INTERNATIONAL ARBITRATION SURVEY:
PARTY APPOINTED ARBITRATORS

BERWIN LEIGHTON PAISNER

HELPING YOU ACHIEVE YOUR OBJECTIVES IN INTERNATIONAL ARBITRATION

International arbitration remains the preferred method for resolving cross-border disputes across all industry sectors. The value and complexity of disputes arising out of international contracts and investments mean that clients require specialist legal advice that is focused on achieving their commercial objectives.

BLP's International Arbitration group comprises a team of specialist arbitration practitioners based in our offices in London, Moscow, Singapore, Hong Kong, Abu Dhabi and Dubai. We work with a broad range of clients, including multi-national corporations, governments and government agencies, financial institutions and private individuals.

We can help.

TIME FOR A CHANGE?

Over the last seven years BLP's International Arbitration group has conducted a number of surveys on issues affecting the arbitration process.

This year we wanted to consider the issue of unilateral arbitrator appointments. Do users of international arbitration consider the continued practice of party appointments a good or a bad thing? Or to put it another way: are party appointments necessary or desirable?

There appears to be a strong body of opinion in favour of retaining party appointments. However, in recent years, the system of unilateral appointments has been criticised by a number of eminent practitioners. It has even been described as a moral hazard.

The replacement of party appointments with arrangements by which an arbitral institution or other independent body appoints all members of the tribunal has also been mooted as a means of widening the pool of arbitrators and encouraging diversity, as well as addressing issues of potential arbitrator bias in favour of the appointing party.

HELLO

We have once again canvassed the opinions of our colleagues within the BLP preferred firm network who work in international arbitration. We have also extended an invitation to participate to the many other international arbitration practitioners and users with whom we work.

We would like to thank all those who responded to the survey.

George Burn
Head of International Arbitration

Over the last 7 years BLP's International Arbitration group has conducted a number of surveys on issues affecting the arbitration process: conflict of interest (2010), delay (2012), document production (2013), choice of seat (2014), the use of tribunal secretaries (2015) and increasing diversity on arbitral tribunals (2016). The final report on each of those studies can be found on our website.

THE ISSUES

Why do unilateral appointments matter?

Arbitrations routinely begin with each side naming an arbitrator – arbitration agreements often provide for this, and the appointment procedures of many institutional and ad hoc arbitration rules permit party appointment or nomination.

The body of opinion in favour of party appointments is a strong one. One eminent practitioner has described the practice of unilateral party appointments as the "keystone of international arbitration" and another has said that it is one of the "most attractive aspects of arbitration as an alternative to domestic litigation". The 2012 Queen Mary International Arbitration Survey found that 76% of respondents prefer selection of the two "wingmen" in a three-member tribunal to be made by one of the parties.

The right of a party to name an arbitrator has been an integral part of the arbitration process for more years than most people can remember. First used to encourage and give legitimacy to the process of arbitration, it is argued that there still exist today many good reasons why the practice should be retained.

It is said, in particular, that the ability to select one of the arbitrators gives a party a sense of control and proximity to the arbitration proceedings that engenders confidence in the process and its outcome. It may also enable a party to ensure that there is someone on the tribunal who shares its cultural or legal tradition. At a more strategic level, well-informed counsel will have a bank of knowledge about the attitudes and approach of potential candidates for appointment and will often take great care in selecting an arbitrator that they believe will be sympathetic to their client's case.

A proposal to remove this right of party investment in the arbitration process is viewed by many as a retrograde step that will erode party autonomy and adversely affect party confidence in international arbitration as a desirable method of dispute resolution.

> The issue of party appointments is a difficult topic but we should not shirk a considered examination of its merits and shortcomings.
>
> Carol Mulcahy, Partner, BLP, London

Concerns also exist around the ability of some arbitral institutions and other neutral bodies to make good quality appointments. This is an important issue if such bodies are to assume responsibility for appointment of all members of a tribunal. It may be that more work around developing confidence in third party appointments is necessary before a shift to removal of party appointments can even be contemplated.

> The ability to select one of the arbitrators gives a party a sense of control and proximity to the arbitration proceedings that engenders confidence in the process and its outcome.

