

Demystifying the Arbitration Process

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Litigation often takes prominence when considering resolving legal disputes, but there's another option that should not be overlooked: arbitration. With more and more commercial contracts and employment agreements leaning towards arbitration clauses, understanding how to navigate this alternative dispute resolution method is essential.

We will break down the arbitration procedure, including the appointment of arbitrators, evidence submission, hearings, and the arbitration decision.

What is Arbitration?

Arbitration is a form of dispute resolution where a neutral third party helps resolve a dispute between two or more parties. It's often quicker and less formal than taking a case to court.

Arbitration can cover a broad range of issues, from commercial disputes and labor matters to consumer issues and even cross-border disputes. Procedures and rules can vary depending on what the parties agree upon and the governing body overseeing the arbitration matter. Overall, it offers a streamlined, often less confrontational way to settle disagreements.

Important Terms to Know

- **Arbitral Proceedings:** the formal steps and activities carried out during the arbitration process to resolve a dispute.
- **Sole Arbitrator:** a single individual chosen to oversee, manage, and make decisions in an arbitration case.
- **Arbitration Tribunals:** a panel of multiple arbitrators, usually three, tasked with handling and deciding an arbitration case.
- **Arbitration Organizations:** institutions that specialize in administering and overseeing arbitration processes
- **Arbitration Agreement:** a legal contract where the parties agree to resolve disputes through arbitration rather than court litigation.
- **Arbitral Awards:** the decisions made by the arbitrator or arbitration tribunal, which can include financial settlements, directives, or other resolutions to the dispute.

Stages of Arbitration

Although every case has its own set of unique circumstances that might alter standard procedures, arbitrations typically unfold in a series of [common stages](#), as outlined by the American Arbitration Association, a non-profit arbitration organization that provides [mediation](#) services.

1. **Case Initiation:** A request for arbitration is the formal document that kicks off the arbitration process. The request is submitted by the claimant to the arbitrator and usually to the respondent.
2. **Arbitrator Invitation:** Arbitrators are invited to review the case details, ensuring there are no conflicts of interest. Arbitrators then sign an oath and disclose any relevant information.
3. **Arbitrator Appointment:** Parties are notified of the selected arbitrator and given a chance to object. If objections arise and are validated, a new arbitrator is invited; otherwise, the case moves forward.
4. **Preliminary Hearing & Information Exchange:** The arbitrator and involved parties will address preliminary issues, set the evidence exchange timeline, and schedule the hearing. A written scheduling order confirms these details.
5. **Hearing Stage:** Parties present their case through a process that may be in-person, over the phone, or document-based, depending on the arbitration rules and agreement. Additional written arguments may also be submitted post-hearing.
6. **Award Stage:** The arbitrator closes the hearing once all evidence is submitted. A written award outlining the case outcome is then prepared and distributed to the parties, concluding the process.

What is an Arbitrator's Role?

At the core of a proceeding is a single arbitrator or arbitral tribunal (a group of three arbitrators). This individual (or group) juggles multiple roles, serving as both judge and jury. Though not appointed by a court, a neutral arbitrator's decision can be as impactful as any judicial proceedings, especially if both parties opt for voluntary arbitration with legally binding terms.

Impartiality and Ethics

The arbitrator holds a significant role in setting the tone for fairness throughout the arbitration process. Adherence to ethical standards is required. Before the arbitration commences, the arbitrator is required to disclose any conflicts that might compromise their neutrality. This process is critical because it lays the groundwork for an unbiased environment. By doing so, the arbitrator ensures that each party can present its case with confidence, knowing that the setting is as impartial as possible.

Managing the Process

In arbitration, the arbitrator acts as the central coordinator, overseeing all procedural elements. They set the hearing dates, establish timelines for evidence submission, and even adapt rules to better fit the specifics of the dispute at hand. The objective is to push the process along but to do so efficiently. Because the arbitrator has the flexibility to tweak procedures, the entire arbitration can be streamlined. This saves time and resources for all involved.

Reviewing Evidence and Conducting Hearings

When it comes to reviewing evidence and conducting hearings, the arbitrator takes on a role akin to that of a judge in a courtroom, but with more flexibility. They scrutinize documents, listen to witness testimonies, and even have the latitude to ask questions to clarify any unclear aspects. The idea is to gather all the information needed to make a decision. Unlike a trial, the arbitrator can modify how evidence is reviewed based on factors of the dispute. This ensures a more customized approach to resolving the issue.

Decision Making

The climax of the arbitration process is the arbitrator's final decision. This can range from requiring one party to pay financial awards to mandating specific actions. What distinguishes arbitration is that the decision is usually accompanied by a detailed explanation. The aim is to provide clarity, so no one is left in the dark. If the arbitration is binding, the decision holds legal weight and can be enforced in a court of law.

Appointment of Arbitrators

Picking the right arbitrator is a joint effort between the disputing parties. The goal of the selection of arbitrators is to find someone knowledgeable in both law and the specific subject matter involved. Given the lasting impact of the arbitration panel's decision, due diligence in this phase is crucial.

Submitting Evidence

Submitting evidence in arbitration is a different ballgame than in court. You're not restricted by the same rules, but getting your evidence right is still key to making a compelling case.

In an arbitration setting, you have a wider net to cast regarding types of evidence. This could be formal contracts and memos or something as casual as a series of emails. The arbitration panel often looks for a well-rounded view, so

they're more open to considering different kinds of inputs, like even anecdotal evidence, depending on the specifics of the dispute.

