

Is arbitration losing its luster?

Furthering efficiency in international arbitration

Martin Molina – Partner

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Inefficiencies in the arbitral process

Arbitration has become increasingly **complex**, generating inefficiencies in terms of **time** and **costs**

Stages at which inefficiencies may occur:

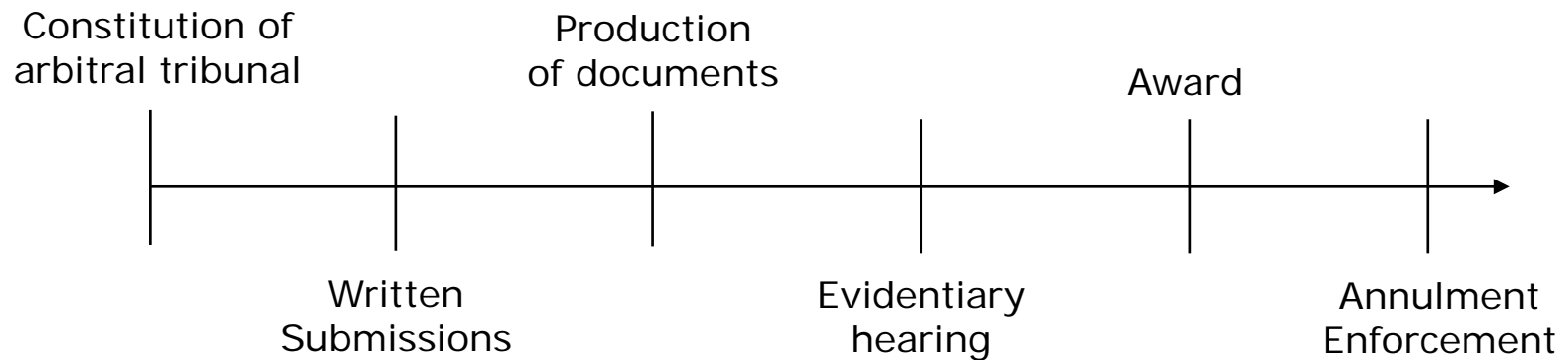


Chart 30: Aspects of the arbitration that contribute most to length of proceedings



Possible Remedies...



THE GOOD THE BAD AND THE UGLY

Possible Remedies

Constitution of Tribunal

- Appointment of a Sole Arbitrator
- « Getting Rid of the Presiding Arbitrator »

Early Determination of [Preliminary] Issues

- Bifurcating the proceedings
- Rendering one or more partial awards
- [Also: limiting the scope of the proceedings, in particular evidentiary hearing]

Written Submissions

- Number and sequence
- Short time limits
- Page limits

Possible Remedies

Evidence

- Documents only?
- Limiting or excluding document production
- Fact witnesses: written witness statements
- Expert witnesses: list of areas of agreement

Award

- Summary reasons
- Time limit for issuing the award
- Time limit on arbitrator's mandate?

Rules on Expedited (Fast-Track) Procedure: Art. 42 Swiss Rules; WIPO Expedited Rules

...and their perceived effectiveness

Chart 9: Rate the following methods for their effectiveness in expediting arbitral proceedings in your arbitrations over the past 5 years:

