



# **DISPUTES & ENFORCEMENT - ARBITRATION CLAUSE BUILDER & PRE- DISPUTE STRATEGY**

**EXPLAINER**

## Arbitration Clause Builder and Pre-Dispute Strategy

This guide explains how to think about the dispute resolution clause in a commercial contract before any dispute has arisen. It covers what an arbitration clause does, how to choose a seat and a set of rules, what a usable model clause looks like, when to require mediation before arbitration, and how the choices you make at the drafting stage affect the money and time you will spend if a fight actually happens. The audience is the person who signs or reviews contracts, not the specialist who will run the case later.

### 1. Why an arbitration clause matters

The dispute resolution clause is usually the last clause anyone reads and the first clause that matters when a deal goes wrong. Most contracts are signed in good faith and never litigated. In the event of a contract breakdown, the original agreements must be referenced, emphasising the significance of clear and effective communication. Using outdated clauses from standard templates can unexpectedly land an Indian startup and its Singapore supplier in court—an experience neither anticipates, in a language neither knows, and under unfamiliar rules.

Arbitration is a private legal alternative to going to court. The parties agree in advance that a neutral tribunal, rather than a civil judge, will decide their dispute, and that the arbitral tribunal's decision, called an award, will bind them. Four features explain why commercial parties choose it.

- **Choice of tribunal:** The parties pick the decision-maker. In court, you take the judge you are assigned. In arbitration, you can appoint someone who already understands different disputes – construction, software licensing, or shareholder disputes, which shortens the knowledge transfer and often leads to a speedy resolution.
- **Privacy:** Hearings, filings, and the award are not public. For a company safeguarding its trade secrets, product roadmap, or customer reputation, this factor is essential.
- **Cross-border enforceability:** An arbitral award made in one country can be enforced in more than 170 others under the 1958 New York Convention. A judgment from a national court is usually not enforceable in other countries. If your counterparty holds assets abroad, this is the single strongest reason to arbitrate.
- **Procedural flexibility:** The parties, working with the tribunal, set the timetable, the language, the number of arbitrators, and the extent of document disclosure. A well-run arbitration can be faster than a crowded court docket, although this is not automatic, as section 6 explains.

Arbitration is not free of drawbacks. There is no general right of appeal, so a wrong award is usually final. The parties pay the arbitrators and the institution, costs a court does not charge. A tribunal also has weaker powers than a court to compel third parties or grant urgent relief before it is formed. For high-volume, low-value claims, or where you expect to need quick injunctions against outsiders, a well-chosen court may serve you better. The point of this guide is to help you make that choice on purpose.

One practical warning for early-stage companies. A broad arbitration clause in a founder or shareholder agreement can pull disputes out of the company court and into a private forum, which affects how minority investors enforce their rights. Match the clause to the contract in front of you rather than reusing a single house style for every agreement.

## **2. Seat, venue, and rules: the three choices people confuse**

Three terms get treated as interchangeable, but they are not. Getting them right is most of the work of a good clause.

### **2.1 The Seat**

The seat, sometimes called the ‘legal place’ of arbitration, is the legal home of the arbitration. It fixes which country's arbitration law governs the process and, more importantly, which courts supervise the tribunal and hear any challenge to the award. The seat is a legal concept, not a travel plan. You can name London as the seat and still hold every hearing by video or in Mumbai. What London gives you in that example is English arbitration law and the supervisory jurisdiction of the English courts.

Because the seat decides who can set aside your award and on what grounds, it is the most consequential single word in the clause. Choose a seat whose courts are known to support arbitration rather than interfere with it, and whose country has signed the New York Convention. Widely used seats include London, Singapore, Paris, Geneva, Hong Kong, and, for India-centred deals, increasingly Mumbai and New Delhi. Avoid naming a seat in a country whose courts routinely reopen the merits of an award, because that removes much of the benefit of arbitrating at all.

### **2.2 The Venue**

The venue is simply where hearings physically take place. It can differ from the seat and can change during the case for convenience. If your clause says the seat is Singapore, but witnesses are in Bengaluru, the tribunal can sit in Bengaluru for the evidentiary hearing without disturbing the Singapore seat. Confusing the two is a common drafting error. Write the word ‘seat’ when you mean the legal home, and say ‘hearings may be held at any convenient location’ if you want flexibility on the physical venue.

### **2.3 The Rules**

The rules are the procedural rulebook the specific arbitration runs on. You have two broad options. Institutional arbitration means an arbitral institution administers the case under its own rules, collecting fees, appointing arbitrators when the parties cannot agree, and scrutinising the award. Ad hoc arbitration means the parties run the case themselves, often using the UNCITRAL Arbitration Rules, with no institution in the middle.

For most commercial parties, and almost always for a startup without an in-house disputes team, institutional arbitration is the safer default. The institution supplies a tested procedure, a default appointment mechanism if your counterparty stops cooperating, and a fee scale you can estimate in advance. Ad hoc arbitration can be cheaper and more flexible for sophisticated repeat players. Still, it depends on both sides continuing to cooperate, which is a poor assumption once a dispute has started.

