

## Arbitration Tips - Claim



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A few brief suggestions to consider, in the event that we are contacted to legally assist the contractual party, that decides to promote an "Arbitral Claim", under the protection of Law No. 131 of December 31, 2013 "That regulates national and international commercial arbitration" in Panama and dictates another provisions"; without having previously participated in the contractual phases and/or during the execution of the contract, which will be subject to the arbitration procedure; and considering that the negotiation channels have been exhausted, without satisfactory agreement between the parties, which have avoided going to the arbitration jurisdiction

Before considering the start of an arbitration process, we must minimally expose our clients, through prior work meetings and/or expressly in writing:

1. Know in detail all facts and evidences.
2. Identify the contractual points to claim.
3. Identify the contractual clauses, which are considered infringed because of the fault of the counterparty.
4. Determine the possible merits of the claims and their monetary estimate (determined and/or determinable), which can be proved in arbitration (quantification of potential damages and economic damages).
5. Expressly state in writing, the "cost - benefit analysis", of participating in an arbitration process.
6. Others, which will depend on the arbitration object in dispute and/or the legal nature of the claims.

Once we have knowledge of the above, **and know in detail each existing evidence to date**, to prepare the claim; we suggest that the Arbitral Claim, at least have the following elements:

## **I. ARBITRATION REQUEST.**

It must expressly state that the controversy contained in the complaint is submitted to arbitration, whether national (in law or equity) or international.

## **II. PARTIES.**

Considering that the general rule is they are legal persons, the identification of the parties must be complete, that is to say, to include:

Plaintiff: name of the company, nationality, registration data (if Panamanian, the Folio number recorded in the Public Registry); followed by the identification of its legal representative or attorney in fact (full name, gender, marital status, profession, personal identity document); followed by the same address for both (name of the building, floor, office number, street, city, country); and complete generals of your Legal Representative and your address (name of the building, floor, office number, street, city, country, telephone and email).

Defendant: updated information as of the date of filing the complaint, including name of the corporation, citizenship,

registration data (if Panamanian, the Folio number in the Public Registry) followed by the identification of its legal representative or attorney in fact (complete name, gender, civil status, profession, personal identity document); followed by the same address for both (name of the building, floor, office number, street, city, country); phones; and electronic mail (s).

## **III. REFERENCE TO THE ARBITRATION AGREEMENT AND CONTRACT.**

Fully identify the contract (s) containing the arbitration clause, its parts, date, and textually quote the arbitration agreement.

In this section, depending on the case, the legal nature of the arbitration dispute could be indicated. For example, in the event of a civil dispute, it could be indicated that it is a controversy of civil nature.

## **IV. FACTS.**

Initially make a draft of all statements of facts related to the dispute, which must subsequently be refined and adjusted to the type of dispute and its complexity; in such a way, that the final demand, does not contain an unmanageable amount of facts and/or improbable affirmations in the process (conservatively no more than 15, complexly no more than 25 and exaggeratedly more than 25).

Ensure that the first facts are difficult to deny by the defendant; write all the facts in a coherent, understandable and

chronological way; and that all the facts have means of proof, for their accreditation during the process.

## **V. PRETENSIONS.**

This section is of vital importance for the content of the claim, since it must contain with precision, the statements, petitions, orders, convictions (determined or determinable), that are requested to the Arbitral Tribunal, are recognized in the Arbitral Award.

Depending on the complexities of the arbitration controversy, main claims and/or subsidiary claims should be considered.

## **VI. AMOUNT.**

It implies indicating at least the amount of money that is intended to be recognized and ordering payment in favor of the plaintiff. Although it constitutes an important element to determine the costs of the arbitration process, on the part of the Arbitration Center in question, we consider that it should not entail a limitation for the actor to expose in its amount, expertly quantifiable items during the arbitration process.

In the event that it is not possible for the plaintiff, at the time of filing his claim, the full quantification of the amount of his claim and that the Arbitration Center, indicates that he must do so; the following wording could be considered:

"The amount of our claims corresponds to the principal amount of (indicate amount and currency), except for better expert appraisal; plus the sums in (indicate currency), that previous realization of expert opinion, correspond in concept of economic damages (identify type of damages, such as, emerging damage, moral damage or others, provided that they do apply the controversy in question), loss of earnings and/or lost profits, which in total would be a sum not greater than (indicate amount and currency); plus the interest that must be computed at the rate of (verify if contractual interest applies, or civil law of 6% per year, or commercial legal of 10% per year), from the enforceability of the obligations claimed in the present arbitration demand, to date of total cancellation of sums of money determined by the Arbitral Tribunal; plus the payment of costs and expenses of the process. ".

