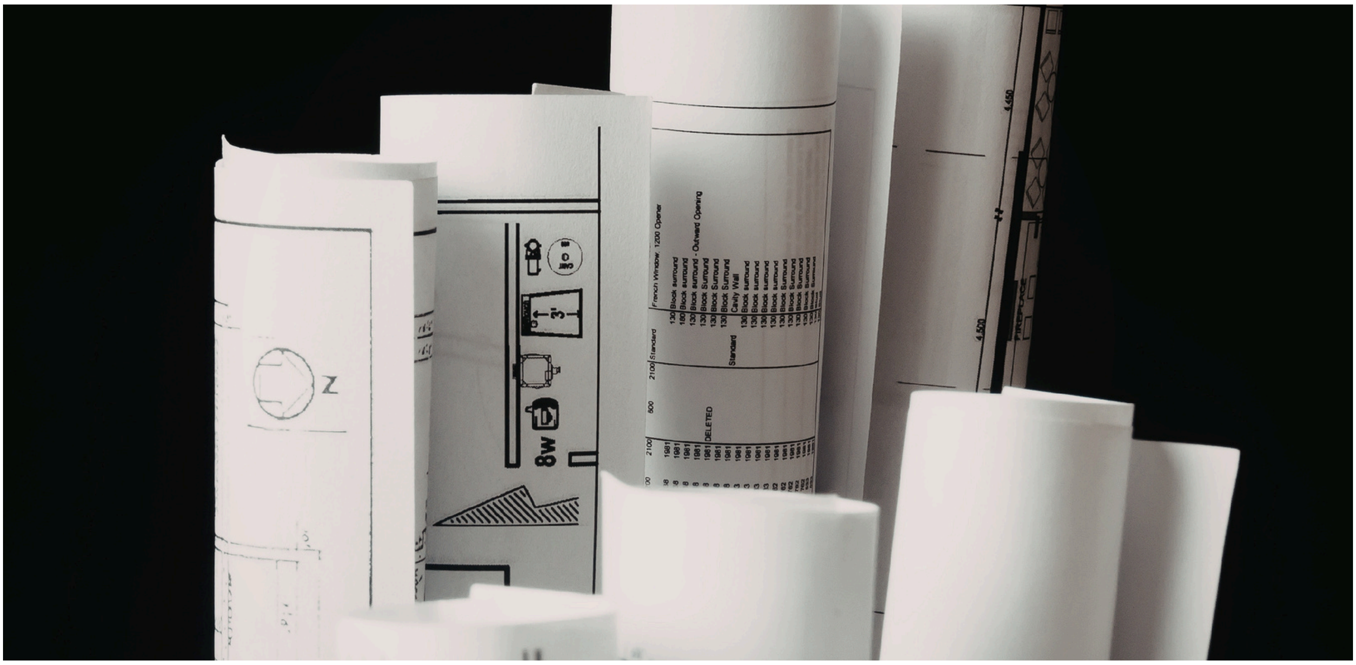
Volume 2 | February 26, 2026

Why an Arbitration Clause Is Anything But Boilerplate

Inside Arbitration | Vardar Şanlı



Designing the Architecture of Dispute Resolution

Arbitration clauses are often treated as standard provisions in commercial contracts, typically added toward the end of the drafting process and rarely negotiated in depth. This is largely because their consequences tend to surface only once a dispute arises, at a stage where drafting choices can no longer be corrected.

Although it may be one of the shortest provisions in a contract, it frequently carries some of the most significant strategic implications. For that reason, an arbitration clause should not be viewed as boilerplate, but as a deliberate and carefully calibrated risk-management tool.

An improperly drafted arbitration clause may cause the dispute resolution process itself to become contested once a dispute arises. Parties may therefore find themselves debating before the chosen forum whether a valid arbitration agreement exists at a preliminary stage, leading to delay, added costs and wasted time.

VARDAR | ŞANLI

There are many aspects of an arbitration clause that parties can, and should, consciously negotiate.

The parties may agree on whether arbitration will be institutional or ad hoc, a decision that directly shapes administrative support and procedural predictability. The choice of seat is even more consequential, as it determines the legal framework, court oversight and ultimately the enforceability landscape.

Parties may also agree on the number of arbitrators, how they will be appointed, the availability of interim or emergency relief, and how arbitration costs will be allocated. The language of arbitration is likewise negotiable, as it directly affects evidence, translation costs and procedural efficiency, particularly in cross-border disputes. Additional considerations may include confidentiality obligations, consolidation or joinder mechanisms in multi-party scenarios, applicable procedural rules, timelines for proceedings and even the desired expertise of arbitrators. These are not drafting formalities; they are strategic choices that often determine how efficiently a dispute will be managed and how effectively the outcome can be enforced.

Practical takeaway

An arbitration clause is far from a mere formality. It determines how, where, and within what procedural framework a dispute will ultimately be resolved, shaping not only the conduct of proceedings but also their cost, efficiency, and predictability.

Arbitration clauses should reflect commercial realities. For example, where a foreign party is involved, choosing English as the arbitration language can prevent unnecessary translation costs that rarely add value to the merits of the dispute.