

KIEV ARBITRATION DAYS 2017: THINK BIG!

Second Session:

Where is your/my evidence?

Disclosure and how not to put your cards on the table

Carita Wallgren-Lindholm

3 November 2017

LINDHOLM WALLGREN

Disclosure and how not to put your cards on the table

1. Topic and its analysis;
2. Relevant players and their perspective: Claimant, Respondent, Arbitrators;
3. Legal cultures and techniques for the presentation of written evidence (all related docs vs. matters in dispute);
4. Background docs for context/atmospheric docs/evidencing matters in dispute/admissibility;

Disclosure and how not to put your cards on the table

5. Timeline (for both sides);
6. Voluntary/semi-voluntary/involuntary disclosure (incl. access to national courts);
7. Relevance of seat, *lex arbitri* (e.g. Sweden);
8. Burden of proof;

Disclosure and how not to put your cards on the table

9. Relevance of arbitrator identity;
10. Your “litigant’s profile”: strategy/maintaining focus/credibility (up-front vs. piecemeal and extent of disclosure)/ user friendliness;
11. Many acts by Counsel will be evaluated against this backdrop (e.g. credibility of refusals);

Disclosure and how not to put your cards on the table

12. Soft law:

- IBA Rules on the Taking of Evidence in International Arbitration (2010)
- IBA Guidelines on Party Representation in International Arbitration (Section 12: Information Exchange and Disclosure) (2013)

13. Deontological rules applicable to Counsel and asymmetry;

Disclosure and how not to put your cards on the table

14. Briefly on confidentiality, legal privilege and business secrets (and relevant enactments);
15. Solving the dispute put before the arbitrators or finding the truth (degrees of necessary inquisition/intellectual curiosity/justice being served).