A further argument against removal of party appointments is that the parties themselves are better placed than anyone else to identify the expertise and experience with which an arbitrator should be equipped in order to deal with their particular dispute. Removal of party appointments might also jeopardize the common – and often useful – practice of co-arbitrators consulting with each other and the parties on the choice of presiding arbitrator.

In relation to the (assumed) greater risk of bias on the part of a party appointed arbitrator, it is argued that the requirement of independence and impartiality of arbitrators applicable under most arbitration rules, national laws and ethical codes should be a sufficient safeguard of due process.

At a pragmatic level, some have even asked whether there is anything seriously wrong with a party appointed arbitrator advocating the position of the party that appointed them, given that the other party will also have appointed an arbitrator who can effectively neutralise the co-arbitrator's input. Of course, there will be various shades of arbitrator conduct that may give rise to perceived or actual bias but there may be more effective ways of dealing with such conduct than the sledgehammer approach of abolishing party appointments.

Why should the right of unilateral appointments be abandoned?

Despite the arguments in favour of unilateral selection, there exists a body of criticism of party appointments. The practice of party appointments has been described by a number of eminent arbitration practitioners as (variously) a "moral hazard", a practice based on "comfort in the status quo" and having the potential to foster "arbitral terrorism" where a party appoints a partisan arbitrator. Such voices call for a fundamental rethink of the manner in which appointments are made.

In theory, although the focus of criticisms may shift depending on the precise arbitration procedure chosen, the points made against unilateral appointments arise in relation to any type of arbitration process whether it be institutional or ad hoc, investment, trade, commodities or other industry-sector arbitration procedure.

> The practice has been described by a number of eminent arbitration practitioners as (variously) a "moral hazard", a practice based on "comfort in the status quo" and having the potential to foster "arbitral terrorism" where a party appoints a partisan arbitrator.

The starting point for criticism of unilateral appointments is that there is no underlying right of a party to appoint an arbitrator. Quite the contrary. As one commentator puts it, "the established practice of unilateral appointments is incompatible with the very concept of impartial dispute resolution, for a party cannot be expected to accept the legitimacy of an award rendered by its opponent's arbitrator".

A seminal lecture addressing this topic reported that two studies of international commercial arbitration had revealed that, in cases involving a tribunal of three arbitrators, dissenting opinions were almost invariably (in more than 95% of the cases studied) written by the arbitrator nominated by the losing party. As has been acknowledged, this does not necessarily mean a failure of ethics – it may simply be that the appointing party has made an accurate assessment of how its nominee is likely to view a particular set of facts or relevant propositions of law. However, the high percentage found is certainly an interesting talking point.

Critics argue that, if the desire for party appointments is based on the view that a party appointed arbitrator will assist the appointing party win the case, such reasoning has little merit. How can that party safely assume that the other party's appointee will not be at least as effective in influencing the tribunal's deliberations and decision?

In addition, there is plenty of anecdotal evidence to suggest that an openly partisan arbitrator will in many cases simply be side-lined by the other two arbitrators, resulting in a situation where the partisan arbitrator will have even less influence than the other party appointed arbitrator.

It is also suggested that the justification of party appointed arbitrators as a means of capturing different cultural perspectives is exaggerated where the arbitration concerns two companies operating in a global market place.

Given the combination of these factors, would the removal of party appointments really cause any practical detriment and might it not do some good?

For example, in some cases where arbitrator bias occurs, it may take a relatively subtle form that a party may find difficult to challenge. There is anecdotal evidence of co-arbitrators being more sympathetic to procedural applications made by the party who appointed them, or during tribunal deliberations advocating the position of the appointing party. In some cases, and in some cultures, the arbitrator may feel that he or she is not even doing anything improper – merely fulfilling the role expected of a party appointed arbitrator.

In addition, if all appointments were made by an institution or other neutral body, this would give more scope for widening the pool of arbitrators and encouraging diversity. Institutions are actively engaging with issues of diversity and an increased number of institutions publish diversity-related statistics. It is to be expected that maintained lists kept by arbitral bodies will be regularly reviewed and refreshed both for diversity and quality.

> If all appointments were made by an institution or other neutral body, this would give more scope for widening the pool of arbitrators and encouraging diversity.

