Schedule

Thursday

Welcome Coffee: 10:30-11:00

Afternoon Coffee: 15:55-16:15

Tour of the Palace. 19:15

Lunch: 12:25-13:35

Cocktail Reception: 18:30

Opening Dinner: 20:00

Friday

Morning Coffee: 11:05-11:25

In Memoriam 13:50-14:35

Lunch: 12:40-13:50

Afternoon Coffee: 15:55-16:15

Saturday

Morning Coffee: 10:15-10:35

Afternoon Coffee: 15:50-16:10

Lunch: 12:05-13:15

Piano Concert: 18:45

Concluding Dinner: 19:45

Thursday, 7 June — **Welcome Coffee: 10:30-11:00**

11:00-11:10

0. Symposium Opening

Laurent Hirsch, HIRSCH, Geneva, Switzerland

FCIArb, Geneva-based sole practitioner handling international arbitration worldwide; He is chairing the ADR Committee of the Geneva Bar Association. He advises and represents companies before arbitral tribunals in international commercial disputes, and serves as an arbitrator.

Symposium Commentator

Peter Rosher, Reed Smith LLP, Paris, France – dual qualified (English Solicitor/French *Avocat*) lawyer with over 23 years' of experience in International Arbitration. He has particular experience in international commercial and investment arbitration and dispute resolution, with specific knowledge in international engineering, construction, energy and infrastructure as well as considerable experience of telecommunications, satellite manufacturing industries and general commercial disputes. He has handled arbitration cases both on an ad hoc basis (including UNCITRAL) and under the rules of international arbitration institutions (ICC, LCIA, SCC, SIAC, and ICSID).

1. What do Users Expect for Arbitration? What are their concerns?

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (10 minutes) and a Q&A session for the remaining (30 minutes).

Panel Chair

Manuel Arroyo, Nater Dallafior Rechtsanwälte AG, Zurich, Switzerland – Partner; Counsel/arbitrator in over 80 international arbitrations; former law clerk to the Swiss Federal Supreme Court; Sole editor/co-author of the most comprehensive treatise on international arbitration in Switzerland (Arbitration in Switzerland – The Practitioner's Guide, 2491 pages, 2nd ed., Kluwer, 2018). LLM in International Commercial Arbitration Law (Stockholm), Dr. iur./Attorney-at-Law (Basel), MCIArb.

Every user of arbitration basically looks for an immediately enforceable award (Jessica Bees und Chrostin), rendered after a swift, thorough and equitable adjudication (Kurt Lindquist) by independent, impartial, competent and committed arbitrators (Stefanie Pfisterer) in a neutral venue (Patrick Baeten).

Speakers:

Patrick Baeten, ENGIE, Brussels, Belgium – Patrick joined ENGIE in 1996, where he now serves as Deputy Group General Counsel, in charge of global disputes. Recent work includes dealing with allegations of environmental and criminal liability related to the operation of coal power plants, ICSID arbitrations under the Energy Charter Treaty, regulatory investigations into energy wholesale market behaviour in the EU and the US, criminal investigations into alleged bribery issues, natural gas and LNG price reviews, construction arbitrations and domestic litigation related to the lifetime extension of nuclear power plants. Patrick lectures European energy law at the University of Leuven. He is a member of the Scientific Committee of the Belgian Centre for Arbitration and Mediation, and of the ICC Taskforce on Arbitration of Climate Change Related Disputes and graduated in law from University of Ghent and holds an LLM in International Law from University of Lovain-la-Neuve.

Presentation: **Importance of Neutral Venue and Sharing of Expectations and Concerns**

Jessica Beess und Chrostin, King & Spalding, New York, New York, United States – senior associate; Jessica's practice focuses on investor-State, intra-State, and international commercial arbitration. Jessica is experienced in all phases of international arbitration in both *ad hoc* and administered proceedings, including under the arbitration rules of the ICC, ICDR/AAA, ICSID, JAMS, NAFTA, and UNCITRAL. Jessica received her J.D. *cum laude* from Harvard Law School and her B.A. *cum laude* from Columbia University and has also conducted legal studies at Cambridge University. She is an Adjunct Professor of Law at Vanderbilt Law School and an alumna of the Center for International Legal Studies' Foreign Direct Investment International Arbitration Moot (FDI Moot), and has arbitrated the 2017 Global Final together with Professor William W. "Rusty" Park and Ms. Carol Ludington.

Presentation: **Immediate Enforceability of Awards**

Kurt Lindquist II, Womble Bond Dickinson, Charlotte, North Carolina, United States – Partner, Kurt serves as the Chair of the International Arbitration team in the US and Co-Chair of the WBD global IA team. Kurt is a highly trusted advisor who assists clients with dispute resolution issues in the United States and around the world. Given the breadth and depth of his experience, Kurt provides advice and assistance in resolving conflicts concerning commercial disputes in a variety of subject areas. Kurt regularly serves as an advocate in complex international arbitrations and disputes both in the private commercial and investment settings including proceedings administered under various arbitral institutions including the ICC, PCA, SCAI, SIAC and ICSID regimes.

Presentation: **Efficient Timetable of Proceedings (including Expedited Procedures)**

Stefanie Pfisterer, Homburger AG, Zurich, Switzerland – attorney-at-law, qualified in both Switzerland and New York. She joined Homburger's dispute resolution practice group in 2014 as associate. Her practice focuses on international and domestic arbitration as well as litigation. She acts as arbitrator and as counsel in complex arbitrations (including ICC, LCIA, Swiss Rules, UNCITRAL, ad hoc). She also acts as counsel in arbitration-related court proceedings (setting aside, provisional measures, etc.) and other state court proceedings. Stefanie earned her Law degree from University of Bern (2007), an LLM from Harvard Law School (2012), and a Dr. Iur. degree from the University of Zurich (2012). She is the author of a number of publications in the field of dispute resolution and is a regular speaker on arbitration-related issues.

Presentation: **Selection of Arbitrators/Independence and Impartiality/Possibly also Transparency**

2. Corruption

The format of this panel is an introduction by the moderator (5 minutes), three presentations by the speakers (15 minutes) and a Q&A session for the remaining (25 minutes).

Panel Chair

Lorraine de Germiny, LALIVE SA, Geneva, Switzerland – is Counsel with LALIVE, in Geneva, Switzerland. A member of both the Paris and New York bars, she has acted as counsel or arbitrator in a number of international arbitral proceedings, either ad hoc (including UNCITRAL) or administered (under the rules of the ICC, SCIA, and ICSID), governed by various procedural and substantive laws. Ms. de Germiny is a member of several professional associations (including the CFA-40, ArbitralWomen, ICDR Y&I and LCIA YIAG). Before joining LALIVE, she practiced international arbitration at King & Spalding in Paris (2009-2014) and at Dewey & LeBoeuf in Paris and New York (2006-2009). Lorraine holds a Licence with honors from the University of Rennes, a J.D. (Juris Doctor) cum laude from Tulane University Law School and an LL.M. from Columbia Law School.

Speakers:

Rodrigo Garcia da Fonseca, Fonseca e Salles Lima, Rio de Janeiro, Brazil – is admitted to practice in Brazil and a founding partner of Fonseca e Salles Lima Advogados Associados, in Rio de Janeiro. He has more than 25 years of experience in dispute resolution. Now working primarily as an arbitrator, he has participated in more than 180 commercial arbitrations in different capacities. He is fluent in Portuguese, English, French and Spanish.

