



JURIDISKA FAKULTETEN  
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# The Stockholm Centre for Commercial Law

## Section for Arbitration and Other Dispute Resolution

In cooperation with the School of International Arbitration,  
Queen Mary, University of London

## Arbitrators: Private Judges, Service Providers or Both?

**Venue: Stockholm University, Aula Magna**

**Date: 10 - 11 May 2007**

(All speakers are confirmed but there may be some small adjustments to the program schedule and the assigned topics.)

This event is sponsored by the Law Firms Friends of the SCCL

## Program

### Thursday, 10 May

- 13:00 – 13.30      **Registration**
- 13.30 – 13.45      **Welcome and introduction**  
Speaker: **Johan Gernandt**
- 13.45 – 15.00      **Session I: Relationships between arbitrators and parties**  
Session chair: **Johan Gernandt**
- 13.45 – 14.30 **Part A: Theories and problems**  
First speaker: **Patrik Schöldström**  
Second speaker: **Emilia Onyema**
- Part A of this session will present theories concerning relationships between arbitrators and parties. Should those relationships be regarded as being based on contract or status (in German: Amt), or something else? The main issue for discussion will be the strengths and weaknesses of these analyses.
- 14.30 – 15.00 **Part B: Practical problems**  
First speaker: **Carita Wallgren**  
Second speaker: **Teresa Giovannini**
- Part B of this session will deal with some practical problems that parties and arbitrators may encounter at the outset of the arbitration, during the arbitration and after the arbitral award has been rendered.
- 15.00 – 15.30      **Coffee break**

**15.30 – 17.00      Session II: Elements in legislation and case law in selected countries consistent or inconsistent with a contractual or other analysis of relationship(s) between arbitrators and parties**

Session chair: **Per Runeland**

**15.30 – 16.15 Part A: Common law**

First speaker: **David St. John Sutton**

Second speaker: **Richard Kreindler**

**16.15 – 17.00 Part B: Civil law**

First speaker: **Gerold Zeiler**

Second speaker: **Claes Zettermarck**

One issue for discussion is whether the selected countries may be said generally to take a contractual approach to the relationships between arbitrators and parties. Other issues for discussion are particular legislative provisions and cases.

**Optional Dinner**

**Friday, 11 May**

**09.00 – 10.30      Session III: The arbitrator as an administrator of justice**

**Session chair: Lars Heuman**

**09.00 – 09.45 Part A: Scope of arbitrator's authority and powers**

**First speaker: Julian Lew**

**Second speaker: Joseph Lookofsky**

The main issue for discussion is whether the arbitrator's authority and powers ultimately are controlled by the parties. If they, for example, instruct the arbitrator to apply the law of a certain country, is the arbitrator's award at all binding on the parties if the arbitrator does not follow that instruction?

**09.45 – 10.30 Part B: Rights/duties/powers of the arbitrator in relation to mandatory rules of law**

**First speaker: Luca Radicati di Brozolo**

**Second speaker: Giuditta Cordero Moss**

The main issue for discussion is whether the parties control the application or non-application of mandatory rules of law. If the parties jointly instruct the arbitrator not apply (or consider or take into account) such rules, should the arbitrator be bound by such instructions? What happens if the arbitrator does not follow the instructions?

**10.30 – 11.00      Coffee break**

**11.00 – 12.30      Session IV: The arbitrator as a provider of services**

Session chair: **Patricia Shaughnessy**

**11.00 – 11.45 Part A: Rights and duties of arbitrator**

First speaker: **John Fellas**

Second speaker: **Siegfried Elsing**

Part A of this session will deal with what rights and duties (whether contractual or not) an arbitrator is considered to have in relation to the parties. Rights to be dealt with include remuneration (level, maturity, advance, fixing), withholding of performance, termination and damages. To be dealt with are also remedies (whether contractual or not) that may be exercised against the arbitrator, such as – using contract terminology – specific performance, termination and damages.

**11.45 – 12.30 Part B: Agreeing on – or contracting in and out of – rights and duties as arbitrator. Applicable law**

First speaker: **Jeffrey Hertzfeld**

Second speaker: **Julian Lew**

Part B of this session will be about the possibility to modify whatever rights and duties the arbitrator may have, for example, by operation of law. For example, if the arbitrator by operation of law is immune from liability in damages, may he contract out of that immunity and into liability?

Part B of this session will also be about the question of law applicable to the relationship between the arbitrator and the parties. Failing agreement, is it the arbitrator's "home" law or the law of the seat of the arbitration or perhaps the law governing the arbitration agreement?

**12.30 – 13.30      Lunch**

**13.30 – 14.45      Session V: Relationships in institutional arbitration**

Session chair: **Tore Wiwen-Nilsson**

**13.30 – 14.15 Part A: The relational matrix.  
Who has what rights, duties and powers in  
relation to whom, and why?**

First speaker: **Mark Appel**

Second speaker: **Yu Jianlong**

Third speaker: **Jan Ramberg**

An institutional arbitration involves at least four participants: two parties, one arbitrator and one arbitral institution. One main issue for discussion is the (contractual) structure of the relationships. Another issue for discussion is the relevance for those relationships of the arbitral institution's rules and of the arbitration agreement incorporating those rules.

**14.15 – 14.45 Part B: Rigidity and flexibility of  
institutional rules – to what extent may rules be varied?**

First speaker: **Jim Morrisson**

Second speaker: **Ulf Franke**

The main issue for discussion is whether institutional rules may be varied to an extent not foreseen by the rules themselves. For example, may the parties contract out of the scrutiny of the award by the ICC Court?

**14.45 – 15.15      Coffee break**

**15.15 – 16.45      Session VI: Concord, conflict and interaction between roles as justice administrator and service provider**

Session chair: **Hans Bagner**

First speaker: **Patrik Schöldström**

Second speaker: **Loukas Mistelis**

Third speaker: **Giuditta Cordero Moss**

This session aims at bringing together the two aspects of the arbitrator's mandate that have been dealt with separately in the previous sessions. One issue for discussion is if the arbitrator must do certain things as a justice administrator even if the arbitrator as a service provider is entitled not to do so. For example, must the arbitrator as justice administrator order a hearing even if the arbitrator accepted appointment on the condition that it was a documents-only arbitration? Another issue for discussion is whether an arbitrator (or prospective arbitrator) is prevented, because of the position as a private judge, from bargaining with only one of the parties concerning the arbitrator's rights and duties as a service provider, for example, concerning remuneration.

**16.45 – 17.00      Session VII: Summing up**

Speakers: **Loukas Mistelis and Patrik Schöldström**

**For registration and information contact: [sccl@juridicum.su.se](mailto:sccl@juridicum.su.se)**

There is no conference fee although there is a fee for the optional dinner

**This event is sponsored by the Law Firm Friends of the  
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