Thus, the allocation of appointments would take place across a much broader group of candidates than may happen when parties appoint an arbitrator from the same short list of favourites. Joint or institutional appointments might also provide more opportunity for talented but inexperienced candidate to sit with a more practised arbitrator. Arbitral bodies would have to work hard to maintain party confidence in the appointment process but the long term prospects for creating and maintaining access to good arbitrators may be considerably enhanced.

How could removal of unilateral appointments be accomplished?

Even if the arbitral community were to reach a consensus that party appointments should be phased out, is there a workable and effective alternative available that would continue to engage the parties?

One extreme "solution" would be for all arbitrators to be appointed by the relevant institution, or other appointing authority, under the applicable arbitration rules.

Alternatively, active party engagement in the process might be maintained by one of the various forms of list procedures by which the parties have some input into choice of arbitrator selection but having the common feature that the final choice of tribunal is made by the institution or other neutral body. Less radical measures might include "blind appointments", where arbitrators are chosen by each party from a maintained list but the arbitrator does not know which party appointed her or him.

To have any real legitimacy, all of these mechanisms will depend upon the parties having confidence in the ability of institutions and other neutral bodies to appoint good arbitrators. The quality of maintained lists must be kept under regular review and the selection process for inclusion must be untainted by undue influence. Some might suggest that the risks associated with these considerations are greater in respect of specialist sectors and newly emerging institutions.

There are also questions around whether arbital bodies have the appetite for dispensing with party appointments. Why should they discard a tried, tested and valued exercise of party autonomy when there may be other ways of dealing with a small risk that bias and inappropriate conduct on the part of one of the party appointed arbitrators has an adverse impact on the quality of the arbitral process? Although there have been revisions of various institutional rules over the last few years, none of those revisions demonstrate a desire to completely remove the general ability of parties to nominate or appoint arbitrators. In trade and commodity arbitrations, the practice of party appointment from a specialised pool of arbitrators is deeply embedded in the process and any modification of current practice would require a fundamental change in culture. If there is no active engagement by arbitral bodies in encouraging change of this nature, it is difficult to see how it will happen.

WHO WE ASKED

We received 151 responses to our survey. Respondents included arbitrators, corporate counsel, external lawyers, academics, users of arbitration and those working at arbitral institutions. The geographical regions in which respondents worked included Central and Southern Asia, East and South East Asia, Australasia, the Middle East and North Africa, North America, Latin America and the Caribbean, Western and Eastern Europe, as well as North, East and West Africa.

WHAT WE ASKED

We wanted first to find out how important respondents thought it was for a party to international arbitration to have the right to select one arbitrator on a three-member tribunal and what qualities a party about to make an appointment looks for in their chosen arbitrator.

We then sought respondents' views on the arguments for keeping, or for discarding, the present system of party appointments.

We also looked at arbitrator conduct in the context of party appointments. We first asked respondents what type of conduct by a party appointed arbitrator they regarded as acceptable or unacceptable. We then asked respondents if they had direct experience of a situation in which a party appointed arbitrator had sought to exercise improper influence on the tribunal or to interfere with the proper running and management of the proceedings.

Lastly, we were interested in finding out from respondents how desirable they considered a number of possible alternatives to party appointments in relation to the selection of a three-member tribunal, and whether respondents had confidence in arbital bodies to make good appointments if they were entrusted with the power to select all members of the tribunal.

KEY FINDINGS FROM OUR SURVEY

Is it desirable to retain a right of party appointment?

66% of our respondents consider retention of party appointments to be desirable. However, there is a reasonable body of opinion (17%) that regard a party's right of unilateral appointment as "undesirable".

55% of respondents who sat as arbitrators ranked retaining party appointed arbitrators as "very desirable". This is in contrast to the findings amongst those acting as counsel. Only 33% of this group regarded party appointments as "very desirable".

As to the validity of reasons for retaining the system of party appointments, 68% of respondents took the view that the parties know more about the dispute and are therefore better placed to select arbitrators. 82% of respondents felt that a right of unilateral appointment gives a party some degree of control over the background and expertise of the tribunal, and 79% felt that party appointments give a party greater confidence in the arbitration process.

