FINAL TRANSCRIPT

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**ACC - Practical Issues In Dispute Resolution

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CORPORATE PARTICIPANTS

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PRESENTATION

Unidentified Company Representative

(starts in progress) ... Corporate Counsel. The role of Association of Corporate Counsel will be explained in short my Mrs. (inaudible) Head of the same (ph) branch.

Unidentified Company Representative

Hello, welcome to our seminar. Thank you for making an opportunity for organizing the seminar. I would like to give a short overview of the Association in the (inaudible) for corporate lawyers, which can help you with networking and communicating your problem. And for more information you can ask directly me after the seminar or you can visit our Web pages, which is www.acca.com. Thank you.

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

So let me introduce yourself (ph). My name is Martin Hrodek and I am partner in charge of Disputes Resolution Department of Baker McKenzie Clark office. Disputes Resolution Department was established 5 years ago. And now we have about 5 lawyers who regularly attend court hearings and (inaudible) work on regulation matters.

This presentation, Practical Approach To Dispute Resolution will kind of make for some of our clients, who has involved in many litigation-arbitration cases, and this focus on practical methods not on those methods which can be read in books or commentary.

This presentation is for your benefit. Please do not hesitate to ask questions or to send questions by email if you have registered for the presentation through Web-cast. You can ask those questions in the course of the presentation and they will be answered. Questions which will be send by emails will be answered when they arrive or at the end of the presentation.

So, you probably have the first page of the presentation. So and go to the page number 2. There is summary of the presentation. In this presentation, we will focus on practical issues, which relate to the relationship between litigation and arbitration. Why? So, in case that this issue has not been addressed in commentaries to many clients is not clear how it works, in various options to issue a litigation or arbitration and how do they arrive to a (inaudible).

The point 2, differences between litigation and arbitration in practical terms. In this part of the presentation we will focus on practical differences between the litigation and arbitration which will then enable you to select the proper dispute resolution mechanism.

In point 3, general principles of conduct in dispute resolution. In point 2, we will explain what are the differences, but in point 3, we will go to joint issues. After all, these 2 types of proceedings are similar. It is dispute resolution. So many things which should be done and which should not be done are the same in both types of proceedings.

Role of Alternative Dispute Resolution. Alternative dispute resolution is quite new in the region of Central Europe. And it is maybe not very known to potential participants in this type of resolution. So we will introduce you to alternative dispute resolution as especially to mediation and explain to you basic characteristics of that. And that would enable you to understand how it can help you to solve certain types of disputes. So that will be point 4.

And then we will touch several principles of effective legal writing in dispute resolution. Why we think that this is important? If a memorandum or letter or agreement is written and then it is signed, it will make a big difference, whether it was written in plain English or in plain Czech.

But if some submissions, which are intended to influence judge or arbitrator are poorly written, it may happen that the judge won't read them. So this is why it is important particularly (ph) of introduction several points. Of course it is much more complex issue.

And if we are going through the presentation, if you have some questions, do not hesitate to ask me. I will respond to them including practical questions.

So please go to slide number 3. Relationship between litigation and arbitration. There are many theories, which describe what is arbitration. How it should be used. And what is its relation to litigation. One traditional theory says that arbitration is an exemption to the general jurisdiction of courts, which cover normally all types of disputes, which are within jurisdiction of courts. Of course there are other disputes, which are solved by agreement of the (ph) bodies.

This traditional theory comes from our judge (ph) and Czech arbitration law, (inaudible) Validation Act, has been influenced by Austrian arbitration law. And it is in effect there from 1950 or 1960. The arbitration law in the Czech Republic was the same as the arbitration law in Austria.

So, how to achieve that? How to achieve that arbitration that the disputes can be solved in arbitration? The basis of that is arbitration agreement. And there are disputes, what is the measure of arbitration agreement? Whether it is authentic for agreement or procedure of law agreement and providing view is that it is procedural law agreement. What does that mean or what is this practical effect of this?

This kind of agreement can be amended in the course of the proceedings or even executed in the course of the proceedings. It is not necessary to sign the agreement. It is enough just to agree if arbitration action is filed with Arbitration Court just to transact and to stop arguing from therein. And arbitration agreement is in fact refuted.

Because arbitration and jurisdiction are the safest (ph), it's based on agreement it can be changed in the course of arbitration. The parties may decide to terminate their arbitration agreement and go to court to solve that dispute. It is of course rare that it's going to happen if arbitration panel is not working properly.

And also vice versa. It is possible to switch from litigation to arbitration, execute arbitration agreement and without (ph) litigation. Of course one important thing must be remembered. It is statute of limitation. But statute of limitation can be addressed contractually. It can be extended, if necessary.

What is the basic rule, quite well known in the Czech Republic but not so common in international arbitration and in foreign jurisdiction, it is who rules on jurisdiction? If arbitration is initiated, the rule is that arbitrator's rule or jurisdiction. But both arbitrators -- both arbitrators which sit at the arbitration panel, in some cases, yes, in some cases, arbitrators from the arbitration court may rule on jurisdiction.

Under rules of Prague arbitration court, for domestic disputes, arbitrators who were appointed by the parties may rule on jurisdiction. And may ask the Board of the arbitration court of -- ask them for their opinion whether it is within jurisdiction or is it not within jurisdiction.

But in international disputes, which are held before this court, it depends (ph) on this court or both of that court rules own jurisdiction. So as the arbitrators as well as jurisdictional challenge, they have to pass the files to the board and the board will solve that.

And same situation is under ICC rules. Another thing or similar situation is under ICC rules. Under ICC rules, the court, just rules on the jurisdiction preliminarily. And if the court is satisfied that there is fine arbitration agreement without going into deep detail, then they pass the files to arbitrators who can then hear jurisdictional charge and decide whether they have jurisdiction or not.

Jurisdictional charges are quite open in arbitration, in domestic and also in international arbitration. And why? It is difficult to say why but we can say that arbitration traditionally was perceived that gentlemen style of solving disputes. But now it's far from that.

Now parties which are involved in arbitration are multinational corporations or companies which are outlooked (ph) by their owner. So, really everything will then come to when the proceedings, and if jurisdictional charge can help them or can, somehow prolong the arbitration they're filing.

Is jurisdiction important? And why it should be addressed properly in the court arbitration. It is important because a lack of jurisdiction can be a ground for challenging arbitration of court after these issues and one of the most common reasons for settling awards outside. That happens, not very often but may happen.

So now we will go to slide number 4.

Unidentified Audience Member

May I ask a question?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

Yes. Of course.

Unidentified Audience Member

(inaudible) if there is any charge that was given to you, if the final decision from litigation purpose was done as the (inaudible) through or (inaudible) personal litigation front?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

Yes, there is.

Unidentified Audience Member

If there are not arbitration (inaudible), is there any chance to recover the (inaudible) is there any or (inaudible) litigation?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

There are various option -- this kind of option to most jurisdictions which are party single (ph) or convention and it gets consolation of arbitration awards for very, very limited reasons. Normally the court cannot review the award on merit of only on procedural issues. What the parties may do, they can arrange for the applied procedure in arbitration and to have other arbitrators review arbitration awards. But it is very rare.