Rodrigo's presentation will explore the following themes and considerations: It is now internationally accepted that, as a rule, allegations of corruption can be arbitrable. Are there limits to this arbitrability? How does corruption affect the validity of the agreements that are subject to arbitration? Are there limits to the evidence the Arbitral Tribunal can hear? Is the Arbitral Tribunal bound by findings of criminal courts? Does a finding of corruption depend on the applicable law and the place where the facts happened?

Operation Car-Wash in Brazil has recently uncovered numerous corruption schemes put in place in various countries. There is currently a wave of commercial arbitration cases in which corruption is not only one of the issues, but actually the core issue of the cases. Some examples will be presented and some of the problems they raise will be flashed out for discussion.

Ximena Herrera-Bernal, Shearman & Sterling LLP, London, England, United Kingdom – is counsel in Shearman & Sterling's International Arbitration and Public International Law practices. She has advised companies and States in international arbitrations under the Rules of the ICC, ICSID, CIAC, LCIA and UNCITRAL, with a focus on disputes in oil & gas, energy infrastructure, telecommunication, construction, agency and distribution sectors. Her experience includes investment treaty arbitrations under both bilateral and

multilateral treaties as well as commercial arbitrations. Ximena is admitted to the practice in Colombia, New York and England and Wales. She received an LLM from Harvard Law School and was a Visiting Researcher in the University of Oxford, where she focused in Public International Law and Law of the Sea.

Ximena will discuss the treatment of corruption in investment arbitration and address the following question: "Developments, Issues, Evolution or Involution?"

Christoph Müller, Université de Neuchâtel, Faculté de droit, Neuchâtel, Switzerland – LL.M. (Columbia Law School), FCIArb, attorney-at-law, is a full professor at the Faculty of Law at the University of Neuchâtel (Switzerland) teaching specific contracts, tort law, comparative and European private law and contract drafting. Since 1995, he has acted as arbitrator and legal expert in over 120 arbitrations and court proceedings. He is a member of the Executive Committee of the Swiss Arbitration Association (ASA) and of the special committee of the Arbitration Court of the Swiss Chambers' Arbitration Institution. He is fluent in German, French (bilingual), English and Italian and has a basic knowledge of Spanish and Farsi.

Christoph will discuss how, in his view, the role of general contract law in tackling corruption has thus far been underestimated. Agreements of a contractual nature are present in many different forms of corruption. He will thus address primarily the two following questions: How can we use private law remedies to provide optimal protection to the victims of corruption? What role can contract law play in the prevention of corruption, i.e. whether and to what extent the contractual law regime can deter potential offenders from corrupt behaviour?

3. Competition

The format of this panel is an introduction by the moderator (5 minutes), followed by brief presentations by the speakers (15 minutes) concluding by an interactive discussion with the audience for the remaining 25 minutes.

Panel Chair and Speaker:

Annet van Hooft, van Hooft Legal, Paris, France – is an independent arbitrator and counsel based in Paris. Admitted to practice in both common and civil law jurisdictions, Annet worked at major U.S. and U.K. law firms in Brussels, New York and Paris, and acted as Counsel at the ICC International Court of Arbitration before setting up her own independent law firm. She is a former Vice-Chair of the ICC Commission on Arbitration and ADR, Co-Chair of the Open Commission on International Arbitration of the Paris Bar and Honorary President of the Bucharest International Arbitration Court (BIAC).

Speakers:

Romano Subiotto, Cleary Gottlieb, Brussels, Belgium – QC; advises companies on a wide range of issues under European law, in particular European antitrust law, and under national antitrust law, and represents companies in arbitrations and before the European Commission, national antitrust authorities, the European Courts in Luxembourg and the English courts in London. Mr. Subiotto joined Cleary Gottlieb in 1988 and became a partner in 1997. He was appointed Queen's Counsel in 2009.

Vasuda Sinha, Freshfields Bruckhaus Deringer LLP, Paris, France – senior associate in the firm's international arbitration group; currently based in Paris, she has previously practiced in Ottawa, Toronto, and London (UK). Ms. Sinha is an experienced litigator with particular expertise in commercial litigation and arbitration and cross-border disputes. She has advised in arbitrations under various rules and has appeared as counsel before various arbitral tribunals and courts, including the Supreme Court of Canada. Ms. Sinha has written in a variety of areas. Ms. Sinha holds a JD from the University of Toronto, a BA Hons (with distinction) from Queen's University and is admitted as a Barrister and Solicitor in Ontario, Canada.

In this interactive session, Romano Subiotto, QC, Vasuda Sinha, and Annet van Hooft will discuss the relationship between international arbitration and competition law.

In his presentation, Romano will first provide a brief overview of how competition law issues became arbitrable in Europe and the U.S., thereby discussing the seminal cases. He will then branch out to other areas of relevance and discuss for example the role that competition law plays in sports arbitration.

In her subsequent presentation, Vasuda will address how competition law issues and actions by the competition authorities can interfere with an ongoing arbitration and lead to conflicting decisions, or an award that may be difficult to enforce in Europe. She will discuss the consequences thereof both for the client and the arbitral tribunal on the basis of her experience in a recent case.

Following the presentations, we hope to engage in a lively discussion regarding various questions raised by the presentation such as:

- It is widely considered that the CJEU in *Benetton* did not set the standard of review to be applied by the national courts when dealing with arbitral awards which allegedly violate European competition law and hence public order. This led to courts adopting different approaches, whether minimalist (like in France) or maximalist (e.g., the Belgian lower court in the SNS matter).
  - What is the standard of review in your country?
  - What do you think of AG Wathelet's criticism in his opinion in the *Genentech* matter (C576/14) of the French standard of review?
  - Is it time for the CJEU to set the standard (assuming it can)? Would that benefit international arbitration? Would it benefit the uniform application of competition law?
- Are arbitral tribunals obliged to follow the opinion of the Commission? Would it be safer if they did?
- How should an arbitral tribunal handle a dispute if there is concurrent jurisdiction with a competition authority? Stay? Continue? What about the potential consequences for the enforcement of the award.
- The impact of the *CDC* case (C-352/13), if any, on arbitration as a method to resolve disputes related to follow-on damages.

4. Investment Arbitration: Is FET Getting Clearer?

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (10 minutes) and a Q&A session for the remaining time (30 minutes).

Panel Chair

Lee M. Caplan, Arent Fox LLP, Washington, DC, United States – partner; representing private and sovereign clients in disputes arising out of concession agreements, investment treaties, and other international agreements. Mr. Caplan has also worked as a lawyer at the U.S. Department of State where he represented the United States in international arbitrations and advised on U.S. investment treaty negotiations. He is the co-author of "The UNCITRAL Arbitration Rules: A Commentary".

Speakers:

Katarína Chovancová, Paneuropean University, Bratislava, Slovakia – is a senior research fellow at the Institute of State and Law of the Slovak Academy of Sciences where she focuses on international investment law and the international investment arbitration. Dr. Chovancová also works as an associate professor in international law at the Faculty of Law of the Pan European University in Bratislava. She has studied law at the Comenius University in Bratislava, Slovakia and the University of London.

Achille Ngwanza, JUS AFRICA, Paris, France – managing partner; advising on State contracts, investment transactions and commercial contracts. He has acted as arbitrator, counsel and expert in several arbitral proceedings related to the extractive industry, commercial matters, and construction. He teaches arbitration law, oil and mining law at various European and African Universities and speaks and writes frequently on international arbitration topics, including as co-editor of *Le contentieux extractif*.

