

MULTI-TIERED DISPUTE RESOLUTION CLAUSES

Multi-tiered dispute resolution clauses, also known as escalation clauses, are commonplace in international commercial contracts, particularly in the construction and projects sectors. They provide for parties to engage in some form of alternative dispute resolution such as negotiation, conciliation or mediation prior to commencing arbitration or litigation. However, they are typically “midnight clauses”, clauses that are included in complex contracts at the last minute and without full consideration. Courts and tribunals have at times been ambivalent in their approach to the enforceability of these clauses, but the modern trend appears to be that they will be enforced wherever possible. It is, therefore, essential to understand the proper approach to be taken to their interpretation and enforceability.

This presentation and discussion will consider the approach to multi-tiered dispute resolution clauses in a number of jurisdictions. They will cover the potential advantages and disadvantages of such clauses, the approaches of courts and other institutions to their interpretation and enforcement, the law to be applied to issues arising in respect of such clauses, and also modern approaches to substantive obligations typically found in such clauses such as duties to negotiate in good faith and to undertake mediation. Some suggestions will also be provided in relation to the drafting of such clauses, including how to ensure they are enforceable and pitfalls to be avoided.



Ben Olbourne is an experienced adviser, advocate and arbitrator and has been a member of the English Bar since 2003. However, he has worked from and been resident in Asia since 2012. He specialises in all aspects of international arbitration across a range of sectors, including general commercial, construction and infrastructure, oil and gas, energy, international trade and commodities, and maritime. His work as counsel in these areas has been recognised in leading regional and global directories such as Chambers & Partners and Legal 500.

Ben accepts appointment as an arbitrator and has recently been or is currently appointed as sole or co-arbitrator in references under ICC, LCIA, SIAC, LMAA, and UNICITRAL rules. He is a Fellow of the Chartered Institute of Arbitrators and is on the panels of a number of regional arbitral institutions. He regularly presents lectures and training sessions on arbitration and advocacy.

**ADMISSION IS FREE.
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