1 Introduction

The great majority of international investment arbitrations are decided by a three-member arbitral panel, where each party selects one arbitrator, and the presiding arbitrator is selected either by agreement of the parties, the party-appointed arbitrators, or, more often, by a neutral appointing authority. Their selection is not only a characteristic feature of international investment arbitration, but also one of the most important and delicate acts taken by the parties during the proceedings. Indeed, as frequent arbitrator Professor William W. Park noted, while “in real estate the three key elements are ‘location, location, location,’ . . . in arbitration the applicable trinity is ‘arbitrator, arbitrator, arbitrator.’”

The selection of arbitrators is made after serious and in-depth research by counsel, in consultation with the client. It is essential that parties nominate arbitrators that are knowledgeable, capable, and can work together. There is a

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2 See Constantine Partasides, The Selection, Appointment and Challenge of Arbitrators, 5 Vindobona J. 217, 217 (2001) (observing that the ability of the parties to influence the composition of the arbitral tribunal is one of the defining aspects of the arbitral process and that “their power to appoint, and the power to challenge, arbitrators are two of their most powerful tools”).
4 Michael Waibel & Yanhui Wu, “Are Arbitrators Political?,” ASIL Research Forum 13 (Nov. 5, 2011) (noting that “the parties to investment arbitration cases and especially their counsel spend a great deal of time and effort to scrutinize the backgrounds of arbitrators, their relationship with the parties, published works and prior appointments. The time spent on choosing the right arbitrators suggests that the personality and background of the arbitrators matters substantially for arbitration outcomes.”).
lot at stake: the qualifications and arbitral skills of the arbitrators can have significant impact on the conduct and development of the arbitration and, ultimately, on the award and its enforcement.\(^5\) Arbitrators are the adjudicators of essentially all the disputes between the parties. During the course of the proceedings, they will have the power to decide both substantive and procedural issues relevant to parties’ dispute. The quality of the arbitrators is essential for a successful arbitration and, more generally, for the reputation of the arbitration process itself.

This chapter first describes how, and assesses who, to select as arbitrators, it then reviews challenges procedures, and finally explains how arbitrators’ vacancies are filled.

2 The Selection Procedure: How to Select an Arbitrator

The method of appointment of the tribunal is generally found in the legal instruments that contain the parties’ arbitration clause (an investment agreement) or—more often—in the State’s unilateral offer to submit future disputes to international arbitration through a bilateral or multilateral investment treaty or a national investment law. In most cases, each party to the dispute selects at least one arbitrator. The appointment of the third, and presiding, arbitrator as well as default appointments are often made by a neutral appointing authority.

2.1 Party Appointments

In most cases, each party in the dispute selects at least one arbitrator. This gives the parties substantial say on the persons selected to judge their case, and is one of the most important features of international arbitration.\(^6\) As one commentator explains, “the selection of the party-appointed arbitrator

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