

Simon Gabriel

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Biography

Simon is the founder of Gabriel Arbitration in Zurich. He has participated in over 80 international arbitration proceedings as chairman, co-arbitrator, sole arbitrator and legal counsel. Simon, admitted to all Swiss courts, holds a PhD in dispute resolution and an LLM in common law advocacy. Before opening his firm in 2012, he worked in the arbitration team of an international law firm. Simon is the Swiss delegate at the ICC Arbitration Commission and endorsed in many arbitrator panels.

Describe your career to date.

I studied law in Switzerland, Canada and the UK; completed my PhD in Lucerne, Switzerland; and started as an associate in a major international law firm in Zurich.

When I experienced the conflict-of-interest-problems at big law firms, I decided to open my own shop and become available in cases where everybody else had conflicts.

This idea came at the right time, and with a bit of luck Gabriel Arbitration has been growing ever since.

What did you find most challenging about starting your own firm?

As solo practitioner you do not have any opportunity for cross-selling. I had clients asking me for M&A services that I did not offer, but at the same time there wasn't an M&A department, with returning clients, that sent arbitration cases to me.

That is a new challenge when you come from a big full-service law firm.

On what types of matters do clients come to you most frequently at present?

Personally, I sit in various cases as arbitrator at the moment. Increasingly, more senior colleagues tend to choose me as chair, if they need somebody who is already experienced, but still motivated to do the footwork.

As counsel, I have recently represented, with my team, cases concerning international sales, infrastructure projects, energy and post-M&A issues.

What are the most significant trends affecting arbitration?

The focus on the highest degree of independence for arbitrators is currently strong, and in particular advocated by the ICC.

The instrument of security for costs enjoys increasing interest against the

background of an increase in third-party funding. Institutions such as VIAC and SCC have recently adopted rules in this regard.

And, of course, diversity remains a huge issue in and beyond the arbitration community.

Switzerland has an interesting style for witness hearings. How does the common law examination approach translate to proceedings in civil law countries?

Indeed, I have experienced a Swiss chairman who interrupted counsel during cross-examination and stated: "Could you please ask more open questions? I am tired of hearing this witness just saying 'yes' all the time."

This anecdote illustrates how different the expectations of a persuasive cross-examination can be. In my experience, it is useful in Swiss hearings, with Swiss arbitrators, to mix the classic closed cross-examination questions with some open questions, just to show that one is not afraid of the witness's answers. It goes without saying that the topics for these open questions must be carefully chosen and the relevant parts of the cross-examination must still be in closed questions.

Such a mix is, in any event, more favourable than the chair ordering that all questions should be asked in an open manner.

How do you think arbitration will change over the next five years?

Arbitration will (and has to) become more efficient.

Medium-sized parties in medium-sized cases, in particular, are fed up with huge legal teams making a fuss about every potential procedural eventuality. The problem is that arbitrators often shy away

from being proactive in the organisation of the proceedings – they fear that they may affront the parties, who should be the masters of their case. Parties' counsel, at the same time, are not prepared to agree on efficient procedural measures as this might backfire at a later stage, and they might be blamed for that by their own clients. Therefore, they typically agree on the safest way forward, which is rarely the most efficient one. In this environment, new ideas for pro-active arbitrators pop up such as the recent Prague Rules.

In my view, the ability of international arbitration to become more efficient will be key for a positive development of this dispute resolution method in the coming years.

What distinguishes your firm from others in the market?

Gabriel Arbitration is one of very few law firms in Zurich that exclusively specialises in arbitration, and it communicates this specialisation in its trade name.

As a result of this high degree of specialisation, we can offer small and powerful teams where typically two experienced persons are responsible for an entire case. These two define the strategy, implement it and personally know the file by heart. Furthermore, they are available and able to discuss the case with the client at any time.

This approach is, in my view, one of maximum efficiency.

What is your proudest achievement to date?

Apart from having learned to dance the Argentine tango (which I thought I could never do), my proudest achievement is the successful "greenfield" founding of an arbitration law firm in Zurich.

WWL says: *Simon Gabriel is "a sharp and bright arbitrator and party representative" who is recognised for his "profound knowledge of the law". One source says, "He is my number one choice in Switzerland."*