik,
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Prof. Dr. Andreas Steininger

Ostinstitut Wismar
Philipp-Müller-Straße 14
23966 Wismar
Tel +49 3841 753 75 17
Fax +49 3841 753 71 31
office@ostinstitut.de
www.ostinstitut.de

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