Part II

Arbitrator Ethics
Arbitrators must consider a significant range of ethical issues beyond the oft-commented-on duties of independence, impartiality, and avoiding conflicts, not least of which is how best to contain costs. Most arbitrators do not think of arbitration costs as an ethical issue. I do.

Arbitrators have an obligation, at the very least, to be sensitive to cost issues and to keep costs down as far as possible. In my judgment, this is a matter of fairness to the parties, fairness being an overarching ethical responsibility that includes many facets in the arbitral process. Costs are one of them. Overly high costs in international arbitration are not only unfair to the parties, particularly if one side has significantly less financial resources than the other, but high costs also diminish the credibility of the process as a dispute resolution mechanism in the eyes of the business community and all users of international arbitration, and on rare occasions may even be contrary to public policy as unfair to impecunious parties.

* The author wishes to thank Christopher Chinn, associate at Baker & McKenzie LLP, for his assistance with this article.

1 The Corporate Counsel International Arbitration Group (CCIAG), for instance, was founded by corporate counsel from major multinational companies in 2006 as a response to rising costs and other problems perceived by users of international arbitration. It was incorporated in France in 2009. More information can be found on its website at http://www.cciag.com/index.html. It will be interesting to see what kinds of commentary will emanate from this and other groups with respect to ethical concerns in arbitration.

2 See, e.g., Awuah v. Coverall N. Am., Inc., No. 08-1920, 2009 U.S. App. LEXIS 1276 at *14 (1st Cir. Jan. 23, 2009) (“Several [U.S.] circuits have agreed that where a plaintiff asserts that excessive arbitration costs deprive the plaintiff of an arbitral forum, a threshold issue is presented for consideration by the court.”).