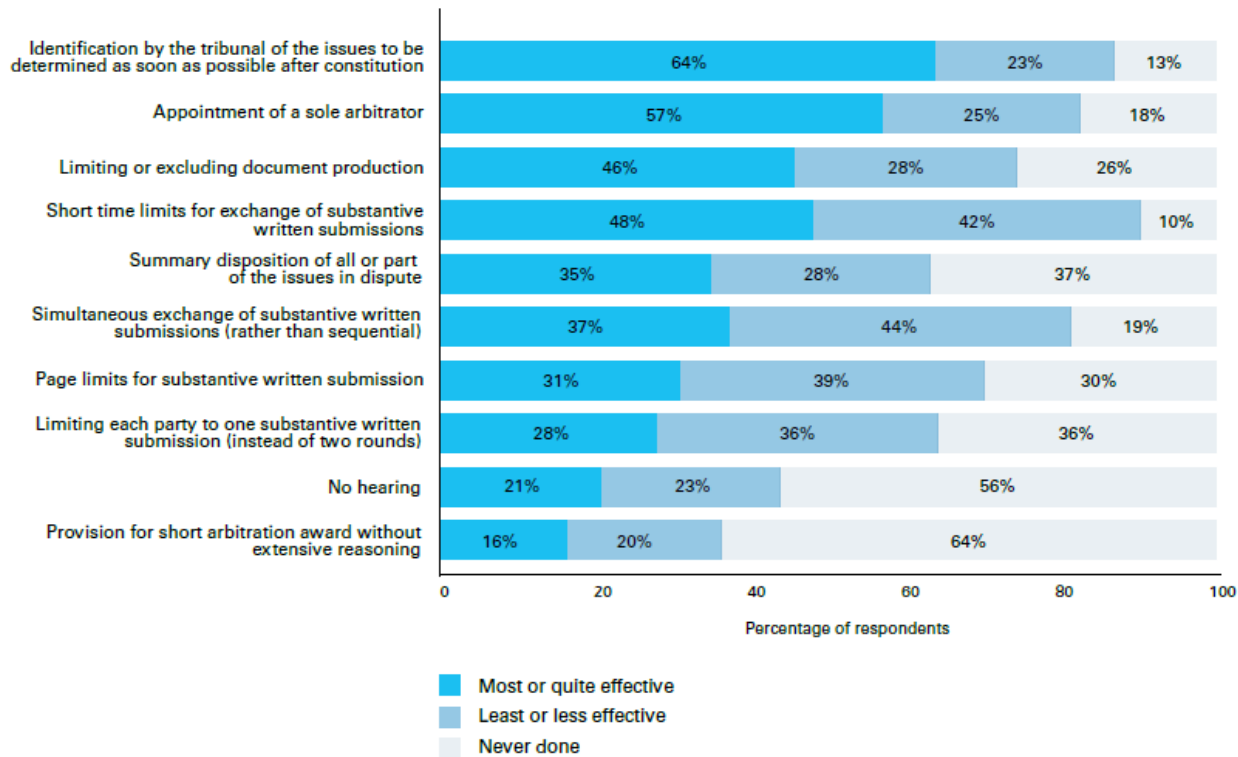
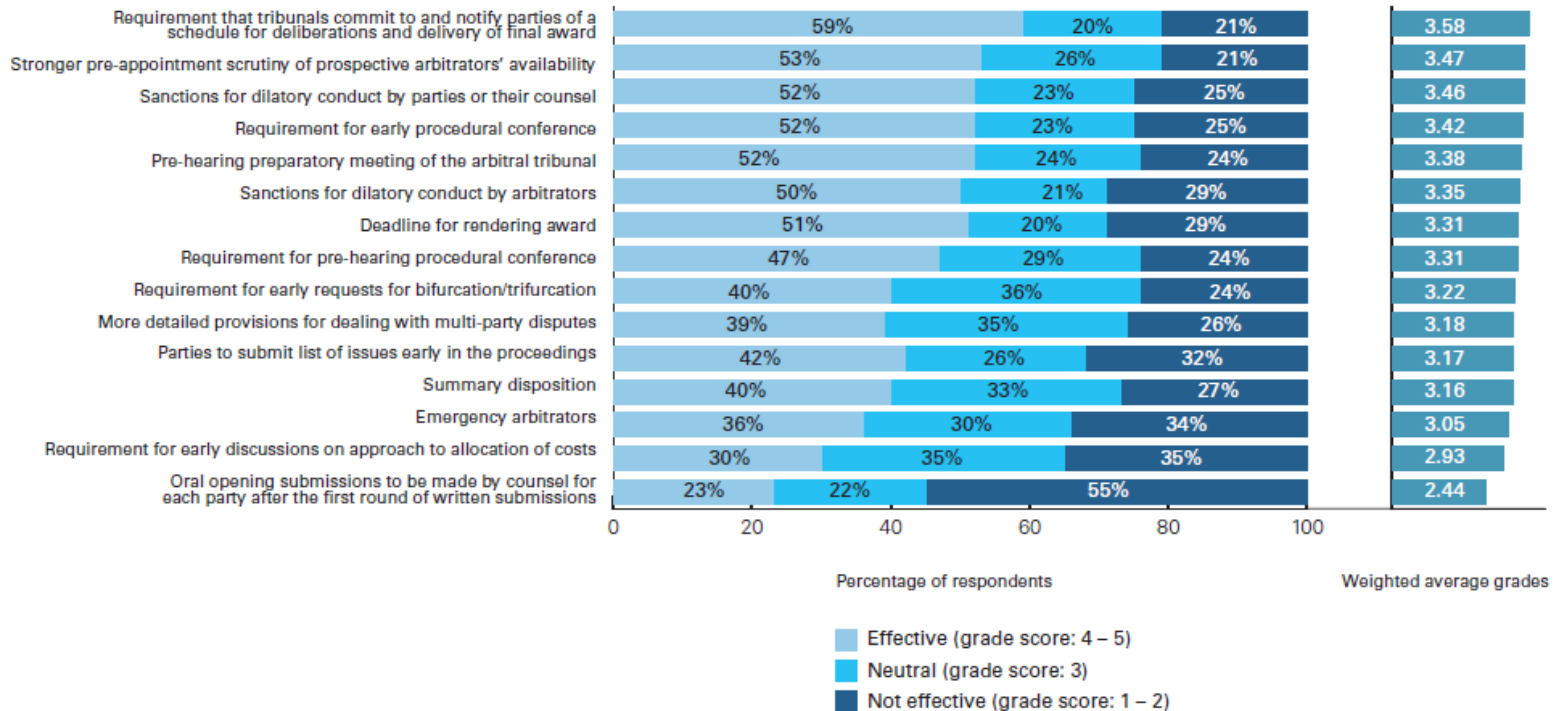


