Pedro Zelaya

Zelaya Etchegaray & Co.
Av. Alcántara N°200
4th floor, of. 407
Las Condes
Santiago
Chile

Email Pedro Zelaya

Call +569 77070553

Click the button on the right for the names of arbitrators and counsel they have worked with in the last three years

Worked with recently

Q&A

What were you, professionally, before you started working as an arbitrator?

For more than 29 years, I was a partner (and, one of its founding partners) of a full-service law firm based in Santiago de Chile, called “Larrain y Asociados Abogados”. www.larrain.cl. We started with 6 partners and no associates and now it has more than 14 partners and 20 or more associates.

What other professional roles do you still have?

As Larrain´s partner, I acted as a counsel, in litigation and arbitration matters; also, I worked as a lawyer, counseling our clients in a wide range of industries and legal areas; for example, I acted as a counsel of foreign investors in (i) Public Work Concessions Contracts (PPP); (ii) in BOT railroads projects; (iii) in high tech financial services firm; (iv) in contracting the design and construction of public and private projects; (v) in forming JV with local companies to participate in bidding process; (v) etc.

If you are yet to receive your first appointment as an arbitrator, please give a brief overview of your experience in international arbitration to date.

Until now, I have acted mainly as counsel of foreign companies in arbitration proceedings in the following matters or industries: (i) Public Work Concession Projects, mainly paid highways (concessionaire against the State of Chile on the special dispute resolution system applicable to this projects); (ii) railroads projects (BOT contractor against EFE Railway, our public railway company); (iii) fruit exports of cherries in which the exporter did not want to pay the price alleging force major.

Do you have or tend to work with a back office?

Yes, and in the short term, I want to have in my new firm, one or two young lawyers to help me in the arbitral proceedings in which I act as an arbitrator or legal expert witness. I like to work with other people because, in my humble opinion and experience, today it´s “quasi” impossible to handle complex arbitration proceedings alone; also, because - as a full-time independent arbitrator - I want to be involved in various cases and I will need the administrative support of my staff.

Do you like to use a tribunal secretary?

Yes, I like - and always use - a tribunal secretary, paid by me and accepted by the parties. Among many others, the “pros” of using a tribunal secretary are:

a) More efficiency and better organization because the tribunal secretary assists me in managing the day-to-day aspects of the arbitration, helping to ensure that deadlines are met, documents are organized, and proceedings run smoothly. This allows me to be focused on the substantive issues of the cases.

b) I ask the tribunal secretary to conduct legal research, draft legal memoranda, and assist in preparing legal documents, such as procedural orders or legal opinions. This support is extremely valuable in complex arbitration cases.

c) For me, a good and experienced tribunal secretary can save not only my time but also the parties‘ money. This can help reduce the overall cost of arbitration proceedings.

d) A tribunal secretary helps me maintain consistency in the case record, ensuring that all relevant documents and correspondence are properly organized and easily accessible.

e) Also, many international arbitrations are conducted under the rules of specific arbitral institutions (e.g., ICC, LCIA, ICSID); so a tribunal secretary with experience in these rules can help ensure compliance and smooth proceedings.

f) While there are clear advantages to using a tribunal secretary in arbitration proceedings, I take care of transparency and disclosure before appointing a secretary. I always tell the parties that I will use a Tribunal Secretary and I will pay him/her from my pocket.

g) Confidentiality is another challenge in appointing a tribunal secretary. For this reason, I try to appoint only lawyers that I know and that give me confidence in his/her absolute discretion and confidentiality.

Is this conversation helpful so far?

Yes, very helpful because it allows me to understand better the items, aspects, or points that - an external professional like you - wants to know about an arbitrator and, especially, about my persona.

How much does your approach vary, case to case?

I think that my approach varies depending on some elements. For example, the particular arbitration rules of the Arbitral Institution that is handling the proceeding are important elements that can vary my approach to the case because I used to follow them very closely. Nevertheless, I am not in favor of some of them; also, the attitude of the parties and their legal counsels (on their presentations, hearings, and audiences, etc.) are important to me and may vary my approach to the case; in front of some bad litigators (that use guerrilla arguments and conducts) I used to be extremely severe.

What is your approach to proposing settlement mid-case?

This is an excellent question.

I used to take very seriously this possibility and spend time convincing the parties that is better an early settlement than a final arbitration award.

Nonetheless, some professional and scholars think - and defend - that an arbitrator is not appointed to facilitate an early settlement between the parties but to dictate a mandatory and final ruling that resolves the case or the conflict.

But I think differently; perhaps because I come from the other side of the table, counseling companies, and supporting their business, not only in corporate matters but also in litigation and arbitration proceedings. I think that a lawyer has to be cold-minded and never fall in love with a case: one has to be practical and pro-business.

I am convinced that, from an economic point of view, it´s better an early settlement rather than a final judgment. In commercial arbitrations, the parties must be focused on their core businesses and, for sure, litigation is not one of them.

What is your approach to identifying potentially dispositive issues early?

First, the amount of the dispute is extremely important because, the higher the amount, the more difficult it is to settle; second, the complexity of the matter because in front of more complex matters, there is less possibility of an early settlement; third, the number of the parties involved and the number of claims that each party alleged.

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But it is always important for an arbitrator to make the effort to help the parties achieve an agreement, that finishes the arbitration totally or partially.

What is your approach to indicating the strengths or weaknesses of cases early?

An arbitrator's approach to indicating each party's strengths and/or weaknesses of their position early in the arbitration proceeding is, in my view and experience, a very useful tool and prioritizes fairness, transparency, and impartiality. The challenge is how to communicate this information to the parties. For me, it has been an excellent approach to have separate meetings with each party (the tribunal secretary is present but is silent); in this way, I explain my preliminary ideas without humiliating the party or its legal counsel.

