

## **Preliminary Actions of Tribunal on Arbitration Subpoenas and Discovery**

### **1. Introduction**

Arbitration is a private dispute resolution mechanism where parties agree to submit their disputes to a tribunal instead of a court. One of the critical early stages in arbitration involves the tribunal's preliminary actions concerning subpoenas and discovery. These actions set the procedural tone, ensure fairness, and establish the scope and efficiency of the proceedings.

### **2. Legal Framework**

The tribunal's authority to manage subpoenas and discovery derives from:

- The arbitration agreement between the parties
- Applicable arbitration rules (e.g., institutional rules)
- National arbitration laws (lex arbitri)
- Relevant international conventions, where applicable

These sources collectively define the tribunal's powers and limitations in compelling evidence and managing disclosure.

### **3. Initial Procedural Conference**

One of the first steps taken by the tribunal is conducting a preliminary or procedural conference. During this stage, the tribunal:

- Establishes a procedural timetable
- Discusses the scope of discovery
- Determines whether subpoenas will be permitted
- Addresses confidentiality concerns

This conference ensures that both parties understand their obligations and expectations regarding evidence production.

### **4. Determining Scope of Discovery**

Unlike litigation, arbitration generally involves limited discovery. The tribunal evaluates:

- Relevance and materiality of requested documents
- Proportionality of the request

- Burden and cost of production

The tribunal may adopt guidelines such as the IBA Rules on the Taking of Evidence to standardize document production practices.

## **5. Authority to Issue Subpoenas**

The tribunal's power to issue subpoenas varies depending on jurisdiction and governing rules. Key considerations include:

- Whether the tribunal can directly compel third parties
- The need to seek assistance from national courts
- Enforceability of subpoenas across jurisdictions

In some systems, only courts have the authority to enforce subpoenas, requiring tribunal coordination with judicial bodies.

## **6. Handling Requests for Subpoenas**

When a party requests a subpoena, the tribunal typically:

- Reviews the necessity and relevance of the requested testimony or documents
- Considers objections from the opposing party
- Ensures the request is not overly burdensome or abusive

The tribunal may deny, limit, or approve the request based on these factors.

## **7. Managing Document Production**

Tribunals often implement structured procedures for document production, such as:

- Requests for Production (RFPs)
- Redfern Schedules for organizing requests and objections
- Deadlines for submission and responses

This structured approach promotes transparency and efficiency.

## **8. Confidentiality and Privilege**

The tribunal must address issues of confidentiality and privilege early in the process. This includes:

- Attorney-client privilege

- Work-product protection
- Commercial confidentiality

Protective measures may include confidentiality orders or restricted access to sensitive materials.

## **9. Use of Technology and E-Discovery**

Modern arbitration frequently involves electronic discovery. The tribunal may:

- Set protocols for e-discovery
- Limit the scope of electronic searches
- Encourage cost-effective technology solutions

This helps avoid excessive costs and delays associated with large volumes of electronic data.

## **10. Enforcement and Sanctions**

If a party fails to comply with discovery orders or subpoenas, the tribunal may:

- Draw adverse inferences
- Allocate costs against the non-compliant party
- Seek court assistance for enforcement

Sanctions are used to maintain procedural integrity and fairness.

## **11. Conclusion**

The tribunal's preliminary actions regarding subpoenas and discovery are crucial for shaping the arbitration process. By carefully balancing efficiency, fairness, and legal constraints, the tribunal ensures that the proceedings remain effective and just. Proper management at this stage can significantly influence the outcome and duration of the arbitration.