CRITICAL FIRST STEPS IN COMPLEX COMMERCIAL ARBITRATION

APPOINTING QUALIFIED ARBITRATORS AND STAGING THE PRELIMINARY CONFERENCE

How parties should approach arbitrator selection and the preliminary conference in order to set the stage for an efficient and fair process.

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Parties to arbitration expect that they will have a full and fair opportunity to present their claims and defenses and the supporting evidence to the arbitrator. But when a commercial case is large or complicated in that it involves multiple parties, difficult or unusual features, or simply a large amount of money, everyone involved—the parties, their counsel and the arbitrators—must strive in earnest to keep costs down and avoid unnecessary delay while ensuring a fair process. Achieving these dual—and seemingly conflicting—goals requires foresight and planning during the initial stages of arbitration.

The first two steps of arbitration are selecting the arbitrator and participating in one or more preliminary conferences. Selecting the right arbitrator and adopting suitable procedures to govern the proceeding are important in every case. But they are even more critical in a large or complex case because of the many ways in which the proceeding can be delayed.

The American Arbitration Association (AAA) considers a case to be large and complex enough to warrant application of its Large, Complex Case Procedures if it involves a claim or counterclaim of at least $500,000, exclusive of claimed interest, arbitration fees and costs.[1] But I am using the term "complex" in a broader sense than the value of the parties' claims and counterclaims. Thus, a complex case could mean one that involves technical or scientific facts, or numerous or difficult legal issues. A case that involves technical facts would require the assistance of experts (such as accountants, engineers, or scientists) to elucidate these facts for the arbitrator or panel. A complex case in the sense discussed here also could involve multiple parties. Multiple party

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arbitrations generally present scheduling difficulties and involve the filing of more motions and discovery requests, which can lead to disruption and delay unless appropriate measures are taken to keep the case on a steady course. A complex case could also be an international dispute involving persons from different countries who speak different languages and have different cultural backgrounds. Language differences alone are enough to complicate an arbitration and make it more expensive if translation services are required. Differences in culture and legal systems often lead to different expectations for the arbitration. This could include different expectations about discovery or other procedures, even whether certain forms of discovery should be allowed at all.

If your arbitration is complex in the sense described here, you should concentrate on the two tasks discussed below in order to select an appropriate arbitrator and work out procedures to ensure that the arbitration is conducted efficiently and fairly.

The Number of Arbitrators

There is no more important duty at the outset of a complex arbitration than to select the best possible arbitrator to hear the case. "Best possible" in this context means the arbitrator has the requisite qualifications and experience to understand the facts and issues in the case and the case management skills to see that it proceeds efficiently and does not get sidetracked.

The number of arbitrators (one or three) and the method of arbitrator selection are often specified in a contract's arbitration clause. When three arbitrators are contemplated, the arbitration clause frequently provides that each party appoints one arbitrator, and the two party-appointed arbitrators name the third arbitrator who shall serve as the chair of the panel. At other times, the arbitration clause provides that the arbitration will be governed by the arbitration rules of a particular arbitral institution, such as the AAA. In that situation, the rules of the designated institution will govern the number and selection of the arbitrators.

Once a dispute has arisen, the parties may have strong feelings about how many arbitrators should hear the case. If they specified a single arbitrator in the arbitration clause, they could agree after a dispute arises to have three arbitrators instead. If they agreed to AAA rules, those rules would determine whether there would be one or three arbitrators. Before proceeding further, certain general observations are in order concerning the number of arbitrators needed to hear and resolve a dispute in arbitration.

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In general, relatively simple or routine commercial disputes are readily handled by a single arbitrator. This is the most efficient and cost-effective way to deal with these disputes. But that may not be the case for a high-stakes controversy involving a large monetary amount, legal or technical complexities, or other unusual features, despite the added cost of having to pay three arbitrators instead of one.

