

## **Four Ways to Make Arbitration Faster and Less Costly**

Arbitration is often preferred to litigation because it tends to lead to a faster resolution at a lower cost than going to court.

If you are a CEO, CFO, or in-house counsel, you want to maximize the benefits of commercial arbitration. As an attorney and arbitrator for international and American clients, I'd like to share my suggestions for optimizing arbitration in commercial disputes.

### **Limit Discovery to Essential Information**

The discovery schedule might be limited to exchanging essential information necessary for the arbitrator to understand the subject matter, and indispensable to render a fair and impartial award. Remember, however, that you should not do so unilaterally, but only in agreement with the other party and the arbitrator. In order to save cost, I recommend limiting testimony and other tools of discovery and subsequent evidence to the most relevant issues and persons (such as subject matter experts) in other words only to that which is instrumental to your position.

In discovery, more is not necessarily better for a variety of reasons. Although time equals money (less time spent means less costs), this approach should be balanced with the need to be convincing and to present your case adequately. Alain, and I cannot stress this enough, Any limitations to the discovery schedule and evidence necessitates agreement between all participants to avoid a detrimental effect for one party alone. If you are prudent with time and resources but the other party is not, you may spend more than you save if you lose (and are compelled to pay the other party's legal costs).

You might also be cautious about document overload. The arbitrator does not necessarily need five copies of different documents that contain the same information. In fact, you may alienate the arbitrator (and further antagonize the other party) with an avalanche of paper and electronic documents which add nothing substantive.

### **Keep an Open Mind**

Arbitrations have guidelines but they are not scripted. You don't know where the arbitration may take you, so keep an open mind to the possibility of a settlement. There may be new information presented that could change your viewpoint and help create a more conciliatory atmosphere.

Remember, an arbitrator's award is binding and enforceable. It may be more strategic for you to craft a settlement that is more to your liking than what the arbitrator may decide.

## **Mind Your Manners**

I realize that disputes are often emotionally charged. This is a time for you (and hopefully, the other side) to set your emotions aside and concentrate on the facts as well as the best possible outcome for all concerned. Having counsel can help with this, as counsel can absorb your emotion and communicate only the facts or fact based argument.

If there is time lost because of interrupting or shouting each other down, arbitration becomes neither cost-effective nor time-saving for all concerned. The same is true for unnecessarily objecting to witnesses, evidence or some procedural step. This may be part of your strategy but does not save time and cost.

A seasoned arbitrator can read the room and allow time for breaks so that tempers may cool. You are at arbitration to resolve a dispute, not create another one.

## **Draft Your Arbitration Clause Carefully**

Hopefully, you have already created a tailored arbitration clause into your contract that addresses the key elements for your arbitration, including confidentiality, discovery limits, deadlines, and arbitrator selection.

Too often, a boilerplate arbitration clause is taken from another contract or a form. While this initially saves time, money, and effort, it paradoxically leads to more time-consuming and expensive arbitration.

Pairfact Legal AG can help make your arbitration proceed efficiently and cost-effectively.

We would be happy to answer your questions about arbitration. Pairfact Legal AG has a wide practice area that includes arbitration services. Attorney Lara Pair and her team provide turnkey legal support and representation, or à la carte legal services.

Schedule a free telephone consultation with Pairfact Legal AG: [office@pairfactlegal.com](mailto:office@pairfactlegal.com).