

## **How do I prepare for Preliminary Meetings in Arbitration Proceedings?**

1. By anticipating when the hearing dates might be fixed.

This is the key decision to be made at the meeting, the Tribunal's first with the parties.

Tribunals are keen to fix the dates early to give ample notice of the hearing to lay witnesses, experts, and counsel. Once the dates are fixed, the Tribunal will work backwards to set timelines for the exchange of witness statements, expert reports, discovery, etc.

I try to get a sense of the hearing dates by:

- Totting up the timelines proposed by the claimant against those proposed by the respondent; and
- By starting with the assumption that the Tribunal will strike a middle-path between the proposals.

I attach below a table that I find helpful in fleshing out the views of the parties. The table highlights the areas of agreement and disagreement, and the reasons for the disagreement.

2. By anticipating questions on the arbitration's procedural history.

I do this because the Tribunal may be keen to know if the opposite stands taken prior to the Tribunal's constitution will affect the arbitration's timetable.

So the Tribunal may be keen to know if (say) the respondent's pre-constitution challenge to the validity of the arbitration agreement will mean that a fresh challenge will be taken. And if so, whether proceedings should be bifurcated to first hear the challenge before the merits.

I prepare by:

- Drawing up a chronology of written submissions (and their dates) so that I can refer them to the Tribunal;
- Going through the applications made prior to the Tribunal's constitution, whilst noting the paragraph and page numbers of the key arguments;
- Having the key documents open on-screen so that I can screen-share the documents quickly.

3. By preparing a summary of the claim (or defence) and the reliefs sought.

Rarely will the Tribunal ask for an outright summary of the claim or defence at the meeting. This is for two reasons:

- A summary of the claim (or defence) is usually set out in the Notice (or Response to Notice) of Arbitration;
- The meeting itself is concerned more with the procedural aspects of the arbitration, instead of the claim's merits.

But a one-minute summary at the tip of the tongue might be helpful to cast the facts in favour of the client. I find that that works best if expressed in response to a question from the Tribunal, instead of as a stand-alone statement.

**PROCEDURAL TIMETABLE**

No.	Procedural Steps	Agreed Position (if any)	Claimant's Position	Respondents' Position	Comments
<b>1.</b>	<b>Submissions by the Parties.</b>				
1.1	Claimant to file Statement of Claim with supporting documents.				
1.2	Respondents to file Statement of Defence and Counterclaim (if any) with supporting documents.				
1.3	Claimant to file Statement of Reply and Defence to Counterclaim with supporting documents.				
1.4	Respondents to file Rejoinder to the Reply to the Statement of Defence and Reply to Defence to Counterclaim with supporting documents.				
<b>2.</b>	<b>Requests to Produce Documents.</b>				
2.1	Claimant and Respondents to exchange Requests to Produce in the form of Redfern Schedules.				

- 2.2 Claimant and Respondents to respond to the other side's Requests to Produce in the form of Redfern Schedules. Parties to produce documents not subject to objection.
  - 2.3 Parties to reply to the other party's objection.
  - 2.4 Tribunal to make orders concerning document production in the Redfern Schedules.
  - 2.5 Claimant and Respondents to produce all documents ordered by the Tribunal pursuant to Redfern Schedules.
- 3. Factual Witness Statements.**
- 3.1 Parties to file any factual witness statements.
  - 3.2 Parties to file and exchange any responsive factual witness statements.
- 4 Expert Witnesses.**
- 4.1 Parties to provide details of expert disciplines, topics, and identity of experts.
  - 4.2 Parties to confer and attempt to agree on principal topics and issues the experts are to opine on.

- 4.3 Parties to file and exchange preliminary list of precise questions upon which each expert will opine on.
- 4.4 Parties to arrange for meetings and communications between their experts.
- 4.5 Parties' experts to produce and file joint expert report on matters agreed and disagreed.
- 4.6 Parties' experts to produce and file individual expert reports on areas of disagreement.
- 4.7 Parties' expert to produce and file reply expert reports.
- 4.8 Parties to confirm experts/factual witnesses they wish to cross examine at the Main Evidentiary Hearing.
5. Parties to advise of arrangements for hearing venue and views of commencing contingency planning for a virtual hearing.
6. Parties to advise of format and structure of hearing bundle.
7. Hearing Bundle to be provided.
8. Pre-Hearing Case Management Conference.

9. Parties to file an agreed statement of facts and agreed chronology.
10. Parties to file Pre-Hearing Written Submissions.
11. Main Evidentiary Hearing.
12. Parties to submit corrections to the transcripts of the Main Evidentiary Hearing.
13. Post Hearing Submissions.
14. Submissions on Costs.