gar

The international journal of commercial and treaty arbitration

MANNHEIMER SWARTLING

100

The guide to specialist arbitration firms **2013**

Fully revised and updated
6th annual edition

THE GAR 100

London. A group of international arbitration students are about to receive the first lecture of their course. Each year, it's broadly the same.

"This is the *White Book*," their teacher will say – a partner at a London law firm – as he holds up a copy of the *White Book* – the UK's court rules of procedure. "It's two volumes and takes up this amount of space on your shelves."

He measures a breeze block with his hands. "It tells you everything that can happen in a High Court case.

"And this is the ICC rules," he says, holding up, well, a pamphlet. "It's about this thick," he says, picking up an imaginary cat in a finger-pinch. "But ICC arbitration is no less complex than High Court litigation."

"The difference between those two thicknesses" – he does the pinch and the breeze block again – "is what international arbitration lawyers know. And it's not written down."

It's that unwritten lore that gives rise to this book. Because unless you have it, you don't stand much chance of successfully navigating a process that, frankly, is unique within the law. A leading textbook on the subject – *Redfern & Hunter on International Arbitration* – observes that a stranger stumbling into an international arbitral hearing might fail to spot that a legal process was underway. It would likely be in a hotel room or training room somewhere. There would be two small groups on one side of the table; on the other, a trio with possibly a bit more grey hair. Something would clearly be going on, but it's all very informal. There's no audience, no usher and little hint of pomp or ceremony. It could perhaps be mistaken for a training course (apart from the presence of a stenographer).

And yet millions, possibly billions, could be at stake. As business has globalised, international arbitration has become the world's commercial court. And more recently, a check on capricious government too. To give you just a hint at what goes on, in the past 10 years, two regional telecoms businesses have acquired new owners thanks to the rulings of arbitral tribunals. Recently, arbitrators told Ecuador to pay $2billion to Occidental. The sums are huge.

Being an international arbitration advocate isn't everyone's cup of tea. For a start, there can be enormous amounts of travel. Second, you'll have to navigate all sorts of legal and cultural issues – ranging from the mindset of the opposing lawyer to working under some other nation's law.

A big ICC case from a few years ago should help to illustrate. On one side, a Middle Eastern government with a strong Islamic tradition; on the other, the two international oil companies. The arbitrators are French, Belgian and English. Although the hearings physically take place in Europe, the law to be applied is Middle Eastern. One of the law firms finds it must convey all of its advice to the client orally – the client puts a ban on the use of written memorandums.

So it can be hot and grimy work. The clients who require international arbitration help are not necessarily nice, listed companies that document things properly and are governed by commercial logic. Indeed, many arbitrations have their roots in the cut-throat politics of resource-rich states, which adds another dimension. Or opposing counsel may be a handful – either because they're so aggressive (thanks to different ethical rules), or just inept and lost in the process. A lawyer who holds him or herself out as skilled in the area must be au fait with all these things.

It's little wonder some don't like it. A *GAR* reporter once sat next to a mid-level associate at a dinner who went on at length about how much he'd loathed his stint in international arbitration. He said that some of the rough-house tactics he'd seen were appalling.

He isn't alone. Quite a few lawyers who step across from litigation report feeling almost seasick in this world where case procedure can be entirely ad hoc.

Over the years, more and more big commercial law firms have come to regard international arbitration as a unique skill set. It all began in the early 1990s when firms such as Freshfields, Clifford Chance and Shearman & Sterling began to centralise international arbitration work. (Other firms resisted the fashion. One leading name of his era tried for years to get his managing partner to follow suit – to no avail. A few years later, the managing partner heard Freshfields described as a "specialist arbitration firm" by a big client – and immediately changed his tune.)

These days, many law firms can supply a client with a lawyer or two who has worked most of his or her career in international arbitration.

And their clients are the better for it. Because, as should be clear by now, international arbitration is all about ringcraft. And when someone who has that ringcraft takes on someone who doesn't, the former pretty much always has the upper hand.

It's not just because they know how to address the chairman of the tribunal (although there is that, and indeed some funny stories about arbitrators being addressed as "your excellency" and "your Holiness" by US plaintiff's lawyer types).

Rather, it's because at some point they'll misjudge the occasion. Perhaps when cross-examining they will "come out of the blocks at 100 miles per hour against an elderly Swiss professor," as one source remembers seeing. Such a tactic "may be appropriate in a courtroom, but will play badly in front of arbitrators, especially if they are also Swiss professors!"