As regards reasons for getting rid of party appointments, the biggest concern appears to be the perceived risk of partisan arbitrators among party appointees. 52% of respondents felt that party appointments increase the risk of partisan arbitrators.

55% of those respondents who sat as arbitrators said that they had experience of a party appointed arbitrator who tried to favour the appointing party by some means. 70% of respondents who had acted as counsel had been in a situation where they believed a party appointed arbitrator tried to favour the party that had appointed them.

15% of respondents felt that a party appointed arbitrator owes an additional duty to the party appointing her or him over and above that owed to the other party.

IMPACT ON DIVERSITY

A significant number of respondents agreed that an increase in the number of institutional appointments in place of party appointments would bring about greater diversity on tribunals, and would provide greater opportunities for younger practitioners to sit as arbitrators. 41% felt that more institutional appointments would help gender diversity and 31% that it would help ethnic/national diversity. 45% of respondents believed that it would provide increased opportunities for younger arbitrators.

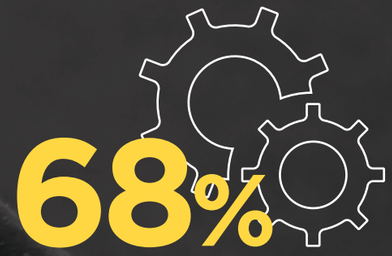
ALTERNATIVES TO PARTY APPOINTMENTS

If party appointments were to be dispensed with, the approach favoured by the largest number of respondents involved the drawing up of a short list of potential arbitrators by the appointing authority but into which the parties would have some input – either by making proposals of arbitrators to go on the short list or by a ranking system. Although the appointing authority would still make the final decision on who to appoint, the percentage of respondents who felt that these approaches were at the acceptable end of the spectrum was 60% or more. This serves to emphasise that parties wish to have a role of some kind in the appointment process.

59% of respondents believed that not all institutions can be trusted to maintain an inclusive and well-qualified list of arbitrators from whom all appointments to the tribunal can be made.

66%

66% of respondents considered retention of party appointments to be desirable.



68%

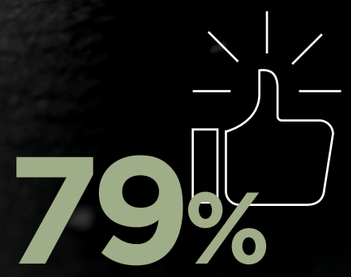
68% of respondents took the view that the parties know more about the dispute and are therefore better placed to select arbitrators.

52%

52% of respondents felt that party appointments increase the risk of partisan arbitrators.

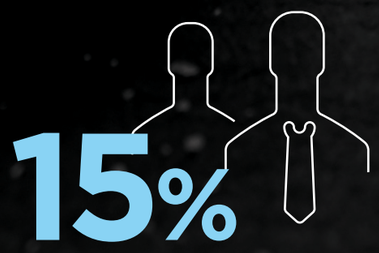
55%

55% of those respondents who sat as arbitrators said that they had experience of a party appointed arbitrator who tried to favour the appointing party by some means.



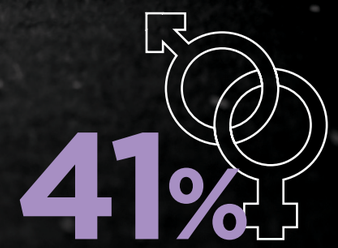
79%

79% felt that party appointments give a party greater confidence in the arbitration process.



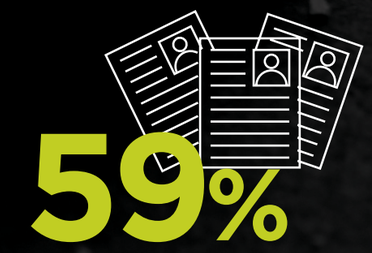
15%

15% of respondents felt that a party appointed arbitrator owes an additional duty to the party.



41%

41% felt that more institutional appointments would help gender diversity and 31% that it would help ethnic/national diversity.



59%

59% of respondents believed that not all institutions can be trusted to maintain an inclusive and well-qualified list of arbitrators from whom all appointments to the tribunal can be made.

