

# MANAGING AN ARBITRATION: TOP TIPS FOR IN-HOUSE COUNSEL

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Legal Briefings - By **Hannah Ambrose, PSC** and **Vanessa Naish, PSC**

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Global arbitration Professional Support Consultants and Practice Managers Vanessa Naish and Hannah Ambrose present bite-size top tips on managing an arbitration for in-house counsel and the important role they play in the arbitral process.



## 1. MAKE USE OF RELEVANT GUIDANCE

- Various arbitral institutions have produced a guide for parties and/or their in house counsel.
- Check the websites for guides and notes. For example the [ICC in-house counsel guide](#) raises important tactical questions for in-house counsel to discuss with their internal and external teams at each stage of proceedings. It is useful even if your arbitration is proceeding under a different institution's arbitration rules.
- Ask for guidance on what to expect from external counsel. For example HSF has a number of step by step guides to arbitration under various institutional rules.



## 2. CHECK IF YOUR AWARD WILL BE ENFORCEABLE

- Where would you enforce your award? Are the courts of that jurisdiction or those jurisdictions likely to be "arbitration friendly"?
- What would be the costs of and how long will it take?
- Consider insuring enforcement risk?



## 3. GET THE RIGHT TEAM

- Think about possible additions to the internal team. If the case will feature a considerable administrative burden (eg collating documents or disseminating information), can legal costs or internal management costs be reduced by hiring a paralegal to manage aspects of the case?
- Do you need to add to your external team? Engage a PR firm to work with your legal team (eg in a case which is wholly or partially in the public domain)? Bring in external IT support to harvest documents?



#### **4. CONSIDER CASE MANAGEMENT: INTERNAL MANAGEMENT AND HOW YOU WILL WORK WITH EXTERNAL COUNSEL**

- Focus on efficient and stream-lined internal management to help to reduce time and costs. Who will be the main contact for your external lawyers? How much authority do they have to make decisions in the case?
- How will you divide labour between in-house counsel and external counsel? Consider whether in-house counsel should be virtually embedded in the external legal team.



#### **5. FAMILIARISE YOURSELF WITH THE LIKELY STEPS AND PEAK COSTS**

- Anticipate periods in which your involvement is at its peak.
- Assist your financial management of the dispute and manage the expectations of any budget holders by asking external counsel to pinpoint periods of increased busyness.



## 6. PLAN AHEAD WITH DOCUMENTS AND WITNESSES

- Consider document retention and document creation at an early stage. Prevent creation of unnecessary but potentially discloseable documents – particularly informal emails.
- Discuss with external counsel how best to approach the document production process: where are documents held, in what form, and how can they be harvested?
- Who are the witnesses of fact? Is there a risk that an individual may be leaving the organisation or that the counter-party may want to rely on the testimony of the same witness, for example, a third party?



## 7. BE VERY CLEAR WITH YOUR LEGAL TEAM: CLARITY FROM THE OUTSET AS TO YOUR EXPECTATIONS

- Who will approve pleadings, attend hearings etc. Plan for the right people internally to be available at the right time. Make the line of command clear, reduce costs by collating comments in-house.
- Discuss whether any balance is to be struck between winning, cost, quality and speed.
- Consider the frequency of, for example, WIP updates, summary emails, and reports for the board.



## 8. PREPARING STAFF FOR AN ARBITRATION HEARING

- Make witnesses available to external counsel for discussion of the process of giving evidence.
- Where your company's management or staff are giving evidence before an arbitration hearing, offer support. Addressing concerns head on is likely to ensure that the evidence they give is accurate and more confident which will ultimately assist the case.
- If organising the logistics for the attendance of yourself and witnesses, document the costs clearly to make them more readily recoverable.



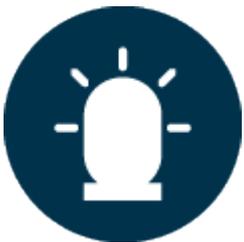
## 9. WAITING FOR AND RECEIVING AN AWARD

- Manage expectations to the time it may take to get an award.
- External counsel are likely to receive the award before you. It may take some time to analyse the award (which may be lengthy) so that they can explain the reasoning for the tribunal's decision and its implications.



## 10. CONSIDERING CHALLENGE OF THE AWARD

- Engage with external counsel at short notice, and make quick decisions in order that the opportunity to challenge an award is not lost.
- Be prepared for a frank discussion as to the likely success of a challenge, the aims (whether to actually overturn the award or to seek a compromise on payment etc) and whether the costs of the process are too great for the likely return.



## 11. CONSIDERING CHALLENGE OR ENFORCEMENT OF THE AWARD

- Consider enforcement whether you win or lose.
- If you win, consider where you will enforce and instruct local counsel if necessary. If costs of enforcement are high, consider mitigating steps (eg a compromise with the losing party, insuring the risk of non-enforcement).
- If you lose, consider whether to pay. If not, consider grounds for resisting enforcement and the potentially substantial cost and time involvement in an enforcement challenge.

For more information on managing an arbitration, please contact Hannah Ambrose or Vanessa Naish.





## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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