KNOETZL

MOTION TO DISMISS

Rule 12(b) Federal Rules of Civil Procedure – 1938

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) **failure to state a claim upon which relief can be granted**; and

(7) failure to join a party under Rule 19.

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MOTION TO DISMISS

US Supreme Court in *Conley v Gibson* (1957)

"In appraising the sufficiency of the complaint, we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. […] [T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim."

Conley v Gibson, 355 U.S. at page 45 et seq.

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MOTION TO DISMISS

Revised Standard set in *Bell Atlantic v Twombly* (2007)

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ibid., a plaintiff's obligation to provide the "grounds" of his "entitlement to relief" requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true.

Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)

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MOTION TO DISMISS

Standard set by the Supreme Court in *Ashcroft v Iqbal* (2009)

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v Iqbal, Supreme Court (2009)

VIAC Rules of Investment Arbitration

Early dismissal of claims, counterclaims and defenses

Article 24a

(1) A party may apply to the arbitral tribunal in writing for the early dismissal of a claim, counterclaim or defense on the basis that:

1.1 a claim, counterclaim or defense is manifestly outside the jurisdiction of the arbitral tribunal;

1.2 a claim, counterclaim or defense is manifestly inadmissible; or

1.3 a claim, counterclaim or defense is manifestly without legal merit.

(2) A party shall file its application for early dismissal no later than 45 days after the constitution of the arbitral tribunal or the submission of the answer to the statement of claim, whichever is earlier. The party shall state in detail the facts and legal basis supporting its application. When filing its application for early dismissal with the arbitral tribunal, the party applying for early dismissal shall send a copy of its application to all other parties.

VIAC Rules of Investment Arbitration

Early dismissal of claims, counterclaims and defenses

(3) The arbitral tribunal, in its discretion, may allow the application for early dismissal to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the other parties the opportunity to make written submissions on the application, decide whether to grant, in whole or in part, the application for early dismissal.

(4) Within 60 days of receiving the last written submission pursuant to paragraph 3 of this Article, the arbitral tribunal shall decide on the application for early dismissal in an order or award, unless the Secretary General in exceptional circumstances extends this period of time.