It is, for example, normal under exit (ph) rules, which relates to state arbitration -- when arbitrations in which investors are taking protection under the letter of the (inaudible) thesis with various acquittal procedures and the award is then reviewed by our arbitrators. But in commercial arbitration it is very, very rare and I haven't seen any (inaudible) from the past.

And just going to your second question, challenges of arbitration law in courts, we will go to slide number 4.

So, when the court may cancel arbitration award, as I said before, the grounds for challenging arbitration awards are very, very limited. And the court cannot review matter on merit. No. If the arbitrators do not give some evidence or if they come to wrong legal conclusion, it doesn't make any difference for that court.

So the first, for example, when the court can cancel arbitration award is as a matter cannot be arbitrated -- that the matter cannot be subject to arbitration. In various countries this was defined differently. But in the Czech Republic, the Czech arbitration type (ph) refers to section 99 of the rules of civil procedure and section 99, it is said that all disputes which, if the nature of a dispute permits, then the disputes can be completed by court approved settlement. Court approved settlement is a settlement agreement approved by court.

But the question is what is the nature of the dispute and which dispute can be completed in that manner? And again, currently there are several -- so, those disputes arising from those matters, which can be solved by court settlement can be arbitrated. As I said before, what are the main problems?

There is a view of some commentators, which is based on old judgment of the Czech Supreme Court which was issued in 1937. And under this view, disputes relating to the tackle (ph) with the real estate cannot be subject to arbitration.

If you would see the precedent judgment from 1977 you'll find it obscure and entire, unclear. This is the view which is present in the environment and some arbitrators believe that disputes which relates to the real estate or to title to real estate, most disputes relating to payment dispute or whatever, that they cannot be arbitrated.

I personally do not think that this view is right but it might happen that some parties will object against arbitration. They would argue that this matter is going to be arbitrated as it relates to title to real estate. And hopefully, it would be solved in the future.

The other issue that I think to the arbitrators is that remedies by which frankly speaking declaration of invalidity of an agreement also cannot be settled by court settlement. So they cannot be arbitrated.

This is compared to international experience and to those in other jurisdiction. But this view which is again present here in the Czech Republic and some undertakers believe that if you seek declaration of invalidity versus settlement and agreement then it simply cannot be arbitrated.

What are the grounds for that -- this view? And these people argue that if the agreement is invalid ab initio, the parties cannot validate that agreement by court settlement. They simply cannot replace invalid agreements. It is the right, for example, for transfer of shares or whatever by court settlement in which they would say, "I am the owner of the shares and the other the partner is not the owner of the shares."

Well, I personally also believe that this view is incorrect and some leading arbitrators in this country also share this view. Because I think that even in various disputes relating to invalid agreement that dispute can be solved by court settlement if that court settlement includes new agreement in this case, on transfer of shares, which would provide for the share transfer. If that agreement is approved by the court as settlement, then I would have enforceable judgment concerning my ownership to sell.

And of course, if I -- if this summary should be or this is the option in the agreement is real invalid, if I believe that this agreement is valid then the court settlement should be that I am the owner of the share and that's it. And if the court thinks that if this

complicates the contract agreement, it's invalid and so that I as a purchaser cannot be owner of those shares then the court should not approve that settlement.

The court has a right not to approve -- obligation, not to approve the settlement if this is concerning the mandated provisions of Czech laws. So the validity of those agreements can be addressed by that, and not by arguing that the nature of the dispute does not summit court settlement.

I feel this issue hasn't been solved yet and this arbitration award, as you have seen before, Prague Arbitration Court has said that if the validity of the agreement or the court ruling (ph) of invalidity of an agreement is an automatic part of the claim, it simply cannot be arbitrated.

What is the practical consequence of this? If there is arbitrations and you are seeking, I don't know, payment of money based on the invalidity of agreement, it is fine, nothing will happen.

But if the other partner initiates court proceedings to invalidate the agreement and you would then would seek payment totally based on that agreement, the arbitration may be suspended until the court solves the validity of the agreement and arbitrators may say, we do not have jurisdiction to solve this and the court only has jurisdiction to solve the matters of invalidity. So we will suspend arbitration proceedings and you'll have to wait years of (inaudible) for judgment, which will then be binding for the arbitrators and it would be basic for the arbitration proceedings.

So the other reason for cancellation of the arbitration award is that the arbitration clause is invalid or does not exist. Invalidity of the arbitration award. Of course arbitration award must be executed in writing. But it can be executed also through email, through fax or through telex, which would lead into a written form of the arbitration agreement.

But also, what is quite often argued in arbitration proceedings, in jurisdictional objection is if that if the agreement is invalid as a whole, then also arbitration agreement must be invalid because it is part of that agreement are traditional (ph) too under section 267 of the commercial court.

Arbitration agreements, which are attached to main agreement are invalid only if the reason for that invalidity counters arbitration agreement. For example, if that agreement hasn't been properly signed by the signatory representative then all the arbitration agreement will be invalid.

But if the main agreement is invalid because -- only because I don't know, the price is too low or the fact it might not be signed properly, arbitration agreement clause can be basis for the arbitration.

Where arbitration agreement does not exist? This comes in dispute, which includes more agreement. Lot of them has arbitration agreement. But the other agreement does not have any arbitration agreement. And now the issue is, whether these 2 agreements are related? And how is it addressed in arbitration clauses?

In arbitration clauses, it is very common to say that the arbitration of course, realize also the disputes (inaudible) in connection with this agreement. So the wording is broader and it covers more, the question of process, what do you want to address by arbitration clause? Whether you want to achieve the broader coverage and to include jurisdiction of the arbitrators for more disputes? But it should be course as that when drafting arbitration clause, the drafters should be aware which would be the results of that

Now we get to incompetence of the arbitrator. I think that we do not have to mention life of age for example. And I know because it is not very common, but incompetence can be divided into 2 parts.

One of them is impartiality and other one is legal independence. What is impartiality? Impartiality, impartial arbitrator does not have personal interest in the case. Arbitrator who is independent, although doesn't necessarily have to have personal interest but he should not be financially dependent on any of those parties.

So he is only affected by the outcome of arbitration but he can be retired, for example. Or most of the time it can be a third provider or he can do whatever. The example for impartiality is if the arbitrator, for example, is the boss of the client or is the boss of the affiliate of the client.

But what is important is the level of relationship between arbitrator and the parties or their legal representative. Many clients normally think that if there is some population shift that this can be weighted (ph) for the successful challenge of the arbitrator.

But this is not true. The issue is more complex and the arbitrators tend to support each other, if they are not seeing some grounds for their recall (ph).

What is very helpful in that respect, is that there any doubts about impartiality it is good tool from guidelines of International Bar Association, which are now being discussed and will be completed soon.

It is 20-pages document which divides issues relating to the incompetence to 3 categories. One of them, and the first one is red list. Firstly, we discuss relations between parties and arbitrator and that red list gets separated into 2 sections.

One of them is known as non-waivable red list. And if relationship is like we have discussed in that part of the red list, then arbitration cannot proceed. Even if the parties agree with the arbitrator.

The other parties they have a red list, which includes for a information cases like, the arbitrator has given legal advice to the party or an affiliate of one of the parties or provided an expert opinion under dispute. So, he will (inaudible) in red list, which is (inaudible) arbitration of the parties convey that, and he can still sit at the arbitration panel. It's quite surprising, isn't it?

