

---

---

**THE LEADING  
ARBITRATORS'  
GUIDE TO  
INTERNATIONAL  
ARBITRATION**

---

---

Third Edition

*Editors*

Lawrence W. Newman  
Richard D. Hill

**JURIS**

**Questions About This Publication**

For assistance with shipments, billing or other customer service matters,  
please call our Customer Services Department at:

1-631-350-2100

To obtain a copy of this book, call our Sales Department:

1-631-351-5430

Fax: 1-631-351-5712

Toll Free Order Line:

1-800-887-4064 (United States & Canada)

See our web page about this book:

<http://www.arbitrationlaw.com>

Copyright 2014

JurisNet, LLC

---

All Rights Reserved

Printed in the United States of America

ISBN 978-1-937518-33-2

Juris Publishing, Inc.

71 New Street

Huntington, New York 11743

USA

[www.arbitrationlaw.com](http://www.arbitrationlaw.com)

---

# THE LEADING ARBITRATORS' GUIDE TO INTERNATIONAL ARBITRATION

---

## ~TABLE OF CONTENTS~

PREFACE TO THE THIRD EDITION.....	ix
PREFACE TO THE SECOND EDITION.....	xi
PREFACE TO THE FIRST EDITION.....	xiii
ABOUT THE EDITORS .....	xv
ABOUT THE CONTRIBUTORS.....	xvii
Perspectives on International Arbitration.....	1
<i>Chapter 1</i>	
THE HISTORY OF INTERNATIONAL COMMERCIAL ARBITRATION—A SKETCH ..... <i>Baron (Michael) Mustill</i>	3
<i>Chapter 2</i>	
INTERFERENCE BY NATIONAL COURTS ..... <i>Jan Paulsson</i>	33
<i>Chapter 3</i>	
ADR AND ARBITRATION ..... <i>Robert B. Davidson and David Plant</i>	63
<i>Chapter 4</i>	
WHOSE ARBITRATION IS IT ANYWAY—THE PARTIES' OR THE ARBITRATION TRIBUNALS? ..... <i>V.V. Veeder</i>	87

<b>Chapter 5</b>		
CONFIDENTIALITY .....	<i>Michael Pryles</i>	109
<b>Chapter 6</b>		
RESPONSIBILITY OF ARBITRATORS AND ARBITRAL INSTITUTIONS.....	<i>Pierre A. Karrer</i>	161
<b>Chapter 7</b>		
THE ETHICS OF INTERNATIONAL ARBITRATORS .....	<i>Catherine A. Rogers and Jeffrey C. Jeng</i>	175
<b>Chapter 8</b>		
THIRD PARTY FUNDING OF INTERNATIONAL ARBITRATIONS .....	<i>Stephen Jagusch</i>	207
<b>Chapter 9</b>		
REAL AND FEARED ARBITRATOR CONFLICTS OF INTEREST .....	<i>Mauro Rubino-Sammartano</i>	247
<b>Chapter 10</b>		
THE ROLE OF THE PRESIDENT OF THE ARBITRAL TRIBUNAL.....	<i>Paulo Michele Patocchi and Robert Briner</i>	281
<b>Chapter 11</b>		
INTERNATIONAL ARBITRATION FROM THE PERSPECTIVE OF CORPORATE COUNSEL .....	<i>Richard D. Hill</i>	305
<b>Chapter 12</b>		
PERSPECTIVES ON FUTURE DEVELOPMENTS IN INTERNATIONAL ARBITRATION .....	<i>Karl-Heinz Böckstiegel</i>	315

<b>The Arbitral Proceeding .....</b>	<b>331</b>
<b>Chapter 13</b>	
THE TRIBUNAL'S APPOINTMENT .....	<i>Gerald Aksen</i> 333
<b>Chapter 14</b>	
EMERGENCY ARBITRATORS .....	<i>Grant Hanessian</i> 343
<b>Chapter 15</b>	
INTERIM MESURES.....	<i>Alan Redfern</i> 367
<b>Chapter 16</b>	
THE ORGANIZATIONAL MEETING .....	<i>Klaus Reichert</i> 405
<b>Chapter 17</b>	
ORGANIZING AN INTERNATIONAL ARBITRATION: PRACTICE POINTERS .....	<i>Albert Jan van den Berg</i> 415
<b>Chapter 18</b>	
THE ROLE OF THE ARBITRATOR IN DETERMINING THE APPLICABLE LAW .....	<i>Emmanuel Gaillard</i> 437
<b>Chapter 19</b>	
THE PARTY-APPOINTED ARBITRATOR: FURTHER REFLECTIONS.....	<i>Andreas F. Lowenfeld</i> 469
<b>Chapter 20</b>	
THE DUTIES OF AN ARBITRATOR .....	<i>Martin Hunter and Allan Philip</i> 477
<b>Chapter 21</b>	
CONTROLLING TIME AND COSTS IN ARBITRATION .....	<i>Christopher Newmark</i> 491

