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Multi-Tier Arbitration Clause: An Analysis of Its Enforceability in Arbitration

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ABSTRACT

In international commercial arbitration, multi-tier arbitration clauses—also known as escalation or filter clauses—are a sophisticated mechanism that requires parties to complete specified pre-arbitral dispute-resolution procedures, usually negotiation or mediation, before moving on to formal arbitration. Drawing on international instruments such as the UNCITRAL Model Law on International Commercial Conciliation (2002), the ICC ADR Rules (2001), and India’s Arbitration and Conciliation Act, 1996, this article critically examines the enforceability and mandatory nature of such clauses across various jurisdictions. Through important rulings such as Cable and Wireless, Walford v. Miles, Emirates Trading Agency LLC v. Prime Mineral Exports Pvt. Ltd., and Sulamerica, the paper examines how courts handle unclear and imprecise multi-tier provisions, as well as the legal ramifications of non-compliance. It also questions whether the national court or the arbitral tribunal should resolve disputes arising from these clauses. With countries differing significantly on questions of enforceability, the research reveals a recurring tension between party autonomy and the public-policy goal of amicable resolution. The study concludes that, although certainty of wording is the crucial criterion, courts and tribunals should try to give escalation provisions purposive effect, combining commercial efficiency with the fundamentally consensual nature of arbitration.

I. INTRODUCTION

Arbitration has long been recognized as a private adjudication procedure that provides parties with an alternative to traditional court proceedings. Party autonomy, the ability of the parties to shape the parameters of a dispute-settlement procedure, is fundamental to arbitration. Historically, this private nature has been prized for its effectiveness, confidentiality, and ability to maintain business ties. However, the classic two-party arbitration model’s shortcomings have been exposed by the growing complexity of international business conflicts, leading to the creation of hybrid procedures that combine the procedural benefits of several alternative dispute resolution (ADR) methods.

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One such innovation is the multi-tier arbitration provision, often known as an escalation clause or filter clause. These provisions incorporate into arbitration agreements a mandate that, before resorting to arbitration, parties must first try to settle their differences amicably through channels such as negotiation or mediation.¹ The goal is to provide parties a structured opportunity for early resolution while saving the time and money that formal arbitration requires, which reflects a relational and commercial justification. However, a body of intricate jurisprudence concerning the mandatory nature of these clauses, their enforcement, and the repercussions of bypassing them has emerged as a result of their increasing use in international commercial contracts.

The legal environment surrounding multi-tier arbitration agreements is examined in this article, with special focus on pre-arbitral clauses, namely those that set requirements prior to the commencement of arbitral proceedings. The study draws on pertinent international instruments and comparative case law from Singapore, India, Australia, and England. Four main questions guide this investigation: the extent to which these provisions are mandatory and enforceable; the repercussions of a party circumventing the pre-arbitral procedures; the appropriate venue for resolving compliance disputes; and the impact of drafting ambiguity on the validity of the clause.²

II. MULTI-TIER ARBITRATION CLAUSES: OVERVIEW AND STRUCTURE

Before a disagreement reaches the stage of binding arbitration, multi-tier arbitration provisions envision it escalating through at least two other types of dispute settlement. They can be roughly classified as either pre-arbitral or post-arbitral. Pre-arbitral provisions set forth requirements that must be met before arbitration can begin, such as conciliation, mediation, or negotiation. Less frequently, post-arbitral provisions provide procedures for review or appeal after an arbitral decision. The former category is the subject of this article.³

A graded escalation is a common feature of a pre-arbitral multi-tier clause. At the first tier, senior representatives of the disputing parties must meet in order to try to reach a commercial settlement without using formal legal procedures. If direct discussion is unsuccessful within a predetermined time frame, a neutral third party mediates the disagreement. Only after mediation fails is the dispute ready for arbitration as a last, legally binding option. A conventional model

¹ALAN REDFERN & MARTIN HUNTER, REDFERN AND HUNTER ON INTERNATIONAL COMMERCIAL ARBITRATION (6th ed. 2015).

²Shrishti Pareek, *Multi-Tier Arbitration Clause*, VIA MEDIATION CTR., <https://viamediationcentre.org/readnews/Njg2/MULTI-TIER-ARBITRATION-CLAUSE> (last visited Nov. 1, 2021).