THE RESULTS

A Party's Right to Appoint an Arbitrator

The results show that there is a relatively wide range of opinion on party appointments. We asked respondents to rank the desirability of unilateral appointments on a scale of 1 ("very desirable") to 5 ("not very desirable at all"). Although 66% of those responding gave a ranking of 1 or 2, 17% chose a ranking of 4 or 5, indicating that there is a reasonable body of opinion that regard a party's right of unilateral appointment to be undesirable. A further 17% of respondents sat somewhere in the middle.

The majority of those respondents who sat as arbitrators are in favour of retaining party appointed arbitrators. 55% of respondents in this category ranked retaining party appointed arbitrators as "very desirable" (a ranking of 1). The percentage of respondents giving that ranking who acted as counsel, as well as sitting as arbitrator, fell slightly to 46%. Among respondents that acted as counsel (but did not sit as arbitrators), the percentage dipped to 33%.

Perhaps unsurprisingly, 83% of party respondents believed that party appointments were "very desirable" (a ranking of 1) or very close to it (a ranking of 2). More noteworthy, is that 83% of respondents from arbitral institutions also ranked party appointments as "very desirable". Although these respondents constituted only 4% of all respondents, it is nonetheless interesting that this was an almost unanimous view among this group.

No respondents working in Australasia, North and Latin America, Eastern Europe or any part of Africa ranked the system of party appointments as not very desirable (a ranking of 5) or close to it (a ranking of 4).

What does a Party look for in a Party Appointed Arbitrator

We asked respondents to consider what qualities a party is looking for when it comes to selecting an arbitrator for appointment in case certain factors operate as an obstacle to appointments by third parties. We provided a list of factors and asked respondents to rank them.

The factors put to respondents and the percentage of respondents who considered that factor to be relevant to a party's choice of arbitrator are set out below.

What is an appointing party looking for when they select an arbitrator for appointment?	Percentage of Respondents who consider this factor relevant to a party's choice of arbitrator
Prior experience as an arbitrator	85%
The right expertise for the subject matter of the dispute	96%
Capacity/diary availability to deal with the matter expeditiously	70%
Someone who will be respected by and can influence other members of the tribunal	79%
Someone who will ensure that the arguments advanced by the appointing party are understood and considered by other members of the tribunal	72%
Someone who will advocate the appointing party's position to the tribunal	9%
Someone who (based on publications/papers presented, legal background) is believed to have views favourable to the appointing party's arguments	40%

The high percentage of respondents who thought that prior relevant experience, capacity to deal with the matter, and the ability to gain the respect of other tribunal members (96%, 70% and 79% respectively), were important factors is not surprising. These factors are also likely to be considered relevant by an appointing authority and are not therefore an obvious bar to removal of party appointments.

It is no secret that many parties and legal counsel will undertake due diligence to try to establish what a potential arbitrator's views are on a particular issue at play in the dispute for which they are appointing. This position is reflected in the 40% of respondents who indicated that a party will look for an arbitrator they believe will hold views favourable to the appointing party's arguments in the dispute. What is more interesting, is that 72% of respondents felt that a party would look for someone who would make sure that their appointing party's case is fully understood by the tribunal, and that 9% of respondents felt that a party would look for someone who would actively advocate the appointing party's case to other members of the tribunal. These last three qualities are not something an independent appointing authority will be looking for in a prospective arbitrator.

As a supplemental question, we asked respondents whether they believe that a party appointed arbitrator owes any additional duty to the party appointing them above that owed to the other party. We wished to test respondents' perceptions of the role of a party appointed arbitrator. 83% of respondents felt that a party appointed arbitrator did not owe the appointing party any additional obligation. This percentage is reassuring but the result of the survey also showed that a little over 15% of respondents felt that a party appointed arbitrator did owe an enhanced obligation to the party that had appointed her or him.

Reasons for Keeping Party Appointments

In favour of party appointments, 68% of respondents took the view that parties know more about the dispute and are therefore better placed to select arbitrators.

82% of respondents felt that a right of unilateral appointment gives a party some degree of control over the background and expertise of the tribunal. 79% felt that it gives a party greater confidence in the arbitration process, and 47% that party appointments enhance the legitimacy of the arbitration process itself.

38% of respondents felt that the ability to appoint an arbitrator makes a party feel that they have at least one arbitrator on the tribunal who will listen to them.

