

Arbitration of Commercial and Financial Disputes: From A to Z

Before the Dispute

- Venue Considerations
 - Confidentiality
 - Specialization
 - Procedural and Evidentiary Rules
 - AAA Rules available at: <https://adr.org/Rules>
 - JAMS Rules available at: <https://www.jamsadr.com/adr-rules-procedures/>
 - Enforceability
 - The Federal Arbitration Act (“FAA”), 9 U.S.C. § 2 (A written provision in a contract to settle by arbitration a controversy thereafter arising out of such contract shall be “valid, irrevocable, and enforceable.”)
 - The FAA reflects a “liberal federal policy favoring arbitration” and the “fundamental principle that arbitration is a matter of contract.” “In line with these principles, courts must place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citations omitted).
- Drafting an Enforceable Arbitration Clause
 - Regulatory Restrictions
 - Drafting a Clear Dispute Resolution Provision During Deal Negotiations
 - Resources: <https://adr.org/Clauses>; <https://www.jamsadr.com/clauses/>

The Dispute

- Arbitrator or Arbitration Panel
 - See, e.g., AAA Commercial Rule 17(a) (“The parties may agree on the number of arbitrators to hear and determine the case. If the arbitration agreement does not specify the number of arbitrators or is ambiguous, and the parties do not otherwise agree, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the Demand or Answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.”)
- Coordination for Prehearing Exchange of Information
- Limitations on Discovery

- Availability of Dispositive Motions and Motions in Limine
 - See, e.g., AAA Commercial Rule 34(a) (“The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines the moving party has shown that the motion is likely to succeed and to dispose of or narrow the issues in the case.”).
- Virtual vs. In-Person Hearings

After the Dispute

- Enforceability of Award
 - See FAA, 9 U.S.C. § 9 (confirmation of award)
- Availability of Appellate (or other Supervisory) Review
 - See FAA, 9 U.S.C. §§ 10-11 (vacatur and modification of awards)
 - *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008) (the grounds stated in the FAA constitute the exclusive grounds for vacatur and modification of arbitration award).
 - *Prostyakov v. Masco Corp.*, 513 F.3d 716, 723 (7th Cir. 2008) (a court may vacate an arbitration award only when the arbitrators’ interpretation was “so wacky” that it was no interpretation at all).