³E. Palmer, *The Use of Multi-Tiered Dispute Resolution Clauses in Latin America: Questions of Enforceability*, 14 AM. REV. INT'L ARB. 285 (2003).

along similar lines has been advocated by the International Centre for Dispute Resolution (ICDR), which calls for negotiation within sixty days, mediation in accordance with ICDR regulations, and arbitration as the final step.⁴

It is crucial to differentiate multi-tier provisions from Med-Arb, a system in which a single neutral serves as arbitrator in the event that mediation is unsuccessful. Despite their apparent similarities, the two systems are fundamentally different. In a multi-tier clause, the processes of negotiation, mediation, and arbitration are sequential but structurally interwoven within the same contractual framework; in Med-Arb, the same person switches between roles within a single process. Additionally, multi-tier provisions differ from stand-alone mediation or negotiation agreements, since they automatically escalate to arbitration when the earlier processes fail.

III. DRAFTING REQUIREMENTS AND CONSIDERATIONS

The accuracy with which a multi-tier clause is worded greatly influences its effectiveness. An escalation clause must clearly state the processes involved in resolving disputes, together with the time limits for each phase, the relevant institutional rules (if applicable), and the trigger that initiates a move from one tier to the next. Any ambiguity at any of these points might render the entire clause invalid for uncertainty.

The significance of well-specified time limits cannot be overstated. Without them, a reluctant party may take advantage of the amicable-resolution steps to delay arbitration indefinitely. The Stockholm Institute of Arbitration affirmed in *Ashgar v. Legal Service Commission*⁵ that an executive-level settlement-negotiation term of thirty days was legally obligatory and had to be followed. Since escalation to higher executive levels is a form of internal pressure intended to accelerate commercial settlement, the clause must explicitly specify the seniority of the participants required at each tier.

The doctrine of separability, which shields the arbitration clause from the illegality of the underlying contract, is advantageous when the clause is included in a future-disputes arbitration agreement rather than a submission agreement signed after a dispute has emerged. Multi-tier provisions included in such agreements are also covered by this doctrine. However, the usefulness of pre-arbitral conciliatory processes in the context of submission agreements is

⁴Prachi Agarwal, *Multi-Tier Arbitration Clauses*, RMLNLU L. REV. BLOG (Oct. 25, 2017), <https://rmlnlulawreview.com/2017/10/25/multi-tier-arbitration-clauses/>.

⁵*Ashgar v. Legal Serv. Comm'n*, [2004] EWHC 1803 (Eng.).

more questionable, since the possibility of a negotiated solution may already have diminished by the time the parties narrow their disagreement into a submission agreement.⁶

IV. MULTI-TIER CLAUSES' MANDATORY AND ENFORCEABLE NATURE

Whether adherence to the pre-arbitral procedures is required (and, if so, what legal ramifications result from non-compliance) lies at the heart of the controversy concerning multi-tier provisions. The law governing the arbitration agreement and the clause's wording play a major role in the outcome.

In India, rulings from the Supreme Court and the High Courts have clarified the position. One of the first Indian courts to hold that a pre-arbitration provision is legally enforceable and must be followed before arbitration may be invoked was the Kerala High Court in *Nirman Sindia v. Indal Electromet Ltd.*⁷ The Supreme Court later upheld this approach in *S.K. Jain v. State of Haryana*, ruling that pre-arbitral procedures are required prerequisites to the commencement of arbitration proceedings. However, this approach is complicated by the statutory position. According to Section 62 of the Arbitration and Conciliation Act, 1996, conciliation proceedings commence only when one party accepts another's written invitation. This means that, even where a multi-tier clause is present, conciliation cannot be enforced unilaterally; fresh consent is needed.

Pre-arbitration mediation agreements have often been upheld by courts in civil-law regimes, particularly France and Germany. German courts have repeatedly recognized the necessity of mediation in commercial contracts, especially in matters involving art, holding that mediation must be attempted before arbitration is allowed.⁸

V. THE POSITION OF ENGLISH LAW

In the past, English law opposed the mandatory enforcement of negotiation terms, viewing them as fundamentally ambiguous and incapable of establishing legally enforceable duties. Since negotiation is by its very nature a non-determinative procedure that does not bind parties to a particular outcome, the House of Lords gave authoritative expression to this position in *Walford v. Miles*,⁹ declaring that a commitment to negotiate in good faith is too ambiguous to be enforced at law.

⁶Kayali, *Enforceability of Multi-Tiered Dispute Resolution Clauses*, 27 J. INT'L ARB. 551 (2010).

⁷*Nirman Sindia v. Indal Electromet Ltd.*, AIR 1999 Ker. 440 (India).

