Abstract

The issue of repeated appointments of arbitrators is gaining increasing importance in the practice of international arbitration. The fact that an arbitrator’s neutrality may be directly impacted when he is nominated by the same party on several occasions cuts to the core of this issue. In a context where jurisprudential and academic works on the subject of ‘repeat arbitrators’ are few, the intention of this piece is to offer a brief description and analysis of the current état de l’art on the matter. Firstly, I introduce the role of an arbitrator in the context of international arbitration. Secondly, I address the relevance of the standards of impartiality and independence in the light of the issue of ‘repeat arbitrators’. Thirdly, I describe some of the factors that come into play when confronted by the possibility of a repeat appointment: namely, the extent to which economic reward, a desire to maintain a pre-existing working relationship between arbitrator and appointing party, and concern for the arbitrator’s reputation influence the reappointment. Fourthly, I suggest two distinct analyses of the situations in which an arbitrator has been repeatedly nominated. On the one hand, I propose the ‘factual repeat arbitrators’ analysis, on the other I propose what I had dubbed ‘legal repeat arbitrators’. I end this section by expounding upon the issue of ‘repeat arbitrators’ by way of the statistics. Finally, I conclude that a determination of an arbitrator’s impartiality and independence is a very subjective one. There are many variables that must be taken into consideration; whilst the idea of being repeatedly appointed may seem attractive to an arbitrator, respect for his own reputation will always play a fundamental balancing role in his decision to accept a repeat appointment.

Keywords

Repeat arbitrator, repeat appointment, impartiality, independence, reputation of arbitrator, factual repeat arbitrator, legal repeat arbitrator.