The AAA's Large, Complex Case Procedures provide for the appointment of a three-member tribunal when the parties are unable to agree on the number of arbitrators and a claim or counterclaim involves at least $1 million. Many international arbitration rules call for consideration of the circumstances of the dispute, particularly its complexity and the amount in issue, in deciding whether to appoint one or three arbitrators, without specifying any monetary threshold.[2] Some international rules default to the appointment of three arbitrators whenever the parties cannot agree on the number of arbitrators, probably in recognition of the inherent complexity of international disputes.[3]

The principle that complexity in a case warrants appointing three experienced arbitrators is sound because complex facts or issues may require different kinds of expertise or perspectives that would be hard to find in a single arbitrator, and even if one could locate such an arbitrator, he or she might not be available to hear the case.

Three bright minds would contribute different perspectives to the deliberative process, as well as distinct expertise, experience and judgment. This could, at the very least, create confidence that the ultimate decision on the merits will be a sound one, and that no important considerations will be overlooked.

Thus, presenting a complex dispute to three

arbitrators rather than one provides greater assurance that the case will be heard by neutrals who collectively have the knowledge and experience necessary to decide the case in a fair and thoughtful manner. (This is probably also true of arbitrators appointed by an arbitral institution because the parties normally have input into the qualifications of the arbitrators the institution ultimately names.)

Using a single arbitrator is obviously less expensive and more efficient (it is easier to arrange schedules with one arbitrator than with three). But these benefits could be lost if the parties agree to conduct very broad discovery, including numerous depositions, and file an assortment of jurisdictional, discovery and/or other motions.

If three arbitrators are used, certain efficiencies still could be realized. For example, the parties could agree that the chair of the panel would decide routine discovery disputes, and the chair would then spread the rest of the workload among the co-arbitrators.

After the hearing on the merits and the panel deliberates, the chair could divide the responsibility for drafting a reasoned award in a complex case among the arbitrators, assigning to the most knowledgeable the issues with which that person is most familiar. This could result in a final written award much sooner than if a single arbitrator had to write the entire award.

Because appeals of arbitration awards are typically limited in scope, parties tend to be more comfortable with the relative finality of an award when three skilled and experienced arbitrators decide the dispute.

In every arbitration, when it comes to the number of arbitrators, the parties must consider whether the advantages of a three-member tribunal are worth the extra costs involved and the potential for delay due to scheduling problems. Some large complex cases are of sufficient magnitude that these costs seem relatively minor and are easily outweighed by the benefits of appointing a three-member panel.

Arbitrator Qualifications

One advantage of arbitration over court litigation is the parties' ability to select the arbitrators. Once a dispute has arisen and arbitration pleadings have been filed, the time will come for the parties to make the selection decision. In order to make a first-rate appointment, the parties' counsel should know much more about their case than they ordinarily would know at this point in litigation. They should understand the claims, counterclaims, defenses, facts and issues in the case inside out. Only then can they make the vitally important judgments involved in selecting not just a competent arbitrator, but the best possible arbitrator to hear their case.

Initially, the parties must decide what qualifications the decision makers should have. Arbitration providers maintain a roster of arbitrators who possess business or legal experience in a variety of industries. The AAA panel, for example, includes arbitrators with expertise in commercial, finance, employment, patent construction, securities, health care, real estate and more.[4] The AAA also has an international panel and a large, complex case panel with arbitrators who have a "minimum of 15 years of business or professional practice involving complex legal or business matters."[5]

In an arbitration administered by the AAA, the parties' counsel generally would discuss the qualifications they would like the arbitrators to have during an administrative telephone conference with the AAA case administrator, who would then prepare a list of candidates with the desired qualifications.[6]

Two attributes every arbitrator should have are impartiality and neutrality—characteristics that mean that the arbitrator has integrity and can issue an unbiased decision. These attributes are required by ethics rules governing commercial arbitrators.[7]

Other qualifications that parties could require arbitrators to possess are discussed below.

Knowledge of the Industry. Industry knowledge is usually held by a person who retired from the industry in question or switched out of that industry into law. Industry arbitrators are familiar with the field in which the dispute arose and generally understand the facts in a case fairly quickly. They do not need as much time as lay individuals would to get up to speed in order to be able to understand the evidence and decide the dispute.