Christina Cathey Schuetz, Clifford Chance LLP, London, England, United Kingdom – advises on a wide range of commercial and investment treaty arbitration matters and is also experienced in transnational and English High Court litigation and regulatory/anti-corruption compliance matters. In 2011-2012 Christina was seconded to Clifford Chance CIS Limited (Moscow). Prior to joining Clifford Chance, Christina worked for another major international law firm in New York City and Frankfurt Main.

Todd J. Weiler, Independent Barrister and Arbitrator, London, Ontario, Canada – is a leading practitioner in the field of international investment law. He has edited 14 books and authored several dozen articles on international law, regulation and arbitration. Dr. Weiler's acclaimed book, "The Interpretation of International Investment Law Equality, Discrimination and Minimum Standards of Treatment in Historical Context", was published by Martinus Nijhoff in 2013. He is currently researching a book on the history of international investment law.

The obligation to afford foreign investors fair and equitable treatment (FET) appears in many of the world's investment treaties. Among other forms of investment protection, e.g., relating to expropriation and national and most-favored treatment, the fair and equitable treatment obligation has emerged as perhaps the most potent and controversial. Despite its prevalence in investment treaties, the scope of the FET obligation is not entirely settled. Not only have States included different versions of the standard in their treaties—some tied to customary international law, and some not—but arbitral tribunals have also varied (some might say considerably) in their approach to defining and applying the FET obligation to resolve disputes before them.

This panel takes up the question: Is FET getting clearer? Using the recent decision in Euro Gas and Belmont Resources v. Slovakia as its point of departure, this panel will address various aspects of the fair and equitable treatment standard, including the relationship between the autonomous and customary international law standards, the role of the denial of justice doctrine, the uncertain scope of legitimate expectations, the role of investor diligence in determining breaches of the standard, and new approaches that seek to codify the standard.

5. Increasing Effective Communication between Counsel and Tribunal

Following a brief introduction, each of the main sub-topics will be addressed in turn by the group during about 50 minutes in total, with approximately 20 minutes reserved for general discussion and follow-up at the end.

Panel Chair

C. Ryan Reetz, Bryan Cave Leighton Paisner LLP, Miami, United States – Miami Office Managing Partner, head of Investor-State Arbitration Team; Represents clients in international litigation and arbitration matters, and serves as arbitrator and expert witness. Served as Chairman, Miami International Arbitration Society (2017); Chairman, Florida Bar International Law Section (2013-14); adjunct professor, Emory University School of Law (2014-present), University of Miami School of Law (2003-10); Scholar-in-Residence, NYU Law School (2015). Co-author, Public Purpose in International Law: Rethinking Regulatory Sovereignty in the Global Era (Cambridge University Press 2015).

Speakers:

Gladys Bagasin, Hanotiau & van den Berg, Brussels, Belgium – Ms. Bagasin serves as Tribunal Secretary in ad hoc and institutional arbitrations under various institutional rules, covering disputes relating to gas pricing, energy, project management, construction, and others. She previously worked as counsel in litigation and arbitration cases (domestic and international) in Manila. She worked as a teaching and research assistant in Georgetown University, where she obtained her LL.M. in Arbitration. She is licensed in New York and the Philippines.

Sandra De Vito Bieri, Bratschi Ltd, Zurich, Switzerland – Partner, Co-head of Arbitration. She has been working in the area of civil procedure and national and international arbitration, alternative dispute resolution, labor law and contract law for 20 years. She has taken part as chair, co- or sole arbitrator, or counsel in more than 30 arbitration proceedings (including ICC, Swiss Rules, and ad hoc proceedings), and has supervised more than 30 arbitration proceedings in her role as member of the Court of Arbitration of the Swiss Chambers' Arbitration Institution.

Duncan Speller, Wilmer Hale, London, England, United Kingdom – Partner in the firm's Litigation/Controversy Department; barrister; member of the International Arbitration Practice Group. He practices International Arbitration and English High Court Litigation; having represented clients in numerous institutional and ad hoc arbitrations, sited in both common and civil law jurisdictions.

Robert W. Wachter, Lee & Ko, Seoul, South Korea - Co-head of the International Arbitration & Cross-Border Litigation Group. He started his career in the United States but has spent the last 15 years in Korea and Austria. He has acted as counsel, arbitrator or arbitral secretary in more than 75 international arbitration cases brought under all of the major arbitration rules, including the ICC, KCAB, VIAC, Swiss Chambers, SIAC, LCIA, SCC, JCAA and UNCITRAL arbitration rules. He is a Fellow of the Chartered Institute of Arbitrators.

The success of an international arbitration matter depends largely upon effective communication between the tribunal and counsel, yet this factor is often taken for granted. Different expectations held by arbitration participants who come from varying legal, national, and cultural backgrounds compound the potential for ineffective communication, as does the lack of specificity with respect to this particular topic in most major arbitration rules. Developments such as the early consultation on evidentiary issues required under Article 2 of the 2010 IBA Rules on the Taking of Evidence in International Arbitration are important steps toward improving communications, but thus far address only limited aspects of a much broader topic.

The panel will examine the topic of effective communications from several different perspectives, including how best to communicate with a tribunal for structural and strategic purposes, how a tribunal (and tribunal secretary) may best communicate with the parties to encourage proper focus on practical issues, and the pros and cons of "new" technological means of communicating with the tribunal. Among the questions to be considered are the following:

-- How and when counsel should approach the tribunal for the purpose of proposing something different from the conventional structure for the procedural timetable.

-- Are there particular alternative structures for the arbitration that lead to more effective communication and advocacy?

-- How can tribunals best encourage the parties to focus on significant practical issues that are often overlooked or unnecessarily deferred?

-- What alternative means of communication should tribunals and parties be considering, and under which circumstances are they most productive?

6. The Emergency Arbitrator

After a 5 minute introduction by the moderator, the panel will be divided into three 20 minute sections. Each section will include a presentation of the relevant topics by a panelist followed by a debate and interaction with the audience. The panel will conclude with 10 minutes for remaining questions from the audience.

Panel Chair

José Ricardo Feris, Squire Patton Boggs, Paris, France – Partner in the International Dispute Resolution Practice Group of the firm. José sits as arbitrator in commercial ad-hoc and institutional arbitration proceedings. Before joining the firm, he served at the ICC International Court of Arbitration, where he held a number of positions including Deputy Counsel, Counsel and Managing Counsel before he was appointed Deputy Secretary General in 2011.

The session will explore the most salient issues regarding the current practice of emergency arbitration.

Speakers:

Douglas D. Reichert, of the California Bar and based in Geneva, Switzerland – Independent arbitrator and practitioner, with substantial experience over 30+ years of complex international disputes involving in particular infrastructure construction projects (dams, tunnels, pipelines, petrochemical and energy process plants, etc.). Served as Registrar for the Egypt-Israel Arbitration Tribunal (Sinai boundary) and Legal Assistant at the Iran-United States Claims Tribunal.

Presentation: **Pushing the Envelope: Emergency Arbitration *Ex Parte***

Many sets of international commercial arbitration rules now feature emergency procedures, but typically these special procedures require notice and *inter partes* process or otherwise exclude *ex parte* actions (e.g., ICC, SIAC, SCAI, SCC, ICDR, CIETAC, and WIPO). In principle, however, arbitration agreements and arbitration rules can provide for limited *ex parte* procedures in relation to provisional measures, and even in the context of emergency procedures that expressly require notice and/or forms of *inter partes* process there are reports of emergency applications that also include requests for an immediate preliminary order to maintain the status quo during the pendency of the emergency proceedings themselves. What risks or constraints on arbitrator authority are then encountered? How does the function of the emergency arbitrator compare with the provisional measure powers of a constituted arbitral tribunal?

