

Pre-hearing Meeting Agenda

Draft June, 2016

1. Preliminary Meeting

- (a) Who should attend.
- (b) When should it take place.
- (c) In person, conference telephone or video?
- (d) Use of Procedural Orders by the Tribunal.
- (e) Method of communication with Tribunal.
- (f) Confidentiality.

2. Constitution of Tribunal and Jurisdiction

- (a) Obtain Confirmation that Tribunal is duly constituted.
- (b) Any jurisdiction issues?

3. Applicable Law and Rules

- (a) Substantive law provided in contract.
- (b) Procedural law of seat.
- (c) Procedural rules: BCICAC? Others?

4. Pleadings

- (a) Pleadings.
- (b) Are they complete?
- (c) If not, fix what is to be delivered by whom and on what date.
- (d) Consider limitations on length.

5. Hearing

- (a) Why dates of hearing should be agreed to and fix now or as soon as possible.
- (b) What length of hearings and who decides?
- (c) Location of hearing.
- (d) Booking of rooms, whose responsible.
- (e) Transcription of hearing.
- (f) Language/translators.

6. Pre-hearing Procedures, Bifurcation and Dispositive motions

- (a) Use of witness statements instead of direct evidence given in person.
- (b) Admission of Evidence.
- (c) Schedule for delivering of witness statements.
- (d) Avoidance of repetitive evidence.

7. Experts

- (a) Will there be expert evidence and if so on what issues/subjects?
- (b) Should Tribunal retain its own expert?
- (c) How will the experts give their evidence: hot-tubbing? Join report?
- (d) Set schedule for delivery of expert reports and expert reply reports.

- (e) Certificate of independence.

8. Production of Documents

- (a) Production by parties of relevant documents (civil litigation model) versus production of documents following a demand.
- (b) BCICAC Rules of procedures, Rule 23.
- (c) Electronic document production issues.
- (d) Schedule for the delivery of documents.
- (e) Motions to resolve issue arising from documents production; procedures and timing.
- (f) Document books or bundle format? Individual or joint? Searchable?
- (g) Schedule for delivery of bundles to Tribunal.
- (h) Stipulation that all documents used at hearing must have been produced beforehand and cannot be used without leave.

9. Prehearing Oral Examination

- (a) Will these be needed if witness statements are employed.
- (b) Number, time limits.
- (c) Use of interrogatories.
- (d) Any limits on scope?
- (e) Procedure for refusals – all questions to be answered, except privilege admissibility determined at hearing.
- (f) Use of transcripts at hearing.

10. Pre-hearing Matters

- (a) Agreed Statement of Facts: counsel to confer and produce prior to hearing.
- (b) Agreed Statement of Issues.
- (c) Pre-hearing briefs; schedule and length limitations.
- (d) Appointment of hearing time.
- (e) Pre-hearing case conference with Tribunal to discuss outstanding issues.

11. Closing Arguments

- (a) Oral argument at close of hearing?
- (b) Written argument post-hearing?
- (c) Declaration of Tribunal of closure of proceedings?
- (d) Indication by Tribunal as to when award will be delivered.
- (e) Transcribe?

12. Other Organizational and Administrative Issues

- (a) Deposits? Amounts and where held?
- (b) Arbitrators' fees and expenses.
- (c) Cancellation policies.
- (d) Settlement/mediation issues.