Knowledge of the Applicable Law. Knowledge of the law is generally held by lawyers who represent members of the industry in issue. When a case involves contractual, legal and regulatory issues, lawyers with expertise in the type of transaction involved and the legal and regulatory environment are obvious choices to serve as arbitrator. They will understand the issues more quickly than other types of arbitrators. For example, when the claims arise out of a complex corporate merger or acquisition, it makes sense to appoint at least two M&A attorneys, or attorneys experienced at negotiating asset and stock purchase agreements. When a complex business-to-business dispute involves a regulated industry, like telecommunications, the arbitrators should be experts in the applicable law and regulations who have experience advising companies in that field.

Similarly, disputes involving the aeronautics and space industries are best resolved by arbitrators who are aeronautics or satellite attorneys, or others with education, training and experience in those areas.

Technical Knowledge. Many complex commercial cases involving a technical subject matter or complex facts benefit from having a technical expert (for example, an engineer, architect, accountant, or other specialist) as the arbitrator or a member of the panel. Expert arbitrators often advise the attorney-arbitrators on the panel how the technical issues should affect the outcome of the case. For example, in a complex construction dispute, it might be advisable to have an engineer on the panel who could explain to the construction lawyers on the panel why a particular construction material failed and who should be held responsible for that failure. In the M&A hypothetical discussed above, it might be prudent to have a tax lawyer, certified public accountant, financial advisor, or investment banker on the panel along with the M&A attorneys. Sometimes it is possible to find industry, legal and technical knowledge in the same person.

In complex international cases, the arbitrators should be experienced international arbitrators with a broad background in international business affairs. These arbitrators know the differences between the practices of different legal systems (e.g., the inquisitorial practice of the civil law system versus the adversarial practice of the common law system); they have experience arbitrating disputes between parties with different cultural backgrounds and languages; and they are familiar with international arbitration concepts, like *lex mercatorio*, competence-competence, among other principles, and with international law and treaties.

Business Acumen. Good arbitrators should have practical business sense. The importance of this qualification should not be underestimated, but it is hard to detect from an arbitrator's *curriculum vitae*. Conducting a joint interview of the arbitrator candidates may be the best way to discern this trait.

Judicial Temperament. As an adversarial process, arbitration is similar to a judicial proceeding, albeit a less formal one. Since arbitrators make binding decisions that will affect the parties, their demeanor should be professional at all times. Arbitrators, like judges, should possess a "judicial temperament." The American Bar Association defines this term (in the context of evaluating judicial nominees) as having "compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law."[8]

The most desirable arbitrators show respect for all participants in the arbitration, and conduct the proceedings fairly and even-handedly. Determining whether a candidate for an arbitral appointment possesses a judicial temperament is not always easy. It too cannot be discerned from an arbitrator's résumé and may not be apparent from an interview. The best course of action is to make discreet inquiries to friends and professional colleagues about the reputation of the arbitrators under consideration.

Arbitrators need to be able to persuade strong-willed parties and attorneys to agree to certain procedures to keep the case on track and on schedule.

Case Management Skills. Arbitration providers are emphasizing the need for case management skills and some, like the AAA, require regular training of the arbitrators on their roster. Good arbitrators have strong case management skills. Laid-back individuals who are not pro-active about managing the process are not considered desirable in today's arbitration environment. Arbitrators need to be able to persuade strong-willed parties and attorneys to agree to certain procedures to keep the case on track and on schedule. Good case management not only contributes to an orderly arbitration process, it helps to control costs, a subject of increasing concern to parties.

Arbitrators must be able to deal with unanticipated events, scheduling difficulties, contentious parties and attorneys, among other challenges. This means they need organizational and diplomatic skills, a calm demeanor, an understanding of human behavior, and the ability to be creative and flexible.

Once the arbitrators are appointed, virtually every aspect of the proceeding demands proactive management, from setting the date for the first preliminary conference to setting the schedule for the hearing and adhering to it to avoid disruption and delay.