Niels Schiersing, Arbitration Chambers, Hong Kong, China (SAR) and London, London, England, United Kingdom – FCIArb and Chartered Arbitrator, Dual qualified as Advocate (Denmark) and Solicitor (England & Wales); Focuses on serving as arbitrator in international arbitrations and has served/is currently serving as arbitrator under the rules of e.g. the ICC, LCIA, SIAC, SCC, DIAC, FAI and DIA as well in ad hoc arbitrations, including under the UNCITRAL Arbitration Rules; Investment arbitration experience both as counsel and arbitrator.

Presentation: **Friction between Speed and Due Process in Emergency Arbitration Proceedings**

Michele Potestà, Lévy Kaufmann-Kohler, Geneva, Switzerland – Senior Associate, specialising in international commercial and investment arbitration. He has participated in numerous international investment and commercial arbitrations as arbitrator, counsel, and secretary of the tribunal, under all major arbitral rules, in various industries (renewable energies, oil & gas, telecom, construction, among others), and in different jurisdictions. Michele has also advised sovereign states on their investment treaty programs.

Presentation: **Emergency Arbitration in Investment Treaty Cases**

Emergency arbitrator (EA) relief poses specific problems in investment treaty as opposed to commercial arbitration cases. Rules of several arbitral institutions exclude or limit the use of EA provisions with regard to investment disputes (e.g., the ICC Rules). By contrast, the Rules of the Stockholm Chamber of Commerce (SCC) allow for the use of EA also in investment matters, as a result of which the SCC's EA provisions have been tested in a number of treaty cases over the recent years. What hurdles, both legal and practical, do parties face when EA relief is requested in investment cases? And is EA suitable at all for investment treaty disputes? The presentation will seek to answer these and other questions by reviewing the emerging EA case law in investment treaty arbitrations.

7. Construction Arbitration

The format of this panel is an introduction and presentation by the moderator (10-15 minutes), presentations by the speakers (15 minutes), and a Q&A session for the remaining time (15-20 minutes).

Panel Chair and Speaker:

Bernd Ehle, LALIVE SA, Geneva, Switzerland – Partner, specialising in international arbitration with more than 15 years' experience (as counsel and arbitrator), in particular in disputes relating to construction and infrastructure projects. Lecturer on International Construction Contracts at the LL.M. program of the University of Fribourg. PhD (Heidelberg), LLM (Northwestern University); see http://www.lalive.ch/en/people/index.php?lawyer=145. Dual-qualified in Switzerland and Germany.

Presentation: **Site inspections as evidence in construction disputes**

In addition to documents, witness and expert testimony, inspections of the situation on-site can be an important additional means of evidence in the context of construction disputes. Bernd will present Dos and Don'ts when conducting site inspections, both from the arbitral tribunal's and counsel's perspective.

Speakers:

Sylvie Cécile Cavaleri, University of Copenhagen, Faculty of Law, Centre for Enterprise Liability, Copenhagen, Denmark – PhD; associate professor; Swiss and Danish qualified attorney; specialising in international commercial dispute resolution and international contract law, with a focus on construction law. Prior to starting her academic career in 2009, she practiced as an attorney in Switzerland. After acquiring her PhD, she acted as in-house counsel at a large construction company in Denmark. Sylvie's research and teaching focus on her areas of specialisation and often consist in comparative analyses of civil and common law jurisdictions, particularly between her country of education (Switzerland), her country of adoption (Denmark) and the UK.

Presentation: **Danish construction "arbitration": civil proceedings in disguise?**

The sole suite of Danish standard construction contracts, which use is mandatory at least for public employers, refers to arbitration under the auspices of the Danish Arbitration Board for Construction and Engineering as main dispute resolution method. Despite being called "arbitration", this method differs from what is normally understood as arbitration for several reasons. Firstly, the parties do not choose their arbitrators, which are elected by the institution from a permanent panel of civil judges and technical experts; secondly, party-appointed experts are in principle banned and single tribunal-appointed experts are the rule. The presentation will discuss the advantages and disadvantages of this Danish system, especially in light of the expressed political intention to make the national standard construction contracts, which are currently being revised, more internationally recognizable in order to attract tenders from foreign contractors.

Christoph Brunner, Peter & Partners International Ltd, Bern, Switzerland – Partner; He has acted as counsel, presiding arbitrator, sole arbitrator, co-arbitrator and legal expert in numerous international commercial arbitrations governed by various procedural and substantive laws. His range of expertise covers in particular sales, M&A, joint ventures, construction/infrastructure projects, and distribution and agency contracts. LL.M. (Berkeley); PhD, Titular

professor for commercial law and arbitration (Bern); author of the treatise “Force Majeure and Hardship under General Contract Principles”, author and editor of a Commentary on the CISG; see http://www.peterandpartners.com/team/christoph-brunner/.

Presentation: **Techniques for Presenting Expert Evidence**

A number of techniques are used in construction arbitration for presenting expert evidence which each have their benefits and pitfalls. Such techniques include, among others, the engagement of “shadow” and “clean” experts, pre-hearing joint expert meetings, joint expert statements and, as regards expert participation at the hearing, summary presentations to the tribunal as part of their direct examination and expert conferencing (or ‘hot-tubbing’). The appointment of an expert by a party and the use of these techniques can create a tension between the expert’s obligation to the tribunal and the interests of his or her instructing party.

Jan-Bertram A. Hillig, Bodenheimer Herzberg GBR, Berlin, Germany – Counsel, specialised on international law with a strong focus on construction law. Lecturer of International Private Law and CISG Law at MCI Innsbruck, lecturer of international construction law at University of Western England in Bristol and BBW University of Applied Science in Berlin. Dual-qualified in England and Germany, PhD (Cologne), post-doc at Reading University, leader of the Working Commission on International Construction Law of the ARGE Baurecht in the German Bar Association (DAV), see https://www.changing-perspectives.legal/hillig/.

Presentation: **FIDIC 2017 – what is new in terms of dispute resolution?**

In December 2017, FIDIC launched its new 2017 suite of contracts. The amendments of the most dominant standard forms used internationally in construction were, according to FIDIC, motivated by the promotion of collaborative work, a new reciprocity between the parties and the intention to improve clarity and certainty. This presentation looks specifically into the dispute resolution updates. Here, FIDIC changed several important details. The claims procedure now applies equally to both parties, FIDIC encourages dispute avoidance by the separation of Claims and Disputes and by the new role of the Dispute Avoidance / Adjudication Board ("DAAB"), FIDIC set a new default position of “standing” DAABs in all books, FIDIC added an early warning system, and FIDIC resolved the former confusion of whether DAAB decisions which are “binding” but not “final and binding” can be executed (*Persero* case). Finally, FIDIC’s insertion of new time bar clauses makes it (even more) interesting to see whether arbitral tribunals consider such clauses effective, especially in civil law jurisdictions.

8. Investment Arbitration: Conflicts & Challenges within the ISDS Regime

The format of this panel is a 5 minute introduction by the moderator, followed by 10 minutes presentations from the speakers and a 40 minute Q&A session

Panel Chair

John Branson, Womble Bond Dickinson (US) LLP, Charlotte, North Carolina, United States – Of Counsel representing clients in cross-border disputes across a range of industries. He acts in complex, high value matters with a focus on commercial and investment arbitrations. Mr. Branson's experience includes advising clients and appearing as counsel in arbitrations under most of the leading institutions (ICSID, PCA, SIAC, SCIA, LCIA, ICDR) as well as ad hoc arbitrations under UNCITRAL Rules.