Or they may inadvertently prick the curiosity of an arbitrator, say, by suggesting that a topic is off limits; forgetting that arbitrators have broader powers to go where they wish. Or they may simply come across as rather condescending. A lot of lawyers from certain legal traditions, when dealing with those from others, naturally are.

Matthew Weiniger – a partner with Herbert Smith in London (and the visiting professor whose students get the breeze-block/cat-pinch comparison) – recalls being pretty much gifted a case by a naïve opponent.

That opponent – a reasonable UK corporate firm ("you'd immediately know them") and a QC ("who was brilliant but doing his first arbitration") – misconstrued a key procedural order. That led them to hand over more documents than they needed to – "the good and bad documents – everything, including internal client memos." Weiniger romped through the cross-examination, as the better prepared. The arbitrator's order, it so happened, was a fairly standard formulation.

Does Weiniger get gifts of that type often? "I'm used to it," he says. "Usually there are more subtle things."

There may have been a more high-profile example recently. In 2011, a joint venture proposal between BP and Rosneft imploded after BP lost an arbitration. It was noted by the cognoscenti in London that BP's chosen law firm isn't super-famous for international arbitration; whereas the opponent's was.

In the end, there's no escaping the old adage, "know your judge" – or its even more important other half, "make sure your judge knows you". The longer any advocate spends in the presence of their adjudicators, the better they will tend to do. The advantage arises for two reasons: improved intuition and the fact that the advocate arrives in front of them with personal capital.

"QCs, in the High Court, are brilliant because they know those panels inside out and that style of advocacy," according to London international arbitration specialist, who asked to speak on condition of anonymity so he could be fully frank.

"Laurence Rabinowitz QC [a well-known UK advocate for commercial cases from One Essex Court] can appear before any judge and they know him: 'Ah, Mr Rabinowitz – very interesting and nice to see you!' The same thing applies in international arbitration. For example, I've got a case right now in front of [a leading international arbitrator]. Every time I go to a conference, he's there ... we read each other's books. My opponent, in comparison ... he hasn't got a clue.

"If you take all the partners in our group," the source adds, "then we've appeared before every single arbitrator worth knowing. Not just once, but multiple times in the past few years. We have the inside knowledge as a result of that. So that means, if I pick up the phone to [names a leading arbitrator] because I want to appoint them, I know they're going to phone back.

"QCs in the high court are brilliant, because what they have is ringcraft. But when it comes to international arbitration, I have the ringcraft."

Another specialist confirms this view. He says he wishes more of his opponents were international arbitration purists because it is more efficient. "I would love to do more cases against Freshfields," this source says. "I tell clients: If this were against Freshfields, I'd get you a deal in two days. It would be over. But because we've got these idiots we're probably going to have to fight for years."

Sophisticated clients, as it happens, get this. They see the value of specialist international arbitration counsel. A survey★ published in 2006 found that three-quarters of in-house counsel interviewees would seek a lawyer they regarded as an international arbitration advocate rather than a litigator. (They defined specialisation as a mix of reputation, amount of work undertaken and experience. In the interim, more law firms have caught religion and created their own international arbitration groups.)

So the challenge now is finding those specialist counsel.

The book you are holding may help. Six years ago, *Global Arbitration Review* conceived the *GAR 100* as vehicle to identify at least 100 firms one can consider "approved" in this discipline. To gain inclusion, a firm would have to open its books to our researchers and allow us "audit" exactly what they'd been up to. Broadly, we've used the criteria identified in that survey: reputation; amount of work undertaken; and experience.

With this edition – our sixth – the number of approved firms is 151, and more countries than ever are covered (at least 40). We've added 16 new firms since the last edition. Once again, it's a mix of large and small practices – sometimes as small as one person (if that person is sufficiently well-known).

As well as adding new firms, we've continued to improve our descriptions of firms. Many now include extra sections outlining the history of the practice – and in particular (where information could be obtained) its lineage (ie, connection with key figures of the past).

Similarly, we set increasing store by a track record of success (while recognising that success is a relative concept – a "win" can be a loss and a "loss" can be win.) It's not unreasonable to expect an arbitration group to win, from time to time, as it goes about its general work.

The research period for all data in the book is 1 August 2010 to 1 August 2012. All the other information is correct as of 1 January this year.

