

THE ISSUE OF REPEAT ARBITRATORS: IS IT A PROBLEM AND HOW SHOULD THE ARBITRATION INSTITUTIONS RESPOND?

*Houchih Kuo**

ABSTRACT

The issue of repeat appointments of the same arbitrator by the same party or counsel or to related proceedings has been a much debated and discussed topic by the international arbitration community. This paper highlights potential problems the practice through a comparative review of case law and proposes ways arbitral institutions can address this growing concern.

This paper argues that although repeat appointments may be an inevitable outcome of limits in the number of the skilled and experienced arbitrators, such appointments can create justifiable doubts as to the arbitrator's independence or impartiality if an arbitrator has a history of ruling in favor of his appointer, has a financial or other personal stake in the outcome, or has become financially dependant upon the same appointer. As a result, the issue of repeat arbitrators can jeopardize public trust and faith in international arbitration.

In response, arbitral institutions should take steps to address this trend by requiring their arbitrators to disclose past and present repeat appointments made by the same party or counsel and by instituting a clear policy that allows the arbitrator to know when he or she should disclose past engagements and whether his or her integrity could be questioned by repeat appointments.

KEYWORDS: *repeat appointments, arbitrator challenge, independence,*

* Head of International Arbitration Division, Chinese Arbitration Association, Taipei, Adjunct Assistant Professor, Chihlee Institute of Technology, Attorney-at-Law (New York), J.D. (McGeorge School of Law), LL.M. (George Washington University Law School), M.A. (National Taiwan University), B.A. (University of British Columbia). The author would like to thank Jeff Jeng, Brian Lin, Jennifer Yapp and Josh Wenger for their invaluable comments. The author can be reached at hkuo@arbitration.org.tw.

impartiality, standards of disclosure, arbitrator ethics, counsel ethics