
Drafting Prayers for Relief – Dos and Don'ts

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Overview

- I. Prayers for relief should be clear
- II. Prayers for relief should be complete
- III. Conclusion

The need for clarity

I. An example of how not to draft prayers for relief:

- “NOW THEREFORE we request that our present Request for Arbitration be granted in its entirety according to the specifics mentioned in the related sections.”
- “By reason of the aforesaid wrongful conduct, XY claims the following relief, alternatively such further or other relief as the Tribunal in its discretion thinks fit:

...

The intention of this Prayer is to summarise the relief set out in the Written Claim Submissions and this Prayer ought not to be regarded as a substitute for the full Written Claim Submissions or as in any way narrowing the relief sought by XY.”

II. Good practices for ensuring clarity:

- Have a separate section in submission detailing the prayers for relief.
- Do not mix up prayers for relief with summary of factual and legal argument.

How specific should prayers for relief be?

- I. What are the expectations of the tribunal with regard to the specificity of requests?
- II. As a rule, at least by the time the tribunal starts its decision-making process, prayers for relief should be as specific as possible:
 - They are a claimant’s best chance to influence what the tribunal will say in the dispositive part of its award. The more specific a prayer, the better the chance for the claimant to obtain the relief he actually wants.
 - A prayer for relief requiring enforcement should be so specific that if it is made the basis for the *dispositif* of the award, the latter will be enforceable without recourse to the body of the decision.

How specific should prayers for relief be? (continued)

III. If unsure whether a specific request will be granted, use a series of specific alternative requests, followed by a more general “catch all” request.

- Example of possible requests in a gas price arbitration:

Request 1: “... to determine and declare an adjustment of the price provisions in accordance with the following formula: [preferred formula].”

Requests 2 – 4: “In the alternative to ... above, to determine and declare an adjustment of the price provisions in accordance with the following formula: [alternative formulas 2 to 4].”

Request 5: “In the alternative to each of the reliefs 1 to 4 above, to determine and declare an adjustment of the price provisions in accordance with the criteria set forth in the Agreement.”

- The same idea underlies the formula requesting “such other or additional relief as the tribunal deems fit” often found at the end of a prayers for relief section.

Ensuring that prayers for relief are complete

- I. Include alternative requests
- I. Include interlocutory requests
- II. Include relief requested with regard to interest and costs

Alternative requests

- Conditional upon main request not being granted.
- A claimant should be aware of the possibility that a request might not be granted and specify any other relief he may want to seek in the alternative.
- Alternative requests can be a good way of combining one or several specific requests with a more general “catch all” request for relief in the event where the specific requests are not granted.
- Always be clear about how an alternative request relates to the remainder of the requested relief.

Interlocutory requests

I. Requests for information in the context of an action by stages:

- Situation: claimant can only specify his main request for relief after obtaining relevant information from respondent.
- Example: claimant has a right to percentage of profits made by respondent, but does not know respondent's business figures. He may want to proceed in stages, with a first stage addressing an auxiliary request for an order to provide the relevant figures. Once the tribunal has rendered an interlocutory award and claimant has obtained the necessary figures, he can then in a second stage request an order to pay the now specified amount.
- Without auxiliary request for information claimant may be unable to substantiate his payment request (in particular if he cannot obtain the relevant information/evidence through document production etc).

Interlocutory requests (continued)

II. Requests for declaratory relief with regard to preliminary issues:

- Situation: claimant has an interest in finally settling certain preliminary questions that may arise again in future proceedings.
- Depending on the applicable *res judicata* rules, the binding effect of a decision may be limited to the dispositive part of an award, without including the tribunal's reasoning. To ensure that findings with regard to preliminary questions will be binding in future proceedings against the same respondent, claimant should request a declaration with regard to those findings, so that they become part of the *dispositif*.
- Example: Respondent defends himself against claim for payment of first instalment by arguing there is no valid contract. Even if the claim is granted, he may still be able to raise the same argument in a second action regarding further instalments, unless the tribunal declares in the *dispositif* that the contract is valid.

Ancillary claims

I. Pre- and post-award interest

II. Costs

Conclusion

- I. Try to be clear and specific in the formulation of your prayers for relief:
 - Ensures that tribunal understands what you want.
 - Makes it easy for tribunal to grant request by transposing it into the *dispositif* of the award.
 - Increases chances of award being enforceable.
- II. Try to be complete:
 - State what you want if your main request is not granted.
 - Include any ancillary requests relating to declarations, interest and costs.



Thank you