Then after the red list, there is orange list. And in the orange list are described relations which can cause serious doubt about impartiality of the arbitrator or the independence of the arbitrator. And in that case parties are permitted to challenge the impartiality of the arbitrator.

And what should arbitrators do if the relationship is in orange list, they should disclose to the parties at the beginning. Of course they must disclose also what is in the red list because these issues are much more serious. And they should disclose also what is in the orange list and then they will wait, and know what would be the parties' reaction in relation to that. Of course the thing will be disclosed at the very beginning of the proceeding or even as the initial discussion about the appointment of the arbitrator. But we'll get to that.

And then there is the green list which, in the view of adopters of the IBA guidelines should not be disclosed. Just to give you a few -- some examples, to use services against one party. The arbitrator's law firm has acted against one of the parties or an affiliate of one of the parties in a case, not in relation to the dispute before the arbitrator tribunals without the involvement of the arbitrator. It's quite some cumbersome wording.

It says that arbitrator's law firm was involved in a dispute against one of the parties while the arbitrator was not. But if even current services for one of the parties, a firm in association of and in alliance of arbitrator's law firm, but which does not share a profit with the arbitrator's law firm and the services to one of the parties or affiliates to one of the parties.

It is a very comprehensive document. So when thinking about challenging arbitrators, it may be useful to (ph) that document. I think that it is on the website of the International Bar Association, where the legislation will be there and just go through what is the understanding between arbitrators of these issues.

Why is that important? If you charge the arbitrator and your challenge is not successful, he can be very hostile to your client. And I had that experience in the past and it's not a good experience. And so the party who tries to challenge the arbitrator the party or their legal counsel should be sure that he will succeed (ph) in that challenge. Otherwise it doesn't make any sense.

One of the other reason for challenging arbitration is the arbitrator or the party was not given an opportunity to discuss the matter. When does that happen? Or how -- what is the specific consequence of this?

Normally arbitrators are very careful about it. And that leads to quite slow conduct of the proceedings because they allow the parties compile the problem brief again and again. And if they come up with a witness, before issuance of arbitration award, they will again call a new hearing and so on and on. And the most important reason behind this behavior is that they do not want to have or to create opportunity for challenging the arbitration award.

And of course what is the (inaudible) as benefit of arbitration is (inaudible) and the litigation and then it can be (inaudible). So well then we can move to the last point. The last point, the first one is imposed by the award of impossible or illegal. It is not very common in our jurisdiction, if that will be international arbitration involving some less developed countries that (inaudible).

And the last point that there are new (inaudible) sufficient to renew these proceedings. It is (inaudible) characteristics to the litigation and Czech arbitration (inaudible) refers to rules of (inaudible) procedure 2.2, 2A. the only difference is that the time for challenging arbitration award is limited, more limited than the time for challenging just on based on new facts.

It is also most present, for example in (inaudible) arbitration law, (inaudible) agree on that and it is not present in most arbitration law systems in foreign countries. So we have that (inaudible) have that. So, may be why it is important to (inaudible). If you are in the arbitration or if you are (inaudible), arbitration, what is your -- in foreign benefits that first of all (inaudible) is not challenged by any party.

So we must show to the parties that conduct of arbitration is fair and most arbitration, it just maybe the most important interest. They don't care about timing, you know, they just want to be nice to both parties because then (inaudible) is just like (inaudible) what would he charge and then the other reason is that of course, if the challenge is made to arbitration award (inaudible) then to provide that challenge is not successful. And if you speak to some arbitrators, you know, (inaudible) would say (inaudible), has not been every charged. Or (inaudible) you know this is that they think is important, of course apart from commercial interest, you know. So do you have (ph) question.

Unidentified Audience Member

From your experience, (inaudible) behind arbitration or arbitrator is involved. Is it (inaudible)is it fast or it may be mutual instinct or we may consider arbitration or (inaudible)?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

The question is that that to decline arbitrator in advance or whether it is better to wait for the dispute to arise?

Unidentified Audience Member

Yes. How to go into (inaudible)?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

Well, of course if you -- it is not very common declare arbitration. It is very rare. Why? The reason is that arbitrator who had suspect, you normally can't appoint anybody without obtaining his consent. Its going to be convicted out for some more urgent for some more urgent, you know or more probably, another (inaudible) with these lawyer as law firm and understand the arbitrator in our arbitration.

And so most financial them for probably (inaudible) that but for the sake of (inaudible) may be better and the client will have a party or arbitrator who is known to him in advance. That is also the risk -- the risk is said, later on the client may find something which he doesn't like about the arbitrator.

Thus he can regulate the point to him and you never know when the dispute can arise. So, it is not common. But said, (inaudible) very important issue, it is maximize a (inaudible) of the chairman or for the (inaudible) of the arbitrator and (inaudible), it is may be the most important thinking in the arbitration.

Any arbitration can be lost by wrong selection of chairman, also arbitrator. So what is the practice and what arbitrators would like party to do is not to care very much about the chairman, you know the party should do the opposite.

And it is common in this industry that parties is high profiles or dispute involving large sums of money that they are very active and they don't (inaudible) appointment for the chairman on the status or and because as they (inaudible) as much as possible.

And that brings us, what should be contact between the parties and arbitrator. If it is party appointed arbitrator, it is normal to speak to him about his potential appointment on 2 issues. One of them is availability, that he has time to handle that case. Also conflict of interest and the other one is of the chairman is arbitrator to (inaudible) the chairman.

So if you are in arbitration, do not hesitate to speak to them about that.

On the (inaudible) chairman pointed by the court after recommendation of the national committee which has or does not have any relation to the dispute. For example, is that we check arbitration, we check parties that (inaudible) with the seat (inaudible) in (inaudible) arbitration. So they can go to the Hungarian National Committee or (inaudible) national committee to ask them of the recommendation, who should give chairman.

Or they can go farther to the Czech National Committee and the (inaudible) of the ICC court is that they care very much about the view of the parties. That the parties agree, informally, who will be the arbitrator. (inaudible) whether the chairman is accessible to them, thy will just (inaudible) parties some (inaudible) and they should not be afraid to (inaudible) their role.

Again this is not in the presentation for some reason but it should be remembered, satisfaction of chairman, also arbitrator is crucial for any arbitration.

What cannot be avoided entirely is that the other party, (inaudible) are more integrated as they will essentially speak to the (inaudible) and (inaudible) find out what is his view on the matter of the dispute. It can happen. So it is better to decide (ph) chairman's who do not have reputation of behaving like that. OK, if there are no other questions I would go to the next slide, slide number 5.

Final proceedings, it may happen if it is not clear whether there is arbitration agreement of if it is not clear that the arbitration agreement (inaudible) or claims. Then the parties will decide to initiate arbitrational proceedings, speaking of the same remedy and court proceedings, speaking of the same remedy. It is not very practical, it is more costly and after all in the Czech Republic, there is no need to do that because we have quite right (ph) provision arbitration act and also rules of federal procedure.

So if there is a doubt about whether this claim can be arbitrated or arbitrators has jurisdiction. It is possible to initiate court proceedings or arbitration proceedings you know which you think, in which that jurisdiction will be given in your view and if the arbitrators or the court decides that they do not have jurisdiction you can go to court, initial litigation or arbitration depending on the situation.

