

New York

Washington, D.C.

London

Paris

Frankfurt

Moscow

Hong Kong

Shanghai

Debevoise & Plimpton LLP Protocol to Promote Efficiency in International Arbitration

International arbitration can provide significant advantages for parties to cross-border disputes, such as a neutral forum, input into selecting the decision-maker and nearly worldwide enforceability of awards. With seemingly greater frequency, however, parties to international arbitrations express concerns about increased length and cost of the arbitration process. These concerns have caused some parties to question the value of international arbitration as an efficient dispute resolution mechanism.

To respond to these concerns, the international arbitration practitioners at Debevoise & Plimpton LLP have developed this Protocol To Promote Efficiency in International Arbitration. This Protocol identifies specific procedures that generally make an arbitration more efficient. Through this Protocol, we express our commitment to explore with our clients how such procedures may be applied in each case. In each arbitration, parties, counsel and arbitrators should take maximum advantage of the flexibility inherent in international arbitration and should use only the procedures that are warranted for that particular case. The procedures set out here are therefore not meant to be inflexible rules. However, through their consideration, we believe that we can improve the arbitration process and thereby enable our clients to enjoy the advantages of international arbitration.

Formation of the Tribunal:

1. Before appointing arbitrators, we will ask them to confirm their availability for hearings on an efficient and reasonably expeditious schedule.
2. We will ask arbitrators for a commitment that the award will be issued within three months of the merits hearing or post-hearing briefs, if any.
3. We will work with our opposing counsel to appoint a sole arbitrator for smaller disputes or where issues do not need the analysis of three arbitrators.

Establishing the Case and the Procedure:

4. We will encourage consolidation and joinder of parties and disputes to avoid multiple proceedings when possible.
5. When possible, we will include a detailed statement of claim with the request for arbitration, so that briefing can proceed promptly once the procedural calendar is established.
6. We will propose and encourage the arbitral tribunal to adopt procedures that are appropriate for the particular case and that are designed to lead to an efficient resolution. We will use our experience in crafting such procedures, and we will not simply adopt procedures that follow the format of prior cases.
7. We will request the arbitral tribunal to hold an early procedural conference, usually in-person, to establish procedures for the case. Although in-person meetings may cost more because of travel time and expense, they often ultimately save costs by allowing a more complete discussion of the procedural issues that may arise. We will seek to set the merits hearing date, as well as all other procedural deadlines, in this first procedural conference.

8. We will request our clients and opposing clients to attend any procedural meetings and hearings with the arbitral tribunal, so that they can have meaningful input on the procedures being adopted and consider what is best for the parties at that time.
9. When appropriate to the needs of the case, we will consider a fast track schedule with fixed deadlines.
10. We will explore whether bifurcation or a determination of preliminary issues may lead to a quicker and more efficient resolution.

Evidence:

11. We will limit and focus requests for the production of documents. We believe that the standards set forth in the IBA Rules of Evidence generally provide an appropriate balance of interests.
12. We will work with opposing counsel to determine the most cost-effective means of dealing with electronic documents.
13. We will, when possible, make filings electronically and encourage paperless arbitrations. When cost-effective, we will use hyperlinks between documentary exhibits and their references in memoranda.
14. We will use written witness statements as direct testimony to focus the evidence and hearings.
15. We will avoid having multiple witnesses testify about the same facts.
16. We will encourage meetings of experts, either before or after their reports are drafted, to identify points of agreement and to narrow points of disagreement before the hearing.
17. We will generally brief legal issues and consider presenting experts on issues of law only when the tribunal and counsel are not qualified to act under that law.
18. We will divide the presentation of exhibits between core exhibits and supplementary exhibits that provide necessary support for the claim or defense but are unlikely to be referenced at a hearing.

The Hearing:

19. We will consider the use of videoconferencing for testimony of witnesses who are located far from the hearing venue and whose testimony is expected to be less than two hours.
20. We will consider the use of a chess-clock process (fixed time limits) for hearings.
21. We will not automatically request post-hearing briefs, but we will consider in each case whether they would be helpful in promoting the efficient resolution of the issues. When post-hearing briefs are appropriate, we will ask the arbitral tribunal to identify the issues on which it may benefit from further exposition, and then seek to limit the briefing to such issues.
22. We will also consider alternative briefing formats, such as the use of detailed outlines rather than narrative briefs, to focus the issues and to make the briefs more useful to the tribunal.

Settlement Consideration:

23. We will investigate routes to settlement, including by suggesting mediation, when appropriate, either at the outset of the case or after an exchange of submissions has further clarified the issues.
24. Where applicable rules or law permit, we will consider making a "without prejudice except as to costs" settlement offer at an early stage. This will not only protect our client's costs position, but it may lead the opposing party to consider potential outcomes more seriously.
25. When appropriate, we will ask arbitrators to provide preliminary views that could facilitate settlement.