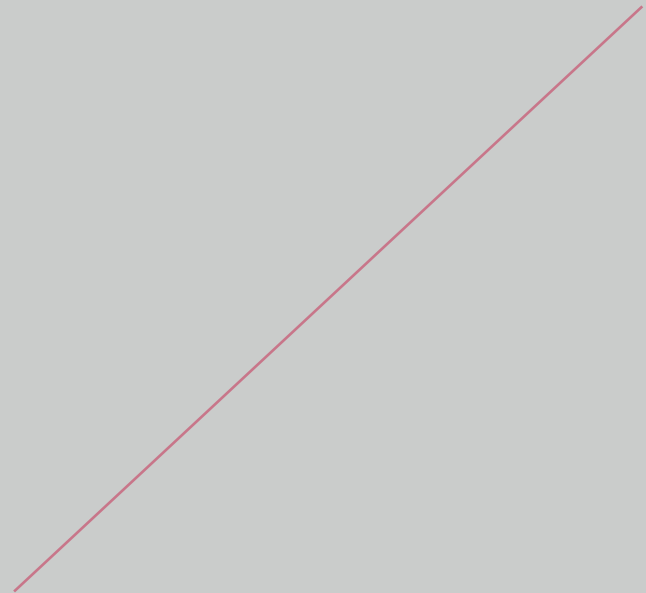


ARZINGER

The art of settlement

Markian Malskyy
Kyiv Arbitration Days 2021



Key issues



Different jurisdictions use diverging approaches to arbitrator's encouragement of settlement during an arbitral proceeding



Means that may be used by an arbitral tribunal, parties or their counsel to facilitate settlements



Nature and contents of a consent award. The power of an arbitral tribunal to issue a consent award



Pros and cons of arbitrator's involvement

Advantages:

- increased efficiency and flexibility of the dispute settlement process;
- availability of a final binding decision (in the form of a consent award) that may be recognized under the New York Convention;
- settlement will provide security and predictability to the parties;
- significant reduction in legal costs for the parties.

Risks:

- potential perceived lack of impartiality;
- possible issues with confidentiality of the information disclosed during settlement negotiations.



Means for arbitrators to facilitate settlements

- ❑ Enforce multi-tier dispute resolution clauses if pre-arbitration phases have not been completed in accordance with the clause.
- ❑ Remind the parties that they can settle their dispute at any time.
- ❑ Question the parties' counsel and the parties themselves at appropriate junctures in the arbitral process regarding the status of settlement discussions and the potential use of other forms of ADR to assist.
- ❑ Raise the idea of settlement discussions and obtain the parties' consent at the outset of the proceedings, ideally at the first procedural meeting.
- ❑ Identify critical issues and make a non-binding preliminary (and certainly neutral) assessment of the case, as a settlement facilitator based on the parties' argument and the evidence on record.





Markian Malskyy

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- More than 12 years of professional experience
- Working experience with Freshfields (Paris office)
- Involved in the resolution of more than 300 disputes under various arbitral rules and acted as an arbitrator in numerous cases
- Expertise recognised by Best Lawyers, Who's Who Legal, Legal 500, Chambers Europe, Chambers Global