You must do that all evidences (inaudible) of receiving resolution. Again, you know they do not have that in England. They do not have that in Australia and also then you must be more careful there on the timing (inaudible) arbitration or litigation. And the issue that is important is (inaudible), most that if you reach a proceedings, that it's a long body, then the (inaudible) can get (inaudible) and before we are able to initiate a litigation. So, this will be remembered.

In the Czech Republic, if you initiate arbitration (inaudible) before everybody then the proceedings is stopped. And you initiate in 30 days of proceedings, the judgment of resolution, said that there is no resolution and number of proceeding at appropriate (inaudible) plan, it has no impact on (inaudible).

So it is a practical (inaudible) proceeding. And now we can go to slide number 6 -- slide number 6. And we go to the point number 2, difference between litigation and arbitration. I think that most of all the difference are (inaudible) over and not all differences are the same as discussed and as presented by arbitrators.

For example, in litigation, it is possible to appeal a judgment. In arbitration it is normally not possible. I will like to disagree or agree by party or unless it affected arbitration for example. So what are the consequences of having that taken in sense to review your case in litigation.

It's of course slower course of proceedings. It takes more time to review or (ph) judgment to (inaudible) court. So, in (inaudible), the upside is that there is a higher level of predictability. That judgment is reviewed by other judges and it's not 1 judge, there are 3 judges that (inaudible) which will review that.

So you can predict based on our core proceedings (ph) will be the result of your case. Case although (ph) over, lower risk of corruption in litigation, not to (inaudible) currency about generally, it is difference between litigation/arbitration. Why? Again because (inaudible) by other judges. So the party has to cross (inaudible) all of the judges to (inaudible) in order to have certainty, what will be the outcome of that litigation.

In arbitration it is easier, (inaudible) chairman. I am not suggesting that you know but it should be -- if it is (inaudible) dispute for example or dispute for high amounts of money, you know this issues and (inaudible) should be considered.

Litigation of course -- litigation, as that is oral (ph) proceedings, the parties are expected to present the arguments, orally. About oral hearings at held at the court proceedings (ph), oral hearings at the high court is the judgment over quarter, just instance which appeal, rather formal.

Normally nothing is discussed the (inaudible) in most cases they have already made decisions you know how they will solve your case. So you cannot expect very much. The final outcome of the proceedings (inaudible) the judgment of the (inaudible) court is the final one.

Of course you can make further appeal to the supreme court, but it if you go to the supreme court, there no (inaudible) at all. So this -- they have this filing based on the written arguments also. So your council cannot affect that at all. Oral skills (inaudible) by written skills.

So in arbitration, presentation of the various parties are more important because it is final decision and if they are representing a (inaudible) lawyer at the oral hearing, they can affect -- influence arbitrators very much.

And after allowed hearing after which arbitration or what is issued, sometimes it can be (inaudible) up to the hearing. It can be pretty much influenced by the performance of the party's council.

If there is some (inaudible), they will be of course (inaudible) influence. You know arbitration is more important, also reputation of the parties and the (inaudible) in the litigation. Why? It is quite known that especially international arbitration is quite close to (inaudible) arbitrators who know each other and who see what they do (inaudible) business. Also they care very much about their reputation and throughout any potential assignments (ph).

So if the council has high reputation then the council of the council party, it is normally better. Of course, arbitrators, for example, I don't know a large (inaudible), normally (inaudible).

And investor state arbitration, you know it is much, much (inaudible) deeper you know who settle arbitration disputes and there is also our reputation of arbitrators which you appoint and (inaudible) all are very important. And I touched reputation of arbitrator is essentially compulsory (ph) in financial arbitrations. That if you are seeing the party from the other country then it may be beneficial for first arbitrator to retain from the same country you'll find that, from -- but up of course, it can have although negative impact. Because arbitrators from the same countries, co-arbitrators from the same countries as the parties, which are appointing them are then deemed to be not very impartial and to advocate more position requirement which may lead that they are not so accepted by the Chairman.

But it's possible maybe to give 1 work example without any speculation. In CNE arbitration in which CNEC sues Czech Republic 700 Czech pounds or they maybe sue for more but they would be in conventional (ph) pounds. (Inaudible) is appointed local Czech arbitrator and you know the outcome of the arbitration.

In another arbitration, which is then depending (ph) Czech Republic appointed well-known professional international law from our (inaudible) country. We don't know the outcome of the arbitration but this law (inaudible) we know that it is in the platform, with this criteria.

OK we go down, in litigation, litigation is public. It can be a problem for large financials who don't want to have discussion in public, their relationship with their clients or the parties or whatever. All the customers for example.

In arbitration, it's just private. So it should not be discussed. Of course depending on the rules. Czech rules are not very sophisticated in that rules of the higher (ph) courts, they say, well they say, Arbitration Act is, it's said, arbitrators cannot disclose. They say nothing about the parties. They (inaudible) them from disclosing the information that is obtained through the other parties.

For example the rules of London Courts of International Arbitration, they also provide for the confidentiality in relation to these submissions, as they are presented by other parties. So it should be remembered and it should be maybe addressed conceptually. If it is conceptually 2 (ph) parties who does before and the logistics arrived is quite difficult (ph) to understand.

And what is effect of public proceedings and litigation. The effect is that it is lower risk of corruption because if that case is high profile, it can be, by the journalists who will follow what the judge or will write about that case and there will be some, maybe public pressure. That is (inaudible) in the way of the judgment.

But in arbitration if it is confidential, no journalists, nobody knows about that in many cases. Well, then it is a part -- people argue, if you are bound by confidentiality that is something from arbitration. So you cannot rely on any public, or regular public facts found. Then you will be reaching (ph) them.

OK? Are there any questions?

We will go to slide number 7.

So what are the differences between -- other differences between litigation and arbitration?

In litigation, normally we're not able to find out the identity of the judge who will hear your case, if you are the claimant. Because that is system in place in all courts and participants are able to review the rules for assigning not just to judges. But they know about the rules. Of course there can be exceptions to those rules. Normally there are not many exceptions.

So either (ph) the rules. For example, if all matters -- if all claims up against defendants, whose names begins with 'H' trying are assigned to one judge, they have, we can predict who will handle their case. But if there are fellow defendants, they can maybe select defendant whose name begins with 'C'. And then they will go to another judge. And so it can be tricky.

And if you know the judges, you can, positive not granted, there is no certainty that you will achieve that. What you can achieve is to have reasonable judgment, if you know those judges.

In arbitration, it is easier. It's much easier if you agree, if you can agree with the other party on the Chairman or the sole arbitrator. You can appoint reputable lawyer or focus on -- if you agree with the other party. And it's always advantageous to agree on the Chairman. If you do not agree then, you are then in the hands of the bulk of the court. And you don't know who they appoint. And it is, that is more and more risky.

Well, attitudes of the arbitrators and judges. Judges are paid as you know. They have fixed amounts of salaries. They have no bonuses. So they don't care very much about, about how they handle the case and this job is a (ph) point in their list of the cases they have to solve. So they try to get rid of them as normally as soon as possible.

And they want to have it simple. They don't want to carry out lots of evidence. So they have 2 options. Normally to reject the claim -- always the option is about rejecting the claim because if they issue a judgment not rejecting the claim, this is more complicated than (inaudible) the claim.