After these private meetings - that are fixed each time by me through a proceeding ruling which is notified to the other party - I encourage them to talk out of the tribunal (not in my presence), so they can talk freely and without the fear that any concession or showing any willingness to settle in front the judge, may damage its position in the arbitration proceeding.

Nevertheless, arbitrators need to maintain a balance between providing helpful feedback and preserving their neutrality and impartiality. The arbitrator should avoid making definitive determinations about the case's outcome early in the process, as that should be reserved for the final award after a full consideration of all evidence and arguments.

How often do you use the IBA rules of evidence? Will you do it against one side's wishes?

The IBA rules of evidence are extremely useful but I never use it against one side's wishes.

Do you encourage the use of skeleton arguments?

No, I don´t encourage the use of skeleton arguments.

Do you encourage the use of discovery?

No, I don´t, because, in our civil continental system, the discovery is not used.

As a co-arbitrator – will you ever consult with the party who appointed you on the identity of the chair?

Still, I don´t work as a co-arbitrator but my position on its role is clear: my role as a co-arbitrator might be that I am not counseling the party that chose me as a co-arbitrator. Once I accepted the role, I needed to be - appear - independent and impartial; my role as co-arbitrator is trying that the position of the party that chose me is well understood by the President and the other co-arbitrator; but my role was not to defend, nor to support, the position defended by the party that chose me.

As co-arbitrator – are you in favor of the parties interviewing candidates for chair that you have identified before any final appointment?

Even though I have never acted as a co-arbitrator, I would not consult with the party that appointed me about the identity of the chair of the tribunal; exceptions apart become once the rules of the Arbitral Institutions have clear guidelines to appoint the President of the Tribunal (some of them allow you to talk with the party that appointed the co-arbitrator and obtain feedback).

Most arbitration rules and codes of conduct for arbitrators prohibit “ex parte” communications or discussions with one party in the absence of the other party or parties. Consulting with a party about the selection of the chair could be considered an improper “ex parte” communication.

However, I know that many arbitral institutions and arbitration rules, such as the ICC or the LCIA rules, set forth procedures for selecting the chair of the tribunal. These procedures typically involve consultation between the 2 co-arbitrators and the parties, but these discussions should occur within the well-known framework of those institutional rules. Any concerns or preferences regarding the chair's identity should be addressed through these formal channels.

As a chair, how open are you to allowing parties input into procedural order no 1? Would you ever allow counsel, say, to draft a first proposal?

I have never served as a Chair of an arbitral tribunal but, acting as a sole arbitrator, I always try that, in mere procedural matters, both parties give me their previous consent and approval of procedural orders.

What is your preference for the presentation of evidence?

I like the IBA guidelines in this matter.

What is your approach to counsel misconduct? Do you prefer to deal with it there and then or to wait until the end of the case?

I used to advise the colleague just after his/her misconduct, telling him/her that this conduct was not appropriate.

What is your usual approach to costs?

In Chile, the usual approach to arbitration costs is that each party pays the costs regarding its position and actions.

What is a 'normal' turnaround time for you to deliver an award (assuming no exceptional circumstances)?

This is a very complex question because there is no general rule nor a normal turnaround time to deliver the final award. But, as I have studied every document from the very beginning and prepared the private meetings where I explain to each party the strengths or weaknesses of their positions, it´s not difficult to deliver an award.

Would you describe your procedural style as closer to common or civil law?

My procedural style is closer to a civil law system and always strictly follows the Arbitral institution rules and guidelines.

What is your policy on cancellations?

On cancellations, I don´t have any personal policy. On the contrary, I strictly follow the rules of the Arbitral Institution under which each arbitration is managed and conducted.

Have you ever been challenged? Is it reported?

Not yet.

How booked up do you tend to be?

So, so. Considering that I´m at the beginning of my career as an independent and sole practitioner arbitrator, I have sufficient time to do other things; for example, to prepare my classes in the Law Faculty, correct the exams, write some legal papers to be published, etc.

Are there any types of appointments or cases that you prefer not to accept (e.g. construction disputes, investor appointments in investor-state disputes)?

Yes, I don´t want to be appointed - and will not accept - as an arbitrator on Treaty Investment Arbitrations or Investor-State Dispute proceedings.

Do you have any areas of specialist knowledge (legal or industry-related)?

Yes, I have deep professional experience in the following industries, sectors, or matters:

- Construction & Engineering
- Distribution & Agency
- Insurance & Reinsurance
- Maritime
- Mergers & Acquisitions

- Projects & Infrastructure
- Public Private Partnerships

Data

Gender:	Male
Nationality:	Spain, Chile
Bar admissions:	Santiago
Civil law:	Yes
Common law:	No
Languages:	English, Spanish
Total no of arbitration appointments:	10+
No of arbitral appointments in past 3 years:	10+
No of those as chair	10+
Where did you sit?	Chile
Under which applicable laws:	Chile
No of appointments in investment cases:	None

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4th floor, of. 407
Las Condes
Santiago
Chile

Email Pedro Zelaya

Call +569 77070553

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Worked with recently (at a hearing in the last 3 years)
Counsel
Edmundo Agramunt Orrego
Nicolas Frias Ossandon
Felix Guerrero
Pablo Klima Golborne
Jose Tomas Lagos Manterola
Nicolas Lama
Sebastian Norris
Camilo Saldias Robles
Joaquin Sanchez
Tzu-Hsin Shen

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