

Legal Writing Pro Cheat Sheet
Mandatory Arbitration Clauses

- Issues to consider addressing:
 - ✓ What disputes are subject to arbitration?
 - ✓ Which arbitral association?
 - ✓ What law governs?
 - ✓ How is panel composed and selected?
 - ✓ Where will the arbitration occur?
 - ✓ Does that forum allow arbitral awards to be enforced in other countries?
 - ✓ In international arbitrations, in what language will the arbitration be conducted?
 - ✓ Will discovery be limited? (This issue is especially important in the US, which has very broad discovery in commercial litigation.)
 - ✓ Does the award/ decision/ judgment need to be “reasoned” – that is, supported with a written explanation?
 - ✓ Is the award subject to judicial review or merely to judicial enforcement?
- Arbitral associations provide sample mandatory-arbitration provisions that track the case law of the jurisdiction.
- Example from the International Chamber of Commerce: “All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”
 - ✓ Three “key expressions”: “all disputes”; “in connection with”; “finally settled.”
- Example from the American Arbitration Association: “Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.”
- As for which disputes are subject to arbitration, research important distinctions in your jurisdiction between “arising out of,” “related to,” “related in any way to,” “in connection with,” “under,” “in respect of” (UK), and “with regards to” (UK) the Agreement.
- In the US, for example, the broadest scope is through a “broad-form clause”: “all disputes arising out of, connected with, or relating in any way to this agreement.”
- UK courts make fine distinctions as well, holding, for example, that “in respect of” is far broader than “in connection with,” and that “arising out of” is broadest of all.