

President's Message

'Beauty contests' conducted by parties to select counsel for important commercial arbitrations have become a standard feature in the international litigation and arbitration practice. My observation is that the approach is increasingly carried over to the process of selecting arbitrators. Here, the 'contest' is conducted in the form of pre-nomination interviews with a range of prospective candidates for appointment normally as party-nominated arbitrator to a three-member panel. Less frequently, such interviews are also held with candidates for appointment as sole arbitrator or chairman of an arbitral tribunal. Such pre-appointment contacts between parties and arbitrators obviously carry risks of jeopardizing the interviewed arbitrator's neutrality, independence or impartiality. So far, arbitrators faced with requests for pre-appointment interviews have had few guidelines, except their own common sense, on how to behave in such interviews and how to best avoid the risk of subsequent challenges.

The IBA Guidelines on Conflicts of Interest in International Arbitration of 2004 do not address the pre-appointment interview process. The arbitration community will, therefore, be thankful to the Chartered Institute of Arbitrators in London for having worked out and published, as Practice Guideline 16, comprehensive guidelines on 'The Interviewing of Prospective Arbitrators.' The guidelines give 19 recommendations covering subjects such as how much can be revealed about the dispute, the constitution of the interviewing team, the recording of the interview, and the questions that can and cannot be asked. The recommendations are not limited to the interviewing of candidates for party-appointed arbitrators but also of prospective sole arbitrators and prospective chairs and include specific safeguards in relating to the latter, less common, situation.

The guidelines are worth being looked at by any arbitrator confronted with a pre-appointment interview request. They are not specifically geared to the UK environment but have evidently been prepared after consultation across a variety of jurisdictions and different legal cultures.

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