Role of the Chair of the Panel. It is vital that the chair of the panel have excellent management skills, since the chair assumes a greater responsibility for guiding the conduct of the case. Retired

judges are often thought to have good case management skills, but that should not be assumed. Former judges may be too comfortable with standard litigation procedures to object when counsel seek to use delaying pre-hearing procedures in arbitration.

Managing the Preliminary Conference

Once the arbitrator or panel has been duly appointed, the attorneys must prepare for arbitration's next key event—the preliminary conference. The meeting itself could be held by telephone or in person, depending on the location of the parties, counsel and arbitrators. At this meeting, the arbitrators and counsel make important decisions that will shape the course of the proceedings to come. A principal objective of the preliminary conference is to discuss the requirements for pre-hearing briefs and the date for their submission, the amount of discovery that should be allowed and the discovery completion date, the date for exchanging witness lists and documentary evidence, the length of the hearing on the merits, and whether the case warrants the expense of preparing post-hearing briefs.

Experienced commercial arbitrators generally have a standard agenda and/or checklist of items to be addressed at the preliminary conference in a complex case. Often, arbitrators will e-mail the parties' attorneys to ask them to confer in good faith prior to the preliminary conference so that they can reach an agreement on as many points as possible. This request signals to the attorneys that they have a good deal of preparation to do before the preliminary conference. The arbitrators also generally request that the attorneys bring to the preliminary conference their own list of agenda items and be prepared to present their clients' views of the case.

At the preliminary conference the arbitrators will go through their agenda, noting whether the parties have reached agreement on each item. When no agreement is reached, or the agreement reached would interfere with an efficient process, pro-active arbitrators will offer useful suggestions to encourage a compromise, or simply decide the issue themselves. The arbitrators will also address the agenda items raised by the attorneys.

Set forth below is a fairly typical list of agenda items for a preliminary conference in a complex commercial arbitration.[9] The list begins with some important threshold questions.

- Does the arbitration involve any issue concerning arbitral jurisdiction, arbitrability of any claims, counterclaims or defenses, or enforceability of the arbitration agreement?
- Do the parties agree on the law and rules governing the arbitration process; and on the substantive law that will apply to the merits of the case?
- Are there additional parties with an interest in the dispute who should be notified of the arbitration or have an opportunity to participate in it?
- Are there any other special issues that need to be addressed? For example, disputes involving trade secrets or proprietary business information will require special arrangements during discovery and the hearing to protect against unwarranted disclosure. The arbitrators may encourage the parties to enter into a non-disclosure agreement or ask their counsel to draft a protective order for the arbitrators to sign.

Motions. Do any of the parties contemplate submitting any motions on jurisdiction, arbitrability, summary disposition, or interim relief? If so, counsel should be prepared to discuss a briefing schedule so that these issues can be briefed and decided as early as possible in the proceedings.

Document Discovery. The arbitrators will determine how much discovery is allowed and set a date for the completion of discovery. Counsel should be prepared to discuss their clients' discovery needs at the preliminary conference. This means knowing, among other things, the identity of persons from whom documents will be sought. If documents need to be obtained from non-parties, counsel must know whether they reside within subpoena range, and whether the law in the jurisdiction allows documents in the hands of third parties to be discovered prior to the hearing.

Counsel should also know whether their clients intend to seek discovery of electronically stored information, since this can significantly increase the cost and time spent on discovery. If the answer is yes, counsel should be required to specify the ESI, demonstrate that it is not available in another form, and that it is highly relevant to the issues in the case.

Depositions. Depositions are commonly used in litigation but are less common in arbitration. In a complex commercial case, arbitrators often encourage the parties to agree to take only a few depositions. When the parties cannot agree, or they agree to a large number of depositions, proactive arbitrators generally will limit the number of depositions to a few key witnesses and limit how much time they may take (for example, half a day for each deposition). Then the arbitrators will schedule a date for their completion.