On the issue of potential bias, 45% of respondents took the view that, in the majority of arbitrations, the principle and requirement that arbitrators should be independent and impartial is a sufficient safeguard against the potential risks associated with partisan arbitrators. Interestingly, 21% felt that provided each party has the right to appoint one arbitrator any bias that exists will be cancelled out.

Reasons for Removing the Right of Party Appointments

The percentages of respondents agreeing with suggested reasons for removing party appointments was noticeably smaller than those agreeing with suggested reasons to keep them.

Only 4% of respondents agreed with the proposition that party appointments are an anachronism that is no longer needed in the modern practice of international arbitration.

52% of respondents accepted an increased risk of partisan arbitrators as a legitimate reason for getting rid of party appointments. Between a quarter and a third of our respondents agreed that other reasons include the desire to avoid any risk that partisan arbitrators may attempt to negotiate a compromise position for its appointing party in the event of disagreement between the tribunal on outcome (30% of respondents) and that unilateral appointments can breed distrust and have the potential to lead to increased challenges (25%).

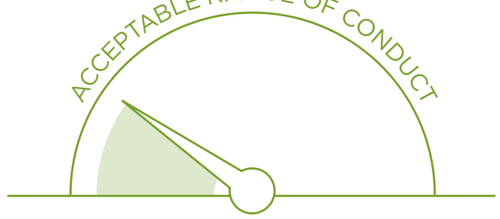
A significant number of respondents agreed that an increase in the number of institutional appointments in place of party appointments would bring about greater diversity on tribunals. 41% felt that this would help gender diversity, and 31% that it would help ethnic/national diversity. 45% felt that it would provide increased opportunities for younger arbitrators.

In support of the case for removal of unilateral appointments, 45% of respondents agreed that parties select arbitrators they think can help them win rather than focussing on the best arbitrator to deal with the dispute.

> "I think arbitral institutions have a key role to play. If they were willing to maintain open lists of well-qualified arbitrators from which appointments could be made I think that this might encourage clients to consider a shift away from unilateral appointments."
>
> Roger Milburn, Of Counsel, BLP, Singapore

Arbitrator Conduct

We asked respondents to indicate their opinion of particular types of conduct by an arbitrator, grading it on a scale of 1 (acceptable conduct) to 5 (unacceptable conduct).



36%

felt that it was at the acceptable range of conduct for a party appointed arbitrator to ensure that arguments put forward by the appointing party are understood and considered by the tribunal (without taking positive steps to do the same for the non-appointing party).

A substantial majority of respondents (73%) were in agreement that it was unacceptable for an arbitrator to be automatically sympathetic to a request by its appointing party for extensions of time/adjustments to the procedural timetable; or to advocate the appointing party's position during tribunal deliberations (67%); or to negotiate with other members of the tribunal to obtain concessions for an unsuccessful appointing party (e.g. in relation to quantum) in return for making the award unanimous (72%). If a ranking of 4 and 5 are taken together, the relevant percentages rise to 89%, 81% and 87% respectively, with the corollary of this being that 11%, 9% and 13% of respondents feel that this type of conduct does not merit a ranking at the "unacceptable" end of the spectrum.

Also of interest is the fact that 5% of respondents felt that it was acceptable for a party appointed arbitrator to inform the appointing party (ex parte) of the tribunal's views on particular issues as the arbitration proceedings progress.

4% of respondents felt that it was acceptable for a party appointed arbitrator to negotiate with other members of the tribunal in order to obtain concessions for an unsuccessful appointing party as the quid pro quo for agreeing to a unanimous award.

The complete set of responses on this series of questions is set out below.

Arbitrator Conduct	Acceptable 1	2	3	4	Unacceptable 5
The arbitrator ensures that arguments put forward by his/her appointing party are understood and considered by the tribunal (but does not take positive steps to do the same for the non-appointing party)	20%	16%	14%	18%	32%
The arbitrator is sympathetic to a request by the appointing party for extensions of time and adjustments to the procedural timetable	3%	3%	5%	16%	73%
The arbitrator advocates the appointing party's position during tribunal deliberations	3%	3%	13%	14%	67%
The arbitrator negotiates with other members of a tribunal to obtain concessions for an unsuccessful appointing party (e.g. in relation to quantum) in return for the award being unanimous	5%	1%	7%	15%	72%
The arbitrator informs (ex parte) the appointing party of the tribunal's views on particular issues as the arbitration proceedings progress	5%	0%	3%	3%	89%

We then went on to ask about individual experiences of the conduct of party appointed arbitrators.

