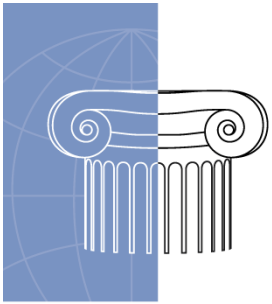


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# The Role of Oral Hearings in taking of Evidence

Peter Rižnik  
CCIS Court of Arbitration



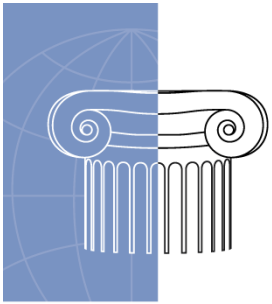
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# Oral Hearings

## OVERVIEW

- Organization of the hearings
  - Time allocation
- Hearing of witnesses / witness statements

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## Oral Hearings – Decision to hold

### When must they be held?

- **Article 28(1) Slovenian Arbitration Act:** Subject to any contrary agreement by the parties, the **arbitral tribunal shall decide** whether to hold oral hearings or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed otherwise, the arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings, **if so requested by a party.**
- **Article 32(1) of our new Rules:** A hearing shall be held **if requested by a party** or **if deemed appropriate** by the Arbitral Tribunal.



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# Oral Hearings - Organization

## Organization

- **UNCITRAL Notes on organizing arbitral proceeding** - <http://www.uncitral.org/pdf/english/texts/arbitration/arb-notes/arb-notes-e.pdf>
- **Pre-hearing Conference**
- **Block hearings / separate periods**
- **Setting the dates** (target dates, firm dates)
- **Venue** (hearing room, back-rooms, etc.)
- **Interpretation (simultaneous, consecutive)**
- **Duration**

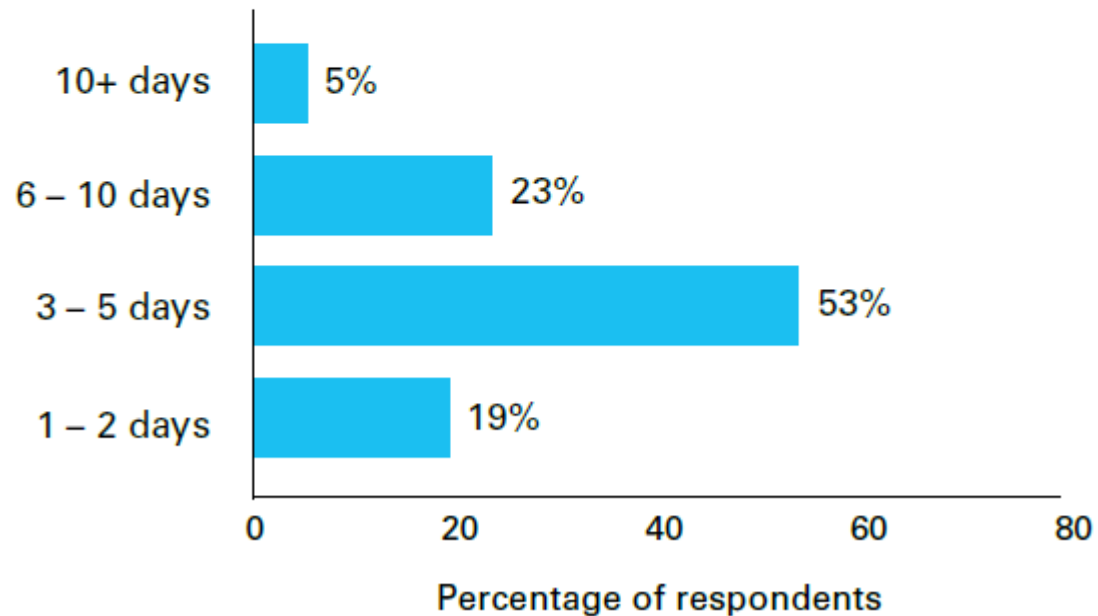


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## Oral Hearings - Organization

**Chart 37: What has been the average duration of the final merits hearings in your arbitrations over the past 5 years?**



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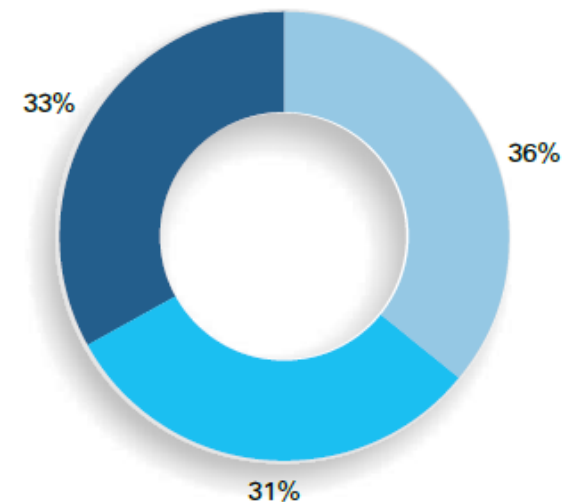
# Oral Hearings - Organization