The main institutions and the rules they administer include the following. The right one depends on where your counterparty and its assets sit, the governing law of the contract, and cost.

| <b>Institution</b>                                 | <b>Common seat</b>        | <b>Typical use</b>                                                                                                                                            |
|----------------------------------------------------|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SIAC (Singapore International Arbitration Centre)  | Singapore                 | In Asia-facing deals, it is a frequent choice for India-related contracts because Singapore courts support arbitration and awards are enforced well in India. |
| ICC (International Chamber of Commerce)            | Paris, or any agreed seat | Large cross-border contracts: the ICC Court's scrutiny adds quality control but also cost.                                                                    |
| LCIA (London Court of International Arbitration)   | London                    | Contracts and English-law-related financial disputes. Provides an efficient fee structure based on hourly rates rather than the amount in dispute.            |
| HKIAC (Hong Kong International Arbitration Centre) | Hong Kong                 | China-facing deals and awards are enforced in mainland China through a specific arrangement.                                                                  |
| MCIA (Mumbai Centre for International Arbitration) | Mumbai                    | India-seated arbitration under a modern institutional framework. Useful when both parties want an Indian seat.                                                |
| Ad hoc under UNCITRAL Rules                        | Any agreed seat           | Experienced parties who want to avoid institutional fees and are confident both sides will cooperate.                                                         |

A short rule of thumb: pick the institution first from the shortlist that fits your region and governing law, then adopt that institution's own recommended clause, then adjust the seat, language, and number of arbitrators to suit the deal. Do not mix one institution's name with another institution's rules, and never name a defunct or fictional body, because a clause that points nowhere can be held unworkable.

### **3. Model clauses you can adapt**

Every serious institution publishes a recommended clause. Start from that text rather than drafting from scratch, then add the four variables that the recommended clause leaves blank: seat, language, number of arbitrators, and governing law. The clauses below are illustrative and should be checked against the current version on the institution's website before use.

### 3.1 A basic institutional clause

This is the plain version for a contract of moderate value. It names one institution, one seat, one language, and a single arbitrator, which keeps costs down.

*“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed incorporated by reference in this clause. The seat of the arbitration shall be Singapore. The tribunal shall consist of one arbitrator. The language of the arbitration shall be [English]. This contract is governed by the laws of [state the governing law].”*

### 3.2 A clause for a higher-value or complex contract

For larger contracts, parties often want three arbitrators, an express confidentiality obligation, and a stated method for appointing the tribunal. Three arbitrators cost more but reduce the risk of a single eccentric decision.

*“Any dispute arising out of or in connection with this contract shall be finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce. The number of arbitrators shall be three. Each party shall nominate one arbitrator, and the two party-nominated arbitrators shall jointly nominate the presiding arbitrator. The seat of the arbitration shall be [city, country]. The language of the arbitration shall be [English]. The parties agree to keep confidential the existence of the arbitration, all documents produced, and the award, except as required by law or to enforce the award. This contract is governed by the laws of [state the governing law].”*

### 3.3 A stepped clause that requires mediation first

This version, discussed further in section 4, obliges the parties to attempt mediation before either can start arbitration. The time limit stops one side from using mediation only to stall.

*If a dispute arises out of or in connection with this contract, the parties shall first seek to settle it by mediation administered by [named institution] under its mediation rules. If the dispute has not been settled within 45 days of the appointment of the mediator, or within any longer period the parties agree in writing, the dispute shall then be referred to and finally resolved by arbitration under the [named] Arbitration Rules. The seat shall be [city]. The tribunal shall consist of [one or three] arbitrator(s). The language shall be [English]. Nothing in this clause prevents a party from seeking urgent interim relief from a competent court or from an emergency arbitrator at any time.*

### 3.4 Drafting points that cause real trouble when missed

- State the governing law of the contract and, ideally, confirm the law governing the arbitration agreement itself. These can differ, and silence has produced expensive disputes about which law applies to the clause.

- Name one institution and use its own rules. A clause that names one body but adopts another body's rules invites a challenge to the whole clause.
- Fix the number of arbitrators. Silence usually defaults to a number set by the rules, which may not be what you would have chosen for the value of the deal.
- Say the language. Without it, the tribunal decides, and translation of every document into an unexpected language is a largely avoidable cost.
- Preserve access to urgent relief. Add a line confirming that either party may seek interim measures from a court or an emergency arbitrator, so the arbitration agreement does not trap you while assets are being moved.
- Check enforceability where the capital is. If your counterparty's assets sit in a particular country, confirm that country enforces awards from your chosen seat before you sign.

#### **4. Mediation-first strategy**

Mediation is a facilitated negotiation. A neutral mediator helps the parties reach their own settlement but cannot impose one. It differs from arbitration in that nobody decides the case for you; you keep control of the outcome and can walk away if the terms do not suit you. Most commercial disputes settle, and settling early through mediation is almost always cheaper and faster than fighting to an award.

A mediation-first, or stepped, clause requires the parties to try mediation before starting arbitration. The commercial logic is straightforward. Once the dispute is framed and each side has seen the other's position, a day or two with a skilled mediator often resolves the matter for a fraction of the cost of a full arbitration. Even where it fails, mediation narrows the issues, so the arbitration that follows is shorter.