## **VII. EVIDENCES.**

The common means of proof, generally used would be the following:

### **A. Documentary.**

All the documents filed with the claim, must be previously read, known, understood and manageable by the Legal Attorneys in Fact of the actor.

### **B. Acknowledgement Diligences of signatures and documents.**

Although these proceedings are requested, unless there are

documents that could be considered false or illegal; during the period of practice of evidences, it is feasible to reach an agreement between the attorneys of the parties, in the sense that these proceedings of appearance of persons to recognize signatures and documents are ignored, corresponding to the Arbitral Tribunal, its subsequent assessment within the process.

C. Declarations (testimonies and statements of part).

List the witnesses, indicating their names, as in the case of requesting declarations from parties (in arbitration proceedings, there are no limitations to cite the parties, to render sworn statements).

D. Proof of Report.

The Public Entities to which the letters will be addressed must be fully identified, requiring reports, as well as the points and documents, which will be requested to be supplied to the Arbitral Tribunal.

In case of including Private Entities, previously investigate if it is about those that regularly collaborate with this type of requirements, because it can be incurred in the error, to pretend a means of evidence, that results failed.

E. Judicial Inspection.

Indicate the scope of this type of proceedings, the points and/or questions to be answered by the experts, and their designation. By way

of example, the following initial text may be used: "We request that through the intervention of experts, the practice of a Judicial Inspection be ordered, solely and exclusively on Books, diary, major, contracts, correspondences, emails, notes, communications, files and records, corresponding to the lines of the months of April of the year (indicate year of beginning), until the year (indicate year), and until the month in which this Inspection Diligence is being carried out; existing the addresses of both parties, and in other Offices and Facilities, where the documents and information requested are found; so that the Experts determine the following points: ".

F. Expert Evidence.

The points and/or questions to be answered by the experts, and their designation should be indicated. The following initial text may be used: "We request, an Expert Evidence be ordered, so that the Experts determine the following points:".

In order to help with the expert assignments, it is feasible to petition the Arbitral Tribunal: (1) That the experts should be allowed access to the main file and accessory notebooks (precautionary measures); (2) Request clarifications from the parties, request reports, conduct interviews; (3) That the experts are allowed to travel to the domiciles of the parties, with the purpose of carrying out the requested procedures; (4) That the experts are

allowed to move to the sites related to the arbitration object; and (5) The use of technological tools, such as video conferences, skype or others, is allowed.

#### **VIII. PROVISION OF FUNDS FOR INITIAL EXPENSES OF THE ARBITRATION CENTER.**

It must be indicated that the initial expenses of the arbitration process have been provided with the claim, the amount of which will depend on the rules of the Arbitration Center, to which the arbitration is brought.

#### **IX. PREVIOUS PRECAUTIONARY MEASURES.**

In case of precautionary procedures prior to the claim, the parties must be fully identified (parties, Judicial Court, entry – year, type of precautionary measure, cautions) and indicate its judicial status.

#### **X. APPOINTMENT OF MAIN ARBITRATOR AND SUBSTITUTE.**

They must be appointed, with their full name, profession and address, to a Chief Arbitrator and a Substitute Arbitrator.

#### **XI. SPECIAL REQUEST ABOUT THE FILING OF THE CLAIM.**

We are of the opinion that it is feasible to request the Arbitration Center to administer the process, that at the

request of the plaintiff or the defendant - counterclaim, Secretariat Certification is issued on the filing of the claim or counterclaim; that can be published in a newspaper of national circulation.

#### **XII. LAW.**

In the substantive, at least the contract object of the arbitration and the rules of applicable substantive law must be stated; and in the adjective, the indication of the applicable Arbitration Regulation, and the Law that regulates the arbitration procedure, in the jurisdiction in question.

Finally, respected readers, in consideration of the final paragraph of Article 50 of Law No. 131 of December 31, 2013 "That regulates national and international commercial arbitration in Panama and dictates another provision", which states *"Unless otherwise agreed by the parties, in the course of the arbitration proceedings, any of the parties may modify or extend their claim or answer, unless the arbitral tribunal considers that presentation is inappropriate taking into account the stage of the arbitration process, the nature of the new claim and any other circumstance that is pertinent."*; We consider that the obligatory question for the debate would be: *Can the actor unilaterally correct the claim and what is the term to correct the claim?*