## Allocation of Time

### Time used by each party

- (time limits for specific stages *statements, direct examination, cross-examination*)
- Chess-clock method (Böckstiegel)
- No time limits

**Chart 38: In what % of your hearings were specific time limits imposed for oral submissions and/or examination of witnesses:**



By using the 'chess clock' method	36%
By allocating time limits for specific stages of the hearing	31%
No time limits imposed	33%

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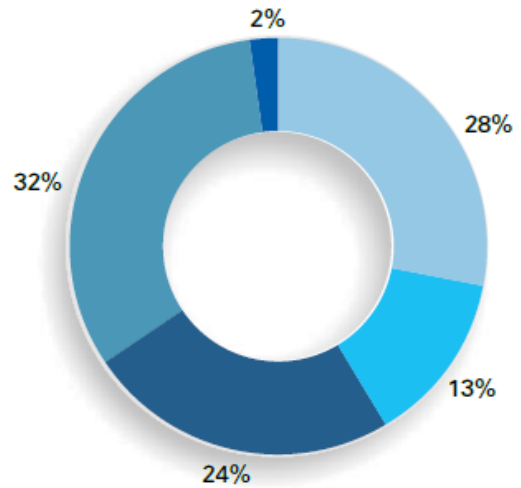
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# Oral Hearings - Organization

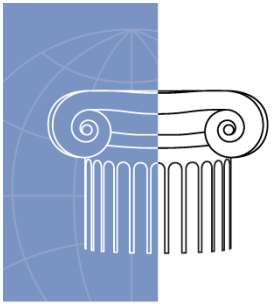
## Closing Statements – Post Hearing Briefs

**Chart 40: Which do you generally find more effective: oral closing submissions or post-hearing briefs?**



Post-hearing briefs	28%
Oral closing submissions	13%
I like to have both	24%
Depends on the case	32%
Have no view	2%

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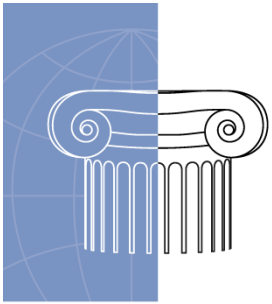
# Oral Hearings – Taking of Evidence

## Hearing of Witnesses

- 2010 IBA Rules on the Taking of Evidence in International Arbitration ([http://www.ibanet.org/Publications/publications\\_IBA\\_guides\\_and\\_free\\_materials.aspx#takingevidence](http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx#takingevidence))

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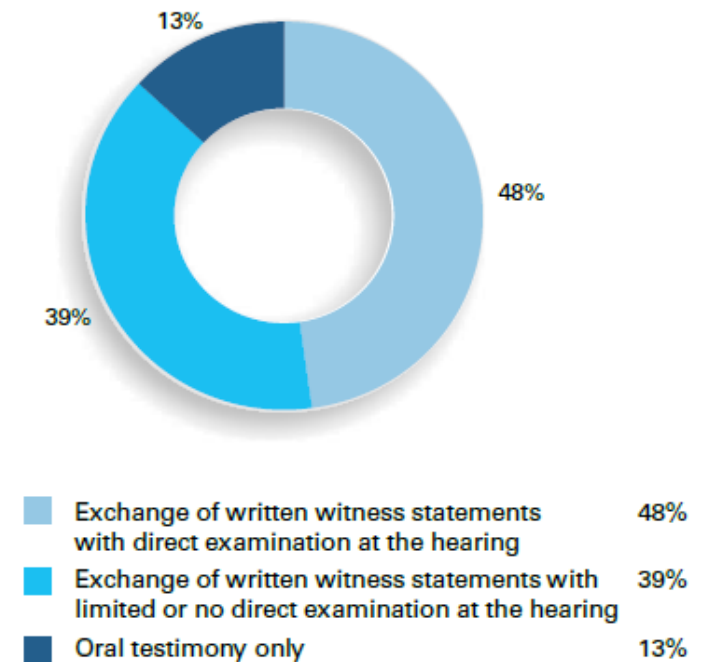
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# Oral Hearings – Taking of Evidence

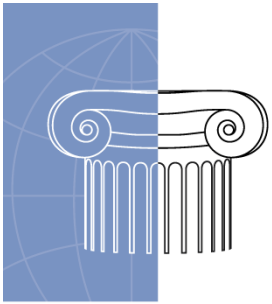
## Written witness Statements

- Written witness statements in 87% of arbitrations

**Chart 22: Over the past 5 years, in what % of your arbitrations was fact witness evidence offered by:**



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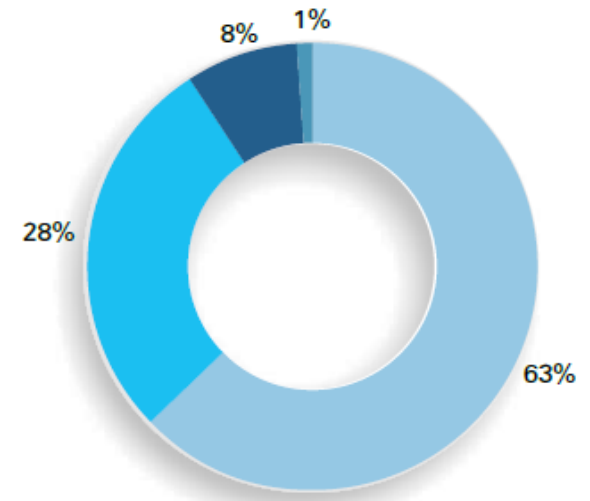
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# Oral Hearings – Taking of Evidence