<b>Chapter 22</b>	
OBJECTIONS TO JURISDICTION	
..... <i>Sigvard Jarvin and Alexander G. Leventhal</i>	507
<b>Chapter 23</b>	
THE ROLE OF THE SECRETARY TO THE ARBITRAL	
TRIBUNAL..... <i>Pierre Tercier</i>	531
<b>Chapter 24</b>	
THE CIVIL LAW APPROACH TO DISCOVERY:	
A COMPARATIVE OVERVIEW OF THE TAKING	
OF EVIDENCE IN THE ANGLO-AMERICAN AND	
CONTINENTAL ARBITRATION SYSTEMS	
..... <i>Giorgio Bernini</i>	555
<b>Chapter 25</b>	
DETERMINING THE EXTENT OF DISCOVERY	
AND DEALING WITH REQUESTS FOR	
DISCOVERY: PERSPECTIVES FROM THE	
COMMON LAW	
..... <i>Charles N. Brower and Jeremy K. Sharpe</i>	593
<b>Hearings and Witnesses</b> .....	631
<b>Chapter 26</b>	
THE CONDUCT OF THE HEARINGS ..... <i>Bernard Hanotiau</i>	633
<b>Chapter 27</b>	
ADVOCACY IN INTERNATIONAL ARBITRATION	
..... <i>C. Mark Baker</i>	655
<b>Chapter 28</b>	
CROSS-EXAMINATION IN INTERNATIONAL	
ARBITRATION—OPPORTUNITIES AND	
CHALLENGES .....	<i>Lawrence W. Newman</i> 677

<b>Chapter 29</b>	
WITNESS CONFERENCING .....	<i>Hilmar Raeschke-Kessler</i> 689
<b>Chapter 30</b>	
NON-SIGNATORIES AND INTERNATIONAL ARBITRATION.....	<i>William W. Park</i> 707
<b>Chapter 31</b>	
WITNESS STATEMENTS: USE AND ABUSE .....	<i>Eric A. Schwartz and Rocío Digón</i> 755
<b>Arbitration, Awards and Post-Hearing Matters</b> .....	787
<b>Chapter 32</b>	
IS THERE A LIFE AFTER THE AWARD? .....	<i>Alexis Mourre</i> 789
<b>Chapter 33</b>	
THE ARBITRAL AWARD .....	<i>Bernardo M. Cremades</i> 813
<b>Chapter 34</b>	
THE TRIBUNAL'S DELIBERATIONS.....	<i>L. Yves Fortier</i> 831
<b>Chapter 35</b>	
ASSESSING EXPERT EVIDENCE .....	<i>Sophie Nappert and Fabricio Fortese</i> 837
<b>Chapter 36</b>	
ACCESSING DAMAGES IN INTERNATIONAL ARBITRATION: PRACTICAL CONSIDERATIONS .....	<i>Hilary Heilbron</i> 857
<b>Chapter 37</b>	
THE DYNAMICS OF DELIBERATION MEETINGS AND DISSENTING OPINIONS .....	<i>Ugo Draetta</i> 889

<b>Chapter 38</b>	
ANNULMENT AND ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS: A PRACTICAL PERSPECTIVE .....	<i>Hans Smit</i> 909
<b>Investment and Other Disputes</b> .....	925
<b>Chapter 39</b>	
ARBITRATION INVOLVING STATES .....	<i>Kaj Hobér</i> 927
<b>Chapter 40</b>	
ARBITRATING INVESTMENT DISPUTES .....	<i>Francisco Orrego Vicuña</i> 985
<b>Chapter 41</b>	
ARBITRATING INTERNATIONAL CONSTRUCTION DISPUTES .....	<i>John Uff</i> 1011
<b>Chapter 42</b>	
INTERNATIONAL ARBITRATION IN OIL, GAS AND ENERGY .....	<i>James M. Gaitis and Thomas W. Wälde</i> 1029
<b>INDEX</b> .....	1079