



# The Constitution of the Tribunal

Jack Graves



# Constituting the Tribunal

Selection of the arbitrator(s)

Choice

Arbitrator disclosures and neutrality

Challenging the appointment of an arbitrator



# Selection of Arbitrators

One or three arbitrators?

Party choice of one or three effective

Model Law Article 10 defaults to three  
(as do UNCITRAL Rules)



# Selection of Arbitrators

Parties may generally appoint – Model Law 11

Subject to any institutional limits

Institution appoints if party fails

But what if no institution?

Need appointing authority –  
UNCITRAL Rules address





# Selection by the Parties

May select single if agreeable, but unlikely

Thus, single often selected by institution  
or appointing authority



# Selection by the Parties

Parties more typically choose one of three arbitrators

And party appointed arbitrators choose chair

Party arbitrators must also be neutral

Many rules strictly limit *ex parte* communications with arbitrator to be selected by party

Choose based on CV, reputation, publication, etc.





# Disclosure & Standards of Neutrality

Model Law Art. 12 requires each arbitrator to be:

Impartial: No actual or perceived partiality as to matter or parties

Independent: No financial or other personal interest in outcome

Available

Disclosure: Must disclose any information likely to give rise to justifiable doubts as to either impartiality or independence





# Challenges to an Arbitrator

May challenge arbitrator:

Based on lack of impartiality and/or independence

Based on qualifications

By appointing party only if new information



# Challenges to an Arbitrator

Challenge procedure  
based on law or rules



# Challenges to an Arbitrator

Key Issue is who decides challenge

Tribunal under Model Law Article 13 (no rules)



# A Constituted Tribunal

Once a tribunal is constituted, it may function in a manner similar to a court of law

Tribunal will control the process going forward, which will typically lead to an award

Tribunal typically first addresses any jurisdictional issues raised by the parties