So they are looking for simply argument. Or they are looking for, on procedural issues. Rather it should be sent to another court -- to the district court -- it is the first thing out in court (ph). So from practical point of view, it goes (ph) to maybe is any doubts about jurisdiction in the submission, to provide the judge with some guidance in that.

Arbitrators can be the same or they can also be different. And normally it depends on how they are paid. If they are paid by fixed fess, they most often behave like judges, but with the view or with understanding that they have all those commercial terms where they want to be next time (inaudible) parties. So they normally perform as assistant judges. OK. Even of they are paid by fixed fee.

But if they are not paid by fixed fee, by hourly fees, which can happen in assistant (ph) arbitration, for example depends on agreement of parties or as you know in arbitration court (ph) London because of international arbitration, then they are not so concerned about how long that thing will last. And they will work -- that they may work on commission for parties.

And so if you are to that that's one (inaudible) that you should have in your mind also arbitrators will be paid. Normally when we are talking arbitration, of course referring to (inaudible) fixed fee. If you refer to rule of ICC Courts, that is also something quite fixed fee which can be increased as the case is difficult.

Does that mean that they have been paid for regulation, whether this will last more (ph)? If there are more fights, more hearings? And there is a reason for increasing the fees.

OK. We will go to next slide. Number 8. I'm thinking about taking a short break, while you think about that. Too much information. We'll one the window and let me -- try to 10 minutes.

Unidentified Audience Member

In 10 minutes.

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

We'll interrupt the presentation for 10 minutes and then we'll meet again.

So from that we're right here. And we'll continue with slide number 8.

So this slide discusses again differences between litigation and arbitration. First issue which will be, which should (ph) parties to thinking about disputes what they should consider as the different power to hear it with it (ph) and carry out our evidence.

In litigation of course the judge may order almost anybody to appear in the court or the judge may order as of companies disclose certain documents till those documents after properly identified.

In arbitration, nothing like that is normally (inaudible) in writing to such party. It is possible to order the party to the dispute to present certain documents. And there are 2 conflicting concepts in international arbitration. One of them is discover a procedure, which is known to (inaudible) to order, which is in common jurisdiction and the opposite. No discovery, no disclosure of all documents.

And in international arbitration, because it is international, it has a (inaudible) together these 2 different approaches. And the concept, which is prevailing is limited discovery, which enables the arbitrators to order all the parties. This is also said in documents which are somehow identified.

It is not unnecessary to know the date or the exact name of the document. But it is necessary for example to ask (ph) arbitration to do that or to the other parties to disclose for example minutes, from the board of directors meetings for the past 6 months or something like that.

And this -- it can be reasonably accepted as arbitrators to order the other parties (ph) -- that it may finish then.

In litigation it is much, much easier. In fact the procedure (ph) is quite close to concept of international arbitration. Though they cause also the other parties to disclose documents, if those documents are somehow unidentified. This is not fishing expedition (ph) and if those documents may relate to the case. And the judges, although they have power they are not doing that very, very, very open.

Or if the parties have not produced documents and the judge thinks that the party has all documents, and the judge does not draw any conclusions, which will be negative for that party (inaudible) all documents.

And I just compare it to arbitration. If the party or the arbitrator doesn't produce documents without any reasonable explanation then the arbitrators are free to conclude that something wrongful in that documents. That is also the reason why they haven't been produced to arbitrators.

There is also the fact that -- although this is a general view that arbitration is less formal than litigation. As you know, litigation as I said, nothing can say that this is not a right form of procedure. That it depends on the judge. There are rules, but judges are normally doing what they want.

Arbitration is different. Arbitrators follow the rules of procedure. The parties may be pleased (ph) as they would do something else or as prescribed by the rules of procedure. But otherwise arbitrators carefully follow these rules.

And so in present tense, arbitration is more formal or it can be much more formal than litigation. As then one example, which is quite common and its domestic arbitration here. It says the parties fix dates (ph) therefore commissions.

In litigation the judge just says, "I'll see what the parties says." And the judge can also recall (ph) in the minutes of the hearing that the (inaudible) date refers to his recent submission. Although the judges can't fix the minutes present in the case of the judge, you know. So with the clients instinct (ph) about -- refers on minutes.

In arbitration, the minutes of the procedure acts (ph) like more, what happens in those proceedings.

What was for a long time a big advantage of arbitration, which was a possibility of arbitration award in almost any foreign jurisdiction, which was, party New York Convention on recognition and enforcement of arbitration award.

That was great advantage and that was why, for example disputes between Czech and Austrian companies, act like (ph) but through arbitration, awards are enforceable under the New York Convention. But Czech law decisions they are not enforceable.

In relation to Germany, the factors were different. The Czech court judgment is marginally enforceable in Germany. At German court decisions were enforceable in Czech Republic based on the understanding of mutual treatment between justice administration of both countries.

But from 1st May, 2004 it is different. There is a regulation (ph) number 44 plus 2000 non-regulation of European commission under which decision, court decision issued in a member state are generally enforceable in other member state. Of course, it is based on several conditions are more properly discussed in the regulation. But those conditions in fact they -- that you must follow (ph).

The rules for jurisdiction which are described in the New York convention, so is the convention said that you should a German company as the court who has that German company has a (inaudible) to that court, and then that German court decision will be enforceable in the Czech Republic and Sweden and in our country's member states, European Union.

But before filing against a foreign company, this is just to go through the integration. And (inaudible) to do what -- the law firm did which was recommended by International Czech Law firm that this law firm was not aware of similar agreement, New York convention which addressed these issues before (inaudible) issues to parties, in European Union, members states of the European Union and they simply didn't pay any attention to that and they filed initiating claims at this court, that they should do that Irish courts. And after 1 year, this court took the proceedings contesting (ph) it would rather go to the Irish court. And might as well expend to know (inaudible) and (inaudible) to effective as to (inaudible). In Thailand (inaudible), because the city organization was (inaudible) enough, so he could start the case in Thailand.

If we discuss European Law, which is (inaudible) for the period of resolution, they forego regulation on bankruptcy proceedings which, that is the issues of and although I didn't think of the proceedings in the more European countries, I don't have the number of that regulation here. But in fact it says that you can -- you should initiate company (ph) proceedings as the country where the company or the investor (ph) has its fees, but you can also do that in another country where the investor (ph) has its assets and then it regulates relationship between that (inaudible) proceedings in the country, rather than (inaudible) in the other country. All of the (inaudible) countries should cooperate and so this situation should also be considered, in bankruptcy proceedings which has international or European effect is prepared for it to be filed.

So I would say to go to the next slide if you don't have questions. So next slide number 9. The similar features of litigation and arbitration. Somewhere, the judges are you know normal people, like themselves you know, for that arbitrators whose reputation, they are normal (inaudible), they have don't have much time to spend reading the paper, which (inaudible). The same as the other 4 (ph) judges you know but they are not very eager about -- not willing to read the documents and also, you shouldn't assume that they don't have time to deal with that case -- your case. They time for the case properly and what is the practical impact that says, you know filings of submission shouldn't be too lengthy.

It is just not necessary to address many difficult and complicated issues. They could be as short as possible.

When I started my career in '94 I drafted a preliminary injunction -- of addition for preliminary injunction which was 5 pages long and that only ruined my further access at you know, nobody really likes too long, it should be only 2 or 3 pages long. It is not true in all cases, that shorter the better.