## Questioning of the witness

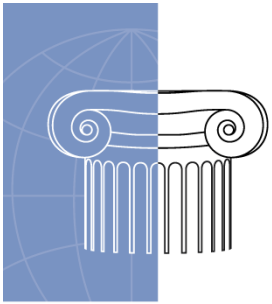
- Direct examination
- Cross examination

**Chart 24: Which method of witness questioning do you prefer?**



Primarily by counsel	63%
Depends on the case	28%
Primarily by the tribunal	8%
Unsure	1%

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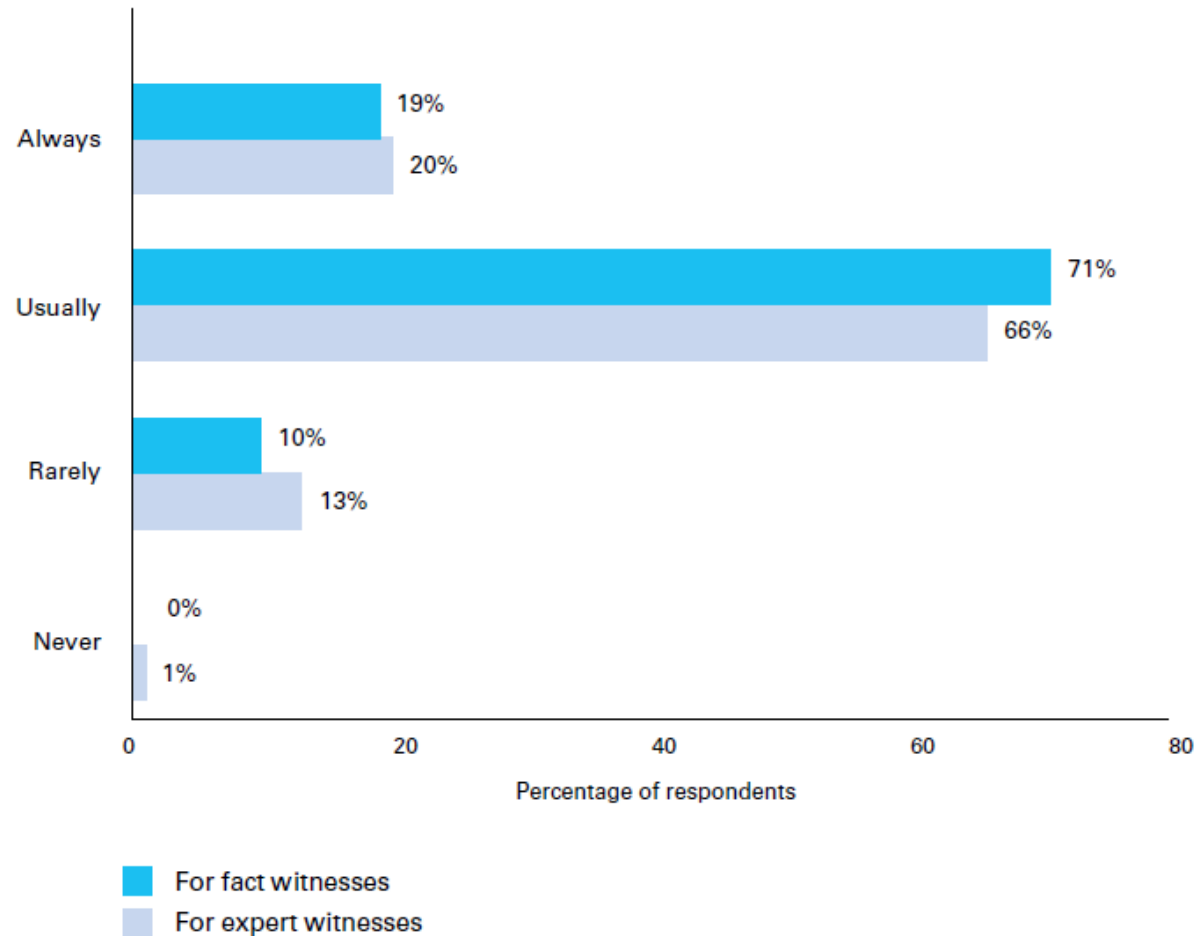


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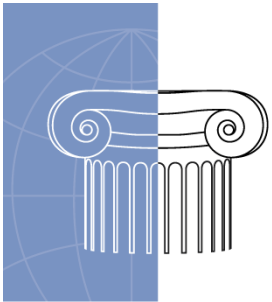
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# Oral Hearings – Taking of Evidence

**Chart 25: Do you believe that cross-examination is generally an effective form of testing witness evidence?**



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