Arbitrator's Award Conference

Lien on Award: How to Be Paid

1. Introduction

In arbitration proceedings, one of the key concerns for arbitrators, legal representatives, and related professionals is ensuring proper payment for services rendered. A critical mechanism that supports this objective is the concept of a lien on the arbitral award. This document explores how arbitrators can secure payment through a lien, the legal basis for such a lien, and best practices for enforcing it.

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2. What is a Lien on an Award?

A lien on an arbitral award refers to the right of an arbitrator (or arbitral tribunal) to retain possession or control over the final award until their fees and expenses have been fully paid. This ensures that arbitrators are compensated before the award is released to the parties.

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3. Legal Basis for Arbitrator's Lien

The right to a lien may arise from:

- **Contractual agreement** between the parties and the arbitrator
- **Institutional arbitration rules** (e.g., ICC, LCIA, AAA)
- **National arbitration laws** in certain jurisdictions
- **Common law principles**, recognizing the arbitrator's right to be paid for services rendered

In many jurisdictions, the lien is recognized as an implied right unless expressly excluded.

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4. Purpose of the Lien

The lien serves several important purposes:

- Ensures arbitrators are paid before releasing the award
- Encourages timely payment by the parties

- Protects arbitrators from financial risk
- Maintains the integrity and efficiency of the arbitration process

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5. When Does the Lien Arise?

The lien typically arises:

- After the arbitrator has completed their work
- When fees and expenses remain unpaid
- Before the final award is delivered to the parties

Some institutional rules explicitly provide that the award will not be released until all costs are settled.

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6. How Arbitrators Enforce the Lien

Arbitrators may enforce their lien through the following steps:

1. **Notification to Parties**
    - Inform parties of outstanding fees
    - Provide a detailed invoice
2. **Withholding the Award**
    - Retain the final award until payment is received
3. **Institutional Support**
    - In institutional arbitration, the administering body may assist in collecting fees
4. **Legal Remedies (if necessary)**
    - In rare cases, arbitrators may seek court assistance to enforce payment

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7. Institutional Rules and Practices

Many arbitration institutions have built-in mechanisms to ensure payment:

- **Advance deposits** for fees and costs
- **Cost schedules** agreed upon in advance
- **Administrative control** over the release of awards

Examples include:

- ICC: Requires advance on costs and withholds awards until payment
- LCIA: Collects deposits and manages arbitrator compensation
- AAA: Uses fee schedules and administrative oversight

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8. Challenges and Risks

Despite the protections offered by liens, challenges may arise:

- One party refuses to pay
- Disputes over fee amounts
- Delays in proceedings due to non-payment

In such cases, arbitrators must act carefully to remain impartial while protecting their financial interests.

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9. Best Practices for Arbitrators

To ensure payment, arbitrators should:

- Clearly define fee arrangements at the outset
- Require advance deposits
- Use written agreements or terms of appointment
- Regularly update parties on costs incurred
- Rely on institutional frameworks where possible

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10. Conclusion

A lien on an arbitral award is a vital tool that ensures arbitrators are compensated for their work. By understanding the legal basis, proper application, and enforcement mechanisms of such liens, arbitrators can safeguard their right to payment while maintaining professionalism and neutrality in the arbitration process.

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11. Case Law and Jurisdiction-Specific Rules

A. United Kingdom

The right of an arbitrator to exercise a lien over an award is well recognized under English law.

- **Arbitration Act 1996 (UK)**:
  - Section 56 expressly provides that an arbitrator may refuse to deliver an award except on full payment of fees and expenses.
- **Case Law**:
  - *Re Coombe and Another (1883)*: Recognized the arbitrator's right to retain the award pending payment.
  - *The Argo Fund Ltd v Essar Steel Ltd [2006]*: Reinforced the principle that arbitrators are entitled to security for their fees.

B. United States

In the United States, the concept of a lien is less formalized in statutes but is supported through institutional rules and contractual arrangements.

- **Federal Arbitration Act (FAA)**:
  - Does not explicitly provide for a lien, but courts generally uphold contractual fee arrangements.
- **Institutional Practice**:
  - The American Arbitration Association (AAA) requires advance deposits and will not proceed or release awards until fees are paid.
- **Case Law**:
  - *Dealer Computer Services, Inc. v Old Colony Motors, Inc.*: Confirmed enforceability of arbitration fee arrangements.

C. India

Indian law recognizes arbitrators' rights to fees and provides mechanisms for addressing fee disputes.

- **Arbitration and Conciliation Act, 1996 (as amended)**:
  - Section 39 expressly grants arbitrators a lien on the arbitral award for unpaid costs.
- **Case Law**:
  - *Union of India v Singh Builders Syndicate (2009)*: Highlighted concerns over arbitrator fees and the need for regulation.
  - *ONGC Ltd v Afcons Gunanusa JV (2022)*: Clarified fee structures and the Fourth Schedule.

D. Singapore

Singapore adopts a modern arbitration framework with clear statutory backing.

- **International Arbitration Act (IAA)**:
  - Recognizes arbitrators' rights to be paid, supported by institutional rules.
- **Institutional Rules (SIAC)**:
  - SIAC requires deposits and will withhold awards pending payment.
- **Case Law**:
  - *AQZ v ARA [2015]*: Emphasized the supervisory role of courts and respect for arbitral procedures.

E. Australia

Australian law supports arbitrators' entitlement to fees through both statute and practice.

- **Commercial Arbitration Acts (State-based)**:
  - Provide that arbitrators may withhold awards until payment is made.
- **Case Law**:
  - *Pipeline Services WA Pty Ltd v ATCO Gas Australia Pty Ltd [2014]*: Addressed arbitrator costs and procedural fairness.

12. References

- UNCITRAL Model Law on International Commercial Arbitration
- Arbitration Act 1996 (UK)
- Federal Arbitration Act (USA)
- Arbitration and Conciliation Act, 1996 (India)
- International Arbitration Act (Singapore)
- SIAC, ICC, LCIA, and AAA Rules