Discovery Disputes. The arbitrators will deter-

mine the procedure for resolving discovery disputes. One procedure is to use a telephone conference. Another is to have the parties write a letter to the panel instead of filing a formal motion. Often the parties agree that the chair of the panel will decide discovery disputes, subject to a party's right to present to the full panel any dispute that is critical or affects the parties' substantive rights. At the preliminary conference, the arbitrators will set a date for the submission of all discovery disputes.

Location and Dates for the Hearing. If the arbitration agreement does not specify the location where the hearing will be held, this topic will be discussed and decided at the preliminary conference. Arbitrators usually take into account any reasons for having the hearing in one place over another, including convenience to the parties and witnesses and minimizing the expense of travel and accommodations.

The arbitrators also will address the dates for the hearing. The attorneys should be prepared to estimate how much time they will need to present their case. It is less costly to set aside consecutive days or blocks of consecutive days for the hearing since this will minimize the number of times that counsel and the parties will have to spend preparing to present their case.

The variety of issues that can come up at preliminary conferences show how important organization and advance planning are to the process.

The arbitrators will also make decisions about how long each hearing day will be.

The arbitrators may raise other issues at the preliminary hearing, such as whether the case would benefit from bifurcating the liability issues from the damages portion of the case. Bifurcating the hearing in this way can reduce the cost of the arbitration, particularly if evidence concerning damages is extensive or complex.

Witness Testimony. Counsel should also be prepared to discuss at the preliminary conference possible ways to increase the efficiency of the hearing. One option is to submit written witness statements in lieu of giving oral direct testimony at the hearing. The statements are usually drafted by counsel for the proponent of the witness. Under this procedure, the witness does not testify on direct examination but must appear for cross-examination. If the parties agree to this procedure, the arbitrator will set a date at the preliminary conference for the exchange of written witness testimony (and the exchange of rebuttal witness lists, if needed).

Another cost-saver that could be considered is the use of video conferencing to allow witnesses to testify from distant locations. Savings in travel costs can be significant.

Another option is videotaping the deposition of a witness and using that instead of live testimony at the hearing. This technique is generally used only for minor witnesses, or witnesses who would be unavailable to testify at the hearing. However, it should only be used when all counsel have had the opportunity to cross-examine the witness.

Arbitrators may raise at the preliminary conference whether to restrict counsel's communications with the client's witnesses during cross-examination by opposing counsel. Restrictions of this sort are aimed at maintaining a fair process and preventing counsel from exerting undue influence over the testimony of their own witnesses.

Another issue that could arise at the preliminary hearing is whether the arbitrator should order the sequestration of lay witnesses. The issue arises in complex cases because of concerns that a witness present at the hearing could be influenced by the testimony of other witnesses. Arbitrators normally will order witnesses to be sequestered if requested by a party, unless the other party demonstrates good cause. In the case of corporate parties, arbitrators usually allow at least one party representative to be present during all the testimony.

Experts. Experts are commonly needed in technical cases to present factual data or analysis for the panel's consideration. To control costs, the parties could agree jointly to retain a single expert to report on specific technical matters in dispute. In highly technical arbitrations where it might not be feasible to use a single expert, the arbitrators could suggest that the experts testify simultaneously—a procedure known as an "expert witness panel." This procedure allows the experts to comment on each other's testimony, and affords the arbitrators an opportunity to pose questions to them both.

The arbitrators will set a date at the preliminary conference for the exchange of all expert reports. To streamline the proceedings, the arbitrators could ask the parties to have their experts meet with each other prior to the hearing to try to narrow the issues in dispute. The experts also could be asked to jointly prepare a list of points

of agreement and disagreement.

Hearing Exhibits. The arbitrators will also set a date for the exchange of exhibits (including rebuttal exhibits). Arbitrators often ask the parties to provide them with a loose-leaf book containing joint exhibits (i.e., exhibits that both parties intend to introduce), and separate books for other exhibits. In arbitrations with a large number of exhibits, as is typical in complex cases, arbitrators often require all exhibits to be marked and numbered in advance of the hearing.