The editorial team is enormously grateful to the firms who responded to this year's request for current information. We're also grateful to various colleagues within *Law Business Research* – particularly Tom Barnes and Nina Nowak from *Who's Who Legal* – for their contribution. On a personal note, I'd like to thank the many international arbitration lawyers – young and old – who have taken time over the years to explain the nuances of their craft to me. I also owe a big thank you to the rest of the *GAR* writing team who have to fit writing this in with their other reporting, and features editor Sebastian Perry for organising the whole process.

David Samuels
January 2013

★ *International Arbitration: a study into corporate attitudes*, by PricewaterhouseCoopers and the School of International Arbitration, London.

Mannheimer Swartling

People in *Who's Who*:	3
Pending cases as counsel:	68
Value of pending counsel work:	US$31 billion
Treaty cases:	2
Current arbitrator appointments:	19 (11 as sole or chair)
No. of lawyers sitting as arbitrator:	8

The firm picked up a GAR Award in 2012 for its special contribution to arbitration culture in Sweden

Sweden has blessed and encouraged private dispute resolution as long as it has had a legal code. The Stockholm Chamber of Commerce has had an arbitral institution since 1917 and an arbitration act since 1929, and there is almost no such thing as commercial litigation in Sweden (aside from employment cases). As a result, Swedish lawyers grow up with arbitration as part of their professional DNA.

In the 1970s, the US and USSR adopted Sweden for the resolution of their trading disputes, turning it into one of the first centres for international arbitration. In the 1980s, China followed suit.

Little wonder, then, that one of the biggest local practices, Mannheimer Swartling, has emerged to such an extent on the international scene.

Formed by a merger in the early 1990s, members of the firm have long been at the forefront of the practice in Sweden. Mannheimer Swartling lawyers represented Swedish interests in the UNCITRAL working groups that developed the Model Law and related projects.

The firm also represented a series of US oil companies before the Iran-US Claims Tribunal.

Today, the practice area is a dominant group within the 400-lawyer firm, and the team is often the highest-ranked firm from a civil law jurisdiction in the *GAR 30*. The practice is led by the country's foremost arbitration academic and arbitrator, Kaj Hobér.

Many of its other members are also active in the wider life of the arbitration community. Jakob Ragnwaldh is a member of the SCC Arbitration Institute's board, while Nils Eliasson is now on the ICC national committee on arbitration in Hong Kong and has also helped to found a group for young practitioners in the region. Robin Oldenstam, who is a member of the *GAR* editorial board, is head of the Swedish Arbitration Association. All those partners also sit as arbitrators, as do Olle Flygt, Stefan Brocker and Alexander Foerster.

Network

Besides three offices in Sweden, the practice group has senior members on the ground in Moscow, Hong Kong and Frankfurt.

Who uses it?

RosInvestCo, a distressed-debt fund that invested in Yukos shares, used the firm in a major SCC case against the Russian government. Vattenfall, Endesa, Stena RoRo, Edison and Norwegian chemicals company Yara are all also clients, along with various Russian businesses the firm can't name.

Track record

The firm won RosInvestCo damages – but not very much. In a 2010 award, the arbitrators said the investors had known the shares faced dire prospects when they bought them in an intra-company deal at a knock-down price, so weren't entitled to any extra compensation. Still, Mannheimer Swartling and their collaborators – Hughes Hubbard & Reed and V V Veeder QC – were the first lawyers to obtain a liability ruling against Russia in a *Yukos* case.

Partners Kaj Hobér and Kristoffer Löf successfully defended mobile carrier Tele2 in a US$728 million ICDR arbitration in New York related to an M&A transaction that took place in 2003 in Russia. The 2011 award rejected the claims against Tele2 and awarded costs and fees to the company.

The same partners led counsel to Yara in an SCC arbitration against Russia's Acron over a fertiliser joint venture, which settled after hearings in 2011 achieving what Yara set out to do from the outset.

The firm has also helped obtain settlements worth €200 million – for Edison in a gas-pricing dispute with Promgas (working with Squire Sanders & Dempsey) and for Vattenfall in the first-ever ICSID claim against Germany (working with German firm Luther). It also managed to reverse a series of anti-enforcement rulings from Russian courts in a long-running matter for Stena RoRo.

Recent events

At the 2012 *GAR* Awards in Stockholm, Mannheimer Swartling jointly received a trophy with the SCC Arbitration Institute and its former secretary general, Ulf Franke, for making a special contribution to international arbitration culture in Sweden.

