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Choosing Arbitration: A Strategic Decision

Arbitration Inside by Vardar Şanlı

What's inside this issue:

When arbitration is the right forum and when it is not?

The first strategic decision in arbitration

Arbitration is often treated as a standard clause in commercial contracts rather than a strategic choice. When a dispute arises, parties tend to default to arbitration without revisiting whether it is truly the right forum.

In practice, however, the decision to arbitrate shapes not only how a dispute is resolved, but also its time, cost and enforceability. The key question should therefore come first: does arbitration actually fit the dispute at hand?

While arbitration is valued for neutrality, flexibility and cross-border enforceability, these features do not apply uniformly to all disputes and may not always outweigh the drawbacks.

When arbitration works and when it does not?

From a practical perspective, arbitration tends to work best where enforcement in multiple jurisdictions is anticipated, where confidentiality is a genuine concern, or where the dispute benefits from decision-makers with specific technical expertise. Arbitration may be less suitable where urgent coercive interim measures are critical, where multiple parties are involved but not all are bound by the arbitration agreement, or where cost sensitivity outweighs the advantages of flexibility and neutrality. Importantly, arbitration is not inherently faster or cheaper. In complex cases, it may rival court litigation in both duration and cost.

“Arbitration under the Act is a matter of consent, not coercion.”

United States Supreme Court
Volt Information Sciences, Inc. v. Board of Trustees of Stanford University, 489 U.S. 468 (1989)

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Practical takeaway

When deciding whether to arbitrate, parties should also consider the economic value of the contract and the nature of the obligations involved. For relatively low-value monetary claims, bringing a debt action before efficient and reliable local courts may be faster and more effective than arbitration.

Arbitration should be treated as a deliberate strategic choice, not a default option. A brief forum analysis at the outset can significantly reduce procedural uncertainty and enforcement risks later in the process.