Speakers:

Veronika Korom, Bredin Prat, Paris and ESSEC Business School, Cergy-Pontoise, France – Senior Associate in Bredin Prat's International Arbitration Group and assistant professor at ESSEC Business School in Paris. She has experience in international arbitrations under UNCITRAL, ICSID, SCC and ICC Rules, with a particular focus on investment disputes and disputes involving issues of EU law. She has also advised on annulment and set-aside proceedings, domestic enforcement proceedings, and on proceedings in the General Court of the EU. She is a lecturer in international business law and international arbitration at the Dauphine University in Paris and the Pázmány Péter University in Budapest.

Maria Vicien-Milburn, Maria Vicien-Milburn Arbitration, Paris, France – Independent international arbitrator, specialist in public international law with extensive dispute resolution experience in arbitration, conciliation and negotiation acquired through senior positions as General Counsel of UNESCO, Director of the General Legal Division of the United Nations and Registrar of the UN Administrative Tribunal; Appointed by the Government of Argentina, with effect from 1 July 2017 to World Trade Organization (WTO) Dispute Settlement Body "Indicative Roster of Panelists"; Directed the conduct of all litigation (commercial, employment or criminal) brought against the UN or UNESCO and selected outside counsel for these matters; Observer to the UNCITRAL Working Group II and lll on international Arbitration and ISDS; Argentine Member of the ICC Commission on Arbitration; Member of the ICC Institute of World Business law; Lecturer at Sciences Po (2016) and Universidad Carlos lll in Madrid(2017)

Richard E. 'Rory' Walck, Global Financial Analytics LLC, Brevard, North Carolina, United States – Partner and co-founder, specialising in damages and valuation in international investment treaty and commercial arbitration. Rory has been consistently named one of the world's leading experts in arbitral proceedings by Who's Who Legal.

This panel will engage in a timely discussion on the current challenges facing the ISDS regime. These challenges are evident throughout the system, from dramatic changes to the form ISDS is being negotiated in new or revised BITs, to institutional reforms or proposals, and even more

clearly in the recent actions and decisions within the European Union. More specifically, the panel will discuss the CJEU's *Achmea* decision and its impact on the future of intra-EU investment arbitration, the role of ISDS in the re-negotiation of NAFTA, the recently announced BITs between the EU and Singapore and the EU and Mexico.

The panel will then discuss the status of current reform proposals of ISDS within the UNCITRAL context, along with other proposals for institutional reforms to address current challenges.

Finally, the panel will attempt to discuss, with the assistance of all attendees, whether and to what extent these current challenges share a common origin and, perhaps more importantly, whether the reforms occurring, or proposed, will be effective in addressing the existing conflicts and challenges facing the ISDS regime.

9. Public Policy and Judicial Review in Selected Countries

The format of this panel is an introduction by the moderator (5 minutes), five presentations by the speakers (12 minutes) and a Q&A session (25 minutes).

Panel Chair

Johannes Koepp, Baker Botts (UK) LLP, London, United Kingdom – Partner in the International Arbitration Group at Baker Botts, specialising in international commercial arbitration and investment arbitration, as well as public international law, mainly in the energy sector. Holds Ph.D. and LL.M. degrees in international law and has lectured law at universities in Switzerland, Germany and Spain. Particularly experienced in multijurisdictional disputes arising out of energy, joint ventures, telecommunications and financial services.

Speakers:

Silvia Dahlberg, Advokatfirman Vinge KB, Gothenburg, Sweden – Partner; Her practice has a particular focus on cross-border matters and covers both arbitration (commercial and investor-state) and complex civil litigations in Swedish courts of all levels. She has acted as counsel in arbitrations seated in various jurisdictions, including Sweden, USA, Switzerland and Brazil, and under most major arbitration rules. Silvia Dahlberg has also handled several high-profile arbitration related court proceedings in Sweden and regularly sits as arbitrator.

Diana Akikol, ABR Avocats, Geneva, Switzerland – Partner; has been practising exclusively in the field of international arbitration for more than a decade and frequently serves as an arbitrator. She has been involved in both ad hoc (including UNCITRAL) and administered proceedings (under the Swiss, ICC, LCIA and DIS Rules) governed by various arbitration acts and substantive laws, including in arbitrations involving States entities.

James Castello, King & Spalding LLP, Paris, France – Partner in the firm's International Arbitration Group based in Paris; for much of his nearly 30 years in legal practice, he has focused on international arbitration (both commercial and investor-State; under institutional rules as well as in *ad hoc* proceedings).

Christopher Harris, 3VB, London, United Kingdom – Barrister; specialising in complex international disputes. Ranked as a leading practitioner in six areas, Christopher is recognised as one of the leading UK-based arbitration counsel: in the 2018 WWL guide, he is identified as the third most highly regarded individual practising arbitration at the UK Bar. Chambers & Partners have ranked him alone as a Star Individual for arbitration for several years, and also as a leading arbitrator. With a strong academic background in PIL, Christopher is particularly renowned for his work in investment arbitration, appearing as counsel in over 20 such cases to date. Christopher has also acted in many of the enforcement proceedings in relation to investment treaty awards to come before the English courts including: *Yukos v Russian Federation*; *Gold Reserve v Venezuela*; *Stati v Kazakhstan* and *Flemingo v Poland*.

David Goldberg, White & Case LLP, London, United Kingdom and Moscow, Russia – has experience in arbitrations conducted under all major arbitral institutions and rules. David is also regularly appointed as an arbitrator, with recent appointments including arbitrations conducted under the ICC, LCIA, ICAC and UNCITRAL rules. David has particular experience of complex international arbitrations arising from corporate transactions connected to Russia and the CIS. Such matters span a broad range of sectors, including oil and gas, metals and mining, telecommunications, manufacturing, financial services and insurance.

The session will provide a comparative analysis of the interpretation of the public policy exception in various jurisdictions, including Sweden, Switzerland, United States, United Kingdom, Russia and CIS countries. The topics addressed will cover:

(i) the distinction between national and international public policy;
(ii) procedural and substantive public policy;
(iii) the standard of review; (iv) whether the public policy exception is used to review the merits of a tribunal's decision; (v) any other national particularities.

10. Managing Time and Costs of Arbitration

The format of this panel is an introduction by the moderator (5 minutes) followed by a podium discussion with Q&A throughout the session (70 minutes)

Panel Chair

Christof Siefarth, GÖRG, Cologne, Germany – Partner; Dr. iur. (Cologne), LL.M. (University of Georgia, United States), Attorney-at-Law (New York); mainly representing foreign clients as counsel in international commercial arbitration proceedings, with an emphasis on distribution law disputes; board member of the Atlanta International Arbitration Society (https://arbitrateatlanta.org/); listed as a specialised arbitrator for distribution law matters by the International Distribution Institute (https://www.idiproject.com/content/idarb-list-arbitrators).

Speakers:

Alan M. Anderson, Alan Anderson Law Firm LLC, Minneapolis, Minnesota, United States and Littleton Chambers, London, England, United Kingdom – FCIArb; Fellow and member of the Council of the Australian Centre for International Commercial Arbitration (ACICA); Member Forum for International Conciliation & Arbitration (FICA); JD (Cornell University), LLM (University of London); PhD (King's College London); specialising in complex commercial litigation and international arbitration.