What the judges (inaudible) the document and arbitrators have the documents which are real (ph) and drafted, when, as effected, organized in pattern. And if this one is lengthy, has very stable contents you know which holds on to the document. And so what you can see normally if you review a court file is that the judges, they take permission of the password (ph), some judges who prefer (inaudible) for the hearing and they underline what they think is important to them.

Some judges even may caution, or the marks which can indicate what they think about that problem and about these arguments. And it is probably difficult. If I don't know 20 pages file in divided into 9 sections you know with no headlines, this is difficult you know to file which is actually remember what is there -- if there headlines you know that says what the judge can expect in the following paragraphs. And if this number is by that file then the judge can refer to the numbers of the paragraphs.

But what they don't like are disorganized filings, where for example there is not clear whether it is evident, whether the (inaudible) chart addressed the way (ph). It does not speak to which part of the filings they relate. So we describe which the number they exhibit and don't refer to the number you that, just see the number -- the number and the filings of the number of the exhibit. There are assistants which can be used, of course, but I doubt (inaudible). And there are all the filings, which submitted as a last minute or as a hearing.

I had one experience with another party which was plaintiff and who filed legal action, which was not to (inaudible) some agreement as evidence. It was disorganized. It was not clear whether all evidences (ph) had been attached and the judge was furious about that lawyer and who filed because the judge would feel that he couldn't (inaudible) before the hearing, because the plaintiff (inaudible) other document. And the final (inaudible) was in fact, it was not compiled, it was -- the party was ordered to pay compensation for each of these (inaudible) hearing which was a very high amount. As I just said, and you should consider whether you would give a decision.

So judges are people. And they are trying to be impartial. In their job description, they should be impartial, in their mind, they are not -- no they don't like some type of people and the question is whether the parties should attest that. We discussed that earlier and we have even been thinking about I don't know sending in lawyer to -- judges' (inaudible), things like that (inaudible) normally it may help. Because judges are, I think if any of you have completed legal education in the word that they are in that are in common passing exams and going to the court for arbitration from that respect.

I don't suggest anything can just this is going to be considered and sometimes it can be helpful.

Legal authority professor, I must now discuss in precedence. Some judges like said, then they can rely on some commentary or even offer given on some exact report prepared by the party, just for this only purpose, for that hearing, for that case. Or some things that they are (inaudible) and they don't need something like that. It depends on the judges. I don't know if one should be compared to other, compare them (inaudible) to present them a precedent target (inaudible) useful to the precedent if they are available.

The arbitrator is also, an arbitrator sometimes, they prefer that (inaudible) offer another course of the matter on (inaudible) on how it is complicated for those and other criminal proceedings, they are just able to wait, a year, 2 years for that other proceedings to be to be completed even there is some relation between these 2 proceedings.

And then matter is sought (ph), they can do the work. Sometimes they make decisions conditionally, when the matter is either unclear or even when the matter is very complicated that they are not able to understand properly what is going on. Then they think that, you know, one party are the good party, other one very bad and all that is enough for the decision, which would

then refer to some provision, if it is clear then what was the purpose, and what is the basis for the decision. And also this always should be remembered.

That would help decide -- of course the argument is not important now, but the basis of getting permission, you know, sometimes it helps to helps to describe the true story, what is behind that, it is not important, even it is realized directly to decline up just it will inform the judge what was the real situation or what is behind that and so on.

But sometimes, it does not to do that, of course. If that story is not very helpful. In complicated cases, when the arbitrator issues judgment after several hearings, they quite often remember only the last 5 or last 4 hearings. And they sometimes make (inaudible) they will issue the judgment. So while hearing, full hearings -- by the fulfilling brief are very important or they should summarized more important issues. They shouldn't -- or they should summarize the basis of the arguments of the judge because that is the only think he will read before he reads the judgment hearing. And nothing else (ph).

Although what happens is that those judges, some judges they don't think, they don't do anything as they come to a conclusion, the issue of the judgment and after the judgment is issued they are (inaudible) things about that and sights (inaudible) how to shake it, you know, for their judgment. You know, it is quite rare, now that it happens, more often.

And now we can switch to Slide number 10, Alternative Dispute Resolution. I don't know whether some of you have an experience on Alternative Dispute Resolution. Most benefit from mediation.

Now there is likely (ph) that it is not very common during the Czech Republic, (inaudible) established in the United States as the most modern principles of things which are present in litigation in Europe now. And that the reason for that was that the litigation, was very expensive and (inaudible) in the United States, discover required you know, counsel documents which lawyers must read and so on. And the other party must read the final documents (inaudible). Around 10/20/30 years ago (inaudible), to go to the arbitration, there was no discovery or limited discoveries in and price could be -- the fees could be lower but now arbitration price litigation in the United States and in England as well (inaudible).

So, alternative dispute resolution is a mechanism how to settle disputes cheaply. And this is why it is successful in the United States, then in England and now it is shifting to Europe and especially all to Central Europe.

So the basic characteristic is that it is voluntary unless the court refer party to IDR, which is possible in present jurisdiction. Then is it confidential. It is very fast -- normally, most of mediation last one day. It can be surprising, but only one day, if you compare it with the other arbitrations or litigation. Because it lasts only one day, it is cheap. Of course there is preparation (inaudible) it is very cheap. And the parties may leave, if they don't like it they can leave without even arbitration or litigation.

What are the basic types? Mediation, expert assessment, mini-trial. Mediation is both common form which is present in Europe now. It is (form of negotiation, but negotiation with different dynamics. The definition which is used is that Mediation is a voluntary, non-binding process in which a third party, the mediator assist the parties to reach a negotiated settlement of sales dispute.

So if you compare this negotiation you have no (inaudible) party, in which the party still come to a reasonable settlement.

What is the role of the mediator? In normal negotiations of the parties just like (inaudible), the other side of the table and (inaudible) counsel and they discuss a position, do reach the agreement, so you will have to pay me they said.

I reached that agreement because you bridged the (inaudible). There is no discussion about the, your commercial interests.

And in mediation, commercial interest of those parties are important, more important than their current position. They (inaudible) agreement you know but one party produces something of the other party purchases a product, the party which is the use of

(inaudible) is interested and we have a party continues to buy those products, after arbitration litigation is (inaudible) on that basis, normally. Parties hate each other. After mediation, it is quite often possible that they will continue with their relationship.

And how those different interests -- how they participate in that solving of the dispute. The good thing, the benefit of the mediator is that you can tell him what you will now tell to the other party. You can tell him that if they were to confirm that they will purchase from my affiliate in China, (inaudible) I will maybe agree to pay half of the claim because I will have another (ph) business. Normally, you will discuss that with the party and said she want to go to court, if normal negotiations failed. So the (inaudible) to have this information, to collect enough information from the other party. Well, yet these all sets (ph) of information and you can ask the other party about, what it is they have to offer you that you purchase from the Chinese subsidiaries.

Will you then be happy if they pay only 50% of that price? No. So it is not for me to tell them in fact I feel, obliged to pay, but since I personally, I don't want to pay, mediator can do that and those parties then cannot pay.

You said that you are paying 50% because you never said that. This is how the mediator can bridge the gap between the parties. And how it normally works, there is some -- may be (inaudible) joining things, which can be similar to, I don't know, to first initial meetings of your (inaudible) and the arbitration department present their cases to each other and to the mediator and so on.

