

International Arbitration and Enforcement



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The First 30 Days: Responding to a Notice of Arbitration

No matter how carefully the arbitration clause was drafted, the real test begins when a notice of arbitration arrives. The clock starts immediately, deadlines are unforgiving, and the strategic decisions made in the first days—from jurisdictional objections to counterclaim positioning—will shape the entire proceeding.

THE CLOCK IS ALREADY RUNNING

Before doing anything else, read the notice line by line. Identify the contract and arbitration clause the claimant relies on—they may have cited the wrong agreement, or there may be no arbitration clause at all, either of which fundamentally changes the response. Then confirm two threshold questions: does a valid arbitration agreement actually cover this dispute, and has the correct entity been named as respondent? A misidentified respondent opens the door to a jurisdictional objection.

Next, map the procedural landscape. Determine whether the clause itself prescribes a response procedure, whether it incorporates institutional rules governing timing and content, and, if neither applies, what the law of the seat provides as a default. In practice, this means working through four sources in parallel: the commercial contract, the arbitration agreement, any incorporated rules, and the *lex arbitri*, with particular attention to jurisdictional objections, tribunal constitution, the claimant's allegations, and counterclaim opportunities.

Deadlines are strict and institution-specific—calendar them the day the notice arrives. Most rules require a response within 14 to 30 days, and missing the window can result in procedural disadvantages, including *ex parte* orders. Under the Singapore International Arbitration Centre ("SIAC") Rules, for example, a respondent may have as few as 14 days from the Notice of Arbitration, whereas the Lusaka International Arbitration Centre ("LCIA") Rules allow twice that time.

IMMEDIATE, IMPARTIAL ASSESSMENT

Before formulating a defense strategy, it is essential to step back and conduct a candid, objective assessment of the case on its merits. This means evaluating not only the strength of the respondent's defenses but also the credibility of the claimant's claims, including the quality of its evidence, the persuasiveness of its legal theories, and the potential quantum of any award. An honest appraisal at the outset helps avoid the trap of confirmation bias and ensures that strategic decisions are grounded in reality rather than advocacy.

Counsel should prepare a preliminary case map that identifies the key factual disputes, the governing substantive law, and any procedural advantages or vulnerabilities. Where possible, assign a realistic probability range to the principal claims and defenses—this exercise forces precision and highlights gaps in the evidentiary record that need to be addressed. The analysis should also quantify exposure, including best-case, worst-case, and most-likely scenarios for damages, costs, and any counterclaim recovery.

This assessment should be shared with decision-makers within the organization early and updated at regular intervals as the proceeding develops. A clear-eyed case analysis informs every downstream decision—from whether to pursue settlement, to how aggressively to contest jurisdiction, to how much to invest in document production and expert evidence. It also provides the framework against which any settlement offer should be evaluated.

CRAFTING THE RESPONSE

Once a notice has been filed, the respondent must deliver an answer that confirms its position on jurisdiction, identifies the issues in dispute, and addresses the claimant's factual and legal assertions; depending on the applicable rules, it may also include the respondent's nomination of an arbitrator and any preliminary objections. The answer is more than a procedural formality—it is a critical opportunity to shape the narrative of the dispute and lay the groundwork for the defense by

admitting or denying allegations and raising preliminary objections or defenses. Jurisdictional challenges and objections based on non-arbitrability must be raised at the outset to avoid waiver.

PRACTICAL AND STRATEGIC CONSIDERATIONS

The level of detail in the answer is a strategic choice: some disputes call for a concise filing that preserves flexibility, while others warrant a more developed submission to shape the tribunal's early understanding of the case. A well-considered response can have a significant impact on both the strategic direction and procedural development of the proceedings. Counterclaims deserve early attention. Beyond their financial upside and potential leverage, they provide an opportunity to advance a competing narrative. Most rules require that a counterclaim be pleaded with the same specificity as a demand, including the facts relied on, the legal basis, and the relief sought.

The response stage is also the moment to evaluate interim relief—such as asset-freezing or document-preservation measures—which can materially strengthen a party's position. Counsel should weigh whether to engage in early settlement discussions, since the organization's objectives—whether rapid resolution, a full defense on the merits, or creating leverage while settlement talks continue—should inform the tone and content of the answer.

Where the dispute requires immediate protective measures, counsel should also evaluate whether to seek relief from an emergency arbitrator—a mechanism now available under most major institutional rules, including the International Chamber of Commerce, Singapore International Arbitration Centre, SCC Arbitration Institute, and Hong Kong International Arbitration Centre Rules. Emergency arbitrator applications can be filed before the tribunal is constituted and decided within days, making them a powerful tool for preserving the status quo in the critical early window. However, emergency relief is not available under all rules or in all jurisdictions, and counsel should confirm both the applicable rules and the enforceability of any resulting order at the anticipated place of enforcement.