Document Exchange and Discovery

In a traditional court setting, there's usually a formalized discovery phase, but arbitration tends to be less stringent. Instead, both parties are responsible for voluntarily exchanging vital documents. This could include everything from written contracts to email correspondences that are relevant to the case. The objective is to provide each side—and the arbitrator—with the evidence necessary to understand the particulars of the dispute. This more relaxed approach prioritizes efficiency and aims to get to the resolution quicker, without compromising the fairness of the process.

Expert Reports

When the dispute involves complex or specialized knowledge—say, a case about intellectual property or intricate construction work—expert reports become particularly useful. These aren't just generic overviews but detailed analyses provided by specialists in the relevant field. The experts dissect the nuances, often using their technical know-how to clarify or substantiate certain claims being made. By incorporating expert reports, the arbitration process allows for a deeper understanding of the issues at hand, which in turn helps the arbitrator make a more informed decision.

Pre-Hearing Briefs

Before the arbitrator bangs the gavel to start the hearings, both parties often submit what's known as pre-hearing briefs. These documents serve as a preview for the arbitrator, offering a summarized glance at the main dispute and the evidence each side plans to present. Crafted well, these briefs can be instrumental in setting the stage for the actual proceedings. They help the arbitrator get a clearer picture and what the main points of contention are. As such, they play a crucial role in helping the arbitrator prepare for the hearings.

The Hearings



Although arbitration hearings share certain similarities with courtroom trials, they possess unique characteristics that distinguish them considerably.

Presentation of Cases

Arbitration isn't just a one-sided affair; it offers a platform for both parties to present their cases thoroughly. This stage is crucial and involves more than just a simple outline of the dispute. Parties delve into the evidence, make their arguments, and aim to persuade the arbitrator of the validity of their position. The presentation can involve various forms of evidence, from documents and email correspondences to photographs and other material artifacts. The ability to articulate a convincing narrative around this evidence can significantly influence the arbitrator's final decision.

Witnesses and Cross-Examinations

Witness testimony often serves as a cornerstone in arbitration hearings. Both parties can call witnesses to corroborate their claims or dispute those of the opposing side. Unlike the rigid structure of courtroom trials, arbitration allows for a less formal approach to witness questioning. This informality provides a chance for deeper exploration of the facts, allowing parties to clarify and elaborate on complex issues. Cross-examination is also common, giving each side the opportunity to challenge the credibility or relevance of witnesses brought in by the opponent.

Confidentiality

One distinct advantage of arbitration over traditional litigation is the level of confidentiality it offers. In contrast to the public nature of courtrooms, arbitration hearings are generally closed to the public and the media. Documents, testimonies, and even the final decision are often kept confidential. This confidentiality can be particularly beneficial in sensitive matters involving trade secrets, reputation, or other confidential information. For many parties, the assurance that details of the dispute will not become public knowledge is a key factor in choosing arbitration as a dispute resolution mechanism.

Focus on Equitable Outcomes

An arbitrator's role extends beyond merely dissecting legal jargon and principles. They also take a holistic view of the dispute, considering broader elements like ethical business practices and general fairness. This broader perspective aims to achieve an equitable outcome for all parties involved, beyond just the strict confines of the law. The arbitrator looks at the whole picture. This may include the impact of the dispute on ongoing business relationships, industry standards, or even public interest. By doing so, they strive to make a fair decision that serves the interests of both parties.

The Final Arbitration Award

The grand finale in any arbitration matter is getting that final arbitration award. This pivotal moment sets the stage for how future disputes might be handled and ultimately closes the case.

Final arbitration awards can be quite diverse. Some go all in with a comprehensive look at the facts, the arbitration panel's reasoning, and the legal grounds for their decisions. Others keep it short and sweet, just stating the verdict and any actions the parties should take. The depth of detail usually hinges on what the parties first agreed to and any rules governing the arbitration procedure.

Monetary and Non-Monetary Outcomes

The award could specify monetary payouts or dictate that one party needs to do something specific. It can even issue a declaratory statement that clarifies certain legal rights. Unlike judicial proceedings, these awards aren't bound by a rigid legal framework, giving room to tailor the outcomes to the specific subject matter at hand.

Binding vs. Non-Binding

One key thing to note about the final award is whether it's a binding or non-binding decision. This is generally spelled out in your initial arbitration agreement. A binding award can be enforced in court, and ignoring it has consequences. Non-binding awards are more like strong suggestions. You can take them or leave them, but disregarding them might shape how separate arbitration proceedings or legal actions down the road play out.

Limited Scope for Appeal

The final arbitration award is usually just that—final. You typically can't appeal unless there are some serious issues like fraud or if the arbitration panel went beyond their jurisdiction. This limited appeal scope is one reason many people see arbitration as a faster, more decisive alternative to traditional litigation.

International Arbitration

If you're dealing with international disputes, the confirmation of awards can get more complex. While most countries will recognize foreign arbitration decisions, be prepared for a few extra steps and some legal nuances.

Ready to Learn More?



Understanding the arbitration process is just the start of learning about dispute resolution. If you're looking to learn more about this world, the top-ranked Pepperdine [Master of Dispute Resolution](#) (MDR) offers a curriculum focused on honing your skills. With expert faculty and a dynamic learning environment, you'll be well-equipped to navigate the legal world.

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