⁸Jolles, *Consequences of Multi-Tier Arbitration Clauses: Issues of Enforcement*, 72 ARB. 329 (2006).

⁹*Walford v. Miles*, [1992] 2 W.L.R. 174 (HL).

But the *Cable and Wireless* decision, in which the English court ruled that a mediation clause that was sufficiently explicit and unambiguous may be enforced and that courts should favour giving effect to such agreements in order to promote amicable dispute resolution, changed the tide. The court defined the criterion as demanding “a sufficiently certain and definable minimum duty of participation”; successive courts have applied this standard with differing levels of rigour. The English approach has evolved significantly since the *Cable and Wireless* ruling, moving away from categorical unenforceability and toward a contextual review of the clause’s content and the parties’ stated intentions.¹⁰

VI. IMPLICATIONS OF AVOIDING THE PRE-ARBITRAL STEPS

Whether a party may request arbitration directly and bypass the pre-arbitral stages is a common question in multi-tier arbitration law. The ramifications of doing so differ by jurisdiction, depending on whether the pre-arbitral procedures are regarded as conditions precedent to the tribunal’s jurisdiction or as procedural duties whose breach results in lesser remedies.

As the English court determined in *Emirates Trading Agency LLC v. Prime Mineral Exports Pvt. Ltd.*,¹¹ pre-arbitral procedures are regarded as jurisdictional conditions precedent: a party cannot lawfully commence arbitration if it does not follow them. The arbitral tribunal would therefore lack the authority to consider the matter unless the requirements are met. By treating non-compliance as a fundamental flaw that undermines the tribunal’s authority rather than a mere procedural anomaly, this approach gives the multi-tier clause maximum teeth.

On the other hand, some tribunals treat non-compliance as a procedural issue that must be raised at the outset of the case or be waived. This approach, which is more protective of arbitral efficiency, ensures that a respondent who raises compliance complaints only after lengthy proceedings have been completed cannot use the escalation process as a tool of delay. The *Sulamerica* case illustrates the limits of mandatory enforcement: the court determined that there was no sufficiently specific agreement to mediate and that the claimant was entitled to proceed directly to arbitration, since the provision did not identify a mediator or a defined mediation procedure.

Australian courts adopt a stringent compliance stance. In *United Group Rail Services*¹² and other cases, Australian courts have generally held that escalation clauses establish legally enforceable contractual duties and that it is impermissible to deviate from them without a valid reason. This

¹⁰MANOJ K. SINGH, *INFRASTRUCTURE ARBITRATION: A PERSPECTIVE* (1st ed. 2020).

¹¹*Emirates Trading Agency LLC v. Prime Mineral Exports Pvt. Ltd.*, (2015) 31 Arb. Int’l 65.

¹²*United Group Rail Servs.* [2009] NSWCA 177 (Austl.).

approach forms part of a broader judicial policy that gives full effect to contractual dispute-settlement procedures voluntarily agreed upon by commercially sophisticated parties.

VII. THE APPROPRIATE ENFORCEMENT FORUM

Important questions of competence and jurisdiction arise from the issue of which forum, the national court or the arbitral tribunal, has the power to assess compliance with multi-tier provisions.

The kompetenz-kompetenz principle typically gives arbitral tribunals the authority to decide their own jurisdiction. A tribunal may treat a party's jurisdictional objection of non-compliance with the multi-tier clause as a preliminary matter that must be settled before moving on to the merits. This approach was supported by Swiss Supreme Court precedent, where the court set aside an award on the ground that the respondent's pre-arbitral right to be heard had been violated through non-compliance with the mediation requirement. A practical benefit of the tribunal's capacity to handle compliance as a preliminary jurisdictional question is that it prevents parallel satellite litigation by confining the matter to the same forum that will decide the substantive dispute.

National courts also have concurrent jurisdiction, especially when it comes to interim relief and procedural objections raised prior to the formal constitution of the arbitral tribunal.¹³ The national court went further in *Kemiron Atlantic Inc. v. Aquakem International*,¹⁴ ruling that the court had inherent authority to order parties to pursue amicable-resolution procedures before arbitration could begin, even where the multi-tier provision was not couched in mandatory language. The English court in *Emirates Trading Agency* affirmed that pre-arbitral procedures serve as conditions precedent that can be enforced by national courts.

