

Preliminary Actions of Tribunal in Arbitration Preliminary Conferences

1. Introduction

Arbitration preliminary conferences (also known as case management conferences or procedural conferences) are critical early-stage meetings in arbitration proceedings. During these conferences, the arbitral tribunal establishes the procedural framework that will govern the arbitration. The tribunal's preliminary actions are essential in ensuring efficiency, fairness, and clarity throughout the process.

2. Objectives of the Preliminary Conference

The main objectives of a preliminary conference include:

- Defining procedural rules
- Establishing timelines
- Clarifying issues in dispute
- Addressing logistical and administrative matters
- Promoting efficiency and cost-effectiveness

3. Constitution and Authority of the Tribunal

Before or during the preliminary conference, the tribunal confirms:

- Its proper constitution
- Its jurisdiction over the dispute
- Any challenges to arbitrators
- The applicable arbitration rules and governing law

4. Procedural Framework

The tribunal determines the procedural structure, including:

- Adoption of institutional or ad hoc rules
- Language of the arbitration
- Seat (legal place) of arbitration
- Method of communication (email, electronic platforms, etc.)

5. Timetable and Scheduling

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A procedural timetable is one of the most important outcomes. The tribunal:

- Sets deadlines for submissions (statements of claim and defense)
- Establishes dates for document production
- Schedules hearings
- Determines timelines for expert reports and witness statements

6. Pleadings and Submissions

The tribunal provides guidance on:

- Format and content of written submissions
- Length limits and document organization
- Number of submission rounds

7. Evidence and Document Production

Key preliminary decisions include:

- Rules governing admissibility of evidence
- Procedures for document requests (e.g., Redfern Schedule)
- Handling of confidential information
- Use of electronic evidence

8. Witnesses and Experts

The tribunal addresses:

- Number and type of witnesses
- Format of witness statements
- Appointment of tribunal-appointed experts (if any)
- Procedures for cross-examination

9. Hearing Arrangements

The tribunal determines:

- Whether hearings will be in-person, virtual, or hybrid
- Venue and logistical arrangements

- Use of interpreters or transcription services

10. Confidentiality and Data Protection

The tribunal may issue directions regarding:

- Confidentiality obligations
- Data protection measures
- Handling of sensitive or proprietary information

11. Costs and Fees

Preliminary actions often include:

- Determining advance on costs
- Allocation of arbitration costs
- Tribunal fees and administrative expenses

12. Interim Measures and Emergency Issues

The tribunal considers:

- Requests for interim or conservatory measures
- Urgent procedural matters
- Coordination with emergency arbitrator proceedings (if applicable)

13. Encouragement of Settlement

The tribunal may:

- Encourage amicable settlement discussions
- Suggest mediation or other ADR mechanisms
- Establish procedures for settlement without prejudice

14. Procedural Order No. 1

Following the preliminary conference, the tribunal typically issues Procedural Order No. 1, which:

- Records all agreed and determined procedures
- Serves as the governing procedural document for the arbitration

15. Conclusion

The preliminary conference is a foundational step in arbitration. The tribunal's early actions set the tone for the proceedings, influencing efficiency, fairness, and the ultimate resolution of the dispute. Careful planning and clear procedural directions are essential to a successful arbitration process.