

KIEV ARBITRATION DAYS 2016: THINK BIG!

What and whom can you trust in and why?

3 November 2016
Kiev

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The confidence complex

- Trust in arbitration as a mechanism for dispute resolution
- Trust to arbitral institutions
- Trust to arbitrators



Trust in arbitration

Global Arbitration Cases Still Rise – Arbitral Institutions' Caseload Statistics for 2015 ¹

	2012	2013	2014	2015
ICC (International Chamber of Commerce)	759	767	791	801
DIS (German Institution of Arbitration)	121	121	132	134
SCC (Stockholm Chamber of Commerce)	177	203	183	181
VIAC (Vienna International Arbitration Center)	70	56	56	40

Trust in arbitration

	2012	2013	2014	2015
SCAI (Swiss Chamber's Arbitration Institution)	92	68	105	100
LCIA (London Court of International Arbitration)	277	301	296	326
ICDR (International Centre for Dispute Resolution)	996	1165	1052	1063
SIAC (Singapore International Arbitration Centre)	235	259	222	271

Trust in arbitration

	2012	2013	2014	2015
CIETAC (China International Economic and Trade Arbitration Commission)	1060	1256	1610	1968
HKIAC (Hong Kong International Arbitration Centre)	293	260	252	271
ICSID (International Centre for Settlement of Investment Disputes)	50	40	38	52
Total	4130	4496	4737	5207

Possible obstacles for the development of arbitration

- National legislation and the lack of courts' support
- Increasing costs
- Limited pool of arbitrators
- Concerns relating to enforceability of the award
- Increased competition from national courts
- Transparency



Trend of specialized arbitration



**REFINED
SUGAR
ASSOCIATION**



**WIPO
Arbitration Rules**

Trend of specialized arbitration

Energy sector

2013 -International Centre for
Energy Arbitration (ICEA)



2014 -Perth Centre for Energy and
Resources Arbitration (PCERA)



Financial sector

2011 -Financial Dispute Resolution Centre



Trend of specialized arbitration

Financial sector



P.R.I.M.E. FINANCE
Panel of Recognised International Market Experts in Finance

2012 –Panel of Recognised
International Market Experts in Finance

P.R.I.M.E. Finance uses certain tools to increase the effectiveness:

- expedited proceedings;
- urgent measures (e.g. “emergency arbitrator”);
- transparency of the proceedings.

Trust to arbitral institutions

What makes the difference?



Arbitral Institutions

- The quality of administration and level of 'internationalism'
- Strong reputation and widespread recognition



Arbitral Institutions

- Requirement for tribunals to commit to a schedule for deliberations and delivery of final awards
- Simplified procedures in institutional rules
- Interim relief
- Availability of emergency arbitrators
- Availability of rules for certain categories of disputes

Trust to arbitrators

- Arbitrators: neutral guardians of the international arbitration system?

One of the key advantages of arbitration is the confidence parties gain by having a person of their own choice hearing and contributing to determination of their case.



Trust to arbitrators

- Party autonomy to appoint one arbitrator is still preferred approach
- Dissatisfaction in the appointment of arbitrators by arbitral institutions



