

President's Message

ASA's Arbitration Toolbox – Thinking of Arbitration as a Decision Tree

There is no single way to arbitrate. This credo lies at the very heart of what ASA represents. Arbitration is a means to an end: resolving disputes in the manner best suited to the particular circumstances of the case. The beauty of arbitration lies in its flexibility – in the ability to tailor proceedings to the specific needs of the dispute at hand.

Yet, in practice, this promise of flexibility is not always fulfilled. More often than not, arbitrations follow remarkably similar procedural structures: the same Procedural Order No. 1, the same sequence of procedural steps, and comparable timetables. While this may promote predictability, it also represents a missed opportunity to design proceedings in a way that genuinely reflects the needs of the individual case.

In some disputes, the parties primarily seek a swift resolution, making speed the shared objective. In others, the core issues are highly technical and require an in-depth examination with the assistance of experts, while quantum may largely follow from the determination of those technical questions. Still other cases may be based almost entirely on documentary evidence, with little or no need for factual witnesses.

It was precisely these different scenarios that ASA had in mind when, several years ago, it developed and implemented the concept of the Arbitration Toolbox: a set of tools that can be selected and combined according to the specific needs of the parties and the dispute.

Experienced practitioners from the Swiss and international arbitration community came together to reflect on the various decisions parties and tribunals face throughout arbitral proceedings. These include the commencement of proceedings, procedural organization, the written phase, the handling of fact and expert witnesses, hearings, interim measures, and awards. For each stage, a range of considerations may be relevant, depending on what matters most to the parties and why.

The result is an interactive, free of charge online platform – the Arbitration Toolbox. Rather than prescribing fixed answers, it deliberately asks questions and guides users through the arbitral process by means of a decision tree. By following the questions posed along the way, parties can identify which procedural steps are necessary for “their” arbitration, how those steps should be structured, and which stages may appropriately be simplified or

omitted altogether. To support users along this path, the Arbitration Toolbox provides guidance for each stage of the proceedings. For example, it addresses practical considerations such as whether witness statements and documentary evidence should already accompany the Request for Arbitration, or whether expert witnesses are required. Importantly, all guidance is drafted in the spirit of user autonomy: it presents available options and may indicate common approaches, but consistently encourages parties to reconsider whether a different approach might better serve their case.

The Arbitration Toolbox also offers a range of templates, including a Sample Request for Arbitration, a Sample Witness Statement, a Sample Expert Report, and a Sample Emergency Relief Application. Here again, however, the central message is that these templates are intended merely as starting points, to be adapted and refined according to the parties' specific needs.

The Arbitration Toolbox is valuable both for experienced practitioners seeking inspiration and for less experienced practitioners learning about the procedural questions that commonly arise in arbitral proceedings and the ways in which they may be addressed. Although developed under the aegis of ASA, the Arbitration Toolbox is entirely independent of the applicable *lex arbitri* or the institutional rules and can thus be used by anybody, anywhere, for any arbitration, institutional or *ad hoc*, irrespective of the seat. The Arbitration Toolbox has further benefited from ASA's collaboration with UNCITRAL. In many places, it refers to the UNCITRAL Notes on Organizing Arbitral Proceedings, which pursue the same objective of emphasizing the flexibility of the arbitral process. The Arbitration Toolbox now features on the UNCITRAL website as an additional resource to the UNCITRAL Notes on Organizing Arbitral Proceedings.

The Arbitration Toolbox was first launched during the ASA presidency of Elliott Geisinger, with an updated version going live in October 2024. The project was chaired by a dedicated core committee consisting of Gabrielle Nater-Bass, Dilber Devitre, and Stefanie Pfisterer¹. Owing to the guidance and wealth of practical information the Arbitration Toolbox provides, it has become one of the most popular resources provided by ASA.

The Arbitration Toolbox does not claim to revolutionize arbitration or fundamentally transform the way proceedings are conducted. Rather, it places parties and arbitration practitioners at the centre and offers them meaningful support. However, it deserves a President's Message and wide-spread attention for the valuable service it offers to the arbitration community.

¹ Further contributors to the updated version included Luis Capiel, Utku Cosar, Ulrike Gantenberg, Anna Masser, Andrea Meier, Carmen Núñez-Lagos, and Swee Yen Koh.

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For those who have not yet explored the Arbitration Toolbox, I encourage you to visit toolbox.swissarbitration.org.

In my opinion, the greatest strength of the Arbitration Toolbox is that it asks questions rather than imposing fixed answers. In doing so, it compels users to engage actively with the process and to reflect on what is truly best for their case. There is great value in asking questions instead of simply providing answers. Questions inspire independent thinking – far more than passive acceptance of ready-made answers ever could.

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