Briefs. Pre-hearing briefs should inform the arbitrator of each party's position and its view of the facts and the law. Many arbitrators think they are valuable while others do not. I personally think they are vital in all but the smallest case.

Type of Award. Some parties provide in their arbitration agreement for the type of award they would like the arbitrators to issue. The arbitrators should take note of the parties' wishes for the type of award when reading the arbitration agreement for the first time prior to the preliminary conference.

If a reasoned award is requested, the arbitrators should inquire into the parties' specific expectations. Do they want a simple award stating who prevails on the various issues and the relief awarded, if any; a brief explanation of the award; or a more detailed, reasoned award including findings of fact and conclusions of law? The AAA rules require an explained award to be requested in writing prior to appointment of the arbitrator. However, this does not preclude the arbitrator from inquiring at the preliminary conference as to the type of award the parties desire if they have not already agreed on the type of award they want. Parties to large, complex cases and international disputes frequently opt for a reasoned award. The arbitrators might inquire whether the parties want a reasoned award to be in a particular format, or be limited in length. The longer it is, the more it will cost.

Because decisions reached at a preliminary conference will shape the future course of the arbitration, the attorneys and the arbitrators need to work cooperatively to adopt practical procedures and a workable schedule.

At the preliminary conference, the arbitrator will establish a date for the exchange and submission of pre-hearing briefs. Arbitrators sometime limit the length of these briefs, depending on the complexity of the case. Page limits can encourage counsel to focus on the most critical issues.

Post-hearing briefs are another matter that could be discussed at the prehearing conference but they do not need to be scheduled at that time. That task can be deferred until the close of the hearing. Whether post-hearing briefs are necessary should depend on the circumstances of the case. In large or complex cases, they could be quite helpful to the arbitrator and worth the extra cost.

Oral Argument. The attorneys usually desire to make an opening statement at the beginning of the hearing to summarize the client's principal claims and defenses and indicate, from their client's perspective, what the evidence will show. Opening statements can provide a useful road map for the arbitrator in a complex arbitration.

Some arbitrators, particularly those who thoroughly prepare for the hearing, may find opening statements to be unimportant and unnecessary. If an attorney insists on making an opening statement, the arbitrators could limit the presentations by each side, say to 20-30 minutes, consistent with the nature of the case.

Post-hearing oral arguments may also be broached at the preliminary conference, but a decision on that matter can be deferred until just before the close of the hearing.

Other Matters. There are a number of other matters that can come up at a preliminary conference. One item is whether the parties want a stenographic record of the hearing. If they do, one of the parties must arrange for a stenographer. Having a record of the hearing can help the arbitrators review the record during deliberations. It can also be helpful to counsel during the preparation of post-hearing briefs. Arbitrators normally inquire at the preliminary conference whether the parties will be arranging for transcription and if they have agreed to share transcription costs.

Sometimes one or more parties or witnesses have a disability and need wheel-chair access, audio-visual equipment, or other special technology. Or there could be language barriers requiring one or more interpreters. These matters should be discussed at the preliminary conference so that appropriate arrangements can be made prior to the hearing.

Following each preliminary conference (there can be more than one in a large, complex case),

arbitrators frequently prepare a formal order memorializing the items agreed upon, arbitral rulings on disputed issues, a detailed schedule of pre-hearing activities and the dates for their completion, and the date for the hearing to begin.

Some matters may remain unresolved and will be taken up at a subsequent preliminary conference, which could be scheduled at the arbitrator's discretion, or at the parties' request.

The variety of issues that can come up at preliminary conferences show how important organization and advance planning are to the process. An arbitration is likely to be long and expensive unless all of these issues are addressed at the outset and the arbitrator determines (often with the agreement of the parties) how they will be handled. Otherwise, disputes will be inevitable and lead to delay down the line.

Because decisions reached at a preliminary conference will shape the future course of the arbitration, the attorneys and the arbitrators need to work cooperatively to adopt practical procedures and a workable schedule.