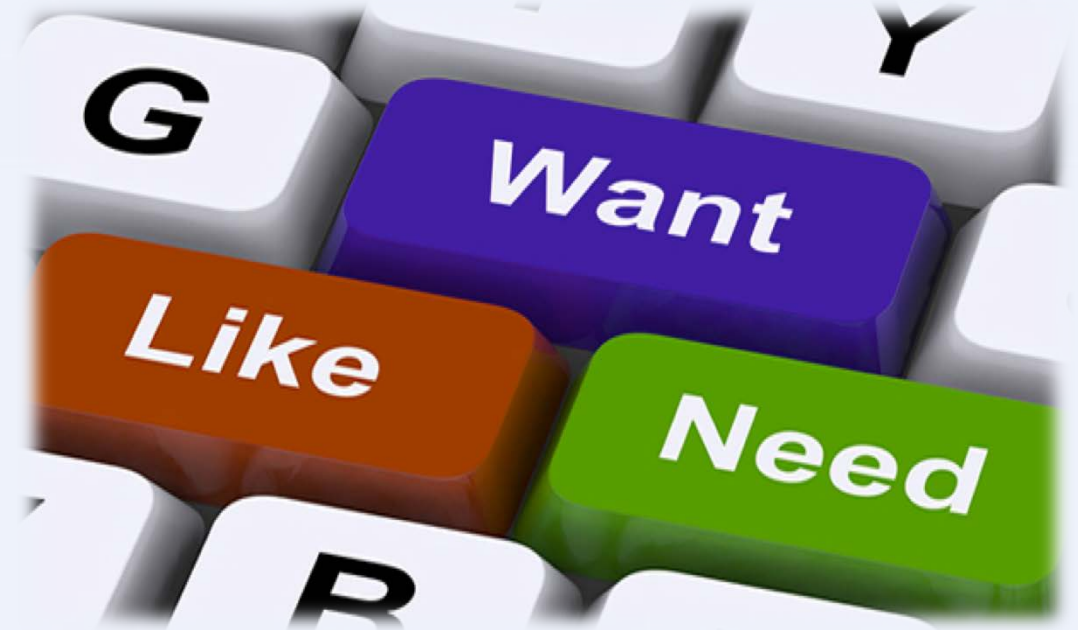
Specific needs of parties when appointing “their” arbitrator

Nationality

- parties wish to have the arbitrator, who has the same cultural background and overall outlook as they do

Disposition

- parties wish to nominate the arbitrator, who has a legal background and legal disposition to suit their case



Impartiality and Independence

- all major international arbitration rules require that each arbitrator, whether party--appointed or not, is to be independent, impartial or neutral or some combination of these

Availability

- avoid a delay in the conduct of the arbitration and rendering of awards



Knowledge of the law governing the contract

- particularly important where the case or significant aspects of it may turn on legal points rather than on issues of fact

Familiarity with arbitration practice

- knowledge and experience of the law and practice of international arbitration is of considerable importance not only for the Chairman of tribunal, but also for the co-arbitrators



Knowledge of particular business or industry

- it may be of assistance to nominate an arbitrator with experience in and understanding of the relevant industry or sector and can assist other tribunal members in understanding the evidence in a particular area in which the other arbitrators may have no background

Influence/Capacity to Persuade

- nominated arbitrator should carry sufficient weight to generate respect from the other tribunal members and be persuasive during the private deliberations of the tribunal



What is the approach in
appointment of arbitrators under
the rules of arbitration?

Institutional mechanisms for appointment of arbitrators

- Establishment of requirements regarding who can serve as arbitrator
 - general requirements under arbitration rules
 - internal procedure to check availability, independence and impartiality of arbitrator
- Establishment of special appointing bodies (e.g. nominating committees)



LCIA Arbitration Rules

Articles 5.9 *“The LCIA Court shall appoint arbitrators with due regard for any particular method or criteria of selection agreed in writing by the parties. The LCIA Court shall also take into account **the transaction(s) at issue, the nature and circumstances of the dispute, its monetary amount or value, the location and languages of the parties, the number of parties and all other factors which it may consider relevant in the circumstances**”.*

ICC Rules of Arbitration

Article 13.1 *“In confirming or appointing arbitrators, the Court shall consider the prospective **arbitrator’s nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator’s availability and ability to conduct the arbitration in accordance with the Rules**”.*

Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce

Article 13 (6) “When appointing arbitrators, the Board shall consider the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration and the nationality of the parties”.