Paolo Marzolini, Patocchi & Marzolini, Geneva, Switzerland – is acting as counsel representing clients and he is sitting as arbitrator in Switzerland and a number of other jurisdictions under various sets of arbitration rules (including, but not limited to, the ICC Rules, Swiss Rules, UNCITRAL Rules and WIPO Rules). Paolo regularly represents clients before the Swiss Federal Supreme Court in proceedings relating to international awards.

Andrea Meier, Wartmann Merker, Zurich, Switzerland – Representation of parties before arbitral tribunals and Swiss courts in commercial matters, notably in cases related to industrial and infrastructure projects, banking, international trade, joint ventures, corporate liability, and insurance. Andrea regularly sits as arbitrator in international commercial disputes under various sets of arbitration rules (ICC, Swiss Rules, DIS Rules, Vienna Rules, and WIPO etc.) and is also an arbitrator at the Court of Arbitration for Sport in Lausanne.

Rupert Reece, Gide Loyrette Nouel, London, England, United Kingdom – English Barrister and *Avocat à la Cour*; specialises in international arbitration and dispute resolution proceedings relating to joint ventures, construction contracts, aerospace and international commerce; acts as counsel in both common law and civil law type arbitration proceedings in English and/or French; experience of all the major institutional rules, including ICC, LCIA HKIAC, and UNCITRAL; regularly appointed as an arbitrator; recognized by Chambers and Legal 500 directories.

The panel will focus on the expectations of all players involved in arbitration, i.e. the parties, their counsel, arbitrators and arbitral institutions, with regard to an efficient time management in conducting arbitration and related costs.

It is often said that one arbitrator instead of three arbitrators can more easily manage time constraints and keep the costs of arbitration down. The members of the panel will share their views and experience on the number of arbitrators and the respective effect.

One key issue currently discussed by many arbitral institutions is shortening the duration of arbitration proceedings by expedited proceedings, in some cases even emergency arbitration. The panel will discuss the advantages, but also disadvantages and potential problems of such kinds of proceedings as well as its effects on costs.

An important issue in managing time in arbitration proceedings are case management conferences and procedural timetables. How can arbitral institutions, arbitrators and counsel influence an efficient handling of case management conferences and procedural timetables?

A comparison of various arbitration rules shows that the terms of reference often cause a certain delay, as does the separate filing of a request for arbitration first, and a statement of claim thereafter. There will be a discussion on possible other solutions.

US litigation often ends as a result of mandatory mediation sessions or with summary judgments, and many civil law litigation cases terminate with the rendering of a default judgment. Are summary and/or default judgments concepts which could and should be used in international arbitration? Should mediation be required or at least urged prior to the final hearing? Should arbitrators take a more active role in facilitating settlements between the parties? If yes, what should be the procedure for tribunal-assisted settlement proceedings?

With courts in many jurisdictions embracing technology to assist in the dispute resolution process, online dispute resolution is one way in which arbitration can be conducted in a more cost and time efficient manner. The panel will discuss recent developments in this area.

Finally, the handling of arbitration “common law style”, i.e. with disclosure, cross-examination, witness statements etc. is considered to delay the proceedings and increase the costs. Based on their experience in handling cases both “common law” and “civil law” style, the panel members will share their views on handling such issues in a time and cost-effective manner.

11. New Trends in Institutional Rules

The format of this panel is an introduction by the moderator (5 minutes), five presentations by the speakers (10 minutes) and a Q&A session (35 minutes).

Panel Chair

Vanessa Liborio Garrido de Sousa, Orrick Herrington & Sutcliffe LLP, Geneva Switzerland – Managing Partner of Orrick Geneva office; She practices primarily in the area of international litigation and arbitration, with a particular focus on complex, high-value disputes involving major infrastructure construction projects, consortia and joint venture agreements, sales of goods, collateral management agreements, aviation and consultancy agreements.

Speakers:

Johannes Landbrecht, Gabriel Arbitration AG, Zurich, Switzerland – practises international commercial arbitration at GABRIEL Arbitration in Zurich; he previously worked at leading international arbitration firms in Frankfurt/Main, Paris, Geneva, and Singapore; admitted to the bar in Switzerland, Germany, and England & Wales (Barrister); lecturer at the University of Zurich.

Presentation: **Over-codification in institutional rules?—Assessing the new provisions on measures for security for costs in the Vienna Rules 2018**

The Vienna Rules 2018 have introduced, in Art. 33(6) and (7), specific provisions on measures for security for costs. Such measures have been debated, and (reluctantly) granted, for decades. However, corresponding detailed provisions in institutional rules seem to be a recent phenomenon. Is there indeed a trend to codify rules regarding measures for security for costs? Is this trend beneficial to international arbitration? More broadly, is detailed codification in institutional rules useful and under what conditions, or is there a risk that institutional rules are becoming too detailed to be fit for purpose?

Susanne Kratzsch, Dr. Kroll & Partner, Stuttgart, Germany – Arbitrator (president, co-arbitrator and sole arbitrator) and counsel in arbitration proceedings inter alia under the ICC, DIS and VIAC Rules; mediator; Member of the Governing Council of the International Dispute Resolution Institute (IDRI); Vice-President of the London Arbitration Club..

On 1 March 2018 the new Arbitration Rules of the German Institution of Arbitration (DIS-*Deutsche Institution für Schiedsgerichtsbarkeit*) entered into force (hereinafter referred to as "DIS Rules 2018"). The revision of the DIS Rules reflects the best practice of a modern set of arbitration rules which meets the users' expectations for cost efficient, expeditious and transparent arbitration proceedings. In particular, the overall characteristic of the revision of the DIS Rules 2018 can be described as a move towards more efficiency. Moreover, the new rules strengthen the role of the institution in arbitration proceedings that are carried out under the DIS Rules. It may be expected that the DIS Rules 2018 will contribute to an even broader acceptance and application of these rules in international arbitration proceedings.

Christian Aschauer, Milan Chamber of Arbitration, Milan, Italy – Sole arbitrator, chairman, co-arbitrator or counsel in domestic and international arbitral proceedings, including under the rules of the ICC, VIAC, *Camera Arbitrale di Milano*, DIS, SCC and UNCITRAL. Most of Christian arbitrations have a foreign nexus, with parties from a broad range of countries, in particular from EU and CEE.

The Milan Chamber of Arbitration is one of the leading arbitral institutions in Europe, with a robust domestic and international workload. According to the most recent figures

for 2017, 125 proceedings were closed in 2017, with an average duration of 13 months. Roughly 19% of the proceedings were international cases. As a matter of tradition, the Milan Chamber puts a special emphasis on neutrality, transparency and efficiency. Therefore, the working group which is currently dealing with the revision of the Rules of Arbitration cannot ignore the growing importance of third party funding. It is pondering a provision which would require parties to disclose the existence and identity of any third party funder throughout the whole proceedings. To foster the efficiency of the proceedings, the working group is also considering how to make the best use of modern information and communication technologies (ICTs), and whether or not this requires prescriptive regulation in the Rules of Arbitration. In this regard, the Rules will probably remain very flexible, and leave the organisation of the communication channels to the Secretariat; this will allow responding to the development of new ICTs very quickly. 'Lastly, interim relief, including the introduction of an emergency arbitrator, is also re-considered.

Robert Landicho, Vinson & Elkins LLP, Houston, Texas, United States –specialises in international commercial arbitration, investor-state arbitration, and U.S. commercial litigation. Rob currently serves as the Young ITA Communications Chair, and is on the ITA Communications Committee and Advisory Board. He is also a member of the ICC, YAF, and Houston International Arbitration Club.