Chart 19: How effective are each of the following innovations that could be included in arbitral rules and procedures to help control time and cost?



Room for improvement / Proposals for innovation

Re-thinking the role of the arbitrators...

...and of the parties (and their counsel)

Innovative measures to further efficiency:

- As soon as possible after constitution:
 - Case management conference / Terms of reference
 - List of issues with “decision tree”

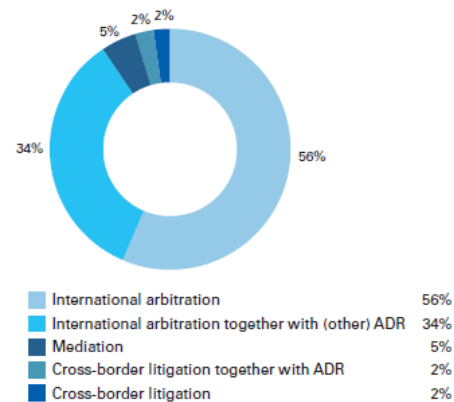
- After first round of written submissions:
 - Preliminary assessment
 - Settlement facilitation)?

- Award:
 - Incentives for expeditiousness
 - Sanctions by way of decision on costs

Conclusion

Arbitration is still – by far – the preferred method of resolving cross-border disputes

Chart 1: What is your preferred method of resolving cross-border disputes?



Responsibility of the parties and their counsel, but also of arbitrators and institutions to ensure that arbitration retains one of its key assets: efficiency.



Martin Molina

lic. iur., LL.M., Attorney at Law, Partner

Rämistrasse 5
8024 Zurich

Direktwahl +41 58 200 39 00
martin.molina@kellerhals-carrard.ch