

€ TRAINING

Claim & Counter-Claim Management



Claim & Counter-Claim Management

Introduction:

While the object of international contracting is to write and manage contracts to minimize disputes, some disagreements are inevitable. These can arise from failures by one of the parties, but also often arise from misunderstandings as to obligations under the contract.

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

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

Traditionally, this has tended to focus on either involving state courts litigation or the equivalent private method of getting a third party to make a decision arbitration. However, there are now many more techniques 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, hybrid solutions such as Arb/Med, where a third party facilitates the settlement by the parties themselves, rather than imposing a decision. Many of these techniques rely on looking at 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 where a foreign law and/or legal system is involved, with which you may not be familiar, and which may include rules which conflict with those of your own country.

Course Objectives:

At the end of this course 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 contracts 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
- Provide an understanding of some of the main methods of dispute resolution 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 useful 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 Audience:

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

Course Outlines:

Unit 1: How Claims and Counter Claims to 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 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 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?
- Tracking 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
- Defining features of claims evaluation and management
- Recognizing the causes of claims
- Warning signs of disputes
- Recording claims
- Reviewing claims
- Requesting further information
- Realistic appraisal
- When to make admissions - and denials
- Offers of settlement
- Independent review
- Cumulative effects
- Managing claims quickly and effectively to avoid disputes
- Managing claims and disputes
- Involving lawyers
- Managing the legal process
- Setting goals
- Decision trees
- Controlling costs - and including them in your thinking

Unit 4: Dispute Resolution:

- What is a dispute?
- Introduction to dispute resolution methods and techniques
- Stage negotiation - setting up internal dispute resolution within the contract
- Measures of success - win-win negotiation
- Understanding what constitutes a "win" for you
- What will be a "win" for the other party?
- Mirror negotiation/red teams
- Negotiating "without prejudice"
- Making offers
- Compromise
- Bargaining
- Interest-based negotiations
- Moving away from rights-based thinking
- Making 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
- Conflict and its resolution
- Differences between alternative dispute resolution methods
- Ethical concerns
- Audit trails
- Avoiding the suspicion of unethical behavior
- Problems with settlements based on interests, not rights
- Applying the same anti-corruption systems to claims as to tendering
- Avoidance is better than resolution
- Avoiding claims and counterclaims
- Avoiding disputes
- Avoiding litigation and arbitration