The firm lost partner Johann von Pachelbel from its Frankfurt office when he departed for K&L Gates in January 2012.

However, it has been a good year for some of its other partners: Hobér launched a new one-year master's programme in investment treaty arbitration at Uppsala University, where he was appointed professor of international investment and trade law in Aprill; the course will accept its first batch of students in autumn 2013. He was also appointed to the independent arbitral appointments committee of the new Scottish Arbitration Centre, whose role will be to select arbitrators when parties fail to do so or if they specify that the centre should select them.

Following his promotion to Mannheimer Swartling's partnership in January 2012, Löf was elected to the board of Young Arbitrators Stockholm in June. He has also been appointed to the advisory board of the newly launched Stockholm International Hearing Centre.

The firm was instructed to act for Vattenfall against Germany again, this time over the shutdown of the country's nuclear power stations in response to the Fukushima crisis (the first case accused Germany of backtracking over plans to construct a coal-fired plant in Hamburg). It is currently acting for Edison in an UNCITRAL arbitration in Vienna over a production-sharing agreement for oil and gas exploration in Croatian territory on the North Adriatic Sea, and for China's Xuzhou Excavator Manufacture in a HKIAC arbitration seated in Hong Kong against John Deere Construction and Forestry.

Rank	Firm	No. in *Who's Who Legal*	Pending cases (as arbitrator)	Merits hearings completed in two years	Jurisdictional hearings completed in two years	Bet-the-company hearings	Pending cases as counsel	Value of current portfolio as counsel (US$ billion)
1 (1)	FRESHFIELDS BRUCKHAUS DERINGER	15	69	57	3	8	280	80
2 (2)	WHITE & CASE	14	49	51	14	7	223	73
3 (3)	SHEARMAN & STERLING	5	21	31‡		11	85	155*
4 (4)	KING & SPALDING	12	36	24	3	3	61	47
5 (5)	WILMER CUTLER PICKERING HALE & DORR	5	51	8	16	2	81	84
6 (11)	SKADDEN ARPS SLATE MEAGHER & FLOM	5	11	15	4	5	48	58
7 (14)	CURTIS MALLET-PREVOST COLT & MOSLE	3	7	8	6	6	57	120
8 (10)	HERBERT SMITH	10	23	34	9	1	82	25
9 (7)	DEBEVOISE & PLIMPTON	6	20	8	2	3	53	49
10 (8)	HOGAN LOVELLS	1	20	44	13	2	96	37.3
11 (21)	DECHERT	4	64	17	12	2	48	Unknown
12 (12)	ALLEN & OVERY	6	36	22	2	0	101	"Several billion dollars"
13 (6)	CLIFFORD CHANCE	6	31	60	8	1	150	35
14 (-)	COVINGTON & BURLING	4	16	14‡		3	23	15
15 (19)	NORTON ROSE FULBRIGHT	10	45	49	6	2	258	38
16 (13)	LALIVE	7	69	11	0	1	48	250†
17 (30)	BAKER BOTTS	5	6	12	N/A	2	18	125*
18 (-)	CLEARY GOTTLIEB STEEN & HAMILTON	1	13	14	2	1	63	120*
20 (19)	SCHELLENBERG WITTMER	5	61	11	1	0	28	4
20 (15)	DLA PIPER	3	24	33	4	2	121	64.4
21 (-)	ARNOLD & PORTER	2	10	13	0	1	21	10
22 (22)	MANNHEIMER SWARTLING	3	19	20	5	1	68	31
23 (9)	BAKER & MCKENZIE	6	43	48	5	1	220	45
24 (16)	CMS	2	71	57	6	0	85	21
25 (17)	CLYDE & CO	1	29	66	5	1	500§	25
26 (-)	DE BRAUW BLACKSTONE WESTBROEK	0	0	17	0	2	30	6.5
27 (-)	WEIL GOTSHAL & MANGES	3	8	16	7	0	40	7
28 (-)	FOLEY HOAG	2	4	7	5	2	31	59
29 (-)	WONGPARTNERSHIP	1	20	12	2	0	40	4.5
30 (-)	SQUIRE SANDERS	1	10	11	N/A	2	27	13

Footnotes

* includes the *Yukos* claim of US$114 billion

† includes one state-state matter valued at "hundreds of billions"

‡ includes jurisdictional hearings

§ includes maritime and commodities work