

# DETERMINING DISPUTE RESOLUTION TERMS IN CONTRACT

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## A. Introduction

When drafting a new contractual agreement, **dispute resolution terms** are a crucial part of the negotiation and reflect the legal, commercial, and practical priorities of the parties. Here's a breakdown of how these terms is generally determined and considerations specific to arbitration, especially in the Gulf states (GCC).

## B. Key Considerations:

- a) Nature of the Contract and Parties Involved
  - International or domestic?
  - Government or private entity?
  - Industry-specific norms (e.g., construction, oil & gas, finance)?
- b) Legal Advice & Precedent
  - Lawyers typically draft the clause using model clauses from reputable arbitration institutions or legal templates.
- c) Preferred Legal System and Venue
  - Parties may choose a neutral forum if they're from different countries.
  - They consider the efficiency, fairness, and enforceability of judgments or awards in the chosen jurisdiction.
- d) Complexity and Cost
  - Arbitration is often more expensive than court litigation but may be faster and more confidential.
  - Small contracts may avoid arbitration due to its cost.

## C. Should You Bind to an Arbitration Center or Not?

- a) Institutional Arbitration (via Center) is generally safer and more structured:
  - Clear procedural rules.
  - Administrative support.
  - Recognized framework for enforcement.

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- b) Ad-hoc Arbitration (no center) offers flexibility and cost-efficiency, but:
- Requires very careful drafting
  - Higher risk of disputes over procedure
  - Works best when parties trust each other or can afford high-quality counsel.

## D. Conclusion:

If you're dealing in the Gulf, arbitration is a viable and often preferred option, especially in international contracts.

For cross-border deals, consider a respected international institution like ICC or SIAC, unless the counterparty insists on a local center.

For domestic Gulf contracts, local centers (like DIAC, ADCCAC, or SCCA) are practical and enforceable.

Avoid ad-hoc arbitration unless you have a strong legal team and want maximum flexibility.

## E. When Is Arbitration Too Costly for Small Contracts?

### Main Cost Drivers in Arbitration:

- 1) Arbitrator(s) fees – often charged hourly or as a percentage of the claim amount.
- 2) Administrative fees – paid to the arbitration institution (e.g., ICC, DIAC).
- 3) Legal fees – often higher than in court cases, as arbitration may involve more detailed procedures.
- 4) Hearing costs – renting venues, translation, expert witnesses, etc.

### Estimated Cost Thresholds (Based on Common Practice):

Ser.	Claim Value (USD)	Arbitration Cost Level	Is Arbitration Cost-Efficient?
1	Under \$50,000	High relative cost	Generally, <b>not</b> recommended
2	\$50,000 – \$250,000	Moderate to high cost	Depends on complexity and center
3	\$250,000 – \$1 million	Reasonable to moderate	Often justified
4	Over \$1 million	Proportionally efficient	Arbitration is typically preferred

*For example, a \$30,000 dispute under ICC arbitration may result in \$10,000–\$15,000 in institutional and arbitrator fees excluding legal costs, which can easily exceed the value of the dispute.*

### **Alternatives for Small Disputes:**

- 1) Litigation in Local Courts (if efficient and fair in that country).
- 2) Small Claims Arbitration Programs (some centers offer streamlined low-cost rules).
- 3) Mediation or Conciliation Clauses before arbitration.
- 4) Ad-hoc arbitration using agreed-upon sole arbitrator (with capped fees).

### **Key Conditions for Validity:**

#### **Clear Language:**

The clause must explicitly state the threshold (e.g., “Disputes below \$100,000 shall be subject to the jurisdiction of local courts...”).

#### **Mutual Consent:**

Both parties must have freely agreed to the clause—this is particularly important for enforceability in arbitration.

#### **Not Against Public Policy:**

In the GCC, arbitration clauses are enforceable as long as they are not contrary to mandatory laws or public policy (e.g., some administrative contracts in Saudi Arabia require special approvals).

#### **Arbitration Agreement Scope:**

The clause should clearly define which disputes go to court and which go to arbitration—to avoid ambiguity or dual jurisdiction.

### **Recommendation:**

If the expected value of the dispute is below \$100,000, you should consider:

- Including a tiered dispute resolution clause: negotiation → mediation → arbitration.
- Limiting arbitration to larger disputes only (e.g., "Only disputes exceeding \$100,000 shall be referred to arbitration").
- Capping costs or selecting a sole arbitrator to keep it cost-effective.

