



Management of Contracts & Contract
Claims Training Workshop



Management of Contracts & Contract Claims Training Workshop

Introduction to Contract Management:

While the object of international contracting is to write and manage contracts to minimize disputes, some disagreements are inevitable. Contract management can arise from failures by one of the parties. Still, they also often need clarification regarding obligations under the contract.

This contract management and claim handling program will examine how claims and counterclaims arise, how they can be reduced or avoided by good contract management, how they should be evaluated when received or prepared when being delivered, and how to resolve disputes arising from such claims. Most importantly, it will also look at ways of avoiding disputed claims in the first place.

Once a dispute starts, it can be solved most effectively by negotiation between the parties. However, some third-party intervention is required if this does not prove effective.

Traditionally, this has focused on either involving state courts litigation or the equivalent private method of getting a third party to decide arbitration. However, many more techniques are available in the international market, including expert determination, mini-arbitration, pendulum arbitration, adjudication, and other techniques whereby a third party decides the matter for the parties.

Also, there are mediation, conciliation, and hybrid solutions such as Arb/Med, where a third party facilitates the settlement by the parties themselves rather than imposing a decision. Many techniques examine the parties' interests rather than their strict legal rights.

All of these processes, and indeed claims and counterclaims generally, become more complicated when placed in an international context. This is particularly the case when a foreign law and/or legal system is involved, with which you may not be familiar and which may include rules that conflict with those of your own country.

Targeted Groups:

- Contracts and Contract Administration Professionals.
- Tendering and Purchasing Professionals.
- Engineering, Operational, and Maintenance Professionals.
- Project Managers.
- Finance Personnel.

Workshop Objectives:

At the end of this contract management and claim handling workshop, the participants will be able to:

- Understand how and why claims and counterclaims arise.
- Explain the differences between claims and counterclaims.
- Identify common causes of claims and disputes and how to avoid them.
- Discuss how to develop contract management procedures to avoid disputes over claims and counterclaims while resisting unjustified claims.
- Enhance understanding of basic negotiation techniques to be used when resolving disputes.
- Understand some of the primary dispute resolution methods involving third parties.
- Develop an understanding of Traditional and Alternative Dispute Resolution techniques, including different ways of resolving disputes without recourse to courts or arbitration.
- Provide strategies and tactics for negotiating during disputes.
- Explain how to use contract provisions to reduce the risk of claims and disputes.
- Develop negotiation skills, which will be valuable tools in all types of negotiating.
- Increase working knowledge of legal implications and potential problems with foreign legal systems.
- Improve the ability to reduce the risk of claims and disputes.

Targeted Competencies:

At the end of this contract management and claim handling conference, the participants will be able to:

- Claims avoidance.
- Claims management.
- Negotiating.
- Dispute avoidance.
- Develop strategies and tactics.
- Prepare counterclaims.
- Understand issues in a complex international environment.
- Analyze and draft contract clauses.
- Understand different legal systems and their approaches to contracts.
- Commercial awareness.
- Look to resolve disputes based on interests, not just rights.

Workshop Content:

Unit 1: How Claims and Counter Claims Arise:

- Causes of typical claims.
- Poor drafting of requirements.
- Lack of clarity in the Scope of Work/Services.
- Misunderstanding of legal or technical obligations:
 - By Client.
 - By Contractor/Supplier.
- Deliberate “misunderstanding”.
- Counterclaims - how do they differ from claims?
- Rights of set-off.
- Obligation to perform work.
- Standards.
- Program.
- Acceleration.
- Variations.
- Extension of time.
- Force majeure.
- Overview of main contractual provisions relevant to claims and counterclaims.

Unit 2: Types of Claims and Counter Claims:

- Types of Claims in Construction and Other Areas - and Their Distinctive Features.
- Re-measure disputes.
- Variations - Disputes on Valuation.
- Variations - Disputes as to Whether There is a Change.
- Breaches of contract.
- Quality of workmanship.
- Re-work.
- Rejection of goods.
- Full rejection.
- Partial rejection.
- Liquidated Damages and Penalties.
- Warranty claims.
- Interface problems - are these always the Contractor’s responsibility?
- Track change where client involvement is limited.
- Special Issues with Documentation in EPC and Turnkey Contracts.
- Special issues with EPC/Turnkey contracts.

Unit 3: Presenting and Evaluating Claims and Counter Claims:

- Requirements for claim presentation.
- Notices.
- Timing and time limits.
- Are time limits binding?
- Format.
- Information.
- Supporting documents.
- Define features of claims evaluation and management.
- Recognize the causes of claims.
- Warn signs of disputes.
- Record claims.
- Review claims.
- Request further information.
- Realistic appraisal.
- When to make admissions - and denials?
- Offers of settlement.
- Independent review.
- Cumulative effects.
- Managing allegations quickly and effectively to avoid disputes.
- Manage claims and disputes.
- Involve lawyers.
- Manage the legal process.
- Setting-goals.
- Decision trees.
- Controlling costs - and including them in your thinking.

Unit 4: Dispute Resolution:

- What is a dispute?
- Intro to dispute resolution methods and techniques.
- Stage negotiation - setting up internal dispute resolution within the contract.
- Measures of Success - Win-win Negotiation.
- Understand what constitutes a “win” for you.
- What will be a “win” for the other party?
- Mirror Negotiation/Red Teams.
- Negotiate “without prejudice”.
- Make offers.
- Compromise.
- Bargaining.
- Interest-based negotiations.
- Move away from rights-based thinking.
- Make the cake bigger - settling other issues.
- Non-financial solutions.
- Long-term business relationships.
- Defusing conflict.
- Personality Clashes and How to Avoid Them.
- Dealing with disputes as they arise - not letting them fester.
- Traditional dispute resolution.
- Litigation.
- Use of foreign courts.
- Enforcement.
- Arbitration.
- Domestic.
- International.
- Single or panel.
- Enforcement.

Unit 5: Issues with evidence and production of documents:

- Mediation.
- Med/Arb and Arb/Med.
- Adjudication.
- Expert determination.
- Early Neutral Evaluation.
- Mini-Arbitration.
- Dispute Review Boards.
- Pendulum arbitration.
- Understand conflict and its resolution.
- Differences Between Alternative Dispute Resolution Methods.
- Ethical concerns.
- Audit trails.
- Avoid the suspicion of unethical behavior.
- Problems with Settlements Based on Interests, Not Rights.
- Apply the same anti-corruption systems to claims as to tendering.
- Avoidance is better than resolution.
- Avoid claims and counterclaims.
- Avoid disputes.
- Avoid litigation and arbitration.