

# CLARIFYING UNCLEAR PRAYERS FOR RELIEF: WHAT CAN AND MUST THE ARBITRATOR DO?

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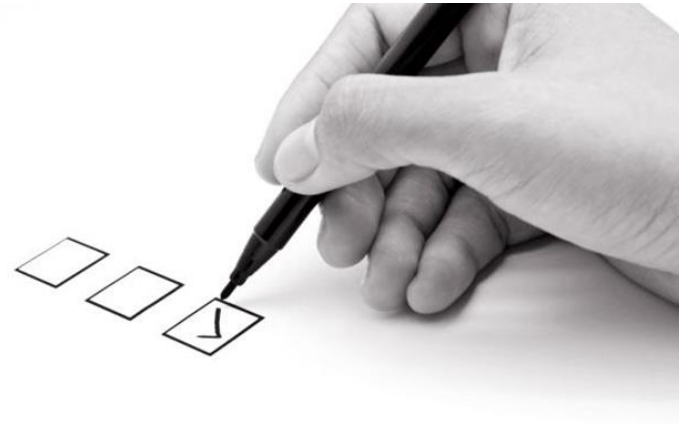
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## What can and must the arbitrator do? Some questions...

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- I. **What** do “unclear prayers for relief” mean?
- II. **Who** can clarify?
- III. **When** must arbitrators clarify?
- IV. **How** can arbitrators clarify?
- V. **What** do unclear prayers have as consequences/**risks**?



## I. **What** do “unclear prayers for relief” mean?

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- Substantially badly drafted
- Linguistically badly drafted



## II. Who can clarify? Can arbitrators clarify?

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No concrete obligation or right of clarification for arbitrators related to prayers for relief, but it can be discerned from:

- The arbitrators' obligation to determine the dispute between the parties and to render an enforceable award
- The arbitrator's obligation to ensure that each party has a reasonable opportunity to present its case
- The parties' right to amend the claim - the pro-active role of arbitrators

### III. **When** must arbitrators clarify?

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At any time **not too early but not too late**:

- Before the Terms of Reference
- After the Terms of Reference but before the hearing
- During the hearing
- During post-hearing brief phase
- After the closing of the proceedings / during the deliberation



## IV. **How** can arbitrators clarify?

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- By **discussing** the issue with the parties:
  - Inviting the parties to submit comments and possibly adjusted prayers for relief
  - Informing the parties of its concerns (but not suggesting on its own initiative that a new relief be requested)
- By **interpreting** the existing prayer for relief:
  - In accordance with the rule of good faith interpretation
  - Not changing the object of the claims, which must be determined by the parties only

## IV. **How** can arbitrators clarify? (cont.)

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Can the arbitrator add new claims to the prayer for relief?

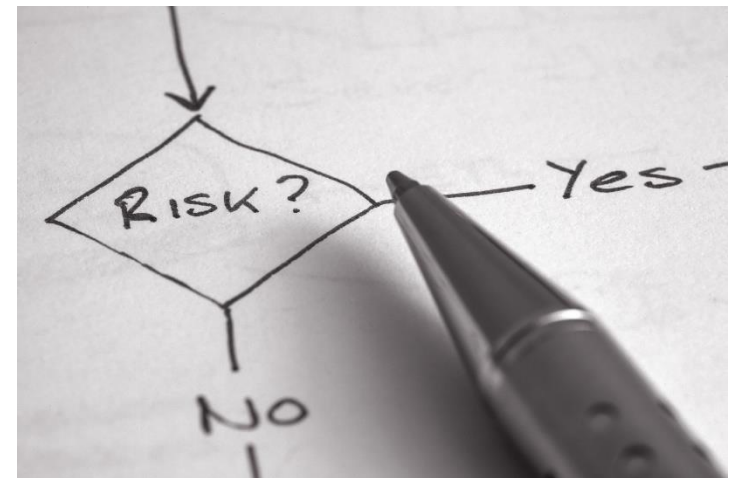
Different **points of view**:

- The tribunal ought not to determine an issue not posed for its consideration
- The tribunal can add new claims to the prayer for relief if it can still stay within the essence of that which was claimed

## V. **What** do unclear prayers have as consequences/risks?

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- Adjudication beyond the relief sought (*ultra/infra/extra petita*)
- Risk of annulment of the arbitral award
- Risk as to the enforcement of the arbitral award





## Questions?

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Thank you for your **attention!**



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