Rules of the ICAC at the UCCI

Article 29.1. *“The President of the Ukrainian Chamber of Commerce and Industry, in appointing an arbitrator, shall have due regard to **any qualifications** required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an **independent and impartial** arbitrator and, in the case of a sole arbitrator or a presiding arbitrator, shall take into account as well **the advisability of appointing an arbitrator of nationality** other than those of the parties”.*

Summing up

- Neutrality and independence
- Linguistic skills
- Relevant qualification (including legal knowledge and professional expertise)
- Circumstances of particular case
- Nationality

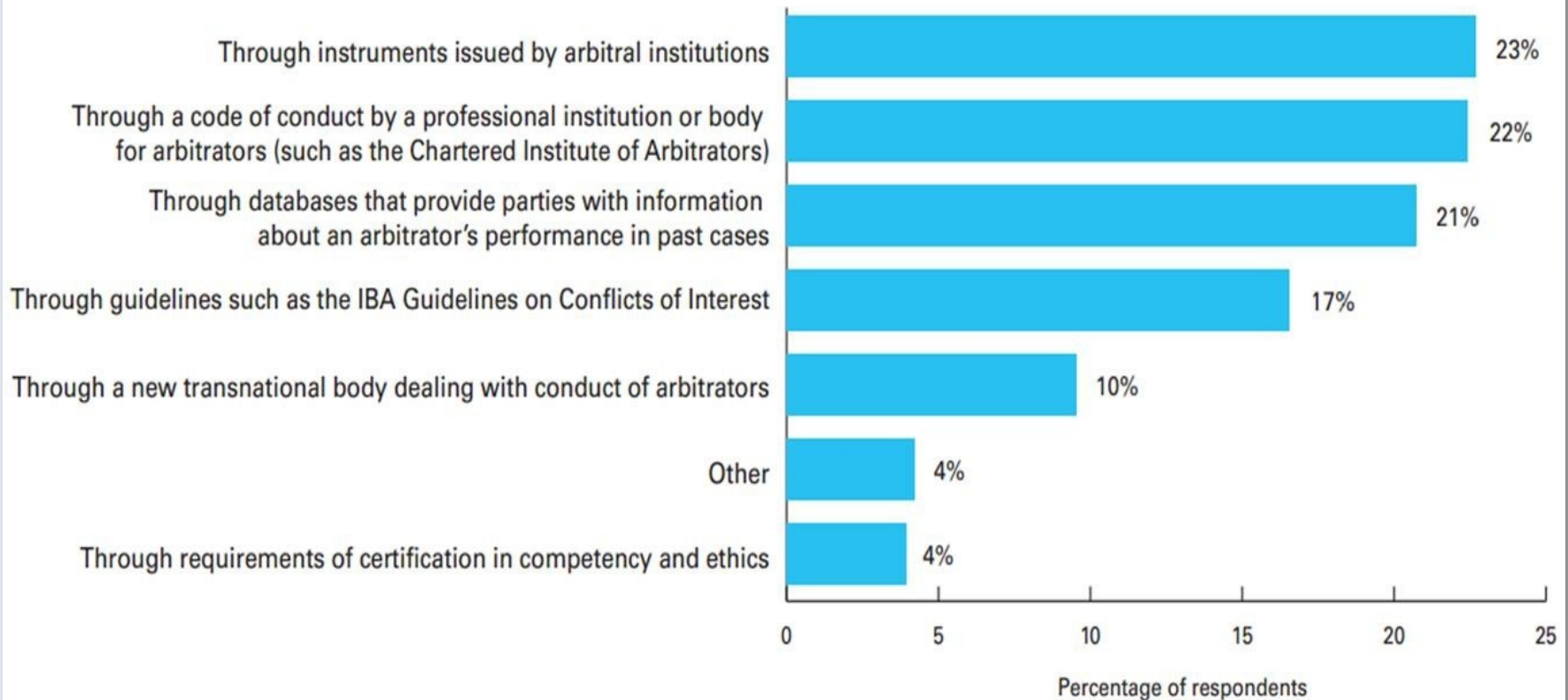
- **Current problems, which parties are facing with appointment of arbitrators**
 - Closed lists of arbitrators
 - Repeated appointments
 - Non--availability of the most “popular” arbitrators
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- **Current needs**

- Extension of arbitrators lists and panels
- Diversity in nationalities/specialization/....
- Transparency in the appointment of, and challenges to, arbitrators
- Regulation of arbitrators conduct

2015 International Arbitration Survey: Improvements and Innovations in International Arbitration

What would be the most effective way to 'regulate' arbitrator conduct?



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TRUST,
BUT
VERIFY
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Thank you for your attention!

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