Then the there are private discussions between mediator and the other party. And in the third and then other party. Then the mediator tries to bridge the gap to find some common commercial interest. And then if he has something he thinks can be acceptable to the parties, then he can call them in joint meetings, at which will be discussed 2 months (inaudible).

Traditionally, (inaudible) award, it takes one day normally. And it is quite boring because the mediator is speaking to the other party who has nothing to lose, while there is nothing you can prepare for because you are looking for mediator to come in also. You can sit 2 hours here and no one will (inaudible) customers and so on and so forth. So this I (inaudible) address it.

But if the party decides to devote an entire day normally the representatives of the party are those who can target settlement, it shouldn't be any low level official, who don't have any authority. But then here they tend to agree on disposal (ph) dispute just to do a normal business.

And there are technical issues, which relates to the mediation. And we talk both by, for example, Hungarian law of mediation, Hungarian has laws (ph). Slovakian laws of mediation, Slovakia has, but we don't have any law.

What then in admissibility of evidence, which was presented in the court of mediation? Mediation is confidential. So normally it should be said in legal framework that that evidence is not admissible in the court proceedings because it is presented as a framing (inaudible) without prejudice.

When the tip (ph) of communication can be opened and start the mediations, it will be -- communication channel is throughout, that they stop -- that they stop asking (inaudible) all that earlier documentation.

And then confidentiality. It is quite a difficult task, confidentiality. The mediator is confidential, all the information obtained confidential. And they are, however suppose the the information exchange from the one party can be disclosed to the other party, the more (inaudible).

As I said in Slovakia, there is a co-mediation, in Hungary there is as well. I have more, more to come, so maybe we can go to the next slide.

Slide Number 11, we will discuss legal framework all that. There is something we should call conciliation. It is present in a Czech rules of civil procedure, Section 68 - 69, in those Czech Arbitration Court, but it is not mediation. It is conciliation and the role of mediator is not that which I described before.

But there are ICC/ADR rules. They are pretty flexible and simple which can be used. They consist of Master Act of International Reconciliation Proceedings which doesn't follow mediation. As I said provides for ADR in Hungary and Slovakia. And the European Commission is looking on a directive which would deal with be Alternative Dispute Resolution.

Why is European Commission interested in that? It is that the courts are overloaded with cases and all of them in jurisdiction and Commission can help us overcome some of them. So those cases are eligible for that and (inaudible) them are. And in fact (inaudible) something between 5% and 10% of cases have resorted to mediation. It doesn't mean that the party has to agree to mediation but that they have to try. If they don't try then for example, they don't receive a -- even if they are successful, they don't receive full fees of compensation for (inaudible).

The same is in England. England is adjusted something, the parties from a data (ph) is as I just said that they should agree -- they will agree normally (inaudible). Do you have any questions about mediation?

Unidentified Audience Member

(Inaudible) mediation ...

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

(Inaudible)

Unidentified Audience Member

Is it successful? Can you tell us anything about the case?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

Well, it was -- yes it was successful at the time of that conference (ph). Yes, I would obviously agree (ph).

Unidentified Audience Member

(Inaudible) remediation?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

(Inaudible)

Unidentified Audience Member

(Inaudible)

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

Now that is of course in (inaudible) mediator because this was regulated on conflict, should be because of some 18-year (inaudible) you know. But it requires some training, people who are doing that should undergo some training. For example,

that London Center (ph) for taking this resolution, and so on (inaudible), file and they have case studies. They are carry out mediation and (inaudible) are able to do that.

So it is good to (inaudible) in that, but it's nothing (inaudible) and to see how it works. Or then (inaudible). Although yes, of course it has nothing to do with process of (inaudible) everything.

Unidentified Audience Member

And you were (inaudible) trying to continue?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

Yes they are. That will be depending from the internal (inaudible). For example, it is not eligible if the parties meet precedence, co-precedence, for some similar agents the bank needs (inaudible) and certain type of (inaudible). Or the other parties may both come with (inaudible) recommendation (inaudible) of companies.

So, what I heard, when I would turn over from one of the attorneys type of firm, was if you feel that your case is very strong and you will certainly win in the court, negotiate, you never know, how it will land in court. If your case is very weak, go to the court -- you never know how it will end. So it is understood, the things would have been to offer to the other party to the counsel -- the other party and that's why, that's why then it is right thing to do. In fact you know, it doesn't last for long. And there's not meant to that (inaudible) not so high. And it asks you to go to the court and they wrap up things (inaudible). OK?

So the next slide, slide number 12, Legal writing, summary of principles for effective legal writing of legal texts. OK, so in this presentation, I would like to define the basic problems of legal text readers. Then to explain why the introduction is very important. Then to explain the role that "the point" has to play and the difference between the reading and writing process, text organization. Then explain the role that the should subject has to play. Then explain how the passive and active voice may influence the comprehensibility of the case and summarize some of the major rules which should be remembered. I will go over just some of them.

So, what expect (ph) the readers from the legal text? What do they expect? What does the client expect from the memorandum filed -- written by his lawyer. Here is the problem and how he should solve that problem. And in fact all legal texts are written to solve some problem. Almost all legal texts are written to solve the reader's problem. It can be the judge who needs to decide a case that can be (inaudible). And majority of legal text are written to solve the reader's individual guideline, commissions, memorandum (ph) associated with this article, in some magazines and all. That is the general problem, but most text which clients have to pay for, are to address individual problems.

So, it should be remembered when drafting legal text that there is a problem, which is to be solved. That the problem will be solved (ph) by reader on that day, and even it is manager in the company to whom an outsider is preparing some documents, he should think about -- to address all this document. What he would think, what he is looking for, and not about his own problems. All the energy (ph), it seems to be quite (inaudible) about (inaudible) other things.

The cardinal role of an introduction. Sometimes the reader realizes that the text solves his problem, although the author has not even -- although the author has not even defined his problem or suggested a solution as a beginning. But what people including judges and arbitrators normally do, they assess text very clearly according to the introduction for which they wish to find out what the text is all about. Then they will decide whether they will go through the text or not to go through the text.

So the first question, the reader is always looking, is attempting to answer is whether that text would solve his problem. If you select some article in a magazine, and if you normally all the (inaudible) in mind what you want to solve by reading that article.

And you will find at the beginning, while you know, that you don't have to pay very much for the article but, but lower shoot (ph) the problem and say from the beginning, what this all lengthy memorandum is about.

What do the readers read in the memorandum or commission, they will keep on asking all the time, what is your point, what do you want? What do you have to tell me? As it is, from the beginning, he will be more able to concentrate on the text and on the argument which could solve your point, which was presented to them (inaudible) for this, able to start with a point. And these are just rules. There are different types, different environment. For example different, to do it another way of course, changed maybe, as well, where that this small (inaudible) legal text approach.

So, introduction are very important. They can leave out problem or state a resolution of that problem. They can leave out problem and solution then judge, when they either than have no clue what this is all about. They can state a problem as well as solution, in (inaudible) of a lengthy memorandum or as an introductionary part of commission and litigation. You can state the problem but leave out the solution -- that solution will have to be found out in the text.

