STATEMENTS OF CLAIM AND DEFENCE

Overview

- “Notice of Arbitration” commences arbitration proceedings.
- Expanded in a Statement of Claim.
- Respondent submits its Defence or Answer, and may serve a Counterclaim.
- Generally, no necessary form, sequence or timing for submissions in arbitration proceedings.
- The parties must notify each other of the case that is being made in order to ensure a fair resolution of the dispute.
- The tribunal is under a duty to manage the arbitration, including deciding on a procedure that is appropriate to the case and which will avoid unnecessary delay and expense.

Provisions of the Arb. Ordinance

- The starting point in the law is s.51: effecting Article 23 of the UNCITRAL Model Law:
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- "*Article 23. Statements of claim and defence*
- (1) Within the **period of time** agreed by the parties or determined by the arbitral tribunal, the claimant shall state **the facts** supporting his claim, the **points at issue** and the **relief or remedy sought**, and the respondent shall state his defence in respect of these particulars, **unless** the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

The most important point

- is that the agreement of the parties is paramount.
- The parties are free to agree on the process to be followed to resolve the dispute.

The parties are free to agree

- on the way in which their cases are to be presented; including:
  - the format
  - and form of the submissions
  - and the timing
  - and manner in which this is to be done.

The provision is designed to be flexible

- and the Ordinance does not impose particular requirements regarding submissions.

The Statements should inform

- There is an implicit requirement that each party is to ensure that the other party understands the case that is being put forward against them.

Role of the Tribunal

- Once the Tribunal is appointed, the Tribunal has the duty to manage the proceedings.
- Tribunal will consult the parties to seek their views and to see if any agreement has been reached,
- and will specify a timetable for the parties to prepare and submit their submissions.

The Tribunal will determine what system / approach may be appropriate to the case.

- This should be one which will avoid unnecessary delay and expense,
- and at the same time, also provide for the reasonable amount of time that each party requires to prepare its submissions.

Statement of Claim

- In most cases, the first step is for the claimant to submit its Statement of Claim in writing.
- This is followed by the respondent submitting its Statement of Defence (and any counterclaim).
- This process of “consecutive submissions” is commonly used in arbitration proceedings.

Usually the Statement of Claim includes the following:

(a) the facts in support of the claimant’s case;

(b) the issues in the case; and

(c) the remedies that are being sought against the respondent (such as a claim for damages and interest).

Evidence and Legal Submission

- The claimant may (or may be required by the Tribunal) to submit any documents that it wishes to rely upon as evidence of its claim contemporaneously ;
- and/or submit an outline of arguments/principles of law that it wishes to raise.

Terminology

- “Statement of Claim” is commonly used, but “Statement of Case” also sometimes used.
- No right or wrong terminology, but parties must understand what is expected of them.
- It is in the parties’ interest to agree (or to ask Tribunal to direct) what form & detail is expected.
- This is particularly important where the parties are from different legal backgrounds.

Statement of Defence (and Counterclaim)

- Respondent receiving the Statement of Claim will prepare its defence to the claims; the Statement of Defence.
- As with the Statement of Claim, there is no specific form.
- Again, the main requirement is that the claimant and the Tribunal understand the facts and arguments that are being put forward.
- The respondent is also entitled to include legal arguments and to attach evidential documents.

Counterclaims

- It is common for respondents to submit any counterclaims with the Statement of Defence.
- Counterclaims are claims which are made by the respondent against the claimant and which arise (ordinarily) from the same contract as the claimant’s claims.
- The counterclaim is usually a separate part of the Statement of Defence.

Replies etc

- Once the Statement of Claim and Statement of Defence have been submitted it is not necessary for the claimant to respond unless the respondent raises a counterclaim.

- However a “Reply” is commonly allowed.

- If a Counterclaim has been filed, the claimant would be required to prepare and submit its Statement of Defence to the Counterclaim.

Amendments and Clarifications

- Section 51 / Art 23:
- *(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it".*
- Therefore, the parties are entitled to amend or supplement their submissions –
- unless the parties have agreed otherwise.

Clarifications (Requests for Further and Better Particulars)

- Formerly quite common in Hong Kong arbitration proceedings, but less common now, and in international arbitrations

Practical details concerning written submissions

- The Tribunal and the parties will consider practical arrangements;
  - to simplify the procedure
  - to ensure that the submissions are effective tools to assist the parties and the tribunal, and
  - To ensure both parties “operate” on the same basis.

These should / may include:

- (a) Whether the submissions will be supplied on paper, by electronic means, or both;
- (b) The number of copies;
- (c) A system for numbering documents; and
- (e) Paragraph numbering in written submissions.

- Reaching an agreement on these issues will ensure uniformity in the presentation.

Arbitration Rules

- Many arbitration proceedings in Hong Kong are conducted under the Domestic Arbitration Rules of the HKIAC.
- There are many other sets of Rules that might apply such as the UNCITRAL Rules, ICC, etc.
- HKIAC Rules include; Article 1 Commencement of Arbitration, and Article 7 Submission of Parties' Written Statements and Documents
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Conclusion

- Tailor these documents to the circumstances of the dispute.
- Use these documents to communicate and explain.
- Avoid an unduly “technical” approach.