**Getting it Right in International Arbitration**

**Panel 1: Improving Quality**

**Panel 2: Reform Functus Officio?**

**Wednesday, November 17, 2021 / 12:00 – 2:00pm New York**

**Webinar**

**CLE Reading List**

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| 1. ["The Governing Law: Fact or Law?" A Transnational Rule on Establishing Its Contents](https://nyiac.org/wp-content/uploads/2021/11/2-G.Kaufmann-Kohler-00969798.pdf)   By Gabrielle Kaufmann-Kohler from *Best Practices in International Arbitration* ASA Swiss Arbitration Association Conference, Zurich, Edited by Markus Wirth, Association Suisse (January 2006). |
| 1. [The Arbitrator and the Law: Does He/She Know It? Apply It? How? And a Few More Questions](https://nyiac.org/wp-content/uploads/2021/11/1-G.Kaufmann-Kohler-00950000.pdf)   By Gabrielle Kaufmann-Kohler, Arbitration International, Volume 21 Number 4. |
| 1. [The Case for Distributing Draft Arbitration Awards](https://nyiac.org/wp-content/uploads/2021/11/The-Case-for-Distributing-Draft-Arbitration-Awards-1.pdf)   By Lawrence W. Newman and David Zaslowsky | New York Law Journal (January 2021). |
| 1. [How Far Should an Arbitrator Go to Get it Right?](https://nyiac.org/wp-content/uploads/2021/11/3-J.-Kirby-How-Far-Should-an-Arbitrator-Go-to-Get-It-Right.pdf)   By Jennifer Kirby, from the book *The Powers and Duties of an Arbitrator*edited by Patricia Shaughnessy and Sherlin Tung. |
| 1. [Arbitration in Autumn](https://nyiac.org/wp-content/uploads/2021/11/5-R.-Park-WWP-Arbitration-in-Autumn.pdf)   By William W. Park, Journal of International Dispute Settlement (2011). |
| 1. [The Functus Officio Problem in Modern Arbitration and a Proposed Solution](https://nyiac.org/wp-content/uploads/2021/11/2020855-FunctusOfficioProbleminArbitrationProposed.pdf')   Report of the Arbitration Committee of the New York City Bar Association (April 2021). |
| 1. [Arbitrators' Authority to Reconsider and Modify Awards under US Law: Functus Officio and Beyond](https://nyiac.org/wp-content/uploads/2021/11/Arbitrators-Authority-To-Reconsider-and-Modify-Awards-Under-US-Law-Functus-Officio-and-Beyond.pdf)   By Yasmine Lahlou, Andrew L. Poplinger, Silvia Marroquin, Chaffetz Lindsey LLP, with Practical Law Arbitration, Practical Law (April 2021). |
| 1. [There’s Many a Slip: *Obrascon Huarte Lain SA v Qatar Foundation for Education, Science and Community Development*](https://nyiac.org/wp-content/uploads/2021/11/Theres-many-a-slip_-Obrascon-Huarte-Lain-SA-v-Qatar-Foundation-for-Education-Science-and-Community-Development-_-Arbitration-Blog.pdf)   By George Burn, Practical Law Arbitration Blog (August 2020). |
| 1. [Challenges to Arbitrators](https://nyiac.org/wp-content/uploads/2021/11/Challenges-to-arbitrators.pdf)   By Practical Law Arbitration (maintained). |
| 1. [Evidence in International Arbitration](https://nyiac.org/wp-content/uploads/2021/11/Evidence-in-international-arbitration.pdf)   By Practical Law Arbitration (maintained). |
| 1. [Expert Evidence in International Arbitration](https://nyiac.org/wp-content/uploads/2021/11/Expert-evidence-in-international-arbitration.pdf)   By Practical Law Arbitration (maintained). |
| 1. [How Do I Appoint an Arbitrator?](https://nyiac.org/wp-content/uploads/2021/11/How-do-I-appoint-an-arbitrator.pdf)   By Practical Law Arbitration (maintained).   1. [The Arbitration Toolkit](https://nyiac.org/wp-content/uploads/2021/11/The-arbitration-toolkit.pdf)   By Practical Law (maintained). |

*A request for CLE credit is pending for NY.  To receive credit, please record the code(s) that will be displayed on the screen during the program and submit the CLE and evaluation forms. You must provide your state bar/ARDC number in order to receive credit.*

**Program Hosts:** NYAW Co-Hosts, Chartered Institute of Arbitrators New York Branch (CIArbNY) and New York International Arbitration Center (NYIAC)

**12:00-1:00pm Panel 1**

**Getting it Right: How Arbitrators, Counsel and Institutions Can Improve the Quality of the Arbitral Process**

This panel of leading arbitrators and counsel will explore possible ways to improve the quality of what we deliver to users of the arbitration process. In particular, what can stakeholders – arbitrators, counsel and arbitral institutions –

do to build party trust and confidence in international arbitration.

• What obligations (if any) do counsel have as advocates in a case to improve the quality of the arbitral process?

• What arbitrator best practices can enhance the decision-making process and the conduct of an arbitration so as to increase the likelihood of getting the process and award “right”?

• Should arbitral institutions contribute to the quality of the tribunal’s award and if so, how?

Moderator:

Professor Gabrielle Kaufmann-Kohler ⎪Partner, Lévy Kaufmann-Kohler ⎪ Geneva, Switzerland

Speakers:  
Adriana Braghetta ⎪ Independent Arbitrator, Adriana Braghetta Advogados ⎪São Paulo, Brazil

Dyalá Jiménez Figueres ⎪ Independent Arbitrator, DJ Arbitraje ⎪ San José, Costa Rica

Joseph E. Neuhaus, FCIArb ⎪ Partner, Sullivan & Cromwell LLP ⎪ New York, NY, USA

Elliot E. Polebaum ⎪ Independent Arbitrator, Polebaum Arbitration ⎪ Washington, D.C., USA

**1:00-2:00pm Panel 2**

**Getting it Right: Should the Functus Officio Rule be Reformed?**

Under the common law doctrine of *functus officio*, courts have barred arbitrators from correcting errors in their final awards. The rules under which most commercial arbitrations are conducted generally, expressly forbid arbitral tribunals from correcting anything other than clerical, typographical or computational errors.

• Should there be a different approach for partial final awards?

• Does the functus officio doctrine lead to more set-aside applications to courts?   Does it lead to more incorrect awards?

• Should institutional providers revise their rules to permit substantive corrections, and, if so, under what circumstances?  Could the parties address this in the organization of the arbitration?

• What about draft awards? Would that improve the quality of the result?

Moderator:

Richard F. Ziegler, FCIArb ⎪ Independent Arbitrator, Acumen ADR ⎪ New York, NY, USA

Speakers:

Martin F. Gusy ⎪ Partner, Bracewell LLP ⎪ New York, NY, USA

Eduardo Silva Romero ⎪ Partner & Co-Chair of International Arbitration Global Practice, Dechert LLP

Professor Janet Walker, C.Arb, FCIArb ⎪ Independent Arbitrator, Arbitration Place and Outer Temple Chambers & York University Osgoode Hall Law School ⎪ Toronto, Canada

Professor Anne Marie Whitesell ⎪ LLM Program & Faculty Director, Program on International Arbitration and Dispute Resolution, Georgetown Law School ⎪ Washington, D.C., USA