Earlier this year, the International Institute for Conflict Prevention and Resolution (CPR) announced that its revision to its Rules for Non-Administered Arbitration of Domestic and International Disputes (effective March 2018) shall contain a new "Young Lawyer" Rule. This Rule encourages tribunals to allow "experienced counsel to provide assistance or support, where appropriate, to a lawyer with significantly less experience during the examination of witnesses or argument." Commentary on this "Young Lawyer" Rule suggests that, if successfully implemented, the Rule will help not only young practitioners gain more experience in advocacy, but (indirectly) will assist female and diverse practitioners who traditionally are underrepresented in international arbitration, and have less experience in advocacy. This portion of the panel discussion will discuss this recent rule, and other developments in institutional rules which seek to encourage young, female, or diverse practitioners and/or arbitrators. What formal rules or informal practices are institutions adopting to encourage inclusion in our field? What are the challenges and inherent limitations in implementing such rules in institutional rules?

Benjamin T. Jones, Three Crowns, Washington, DC, United States – is a senior associate in the Washington office of Three Crowns. He has significant experience advising and representing parties in complex, high-value commercial and investment treaty arbitrations in a broad range of sectors (including energy and infrastructure, joint ventures/shareholders' agreements, defense, financial transactions, and technology).

In 2017, the International Chamber of Commerce International Court of Arbitration introduced rules on expedited procedures (Appendix VI to the 2017 ICC Rules). The Expedited Procedures apply automatically to cases where the amount in dispute does not exceed US$2 million, and the parties may opt-in to the application of the Expedited Procedures for cases involving a greater amount in dispute. The Expedited Procedures offer a simplified arbitral procedure, which gives the Arbitral Tribunal greater flexibility to limit the proceedings in order to achieve the rendering of the final award within six months from the case management conference. The presentation will examine the procedural framework of the Expedited Procedures, and consider the balance between party autonomy and procedural efficiency reflected in the Expedited Procedures. Time permitting, it will also touch briefly upon the Emergency Arbitrator Rules set out in Appendix V to the 2017 ICC Rules.

12. Ethics

The format of the panel is a 5 minute introduction from the moderator followed by four 14 minute presentations from the panel members followed by a 14 minute question and discussion period from delegates with panel members led by the moderator.

Panel Chair:

Michael B. Devine, Northumbria University Law School, Newcastle upon Tyne, England, United Kingdom, Senior Lecturer, and Magdelen Barristers' Chambers, Exeter, England, United Kingdom, Associate Tenant – FCIArb. Attorney-at-Law and Barrister-at-Law. Member of the Iowa, New York, and US Supreme Court Bars. Called to the Bars of England and Wales (Gray's Inn of Court, London), Northern Ireland (Inn of Court of Northern Ireland, Belfast), and Ireland (King's Inns of Court, Dublin).

Speakers:

Franz X. Stirnimann, Froriep Legal SA, Geneva, Switzerland –Partner; FCIArb; Attorney-at-Law. Member of the New York, England and Wales, and Geneva Bars.

Presentation: **Ethics Loopholes and Creating a Global Procedural Framework**

A) The "Ethics Loopholes"

1 "Outsourcing the Problem:" Can professional duties simply be outsourced to non-lawyers? For example, the increasing use of professional witness preparation providers run by non-lawyers. What is the use of creating rules if the relevant players are not subject to them?

2 The problem of the new vogue of "transparency" (ART, Arbitrator Transparency, etc.): they cover only the usual players, but not the outsiders and rogues, and it is the rogues who are the usual source of ethical problems.

3 The lack of policing powers of arbitrators.

B) What is the policy solution? What is the best overall solution for creating a global procedural framework?

1 "Soft Laws" like the IBA Guidelines that are increasingly referred to but have no deterring effect?

2 A global ethics initiative across arbitration associations and their members such as the one proposed by ASA?

3 Creation of special chapters in local bar rules dedicated to the practice of arbitration, and then possibly conventions between such local bars that are active in arbitration (Paris, New York, Geneva, Stockholm, Zurich, etc.) and evaluation of IBA Rules, creation of international bar rules through conventions between bar associations, alignment of local bar rules and creation of specific chapters for arbitration that are aligned, etc.

David A. Lawson, Bonnard Lawson, Geneva, Switzerland – Of Counsel; FCIArb; Attorney-at-Law. Member of the California and US Supreme Court Bars. Member of the Section of Lawyers from Foreign Bars of the Geneva Bar Association.

Presentation: **Resolving Conflicts of Lawyers' Ethical Rules in International Commercial Arbitrations**

A) Three examples of conflicts of ethical rules (the local rules of professional conduct applicable to lawyers) which can arise in international commercial arbitrations will be examined.

1 A dispute as to conflicting ethical rules relating to legal privilege of the work-product of one party's in-house counsel

2 A dispute as to a party calling a former external lawyer as a fact witness

3 A dispute as to counsel preparing (i.e., "seriously coaching") a fact witness as to his or her testimony prior to appearing at the hearing.

4 Other examples of ethics conflicts, suggested by symposium attendees, will also be considered.

B) Two specific questions will be addressed in this context:

1 Are members of the arbitral tribunal who are lawyers also bound by their own rules of professional conduct, and/or in making rulings on such ethical rules conflicts, must they respect or take in account the rules of professional conduct that bind each parties' counsel?

2 Can or should we seek to establish common "ethical conflicts rules" or guidelines (and/or consider the underlying policies and/or state interests involved in the conflicting ethical rules), to resolve such ethical rule conflicts in a rational and predictable manner, as opposed to the unpredictable and often inconsistent case-by-case approach currently in practice?

Thomas W. Walsh, Sullivan & Cromwell LLP, New York, New York, United States – Special Counsel; Attorney-at-Law. Member of the New York Bar

Presentation: **Arbitrator Challenges: Lessons Learned from the LCIA Court's Challenge Decisions**

A) IN 2011 and 2018, the LCIA published anonymized versions of the LCIA Court's reasoned challenged decisions dating from 1996 to 2017.

B) The overwhelming majority of the Court's decisions denied the challenges at issue, although a small but instructive portion of the challenges were upheld.

C) What do the LCIA's decisions tell us about the bright lines and grey areas in arbitrator independence and impartiality?

Roula Harfouche, Accuracy, London, England, United Kingdom – Partner; Specialising in contentious valuations and the assessment of quantum issues in international litigation and arbitration

Presentation: **Ethical Issues as They Relate to Party-Appointed Experts in International Arbitration**

A) Seasoned/Professional experts, e.g., damage experts rather than occasional experts.

B) Bound by e.g., [English] CPR 35 and Practice Direction 35: Expert Evidence – General Requirements, including independence and objectivity.

C) Also bound by rules of professional qualifying body. Fundamental principles of the ICAEW Code of Ethics: Integrity, Objectivity, Professional Competence and Due Care, Confidentiality, Professional Behavior.

D) Sanctions for breaches: Disciplinary procedures of ICAEW. Loss of reputation and credibility, which leads to loss of business.

E) Focus on objectivity: We are caught in a vicious circle. Does the definition of objectivity or independence depend on the law? Ethics vs. the need to bring in business.

F) Where do we draw the line? Is there a line?

13. The Appointment of Arbitrators by Parties, Wings and Institutions

The format of this panel is a 5-minute introduction by the moderator, 15-minute presentations by the speakers and a 25-minute Q&A session.

Panel Chair:

Jan-Michael Ahrens, Siemens AG - LC CB LIT, Erlangen, Germany – Principal Counsel Litigation of Siemens and responsible for managing major disputes for the group worldwide, with a particular focus on large infrastructure projects. Jan holds a doctorate in law (Freiburg) and an LL.M. from Geneva and Lausanne universities; he has been admitted to the bar in Germany, Switzerland and England & Wales.