There are risks to manage in the drafting. A stepped clause with no deadline lets a reluctant party drag out the mediation stage to delay the real remedy. Fix a clear time limit, such as 30 or 45 days from the appointment of the mediator, after which either side can move to arbitration. Make the mediation step a genuine precondition if that is what you want, because a court or tribunal may otherwise treat it as merely an agreement to talk. And always carve out urgent interim relief, so that a party facing dissipation of assets can go straight to a court or emergency arbitrator without first sitting through mediation.

Two related structures are worth knowing. In med-arb, the same neutral first mediates and, if that fails, then arbitrates the dispute. It is efficient but carries a fairness concern, because the arbitrator may have heard confidential settlement positions during the mediation. In arb-med-arb, an arbitration is started and paused for mediation; if mediation settles the case, the settlement is recorded as a consent award, which is enforceable under the New York Convention. The Singapore International Mediation Centre and SIAC run a well-known arb-med-arb protocol together, and it is a sensible option for parties who want the settlement to be as enforceable as an award.

For cross-border settlements reached through mediation, the 2019 Singapore Convention on Mediation now allows a mediated settlement agreement to be enforced directly in signatory states, which strengthens the case for trying mediation first. Check whether the relevant countries have ratified it before relying on it.

## 5. What a startup should do differently from a large corporate?

The same clause is not right for a seed-stage company and a listed multinational, because their risks and resources differ.

A startup should keep the clause simple and cheap to run. That usually means a single arbitrator rather than three, a nearby and arbitration-friendly seat, an institution with a clear fee scale, and a mediation step to force an early, low-cost conversation. A startup rarely has the cash to fund a three-arbitrator ICC case, so a clause that quietly commits it to one can be a serious liability. Watch the interaction with investment documents as well: shareholder and founder agreements need clauses that fit company law, not a generic supply contract clause.

A larger corporate can afford, and often wants, three arbitrators for high-value contracts, institutional award scrutiny, and a seat chosen for the strength of its supervisory courts rather than convenience. The corporate concern is consistency across a large contract portfolio and enforceability against counterparties in many countries. Corporates also benefit from keeping a short internal playbook so that every contract owner uses an approved clause rather than inventing one.

## 6. Cost and time trade-offs

Arbitration is often faster and cheaper than court. It can be, but only if you make choices at the drafting stage that keep it that way. The main levers are set out below, with the trade-off each one carries.

| Choice                          | Effect on cost and time                                                                      | Trade-off                                                                                   |
|---------------------------------|----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| One arbitrator instead of three | Cuts arbitrator fees by roughly two-thirds and speeds up scheduling.                         | Less resilience against a single poor decision and better suited to lower-value disputes.   |
| Institutional over ad hoc       | Predictable fee scale and a default appointment mechanism if a party stalls.                 | Institution fees on top of arbitrator fees; the trade is certainty for a set cost.          |
| Limited document disclosure     | Document production is the largest driver of cost and delay; limiting it saves both.         | You may see fewer of the other side's documents, which can matter in a document-heavy case. |
| Expedited or fast-track rules   | Many institutions offer an expedited track for smaller claims, with a short fixed timetable. | A compressed timetable leaves less room to develop a complex case.                          |
| A workable seat                 | A supportive seat means fewer court challenges and less delay enforcing the award.           | None material - this is close to a free choice, so choose the seat with care.               |
| Mediation step first            | Creates an early, low-cost off-ramp; most disputes that settle, settle here.                 | A short built-in delay before arbitration, which a deadline keeps under control.            |

Two honest cautions belong here. First, arbitrator and institution fees are real costs that a court does not charge, so for a straightforward debt claim of modest size, a court may cost less. Second, the promise of speed depends on the parties and the tribunal. A determined party can slow any process, and a busy three-member tribunal can be hard to schedule. The drafting choices above tilt the odds in your favour, but they do not guarantee a quick result.

The way to use this section is to price the clause against the contract. For a low-value, high-volume relationship, a single arbitrator, limited disclosure, an expedited track, and a mediation step will usually give the best value. For a high-value, one-off contract with a counterparty abroad, the extra cost of three arbitrators and institutional scrutiny buys resilience and enforceability that are worth paying for.

### ***A pre-signing checklist***

*Before signing any contract, run the dispute clause through these questions. If you cannot answer one of them from the text of the clause, the clause needs more work.*

1. *Have we named one institution and adopted that institution's own rules?*
2. *Have we stated the seat, and is it a country whose courts support arbitration and that has signed the New York Convention?*
3. *Have we set the number of arbitrators to match the value of the deal?*
4. *Have we stated the language of the arbitration?*
5. *Have we stated the governing law of the contract, and considered the law of the arbitration agreement?*
6. *Does the clause require mediation first, with a deadline, if we want an early settlement route?*
7. *Have we preserved the right to seek urgent interim relief from a court or emergency arbitrator?*
8. *Have we confirmed that our chosen seat produces awards that are enforceable where the counterparty holds assets?*



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