

Debevoise  
& Plimpton

# Debevoise Efficiency Protocol (2018)

To address concerns about increased length and cost in international arbitration, in 2010 the Debevoise & Plimpton International Dispute Resolution Group issued our Protocol to Promote Efficiency in International Arbitration. We now update our Efficiency Protocol. Through this Protocol, we reiterate our commitment to explore with our clients how, in each case, the participants can take advantage of international arbitration's inherent flexibility to promote efficiency without compromising fairness or our clients' chances of success. The procedures set out here are therefore not meant to be inflexible rules, but instead are considerations that, when appropriate for the case, can improve the arbitration

## Formation of the Tribunal

1. Before appointing arbitrators, we will ask them to confirm:
  - 1.1 their availability to administer the case, including hearings, on an efficient and reasonably expeditious schedule;
  - 1.2 a commitment to conduct the proceedings efficiently and to adopt procedures suitable to the circumstances of the arbitration; and
  - 1.3 a commitment not to take on new appointments that would reduce the arbitrator's ability to conduct the case efficiently.
2. 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, even if the arbitration clause provides for three arbitrators.

## Establishing the Case and the Procedure

3. We will seek to avoid unnecessary multiple proceedings, for example by considering joinder, consolidation, overlapping appointments, stays, and coordinated hearings and briefing schedules.
4. We will request that the arbitral tribunal hold an early procedural conference to establish procedures for the case.
5. We will request our clients and opposing clients to attend 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.
6. We will propose procedures that are appropriate for the particular case, proportionate to its value and complexity, and 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. We will encourage active participation by the tribunal throughout the case. For example:
- 6.1 We will consider including a detailed statement of claim with the request for arbitration so that the tribunal will be able to set the procedures with more knowledge of the issues in dispute.
  - 6.2 We will consider a fast-track schedule with fixed deadlines.
  - 6.3 We will request additional procedural conferences following certain submissions to consider whether the procedures could be made more efficient in light of the submissions.
  - 6.4 We will suggest page limits for memorials in order to ensure that they focus on the most important issues.
  - 6.5 We will encourage the arbitral tribunal to establish cyberprotocols to protect transfer and use of sensitive information and to disclose cyber incidents, in line with the **Debevoise Protocol to Promote Cybersecurity in International Arbitration**.
7. When acting for claimants, we will seek to use the time between the filing of the arbitration and the initial procedural conference to prepare the first merits submission so that the schedule can commence soon after the conference.
  8. We will explore whether bifurcation or a determination of preliminary issues may lead to a quicker and more efficient resolution.
    - 8.1 For bifurcated proceedings, we will encourage the arbitral tribunal to set deadlines and hearing dates that include all phases of the case. This minimizes delay at a later stage caused by conflicting commitments of the tribunal members or counsel.
    - 8.2 Such a schedule would include a deadline for the arbitral tribunal to indicate whether the proceeding should continue to the next phase. A reasoned decision can follow, but, in the meantime, the parties can be drafting the submissions in the next phase.
  9. In order to avoid delays in drafting the award, we will ask the arbitral tribunal to include in the initial procedural schedule:
    - 9.1 the dates on which they will deliberate following the hearing, including at least one day immediately following the hearing; and
    - 9.2 a date by which the award will be issued.
  10. We will encourage tribunals to award costs at the time of interim decisions, when appropriate, in order to discourage time-wasting or unmeritorious applications.

## Evidence

11. We will limit and focus requests for the production of documents. We believe that the standards set forth in the IBA Rules on the Taking of Evidence generally provide an appropriate balance of interests.
  - 11.1 We will work with opposing counsel to determine the most cost-effective means of dealing with electronic documents.
  - 11.2 We will request the arbitral tribunal (or the Chair) to conduct a telephone conference following the submission of any objections to document requests to the tribunal. Such a conference can lead to a more effective weighing of the need for requested documents compared to the burden of production and potentially narrow the disputes.
12. When possible, we will make filings electronically and encourage paperless arbitrations.
13. We will seek to avoid having multiple witnesses testify about the same facts.
14. 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. Expert conferencing at the hearing, particularly with respect to quantum experts, can also often be time-saving and more effective.
15. We will brief the applicable law, rather than submit expert evidence as proof, except in unusual circumstances.
16. 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

17. In order for the hearing to focus more effectively on the facts and issues that need to be decided, we will ask the arbitral tribunal to set in the initial procedural order:
  - 17.1 a date following the final written submissions on which they will confer regarding the issues in the case and the upcoming hearing, and
  - 17.2 a date for a prehearing conference at which they can discuss with the parties the disputed facts and issues on which they hope the hearing will focus.
18. 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.

19. We will generally encourage the use of a chess-clock process (fixed time limits) for hearings.
20. We will not automatically request post-hearing briefs. We will consider in each case whether they would be helpful, and, if so, we will seek to limit the briefing to specific issues identified by the tribunal.
21. We will 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.
22. We will seek agreement on a common summary format for costs schedules to facilitate the tribunal's comparison and to avoid the expense of removing privileged information from daily time entries. We will also consider whether any argument about entitlement to costs is necessary.

## Settlement Consideration

23. We will consider settlement options at the outset of each case and then at appropriate points such as when an exchange of submissions has clarified issues or a preliminary issue has been determined. Routes to settlement could include negotiations or other non-binding ADR such as early neutral evaluation.
24. Where applicable rules or law permit, we will consider making a "without prejudice except as to costs" settlement offer at an early stage.
25. We will consider asking arbitrators to provide preliminary views that could facilitate settlement.