Speakers:

Carol Ludington, Ludington Ltd., Willernie, Minnesota, United States – Certified Public Accountant, Certified in Financial Forensics, a Certified Licensing Professional and ACIArb, with over thirty years' experience as a damages expert and consultant. She has served as a neutral advisor, sole arbitrator and on arbitral panels, is trained as a mediator and often performs initial damages assessments.

Presentation: **(Non?)-Traditional Neutrals**

Carol will lead a discussion about the evolution of arbitral tribunal composition, "traditional" vs. "non-traditional" arbitrators, the advantages/disadvantages of subject matter expertise among the panelists, practical considerations impacting panel composition, and the impact of panel homogenization on outcomes.

Timothy G. Nelson, Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, United States – Tim specialises in international litigation and arbitration and represents clients in a variety of cross-border disputes, including investor-state arbitration, international commercial arbitration and litigation before the US Courts.

Presentation: **Criteria and Methods for the Appointment of Arbitrators and their Implications for the Legitimacy, Integrity and Effectiveness of Arbitration**

Tim will present, and lead a discussion on the criteria and methods commonly used for the appointment of arbitrators, on the strategies and tactics employed by parties and on the implications of these on the legitimacy, integrity and effectiveness of arbitration.

Luciana Ricart, Curtis, Mallet-Prevost, Colt & Mosle LLP, London, England, United Kingdom – Luciana works in investor-state arbitration and in public international law contentious and non-contentious work. She has represented governments and state-owned entities in ICSID, SCC, ICC and UNCITRAL arbitration proceedings and has advised these entities on topics such as enforcement of arbitral awards, sovereign immunity, treaty interpretation and territorial sovereignty disputes.

Presentation: **Appointment of Arbitrators in Investor-State Arbitration.**

Luciana will discuss the appointment of arbitrators in investor-State arbitration from the point of view of States and State entities. The presentation will, first, address the expectations and considerations of States when appointing their party-appointed arbitrator and the chair of the tribunal and, second, the role that institutions play when selecting arbitrators on behalf of defaulting States and when appointing the chair.

14. Look into the Future – Opportunities and Challenges

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (10 minutes) and a Q&A session for the remaining (30 minutes)

Panel Chair and Speaker:

Mauro Rubino-Sammartano, LawFed BRSA, Milan, Italy – President of the European Court of Arbitration, Chartered Arbitrator, Advocate in Milan and Paris, Senior Partner of LawFed BRSA.

Looking at recent past generally helps to design the future. As to arbitration, the trend consists *inter alia* of an increasing number of domestic and transnational arbitrations, of a substantial increase in the number of new and not always very experienced and very impartial arbitrators, of a duration which is frequently not satisfactory to users and of a very large increase of challenges of awards. We can just try to predict the follow up of such trend or we can try to fly high and to explore if and how the future could be better than the past. I propose that we try to design together a better future.

Speakers:

Stephen D. Mau, The Hong Kong Polytechnic University, Hong Kong, China (SAR) – has 20+ years of legal and business experience in the US and Hong Kong. He teaches the Msc in Construction Law and Dispute Resolution at the Hong Kong Polytechnic University. He was a senior registered foreign consultant with Hong Kong's largest local firm, heading its Construction / Engineering Practice Group. He is a Fellow of the Chartered Institute of Arbitrators and a HKMAAL accredited mediator (general).

Presentation: **Unified Arbitration Rules: Consistency and uniformity versus horses for courses**

Similarities already exist in arbitral institution rules. Is there a need for harmonization or even a uniform set of rules for international arbitration? What are the advantages of harmonization or uniformity? What are the needs for harmonization or uniformity? Conversely, is diversity good? Should parties be able to select a set of institutional rules which they think or predict would be most suited for their dispute? Should the uniqueness of an arbitral institution's rules be removed for the sake of global uniformity? For example, would institutions such as the HKIAC, SIAC, and NZIAC (and possibly DIS) be willing to surrender its Arb/Med/Arb provisions for the sake of harmonization or global uniformity? Which institution is to surrender portions of its rules? Who decides? These questions, among others, will be posed to the audience for discussion.

Lawrence S. Schaner, Schaner Dispute Resolution LLC, Chicago, Illinois, United States – FCIArb, arbitrator and counsel in international and complex commercial disputes. Adjunct Professor, Northwestern University, teaching international arbitration. Editor, Dispute Resolution International (IBA journal); Co-Editor, International Arbitration in the United States (Wolters Kluwer 2018); member, ICC Commission on Arbitration; Midwest Chair, ICC's US national committee. 29 years at Jenner & Block in Chicago (until 2017) as partner and co-chair of the firm's international arbitration practice.

Presentation: **How to Overcome the Partiality of Some Party Appointed Arbitrators**

Party-Appointed Arbitrators – A Need for Reform? Or Much Ado About Not Much? Is there a problem with the lack of impartiality of party-appointed arbitrators? If so, what – if anything – can and should be done?

Mohamed Abdel Wahab, Zulficar & Partners Law Firm, Cairo, Egypt - Chair of private international law and professor international arbitration at Cairo University, and founding partner and head of international arbitration at Zulficar & Partners Law Firm. Vice president of the ICC International Court of Arbitration; member of the LCIA Court of Arbitration; president of the LCIA Arab Users' Council; member of the advisory committee of the CRCICA; member of the CIMAC Court of Arbitration; member of AAA-ICDR International Advisory Committee; member of CIArb's Board of Management and Practice and Standards committee; president of the CIArb's Egypt branch. He Served as '*Sole Arbitrator*', '*Presiding Arbitrator*', '*Party Appointed Arbitrator*', or '*Counsel*' in more than 175 cases, and is regularly recognized and ranked as a world leading international arbitration practitioner in all leading legal directories.

Presentation: **Single, Double and Multi-Hatting in ISDS: Present Challenges and Future Prospects**

This topical issue in the ISDS debate simply revolves around whether the ISDS realm should embrace segregation between counsel and arbitrator roles, so that practitioners should elect to either act as counsel or arbitrator in ISDS proceedings. The author intends to provide an objective overview of this ongoing debate and the associated advantages and disadvantages of any such segregation, before concluding with some critical observations, analysis and predictions for the future trajectory of multi-hatting in ISDS and any possible spillover effect into the dominion of international commercial arbitration.

Presentation: **Control of Standards with a View to Certify Arbitrators, to Have a Universal Code of Ethics and an Arbitrator's Pledge**

Mauro Rubino-Sammartano will propose to explore better ways to allow the parties to be more informed as to the arbitrators, to facilitate their selection of arbitrators and to see if the standard of arbitrators can be raised by a common and solid block.

Regular and sophisticated users of arbitration frequently look for as much information as possible as to potential arbitrators in order to make the best possible choice. Frequently one can rely only on a CV, on words of mouth or base oneself on reputation of arbitrators or on recommendations from third parties, which some time have not experienced the arbitrator in such a capacity. In order that arbitration serves society, it seems proper to look for ways in order to allow this people, in particular in-house counsel, to make a more informed selection. Amongst the various ways to be explored to achieve this, a specific reference will be made to training which entitles to qualify oneself as a certified arbitrator, the adoption and acceptance of a universal Code of Ethics and the issue by the arbitrator of the Pledge which provides useful information as to the arbitrator's approach to some general issues.

Symposium Closing **17:25-17:30**

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