## F. Main Guidance for Drafting Dispute Resolution Conditions

When drafting Dispute Resolution (DR) clauses, it is essential to adopt a clear, tiered approach to resolve any disputes, controversies, or claims arising from the agreement. The below model provides a structured framework for dispute resolution, which prioritizes amicable settlement before escalating to formal processes like mediation, arbitration, or litigation.

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### a) Amicable Settlement

**Purpose:**

*Encourages direct dialogue to resolve disputes without the need for formal proceedings, reducing cost and preserving business relationships.*

**Model Clause:**

*The Parties agree to attempt in good faith to resolve any dispute, controversy, or claim arising out of or in connection with this Agreement through direct negotiations. Either Party may initiate this process by delivering written notice to the other Party describing the dispute. If the dispute is not resolved within 30 calendar days of receipt of the notice, the matter shall proceed as set out below.*

**Best Practices:**

- *Define a clear starting point (i.e., written notice).*
- *Specify the timeframe (e.g., 30 days).*
- *Consider whether escalation within the organization (e.g., to executives) is necessary before moving to mediation.*

### b) Mediation

**Purpose:**

*Mediation offers a non-binding, confidential, and cost-effective means to resolve disputes with the assistance of a neutral third party.*

**Model Clause:**

*If the dispute remains unresolved after the amicable settlement period, the Parties agree to submit the matter to mediation administered by [Insert Institution, e.g., the Saudi Center for Commercial Arbitration (SCCA), DIAC, ICC] in accordance with its Mediation Rules. The mediation shall take place in [Insert City], and the language of the mediation shall be [Insert Language].*

### **Best Practices:**

- Specify the institution (e.g., SCCA, DIAC, ICC).
- Identify the city and language to avoid ambiguity.
- Mediation should ideally be concluded within a specified time (e.g., 60 days).
- Make clear whether mediation is mandatory or optional before arbitration.

### **c) Arbitration (for Disputes Exceeding USD 100,000)**

#### **Purpose:**

Arbitration is a binding method of dispute resolution often preferred in international contracts due to its neutrality and enforceability.

#### **Model Clause:**

If the dispute is not resolved through mediation, and the amount in controversy exceeds USD 100,000, the dispute shall be finally settled by arbitration administered by [Insert Arbitration Institution, e.g., ICC, SCCA, DIAC] under its rules in force at the time of the commencement of the arbitration. The arbitration shall be conducted by [one/three] arbitrator(s) appointed in accordance with said rules. The seat of arbitration shall be [Insert City], and the language of arbitration shall be [Insert Language].

#### **Important Note:**

Failing to state "administered by [institution]" could lead to ambiguity. Merely stating "under the rules of" without specifying administration could result in procedural disputes, as some parties may argue that arbitration is ad hoc (i.e., self-managed) rather than institutional.

### **Best Practices:**

- Include **both** the administration by and application of the rules of the institution.
- Clearly specify:
  - Number of arbitrators (typically one or three).
  - Qualifications of arbitrators (e.g., Civil Law vs. Common Law background; technical expertise such as construction or IT; language fluency).
  - Seat of arbitration, which affects procedural law.
  - Language of the proceedings.

### **d) Local Courts (for Disputes up to USD 100,000)**

#### **Purpose:**

Small-value disputes may be more efficiently and cost-effectively handled by local courts, unless both parties agree to arbitrate.

#### **Model Clause:**

For disputes where the amount in controversy does not exceed USD 100,000, the Parties agree that such disputes shall be submitted to the competent courts of [Insert Country]. However, the Parties may mutually agree in writing to submit such disputes to arbitration.

### **Best Practices:**

- *Define the threshold clearly.*
- *Identify the competent court jurisdiction to avoid forum shopping.*
- *Allow for flexibility to opt into arbitration upon mutual agreement.*

### **General Considerations for All Dispute Resolution Clauses**

**1. Enforceability:**

Ensure that each clause is compliant with local laws and international conventions (e.g., the New York Convention for arbitration awards).

**2. Consistency:**

The dispute resolution clause must be internally consistent and not contradict other sections of the agreement (e.g., governing law).

**3. Confidentiality:**

Include a provision, especially for arbitration and mediation, requiring confidentiality of proceedings and outcomes.

**4. Costs and Fees:**

Consider how fees and costs will be allocated (e.g., each party bears its own costs, or the losing party pays).

**5. Interim Relief:**

Specify whether parties may seek interim or injunctive relief from courts before or during arbitration.

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