

**International Investment Arbitration:
Understanding the Perspective of the Arbitrator**

An Outline for Participants

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- 1) July 1 - Introduction to the Themes of these Lectures: Why the Perspective of the Arbitrator?**
 - a) What does it mean to take this perspective?
 - b) Are we describing what the perspective of the arbitrator is or suggesting what the perspective should be?
 - c) What is a method for approaching the question?
 - d) Three themes that will arise in these lectures:
 - i) What is the function, the job, of the investment arbitrator?
 - ii) How does that job depend on the institutional framework?
 - iii) How is the job different from that of the international commercial arbitrator?

- 2) July 2 - Educating the Arbitrator: Who is New to Investment Arbitration?**
 - a) Assume one of your co-panelists is new to investment arbitration. How would you describe its history and difference from international commercial arbitration?

- 3) July 3 (Two hours) - The Selection and Challenge of Arbitrators: An Interactive Session.**
 - a) Using video excerpts from a mock arbitration, we will discuss the selection and challenge of arbitrators.
 - b) What considerations are specific to investment arbitration?
 - c) What is the perspective of the arbitrator on such matters? What is the perspective of the challenged arbitrator? What is the perspective of the co-arbitrators deciding on the challenge?

- 4) July 4 - The Importance of the First Session.**
 - a) The prehearing conference in ICSID terms is called the "First Session."
 - b) We will discuss the work of the session in terms of the parties and the dispute. But what does it do – should it do -- for the panel? Assume you are meeting your co-panelists for the first time, what are your goals?

- c) In preparing for the session, you receive an email and see an earlier email involving your co-panelists on which you were not copied. What do you do?

5) July 8 - Decision-Making Forced at the Start: The Example of Interim Measures.

- a) At least three issues may arise at the start forcing the panel to start interacting: interim measures, challenge, and requests by amici.
- b) How should decision-making among three persons take place?
- c) We will consider this question in the context of interim measures.

6) July 9 - Preliminary Objections and Bifurcation.

- a) The assertion of preliminary objections accompanied by a request for bifurcation is an early and not uncommon request by respondent.
- b) How do we think about this procedural request and the underlying questions of jurisdiction? Does the ICSID framework change the way we think about such questions?

7) July 11 - Arbitrators: Evidence, Documents, Expertise and Numbers.

- a) Should arbitrators ever appoint an expert?
- b) How good does an arbitrator have to be with numbers? What does a panel do with a co-panelist who does not view himself/herself as qualified to assess expert reports submitted by the parties?
- c) How are arbitrators to assess evidence?
- d) Should arbitrators order the production of documents? Is the answer to this question different in the context of investment arbitration as opposed to commercial arbitration? Why?

8) July 12 - Effective Advocacy from the Perspective of the Arbitrators.

- a) Why might arbitrators have a different perspective than counsel as to what is effective?

9) July 15 - Deliberations and the Importance of Applicable Law and Treaty Interpretation.

- a) What is your method for interpreting a treaty? How can it be disciplined?
- b) May the panel look to law not submitted by the parties? Why?

10) July 16 (Two hours) - Party Representation and Deliberations: An Interactive Session.

- a) We will conduct a mock arbitration and deliberation.

11) July 17 - Deliberations and Drafting the Award.

- a) How should a panel approach deliberations?

- b) How is the question of dissent to be approached?
- c) What is the organization of the award? How is it to be drafted?

12) July 18 - The Arbitrator and the Public Interest.

- a) The panel will often be confronted with arguments about the public interest. When can the arbitrator or the panel consider the public interest? How does it know the public interest?

13) July 19 - Conclusion, Summary of the Arbitrator's Perspective.

- a) What is my job?
- b) How does the panel as a whole discipline its discussion?