So text organization, how most texts are written? The people are thinking about a reason, which would -- I'm sorry -- we will move to next slide number 15. The process of writing is different from the process of reading. In writing, most writers think about reasons. It should bring them to the point. Some writers use writing process, to share their thinking about the outcome. So they, in the beginning they don't know -- they don't know what they want to write, they don't know the conclusion.

When they start writing, can know then an opening and other, many sources of information. They don't have to collect that. And I still don't know what will be the result. And they spend, maybe 20 hours on that and then they find out that there's no -- and there's no goal (ph) to do that and also so that there is to have clear structure of the document in mind before starting writing, to introduce all the arguments and also about points. And then you will look after the point and then as reason.

I will give you one example, you know, for example, agreement is invalid because it was not properly defined, because the object matter is not defined properly, because there are other reasons.

It is clear from the beginning what I am trying to tell, is that the agreement was not signed, agreement does not have the fully defined subject matter. Agreement is unclear. Then you don't know what will the outcome. Whether I would say at the end that the agreement is invalid or invalid. I don't know where is the crime and other, for instance, therefore invalidity.

So it helps readers to understand text, which is very helpful for judges, who should understand the text and some of the agreements. Otherwise, they will think that it cannot lead -- that they cannot look for arguments.

Our next Slide Number 16. Although the best positioned sentences shows what the reader should expect if there is problem.

First example, an arbitration facilitates a non-public proceeding. However the limitation of remedies and arbitration might benefit counterparty.

Second example, although limitations of remedies in arbitration may benefit the counterparty, arbitration facilitates a non-public proceeding. The question is, what would you expect after reading the first sentence and after reading the second sentence. What will be discussed after the first sentence, (inaudible).

As I said, whether we will first discuss non-public proceeding (ph) or limitation of remedies. It will (inaudible) from the second part of the sentence it is likely, or the readers expect (ph) that we will discuss limitation of remedies and arbitration that it may benefit the counterparty, in the first example.

In the second example, it is assumed that later on arbitration non-public proceedings will be discussed. So by drafting sentences and by putting all this in proper order it is possible to achieve that the text is easier to understand.

In effect which, next slide -- slide number 17, in effect difference subjects have in understanding the text. Well, how do you read the scene (ph) in the verb? Verb is comprised by person and their action. And it would act that there was in text, there are subject and the verb. Subject describe person and the verb describe actions.

If we go to the next slide, slide number 18, it is clear that the role of subject is crucial. But different subjects have different influence on understanding of the text. And that for example, one of them many (inaudible) is that share offer may occur only after the SEC approved prospectus. The other one is shares may be offered only after the SEC approves the prospectus.

Third one, the company may offer its shares only after the SEC has approved the prospectus.

Number 4, you may offer the shares only after you submit the prospectus to the SEC and the SEC approves it. Or if you are an in-house counsel, so what would be more clear for you? Number 1 or number 4? Or is it number 3?

Unidentified Audience Member

Four?

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

Yes. You should do something, note that problem, share offer, which we cannot touch, will occur some times. Of course putting pressure on both sometimes, is not good, if we want to hide something. Or if you, if we don't want the litigation to tell our clients that something is wrong, you shouldn't say, we did something wrong. You should say, oh, something happened, you know, something was down, not in a very good measure and so on.

Next slide, effect that different subjects have in understanding the text. And all potential subjects are, or categories of subject are ranked from easiest understand or more difficult understand. If you feel that the subject are people like investor partner, customer, everybody will understand or to be would be ready to understand because it is how it works and some key people are doing something, not some exception.

Then personification by a company, court, quite easy to understand. If we speak about non-animate object like construction, money, it is less easy to understand. If there are general abstractions like ownership expense for example, they are understandable to almost everybody but there are exceptions too.

And professional abstractions like deductibility, and some expenses based on arbitrability are very difficult to understand if they are in the subject. Our arbitrability can hide something. We can (inaudible) not arbitrability.

Next slide is number 20, which will be also that subject draws the readers' attention. There are 3 examples.

Bank Act protects bank depositors with a provision on the invalidity of blatantly disadvantageous transactions. So Bank Act protects. So, we would see we are discussing in the example number 1, legislation, you know whenever you discuss commercial (inaudible) something else, this is what would a reader conclude.

And bank depositors are protected by the provision of the Bank Act on getting validity of the invalidity of blatantly disadvantageous transactions, bank depositors.

So this is (inaudible) that view is the bank depositors that beware of (inaudible) is a problem company.

The last example, The Bank may use the provision of the Bank Act on invalidity of blatantly disadvantageous -- and so on and so on. So, the last example, again the bank, so what the bank can do.

And this information is almost the same. These 3 consists about the meaning and the impression on the reader is different.

Next slide, slide Number 21, active and passive voice -- it is said that passive voice shouldn't be used in English and in a Word document, there is a tool which says that all passive voice should be active (ph). So for the general understanding, as an expense it iss right. There are 2 examples.

First number 1, foreign investors must consider limitation on profit repatriation. It is very, very essential.

Number 2, limitation from profit repatriation must be considered by foreign investors. This is not so clear. Well, if you want to achieve priority, you shouldn't use so much of passive voice and you should concentrate on active voice. And passive voice also can tend including how important a -- important work.

If we take number 3, limitation on profit repatriation often discourage foreign investors. It really, as if we take number 4, foreign investors are discouraged by limitations on profit repatriation. And number 4, it is easy to see that that center theory for foreign investors, that just discouraged. Full stop. Third sentence will have some meaning. Well, you can read out the limitations on profit, (inaudible) being very careful involving the document you know when (inaudible) oversee that.

In number 3, if we were to look for investor, then sentence will make any sense. Limitation of profit repatriation often discourage. So, the use of passive voice may then in (inaudible) is not important subject.

And now on the last slide, conclusion 22, after all this. What should be remembered and why it is, a judge's (ph) interest to be affected, you know, he is reading the text to solve the problem. So that that almost should be shaped to solve that problem, you know to -- not to say allows the (inaudible) but to solve that problem.

Number 2, is it convenient to define the problem and disclose the solution right at the beginning. This makes it clear what the following text is about. And the readers who don't have enough time, then they know what they will invest the time into. You can also take off that if you do that they will not do that, if they don't like it. It is (inaudible) of course.

Number 3 restraining from passive voice and careful choice of subjects helps to make the text easier to understand and more convincing.

As I said before, the world is understood by the people as there are subjects, and actions, people and actions and in fact we have subject and (inaudible) this is how the work is perceived and also passive voice should be watched carefully.

And lastly in the conclusion we have to repeat the whole solution. After reading through the pages (inaudible) from (inaudible) what is at the beginning. So he is able to state what is conclusion here. (inaudible) in the introduction.

And the last Slide, thank you for your attention.

Unidentified Speaker

(inaudible) presentation and (inaudible) will hopefully release them in (inaudible). Thank you.

Martin Hrodek - *Baker & McKenzie - Local Partner, Prague Office*

OK, thank you for all of you coming and (inaudible) agenda taking it is good, I think corporate counsels need to speak together or (inaudible) if we -- when we collected them at some European meeting, at a workshop and we can write some compliance (inaudible) very likely what is discussed at that workshop more (inaudible) so that they can speak to (inaudible) up to, you know

what, how it is (inaudible). This is what they also like very much the outcome (inaudible). OK, thank you. OK, presentation is over. Good-bye.

Unidentified Speaker

Bye.