

Preliminary Actions of Tribunal on Arbitration Discovery

1. Introduction

Arbitration tribunals play a central role in managing the discovery (or disclosure) process in arbitration proceedings. Unlike court litigation, arbitration emphasizes efficiency, flexibility, and party autonomy. Therefore, the tribunal's preliminary actions are critical in shaping a fair, proportionate, and cost-effective discovery process.

This document outlines the key preliminary actions, conduct guidelines, and typical procedural orders that tribunals adopt at the early stages of arbitration concerning discovery.

2. Objectives of Tribunal in Discovery Phase

At the outset, the tribunal seeks to:

- Ensure fairness and equality between parties
 - Maintain procedural efficiency and avoid unnecessary delays
 - Limit costs and burdens associated with excessive discovery
 - Preserve confidentiality and sensitive information
 - Encourage cooperation between parties
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3. Preliminary Case Management Conference (CMC)

3.1 Purpose

The tribunal typically convenes an initial Case Management Conference to:

- Define the scope of discovery
- Establish timelines and procedural rules
- Address party expectations and concerns

3.2 Key Issues Addressed

- Scope of document production
- Relevance and materiality standards

- Format of document requests (e.g., Redfern Schedule)
 - Treatment of electronic discovery (e-discovery)
 - Privilege rules and confidentiality
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4. Determination of Applicable Rules

The tribunal identifies and confirms the procedural framework governing discovery, which may include:

- Institutional arbitration rules (e.g., ICC, LCIA, UNCITRAL)
 - Agreed procedural rules by the parties
 - IBA Rules on the Taking of Evidence in International Arbitration (commonly used as guidance)
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5. Scope of Discovery

5.1 Relevance and Materiality

The tribunal typically limits discovery to documents that are:

- Relevant to the case
- Material to its outcome

5.2 Proportionality

Requests must be proportionate in terms of:

- Volume of documents
 - Cost and effort required
 - Importance to the issues in dispute
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6. Document Production Procedure

6.1 Redfern Schedule

The tribunal often requires parties to submit document requests using a Redfern Schedule, which includes:

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- Description of requested documents
- Relevance and materiality justification
- Objections by opposing party
- Tribunal's decision

6.2 Objections

Common objections include:

- Lack of relevance
 - Excessive burden
 - Privilege (legal, settlement, etc.)
 - Confidentiality concerns
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7. Electronic Discovery (E-Discovery)

7.1 Tribunal Considerations

- Whether e-discovery is necessary
- Scope of electronic searches
- Use of keywords, custodians, and date ranges

7.2 Cost Control Measures

- Limiting data sources
 - Phased discovery
 - Use of technology-assisted review (TAR)
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8. Privilege and Confidentiality

8.1 Privilege Rules

The tribunal may determine:

- Applicable law governing privilege
- Treatment of in-house counsel communications

8.2 Confidentiality Orders

Tribunal may issue protective measures such as:

- Confidentiality agreements
 - Restricted access to sensitive documents
 - Use of confidentiality clubs
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9. Procedural Timetable

The tribunal establishes a clear timetable covering:

- Submission of document requests
 - Objections and responses
 - Tribunal rulings
 - Production deadlines
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10. Tribunal Orders and Directions

10.1 Procedural Orders

Typical preliminary procedural orders may include:

- Limits on number and scope of document requests
- Format requirements for submissions
- Deadlines and extensions policy

10.2 Sanctions for Non-Compliance

The tribunal may impose:

- Adverse inferences
 - Cost sanctions
 - Exclusion of evidence
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11. Conduct Guidelines for Parties

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The tribunal may encourage or require:

- Good faith cooperation
 - Avoidance of fishing expeditions
 - Timely compliance with orders
 - Transparency in objections
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12. Use of Soft Law Guidelines

Tribunals frequently rely on soft law instruments such as:

- IBA Rules on the Taking of Evidence
- Prague Rules (in certain jurisdictions)

These provide structured yet flexible guidance on discovery practices.

13. Early Resolution Mechanisms

The tribunal may explore:

- Narrowing of issues
 - Bifurcation of proceedings
 - Early dismissal of claims or defenses lacking merit
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14. Conclusion

The tribunal's preliminary actions in arbitration discovery are foundational to the efficiency and fairness of the entire proceeding. By setting clear expectations, structured procedures, and proportionate limits, the tribunal ensures that discovery serves its intended purpose without undermining the advantages of arbitration.

Effective early management reduces disputes, controls costs, and promotes a streamlined path toward resolution.