



Chartered
Institute of
Arbitrators

CIArb

Guideline 5: Guideline for Arbitrators regarding Documents-Only Arbitrations

1. Introduction

1.1 This Guideline is intended to provide advice for arbitrators where a 'documents only' procedure is adopted by agreement between the parties or by the exercise of the arbitrator's discretion. Section 34(2)(h) of the English Arbitration Act 1996 gives the arbitrator this discretion in the absence of any agreement by the parties to the contrary.

1.2 Most of the consumer arbitration schemes administered by the Institute, and other consumer arbitration rules, require disputes to be resolved on documents only. The Arbitration Act 1996 s.34(2)(h) gives arbitrators the power, in the absence of agreement between the parties, to decide 'whether and to what extent there should be oral or written evidence or submissions'. The arbitrator therefore has the power to dispense with a hearing of oral evidence or submissions if he considers them to be unnecessary.

2. Comparative View

2.1 The standard rule around the major arbitration centres gives the tribunal the power to determine the procedure to be adopted where and to the extent that the parties have not reached a contrary agreement: Article 1494 French NCPC, Art 182(2) Swiss LDIP, Article 1694 Belgian Code judiciaire.

2.2 However, Article 24(1) of the UNCITRAL Model Law, reflected in section 24(1) of the Swedish Act, and section 1047 ZPO, Article 182(3) of the Swiss LDIP, Article 1039(3) Dutch Burgerlijke Rechtsvordering and Article 1694(2) of the Belgian Code Judiciaire are different from the English and French law position in that the tribunal is required to hold a hearing if requested by a party unless there has been a prior agreement to the contrary.

3. When the procedure may be used

A documents-only procedure is most clearly appropriate where all the evidence relevant to the dispute is contained in documents, including expert reports, and there is no need for oral testimony from witnesses. However it can also be appropriate where the dispute involves simple issues of fact and opinion.

4. Recommended procedure

4.1 Initial directions

Clear directions should be issued at the outset so that both parties are absolutely clear as to what is required of them. The arbitrator must direct the parties that anything sent to him should be copied at the same time to the other party.

4.2 Submissions and documents

4.2.1 Normally the parties should be required to make their initial submissions sequentially. Where both parties are fully aware of the other party's case simultaneous exchange may be appropriate. If the initial exchange of submissions is done simultaneously, it may be appropriate to have a further exchange of submissions so that each party may answer points raised by the other not anticipated in its initial submission.

4.2.2 The parties should be advised to set out their whole case in their initial submissions and to attach copies of all the documents on which they rely. As it is essential that the parties' submissions and evidence cover all relevant matters to be considered, the parties should be allowed as much time as they reasonably need for their submissions.

4.2.3 Where witness statements and/or experts' reports are necessary they should be attached to the parties' submissions or exchanged later as appropriate. It may save time and costs if the parties, instead of each appointing their own experts, agree to the appointment of a single expert either jointly by themselves or by the arbitrator. In that case his report should be requested after the parties have exchanged their submissions and documentary evidence and any statements of witnesses of fact so that the expert may know exactly the problem he has to address.

4.3 Examination of submissions and evidence

The arbitrator should retain the right to call a meeting with parties or to raise questions with the parties in writing should he consider it appropriate. If a meeting is called it should be made clear that this will not be a hearing at which the parties can examine each other or their witnesses, but that the arbitrator himself will ask the questions.

4.4 Inspection

If an inspection of the subject-matter of the dispute is necessary this should be carried out in the presence of both parties. Exceptionally if one of the parties does not wish to attend or refuses to do so and the arbitrator needs someone to guide him as to what he should be looking at, it may be carried out in the presence of the one party only. It should be made absolutely clear that the visit is for inspection only and that no evidence or submissions will be entertained from either party.

4.5 The Award

The arbitrator should ensure that he has covered all the issues raised by the parties in his award and has fully understood their respective submissions and evidence. Where the dispute is relatively complex it may be advisable for the arbitrator to check with the parties in advance that he has correctly defined the issues, and/or the undisputed facts, but he should not give them any opportunity to question his findings on the disputed facts.