

Four factors to consider when selecting an arbitrator

by Jessika Stadwick - j.stadwick@tamimi.com -

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One major difference between arbitration and litigation is that parties to an arbitration participate in the selection of the Tribunal.

This is usually seen as a significant advantage of arbitration. Parties are permitted to propose candidates to act as a sole arbitrator or, in the case of a three-member tribunal, each party is permitted to nominate one arbitrator and the two party-appointed arbitrators appoint the chairman.

Selecting an arbitrator may be one of the most crucial decisions a party will take. There is little recourse against an arbitral award and no right of appeal, so getting a Tribunal capable of understanding the issues is important. Furthermore, arbitrations are conducted without strict rules of procedure so an arbitrator's role is not only to render an enforceable award, but to ensure that the process is expeditious, fair and cost-effective. An arbitration may very well turn on the quality of the arbitrator and for this reason [choosing arbitrators](#) is a critical phase of the process.

Most institutional rules do not provide much guidance with respect to the qualifications or skills needed to be an effective arbitrator, other than to say an arbitrator must be independent and impartial. Expanding on the institutions' guidelines, we have detailed an additional four factors to consider when selecting a candidate:

1. Choose an Arbitrator with a Manageable Caseload

When vetting candidates inquire into their caseloads. Ask whether the arbitrator can devote sufficient time and attention to the parties' dispute, and nominate the arbitrator whose schedule permits taking on the case.

It is no secret that well-known arbitrators are highly sought after and their caseloads can be considerable. Indeed, they may have months in their diary booked up far in advance. Choosing an arbitrator with a heavy caseload can lead to scheduling conflicts which may delay the proceedings and affect the parties' right to a speedy resolution. It is therefore recommended that the ability of the arbitrator to take on the case be a top consideration.

This however is not an unbreakable rule. In some circumstances busy schedules are not a concern. When specific legal or professional expertise are required and time permits, it may be sensible to appoint the arbitrator best suited to the case, rather than one who could resolve the dispute faster.

2. Choose an Arbitrator with the Requisite Legal and Professional Expertise

A significant advantage of participating in the selection process is the ability to choose a decision maker with expertise that mirrors the nature of the dispute. For example, in certain disputes an engineering background or experience in the oil and gas industry may be essential to achieve a satisfactory result and avoid the need to waste time explaining basic industry concepts and norms.

There is often a tendency to choose an arbitrator with a formal legal education, but this need not always be the case. A formal legal education and legal experience can increase the likelihood of

receiving a well-reasoned and legally sound award, and an experienced lawyer will likely have the appropriate judicial demeanor and familiarity with international commercial matters to resolve complex factual or legal issues. However in certain circumstances, particularly where the dispute involves a niche industry, it may be more sensible to appoint an arbitrator with a particular professional expertise.

To this end, parties should thoroughly investigate candidates. In particular, review CVs, conduct online research and consult with colleagues.

3. Take into Consideration the Arbitrator's Nationality

In arbitrations where the parties are of different nationalities, arbitral institutions (such as the Dubai International Arbitration Centre or the DIFC-LCIA) often direct that a sole arbitrator or chairman of the tribunal cannot have the same nationality as one of the parties. The parties are of course permitted to agree otherwise in writing. The rationale behind this rule is to prevent a real or perceived bias in the proceedings.

In a three-member tribunal, party appointed arbitrators may have the same nationality as a party. Choosing an arbitrator of the same nationality is often sensible because then at least one member of the tribunal will have a good understanding of the culture, business practices and customs of the country where the party is from.

4. Choose an Arbitrator with Strong Management Skills

The absence of strict procedural rules can lead to a prompt, efficient arbitral process tailor-made to the dispute at hand. This flexibility in the process is a primary advantage of arbitration. If not managed properly however, the absence of procedural rules can lead to protracted disagreements between the parties, thereby causing delay and the incurrence of unnecessary costs.

To ensure the arbitral process is administered in an efficient, cost-effective manner, the parties should choose a strong arbitrator capable of managing people as well as the process.

When vetting a candidate in respect of their management skills, the practical considerations include whether the candidate has a good judicial demeanor, is familiar with the arbitration process and is comfortable dealing with different cultures, legal systems, and the tensions which inevitably run high during disputes.

Practical Tip

To identify a suitable arbitrator ask for recommendations from colleagues. Word of mouth still reigns supreme when compiling a list of candidates. Also ask legal counsel for their recommendations, most firms will keep a list of arbitrators they have used in the past or who have a good reputation. Arbitral institutions also have lists of arbitrators, although these lists may not be made public unless you are using the institution. Another excellent resource is professional networks for dispute resolution practitioners, such as the Chartered Institute of Arbitrators, which has a searchable database of arbitrators (www.ciarb.org).