Non-participation carries serious risk. If a respondent fails to file an answer or appear, the arbitration will generally proceed and the tribunal may render an award on the merits; although the claimant must still prove its case, the absence of any defense, witness evidence, or challenge to quantum materially increases the likelihood of an adverse outcome. Early non-participation may also forfeit critical strategic opportunities—narrowing the issues, seeking bifurcation, proposing a more favorable timetable, or pursuing settlement—and can create significant enforcement risk, since the resulting award may be recognized and enforced across multiple jurisdictions with only limited grounds for challenge.

SELECTING AND APPOINTING THE ARBITRATOR

The selection of the arbitrator, or, in a three-member tribunal, the respondent's party-appointed arbitrator, is one of the most consequential decisions in the early phase of any arbitration. The arbitration clause and applicable institutional rules will dictate the appointment mechanism, including the number of arbitrators, any qualifications or nationality restrictions, and the procedure for selecting a presiding arbitrator or sole arbitrator. Counsel should review these provisions carefully, because a failure to nominate within the prescribed time may result in the appointing authority making the selection on the respondent's behalf.

When evaluating potential arbitrators, counsel should consider subject-matter expertise, familiarity with the governing law and the relevant industry, prior awards and published writings, availability, and temperament. It is equally important to conduct thorough conflict-of-interest checks and to assess whether a candidate's known procedural preferences on matters such as document production, witness testimony, and hearing format align with the respondent's likely procedural strategy. In cases involving complex technical or financial issues, the arbitrator's comfort with expert evidence and damages methodologies may be decisive.

Where a three-member tribunal is contemplated, the respondent's party-appointed arbitrator will typically participate in the selection of the presiding arbitrator—a process that itself requires careful strategic consideration.

Counsel should also be prepared to challenge an arbitrator's appointment if legitimate grounds for doing so exist, such as a lack of independence or impartiality, and should be familiar with the challenge procedures under the applicable rules. The composition of the tribunal will shape the conduct of the entire proceeding, and the investment of time and care at this stage is almost always repaid.

BUILDING THE EARLY DEFENSE FRAMEWORK

With the case assessed, the answer filed, and the tribunal taking shape, the respondent should turn its attention to constructing a coherent defense framework. This begins with identifying the core legal and factual themes that will anchor the defense narrative throughout the proceeding. A well-defined and well-articulated defense theory provides a through-line for every subsequent submission, witness statement, and hearing presentation.

Equally important is assembling the right team. Complex international arbitrations frequently involve coordinating between in-house counsel, external counsel in the seat of arbitration, local counsel in the jurisdiction where enforcement may be sought, and technical or quantum experts. Roles and reporting lines should be defined at the outset to avoid duplication of effort and ensure that strategic decisions are made efficiently. A realistic litigation budget—tied to the case analysis and updated as the proceeding evolves—will help decision-makers allocate resources proportionately to the stakes involved.

Counsel should also evaluate funding and cost exposure at the earliest opportunity. Beyond the institution's advance on costs, the respondent should assess overall anticipated legal fees, expert costs, and hearing expenses in light of the amounts in dispute. In appropriate cases, third-party funding or after-the-event insurance may be available to manage downside risk and ensure that the defense is not compromised by resource constraints. These arrangements take time to negotiate and should be explored well before cost pressures mount.

The respondent should also consider at the outset whether the arbitration involves multi-party or multi-contract complications. Where related disputes arise under separate agreements or involve additional parties, questions of

joinder, consolidation, and parallel proceedings must be addressed early. Failure to do so can result in inconsistent awards, duplicative costs, and fragmented fact-finding. Most institutional rules now contain provisions for joinder and consolidation, but the scope and availability of these mechanisms vary, and the arbitration clause itself may impose limitations.

Finally, the respondent should anticipate the procedural road ahead. This includes preparing for the first procedural conference—where the tribunal will typically establish a procedural timetable, address bifurcation requests, and set the ground rules for document production and witness evidence. Arriving at that conference with a proposed procedural order and a clear view of the key procedural issues signals preparedness and can influence the tribunal's management of the case in ways that benefit the defense.

PROTECTING YOUR CASE

In-house counsel should establish a document-management protocol early, locating and preserving all relevant pre-contractual, contractual, and execution-stage documents and identifying potential witnesses. Counsel should also be mindful of submission deadlines and the requirement to pay a provisional advance on costs to the administering institution. It is also worth confirming whether any mandatory pre-conditions, such as negotiation or mediation steps, have been satisfied; if they have not, the tribunal may lack jurisdiction to proceed.

Equally important is early identification of key witnesses—both fact witnesses and potential experts—and an assessment of their availability, credibility, and willingness to participate. In international arbitrations, where witnesses may be located across multiple jurisdictions and beyond the tribunal's compulsory process, early engagement is essential. Counsel should also establish clear protocols for preserving legal privilege and maintaining confidentiality, particularly where multiple legal teams or jurisdictions are involved; a privilege breach at the document-collection stage can have consequences that persist throughout the proceeding.

For more information or assistance, please contact **Graham R. Cronogue**, **Ashley F. Calcagno**, or another member of Blank Rome's **International Arbitration** group.

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