

## **Tripartite Tribunal – Party Arbitrators**

### **1. Introduction**

A tripartite tribunal is a commonly used structure in arbitration proceedings, particularly in international commercial arbitration. It consists of three arbitrators: one appointed by each party (known as party-appointed arbitrators) and a third presiding arbitrator (often called the chairperson), who is either jointly selected by the party-appointed arbitrators or appointed by an arbitral institution.

This document focuses on the role, functions, duties, and controversies surrounding party-appointed arbitrators within a tripartite tribunal.

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### **2. Composition of a Tripartite Tribunal**

A tripartite tribunal typically includes:

- **Claimant's Arbitrator** – appointed by the claimant
- **Respondent's Arbitrator** – appointed by the respondent
- **Presiding Arbitrator (Chairperson)** – jointly selected or institutionally appointed

This structure aims to balance party autonomy with neutrality in decision-making.

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### **3. Concept of Party Arbitrators**

Party-appointed arbitrators are individuals selected by each disputing party. Their appointment allows parties to have confidence in the tribunal by choosing someone with relevant expertise, legal background, or familiarity with the dispute's subject matter.

Unlike judges in traditional courts, party arbitrators are chosen by the disputing parties themselves, which introduces unique expectations and challenges.

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### **4. Role and Functions**

Party-appointed arbitrators perform several important functions:

#### **4.1 Participation in Proceedings**

They actively participate in hearings, procedural decisions, and deliberations.

## **4.2 Contribution to Decision-Making**

Each arbitrator has equal voting power in rendering the final award, regardless of who appointed them.

## **4.3 Ensuring Fair Representation**

They help ensure that each party's perspective is adequately understood during deliberations.

## **4.4 Selection of the Presiding Arbitrator**

In many cases, the two party-appointed arbitrators collaborate to appoint the presiding arbitrator.

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# **5. Duties and Obligations**

Despite being appointed by parties, arbitrators must adhere to strict standards:

## **5.1 Independence**

They must be free from external influence, including from the appointing party.

## **5.2 Impartiality**

They must not favor the party that appointed them.

## **5.3 Disclosure**

They are required to disclose any potential conflicts of interest.

## **5.4 Confidentiality**

All proceedings and deliberations must remain confidential.

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# **6. Legal and Ethical Standards**

International arbitration frameworks impose clear guidelines:

- **Institutional Rules** (e.g., ICC, LCIA, UNCITRAL)
- **IBA Guidelines on Conflicts of Interest**

These standards reinforce that party-appointed arbitrators are not representatives or advocates, but neutral decision-makers.

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## **7. Advantages of Party Arbitrators**

### **7.1 Party Confidence**

Parties feel more secure knowing they have appointed an arbitrator.

### **7.2 Expertise**

Parties can select arbitrators with specialized knowledge.

### **7.3 Balanced Tribunal**

Ensures both sides have equal input in tribunal composition.

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## **8. Criticisms and Challenges**

### **8.1 Perceived Bias**

There is a common perception that party-appointed arbitrators may favor their appointing party.

### **8.2 Strategic Appointments**

Parties may appoint arbitrators expected to be sympathetic to their case.

### **8.3 Dissenting Opinions**

Party-appointed arbitrators are more likely to issue dissenting opinions.

### **8.4 Delay and Cost**

Disagreements between arbitrators can slow proceedings.

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## **9. Neutrality vs. Party Expectations**

A central tension exists:

- Parties may expect loyalty from their appointed arbitrator
- Legal standards require complete neutrality

Modern arbitration strongly emphasizes neutrality, and failure to comply may lead to challenges or removal of the arbitrator.

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## 10. Removal and Challenge of Party Arbitrators

Arbitrators may be challenged if:

- There is a conflict of interest
- They demonstrate bias
- They fail to act independently

Most arbitration rules provide formal procedures for such challenges.

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## 11. Role in Deliberations

During deliberations:

- All arbitrators must engage in good faith discussion
- Decisions are typically made by majority
- The presiding arbitrator often plays a coordinating role

Party-appointed arbitrators contribute equally to reasoning and final outcomes.

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## 12. Conclusion

Party-appointed arbitrators are a defining feature of tripartite tribunals. While they enhance party autonomy and confidence, they also raise concerns regarding impartiality and independence. Modern arbitration frameworks seek to balance these competing interests by enforcing strict ethical and legal standards.

Ultimately, party-appointed arbitrators are expected to act as neutral adjudicators, ensuring fairness, efficiency, and legitimacy in the arbitration process.

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## 13. References (Suggested)

- UNCITRAL Arbitration Rules
- ICC Arbitration Rules
- LCIA Arbitration Rules

ADR Global, Inc. ● Washington, D.C. ● (888) 249-0559●[www.adrglobal.net](http://www.adrglobal.net)

- IBA Guidelines on Conflicts of Interest in International Arbitration
- Redfern and Hunter on International Arbitration