

Preliminary Actions of a Tribunal in Arbitration

Focus: Marshaling Orders and Handling of Exhibits Before Commencement

1. Introduction

Before the substantive hearing in an arbitration begins, the tribunal undertakes several procedural steps to ensure efficiency, fairness, and clarity in the proceedings. Two critical components of this preparatory phase are:

- Issuing marshaling orders (also referred to as procedural or case management orders)
- Establishing protocols for the handling of exhibits

These steps streamline the arbitration process, minimize disputes, and promote an orderly presentation of evidence.

2. Marshaling Orders (Procedural Orders)

2.1 Definition

Marshaling orders are directions issued by the arbitral tribunal to organize and structure the arbitration proceedings. They govern procedural aspects such as timelines, submissions, and evidentiary matters.

2.2 Purpose

The primary objectives of marshaling orders include:

- Ensuring procedural efficiency
- Reducing ambiguity and disputes between parties
- Establishing clear timelines and expectations
- Facilitating fair and equal treatment of parties

2.3 Key Elements of Marshaling Orders

A well-drafted marshaling order typically addresses:

a. Timetable for Proceedings

- Filing of statements of claim and defense

- Submission of counterclaims and replies
- Deadlines for document production

b. Scope of Issues

- Identification of key issues in dispute
- Agreement on uncontested facts

c. Rules of Evidence

- Applicable evidentiary standards
- Admissibility criteria

d. Witness Procedures

- Submission of witness statements
- Order of witness examination

e. Hearing Logistics

- Dates and venue of hearings
- Mode (in-person, virtual, or hybrid)

f. Confidentiality Measures

- Protection of sensitive information
- Access restrictions to documents

2.4 Tribunal's Discretion

Arbitral tribunals enjoy broad discretion in issuing marshaling orders, subject to:

- The arbitration agreement
- Applicable institutional rules
- Principles of natural justice and due process

3. Handling of Exhibits Before Commencement

3.1 Importance

Proper handling of exhibits ensures that all documentary evidence is organized, accessible, and admissible, reducing delays and confusion during hearings.

3.2 Classification of Exhibits

Exhibits are generally categorized as:

- Claimant's exhibits (e.g., C-1, C-2, ...)
- Respondent's exhibits (e.g., R-1, R-2, ...)
- Tribunal exhibits (if applicable)

3.3 Submission Protocols

Tribunals typically establish clear rules regarding:

a. Format

- Electronic (PDF, searchable documents)
- Hard copies (if required)

b. Numbering and Indexing

- Sequential numbering
- Comprehensive exhibit lists or indices

c. Timing

- Deadlines aligned with pleadings
- Rules for late submission or supplemental exhibits

3.4 Authentication and Admissibility

The tribunal may require:

- Certification or verification of documents
- Statements regarding authenticity
- Objections to admissibility within specified timeframes

3.5 Document Production Process

Where applicable, procedures may include:

- Requests for production (e.g., Redfern schedules)

- Objections and tribunal rulings
- Compliance timelines

3.6 Confidentiality and Data Protection

Protocols may include:

- Redaction of sensitive information
- Secure document-sharing platforms
- Restrictions on use outside arbitration

3.7 Use of Technology

Modern arbitration often utilizes:

- Electronic document management systems
 - Shared online repositories
 - Hyperlinked submissions for ease of navigation
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4. Coordination Between Marshaling Orders and Exhibit Handling

The tribunal ensures consistency between procedural orders and exhibit management by:

- Aligning exhibit deadlines with submission schedules
 - Defining consequences for non-compliance
 - Establishing procedures for resolving disputes over documents
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5. Challenges and Best Practices

5.1 Common Challenges

- Late or incomplete submissions
- Disputes over admissibility
- Poor document organization
- Confidentiality breaches

5.2 Best Practices

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- Early agreement on procedural framework
 - Clear and detailed marshaling orders
 - Use of standardized exhibit formats
 - Adoption of technology for efficiency
 - Proactive tribunal case management
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6. Conclusion

The tribunal's preliminary actions, particularly the issuance of marshaling orders and the structured handling of exhibits, are foundational to a successful arbitration. By establishing clear procedures and expectations early, the tribunal enhances efficiency, reduces disputes, and ensures a fair and orderly process.

7. References (Optional)

- UNCITRAL Arbitration Rules
- ICC Arbitration Rules
- IBA Rules on the Taking of Evidence in International Arbitration