

# **PROMOTING EFFICIENCY IN INTERNATIONAL ARBITRATION**

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## **Arbitration practitioners at Debevoise & Plimpton are seeking to establish a new Protocol, which they hope will encourage good practice worldwide**

The international arbitration practitioners at Debevoise & Plimpton have long focused on finding solutions to the problems of increased costs and delays that threaten the process, so that our clients can continue to enjoy its benefits: a neutral forum, input into selecting the decision-maker and nearly worldwide enforceability of awards, among others.

Several years ago, I published an article, based on a speech originally given in Madrid as the first Hugo Grotius Lecture, called, "Towards a New Paradigm in International Arbitration: The Town Elder Model" (Arbitration International, 2008). In the article I encouraged arbitrators, parties and counsel to reduce procedure in international arbitrations only to that which is necessary for each case.

In April 2010, our firm took another significant step by issuing the Debevoise & Plimpton Protocol: to Promote Efficiency in International Arbitration. We made a public commitment that we would continue to conduct arbitrations in a manner that focuses on efficiency, as well as success, for our clients. The Debevoise Protocol describes 25 specific procedures that we will explore with our clients in each case: we hope that by making such a public commitment, other counsel will also make a pledge to conduct cases in an efficient manner.

If more law firms follow this model, it will, of course, be easier for us to achieve that goal for our clients. First, we will work to ensure that arbitrators in our cases have sufficient availability to conduct the case efficiently and to issue an award within three months of the final submission. Unfortunately, increasingly busy arbitrators have led to greater delays in issuing awards. It is incumbent on arbitrators to do their work quickly and intensely once the parties have finished theirs.

En un esfuerzo por reducir costes y eliminar retrasos innecesarios que ponen en riesgo la atracción que hasta ahora tenía el uso del arbitraje internacional, expertos de Debevoise & Plimpton sugieren unos principios de buenas prácticas para mantener las ventajas que ofrece el arbitraje internacional a las empresas, incluyendo la selección del profesional con autoridad para decidir y la opción de que el laudo sea reconocido a nivel internacional, afirma David W. Rivkin socio de las oficinas de Nueva York y Londres.

By filing a detailed statement of claim with a request for arbitration, the arbitrators and parties can focus on the procedures that are appropriate for the case. As the Debevoise Protocol states, "we will use our experience in crafting such procedures, and we will not simply adopt procedures that follow the format of prior cases." An early procedural conference is critical. We encourage client attendance at all meetings with the arbitrators, because greater involvement in the process by them inevitably leads to better and more efficient procedures. Among other procedures, we often focus on the use of preliminary issues, which we have used quite successfully to win cases for our clients without the need for a hearing on all issues.

The Debevoise Protocol encourages the use of the standards of the IBA Rules of Evidence, which provide an appropriate balance of interests regarding the production of documents. We commit to work with opposing counsel to determine the most costeffective means of dealing with electronic

documents, as well as greater use of electronic filings. We promote the use of written witness statements as direct testimony, meetings of experts, and briefing of legal issues, rather than presenting legal experts, as steps that we have found make arbitration procedure more efficient.

During hearings, video conferencing and time limitations can often be useful. Most importantly, we discourage arbitrators from almost automatically requesting substantial post-hearing briefs. The Debevoise Protocol states, "we will consider in each case whether they would be helpful in promoting the efficient resolution of the issues," and when they are appropriate, "we will ask the tribunal to identify the issues on which it may benefit from further exposition and seek to limit briefing to such issues."

Finally, the Debevoise Protocol includes creative procedures to achieve settlements. We believe that arbitrators can more frequently be asked jointly by the parties to provide preliminary views. In addition, where applicable rules or laws permit, it may be advisable to make a settlement offer "without prejudice except as to costs." Such an offer could shift costs if the final award is not better for the opposing party than the settlement offer. The threat of that shift may cause the opposing party to consider a settlement offer much more seriously.

David W. Rivkin is a partner in the New York and London offices of Debevoise & Plimpton. He can be contacted via [dwrivkin@debevoise.com](mailto:dwrivkin@debevoise.com). The Debevoise Protocol may be found in English, Spanish and Portuguese at [www.debevoise.com/arbitrationprotocol](http://www.debevoise.com/arbitrationprotocol)