

Disposing of the Double-Hatting Ban

Media Mentions

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Bracewell's **Martin Gusy** discussed with *Commercial Dispute Resolution* the proposed reform of the codes of conduct for arbitrators and judges involved in investor-state dispute settlement (ISDS), including a focus on the phenomenon of double-hatting, which was a key topic of discussion at the United Nations Commission on International Trade Law's 44th session of its Working Group III: Investor-State Dispute Settlement Reform held in Vienna at the end of January.

Gusy considers: "The discussion of double-hatting is most properly framed in terms of independence and impartiality. Double-hatting by an arbitrator candidate can be controlled by way of a challenge."

Controversy has arisen due to perceived issues of bias, with professionals able to serve across a multitude of roles which potentially encourages the favor of specific clients or the professional's own commercial need for repeat appointments.

The Working Group's work gained considerable traction shortly before the COVID-19 pandemic and is by no means the first attempt to limit double-hatting, coming after the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration, which was adopted in October 2014.

"It is sensible to ask whose perception reforms are trying to address: if the parties', then party-autonomy should prevail; if the often government-argued legitimacy of the ISDS system, then the empirical basis for desired reforms should always be critically analysed," says Gusy.

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Martin Gusy

Partner

NEW YORK

+1.212.508.6112

martin.gusy@bracewell.com

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