Conclusions

A large or complex commercial arbitration may be challenging for even the most experienced and adept participants. When the stakes are high—because the amount in controversy is large or the issues are novel or complex—arbitration must be approached flexibly to control the cost, minimize the risk of disruption and delay, and provide a fair opportunity for each party to present its case. These aims can be furthered by selecting arbitrators who bring relevant industry experience, knowledge of the applicable law, business acumen, arbitration training and experience (international, if needed), a judicial temperament, and case management skills attested to by others who have worked with them.

The attorneys also bear responsibility for ensuring that the arbitration will proceed in a fair and efficient manner. They should be prepared to resolve all the issues that come up and make reasonable compromises to streamline the process without sacrificing the development of the record. In arbitration, fairness can be achieved without burdening the process with wasteful trappings of court litigation. The advantage of arbitration is that its first critical steps, if handled skillfully, should lead to a fair and efficient process free from the delay and enormous cost of litigation. ■

ENDNOTES

[1] These rules are available at www.adr.org. Parties to a case that qualifies as a large, complex case under these rules are not required to use them. The parties are free to opt out of them or modify them to meet the needs of their case.

[2] See e.g., ICDR International Dispute Resolution Procedures, art. 5 (considers the "complexity or other circumstances of the case" as well as its "large size"); London Court of International Arbitration Rules, art. 5 (considers "all the circumstances of the case") and FAQ No. 27 (considers the "sum in issue"); International Chamber of Commerce Rules of Arbitration, art. 8 (one arbitrator is appointed "save where it appears to the Court that the dispute is such to warrant the appointment of three arbitrators"; Article 8 does not mention the criteria for deciding on three arbitrators); Singapore International Arbitration Center Rules, Rule 5.1 (takes into account "the complexity ... or other relevant circumstances of the dispute, including the quantum involved); Stockholm Chamber of Commerce Institute Rules of Arbitration (Stockholm Rules), art. 16, (considers "the complexity of the case ... and other circumstances, including the "amount in dispute"); World Intellectual Property Organization Arbitration Rules, art. 14 (looks to "all the circumstances of the case").

[3] See United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, art. 5 ("if ... the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed"); International Center for Settlement of Investment Disputes (ICSID) Convention on the Settlement of International Disputes Between States and Nationals of Other States, art. 37 ("Where the parties do not agree upon the number of arbitrators ... the Tribunal shall consist of three arbitrators); Stockholm Rules, art. 16 (the tribunal shall consist of three arbitrators unless the Stockholm Chamber taking into account various factors, decides that the dispute should be settled by a sole arbitrator).

[4] AAA Guide to Complex Commercial Cases, 3-5, lists examples of the most frequently requested fields of expertise in large, complex cases, including aerospace, banking, data communications, construction, employment, energy, environmental, health care, insurance, intellectual property, international, real estate, and retired federal and state judges.

[5] See Commentary, AAA Large, Complex Case Procedures, L-2 (Arbitrators).

[6] *Id.*, at L-1 (Administrative Conference).

[7] See AAA-American Bar Association Code of Ethics for Arbitrators in Commercial Disputes, effective March 1, 2004. Eric Tuchmann, "AAA/ABA Revised Code of Ethics Provides Important Guidance on Arbitrators' Conduct," *Metropolitan Corporate Counsel*, available at www.metrocorpcounsel.com, stating: "The Code presumes all arbitrators are neutral, including party-appointed arbitrators. This reverses the presumption of non-neutrality for party-appointed arbitrators that was contained in the 1977 Code." Parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by the special ethics rules appearing in Canon X of the AAA/ABA Ethics Code.

[8] *ABA Standing Committee on the Federal Judiciary: What It Is and How It Works*, 4 (ABA 2007).

[9] The rules of some arbitral institutions provide a list of matters to be considered at a preliminary conference and offer other procedures for managing such conferences. See e.g., AAA Large, Complex Case Procedures, L-3 (Preliminary Hearing) and L-4 (Management of Proceedings).