We asked those respondents who sat as arbitrators, whether they had ever encountered a party appointed arbitrator who tried to favour the appointing party by some means. Of those respondents who sat as arbitrators (54% of all respondents), a very large number (55%) said that they had encountered a party appointed arbitrator who had tried to do so.

70%

of respondents who had acted as counsel (61% of all respondents) had been in a situation where they believed a party appointed arbitrator tried to favour the party that had appointed them.

Alternatives to Party Appointments in Institutional Arbitration

Lastly, we wanted to explore with respondents what their views were on a number of possible alternatives to party appointments. We provided respondents with details of these suggestions and asked them to rank them on a scale from 1 to 5 (with 1 being desirable and 5 being less desirable).

Some of the options put to respondents involved a party to arbitration having some input into the short list of candidates from whom the tribunal was to be selected while others did not. In certain options, the list of candidates included only arbitrators from a closed list maintained by an institution, in others "outside" candidates could be included.

The approach favoured by the largest number of respondents involved the drawing up of a short list of potential arbitrators by an arbitral institution (or by analogy the relevant appointing authority) who would then be ranked by the parties and the arbitrators chosen by the institution from those candidates with the highest overall ranking. Under one approach, the short list would be made up of names proposed by the parties (without the potential arbitrators being told that their names had been put forward). Under a second approach, the institution would prepare the short list with the parties having the opportunity to strike out as well as to rank the potential candidates. The percentage of respondents who favoured these two approaches was very similar. 62% of respondents ranked the first option as 1 or 2 (the desirable end of the spectrum). 60% of respondents ranked the second option at 1 or 2.

The least favoured approach was a situation where an appointing institution chose all three arbitrators from a pre-existing closed list held by the institution. 81% of respondents ranked this as 4 or 5.

There was a relatively balanced response to the idea of an appointing institution selecting all three arbitrators but looking beyond its maintained list of arbitrators if this was considered necessary. 46% of respondents ranked this at 1 or 2 and 34% at 4 or 5. The final option considered involved appointments being made by the institution from a pre-existing open list held by the institution (27% considered this desirable (a ranking of 1 or 2) and 45% undesirable (a ranking of 4 or 5).

Confidence in Arbitral Institutions

Given the significant number of institutional arbitrations conducted on a global level, and the important role that institutions would have to play if unilateral appointments were to be phased out, we wanted to find out if respondents had confidence in arbitral institutions to make good quality appointments of all members of a three-person tribunal.

We asked respondents to rank their level of confidence in institutions on a scale of 1 (a lot of confidence) to 5 (little or no confidence). There was a very wide spread of responses to this question.

Only 7% of respondents had a lot of confidence in the ability of institutions to make good quality appointments (a ranking of 1), and only a further 19% of respondents gave a ranking of 2 out of 5.

At the other end of the spectrum, 13% of respondents gave a ranking of 5 (little or no confidence) and a further 21% a ranking of 4.

59% of respondents believe that not all institutions can be trusted to maintain an inclusive and well-qualified list of arbitrators from whom all appointments to the tribunal could be made.

Lastly, we asked respondents whether they thought that arbitral institutions should amend their rules so that all arbitral appointments were made by the institution, unless the parties expressly agreed otherwise in their arbitration agreement. There was a resounding "No" to this question from a large majority of respondents (69%). Only 22% of respondents answered yes to the question, with a further 9% saying that they "don't know".

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

London

Adelaide House, London Bridge
London EC4R 9HA England

George Burn
T: +44 (0)20 3400 2615
george.burn@blplaw.com

Clients and work in 130 countries, delivered via offices in:
Abu Dhabi, Beijing, Berlin, Brussels, Dubai, Frankfurt, Hong Kong, London, Manchester, Moscow, Paris, Singapore, Tel Aviv and Yangon

www.blplaw.com

15970