

Ten tips for saving time and cost in international arbitration

Concerns over increasing time and costs in international arbitration have risen in recent years. These were famously articulated by the Chief Justice of Singapore in his opening speech at the ICCA Conference in 2012.¹ Various arbitral institutions have also issued guidelines in the last few years, designed to help parties save time and costs.² Here, **Ben Giaretta** and **Michael Weatherley** make ten further suggestions as to what a party can do to make the arbitration process more efficient, and save time and costs as a result.

1. First, investigate

The importance of doing a proper investigation and analysis at the outset cannot be overstated. This will provide the building blocks of any claim or defence. It will also inform you whether a claim or defence is worth pursuing or not. The three elements of any investigation are:

- **Facts:** what has happened? This is established by examining the documentary record and by speaking to the individuals involved.
- **Rights:** what legal rights arise out of the facts? This requires legal analysis and research.
- **Interests:** having identified the facts and your rights, what is the best way forward? Is it in your interests to start (or defend) an arbitration, or would your business be better served by another course, such as proposing a settlement or simply learning a lesson and moving on?

The extent of any investigation will vary depending on the situation. But, in general, resources spent here will save costs later.

2. Then, plan

Once you have resolved to start or defend a claim, the next step is to work out how to proceed. It is helpful to create two documents:

- **A summary of your arguments:** This should be short (say, one page) and might be in diagrammatic form. Even the most complex arguments can be summarised in this way; and if they cannot, it may suggest these have not been investigated properly to begin with.
- **A project plan:** This is an initial timetable for preparing the claim or defence and the subsequent steps in the arbitration, with preliminary estimates for timing, and allocation of responsibilities.

Both these documents will develop as the arbitration proceeds: it is never possible to predict at the start precisely how an arbitration will unfold. But the discipline of preparing these at an early stage, and updating them over time, will anchor the claim or defence and keep it on track. They will also help you to prepare a budget for the arbitration.

3. Work backwards

This requires you to establish what you want to gain from the arbitration; then, through deduction, work out how you are going to get to that point. An arbitration of course can have multiple potential outcomes: a settlement, a victory or a loss. But focussing on your goals will keep your efforts results-oriented, and avoid any sidetracks.

4. Choose the right team

The right team to deal with an arbitration usually consists of internal personnel and external advisers, and a mixture of talents, with regular communication between them. It is invaluable to have people with international arbitration experience, and also people who are prepared to engage constructively with the strategy and provide new perspectives (see next Tip).

5. Avoid group-think

Most arguments can benefit from a second opinion, particularly when these have been developed by a closed circle, and so may be affected by "group-think". A second view may be provided by someone else within the organisation, or by external counsel. This

helps to focus arguments and eliminate unnecessary parts.

6. Use technology

Electronic databases require upfront investment but are the fastest and most convenient way to store, collate and organise substantial amounts of documents. They also enable sharing of documents between team members in different locations. Email, video links and telephone conferences all have their place too in a process that by its very nature is international; although be wary of the false economy of dispensing with direct, face-to-face contact in some situations.

7. Choose the right tribunal

Experienced arbitrators, who recognise that they have a duty to ensure the expeditious and economical determination of the dispute, as well as a duty to ensure a fair process,³ can ensure that an arbitration is conducted efficiently. On occasions, this must be balanced against their availability: choosing an experienced arbitrator who does not have time to deal properly with the matter can also be a route to delay and excessive costs.

8. Review regularly

Positions and interests change over time. It is useful to reassess the direction of the team periodically, to ensure it remains on track towards your desired destination – particularly if that destination has altered. A review may be conducted via a formal team meeting,

or by bringing in a fresh pair of eyes to assess the team's progress and direction.

9. Mediate

Serving a claim or filing a defence does not mean that the arbitration must be fought all the way to an award. A settlement can be reached at any time if both sides are willing, and often a third party mediator can help bring this about. Usually, the key question is when in a process can a mediation be attempted: too early, and the parties may not properly know their own positions; too late, and positions may have become entrenched.

10. Learn

Disputes are a fact of commercial life. Sometimes these escalate into arbitrations; and even a victory can come at a cost of fees or management time. Whatever the result, there is value in setting aside time at the end to learn lessons from the experience. You should reassess your standard terms, internal processes and business relationships; and how you have dealt with the dispute. Through learning you will be better prepared the next time a dispute happens.

Notes

- 1 ICCA is the International Council for Commercial Arbitration. The Chief Justice's speech is available [here](#).
- 2 The ICC report on saving time and cost in arbitration is available [here](#). The CI Arb 2011 Survey on Costs of International Arbitration is available [here](#). It suggests that the average arbitration takes around 20 months to resolve, at a cost of around £1.5 million.
- 3 These duties are set out expressly at Rules 16.1 and 37.2 of the SIAC Rules. The SIAC Rules can be found [here](#).

Further information

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