It is sometimes said that the judicial enforcement of escalation provisions is at odds with the party-autonomy principle that underpins international commercial arbitration. Requiring parties to engage in mediation or negotiation that they deem pointless is said to create needless procedural hurdles, raise costs, and delay the resolution of commercial disputes. However, it is more accurate to say that parties who willingly agreed to escalation provisions are bound by those agreements, and that when courts and tribunals enforce them, they give effect to commercial purpose rather than overriding it.¹⁵

¹³INT'L CTR. FOR DISPUTE RESOL., *Model Clause on Negotiation-Mediation-Arbitration*.

¹⁴*Kemiron Atlantic, Inc. v. Aquakem Int'l, Inc.*, 290 F.3d 1287 (11th Cir. 2002).

¹⁵*Id.*

VIII. THE IMPACT OF AMBIGUOUS AND VAGUE CLAUSES

Ambiguity can have detrimental effects when designing a multi-tier clause. Ambiguity at the threshold may render the provision wholly unenforceable. Courts and tribunals have consistently held that a clause must be sufficiently certain to be capable of performance; if it does not identify the type of ADR required, the procedure to be followed, or the time within which it must be completed, it may be treated as a mere agreement to agree, which, under most legal systems, is not a binding contractual obligation.

An agreement to negotiate in good faith was deemed unenforceable in *Courtney and Fairbairn Ltd. v. Tolaini Brothers (Hotels) Ltd.*¹⁶ because it placed no clear obligation on either side. In *Walford v. Miles*, the House of Lords affirmed this by ruling that such agreements are intrinsically unenforceable owing to the open-ended nature of negotiation. In *Cable and Wireless*, the court distinguished, but did not overrule, these rulings, emphasizing that a mediation clause outlining an institutional method might satisfy the certainty standard.¹⁷

Teare J., in *Emirates Trading Agency*, stated that courts should not interpret a provision as invalid for ambiguity merely because it is difficult to prove that a negotiation or mediation commitment was broken. Rather, courts ought to make deliberate efforts to interpret the clause in a way that honours the parties' evident commercial objective. The Singapore court in *International Research Corp. PLC*¹⁸ adopted a similar approach, holding that enforceability turned on whether the clause was sufficiently certain (and declining to enforce it where it was not) while affirming that clarity of drafting, not the inherent nature of the ADR mechanism, is the operative criterion.

Courts should not automatically refuse enforcement when a clause is ambiguous. If the parties' underlying intention to attempt amicable settlement in good faith is clearly established, a court or tribunal may give effect to that intention even in the absence of procedural specificity. A vague clause ought not automatically be treated as void; rather, the preference should be for saving the clause through purposive construction wherever possible, consistent with the broader public policy in favour of peaceful commercial dispute resolution.

¹⁶*Courtney & Fairbairn Ltd. v. Tolaini Bros. (Hotels) Ltd.*, [1975] 1 W.L.R. 297 (Eng.).

¹⁷Craig Tevendale, Hannah Ambrose & Vanessa Naish, *Multi-Tier Dispute Resolution Clauses and Arbitration*, 1 TURK. COM. L. REV. 31 (2015).

¹⁸*Int'l Research Corp. PLC*, [2013] SGCA 55 (Sing.).

IX. INTERNATIONAL RULES AND COMPARATIVE PERSPECTIVES

Several international instruments and institutional rules address multi-tier dispute resolution, lending legitimacy and normative force to the escalation approach. Article 13 of the UNCITRAL Model Law on International Commercial Conciliation (2002) provides that courts and tribunals shall ‘make an attempt to resolve the dispute’ by recourse to conciliation before proceeding to final adjudication. Even if the clause does not establish a strictly justiciable requirement, the choice of mandatory language indicates a normative preference for pre-arbitral resolution.

The ICC ADR Rules (2001) allow parties to choose whatever resolution method they consider suitable, such as neutral evaluation, mediation, or negotiation, with compliance largely contingent on the parties’ good faith. In international commercial contracts, the ICDR’s suggested multi-tier approach, which offers sixty days for negotiation and a further sixty days for mediation before arbitration may begin, has been widely used as a practical model.¹⁹

The legal landscape in common-law nations has shifted, if unevenly, toward broader acceptance of the enforceability of pre-arbitral procedures. Australia is at the forefront when it comes to strict compliance; England has moved significantly from its earlier stance of categorical unenforceability; Singapore has taken a contextual approach; and India maintains a parallel track in which the courts mandate compliance but additional consent-based conditions for conciliation specifically are imposed by statute. The continued jurisdictional diversity highlights the need for clearer international guidelines on the enforcement of escalation clauses.

X. CONCLUSION

Within the framework of international commercial dispute resolution, multi-tier arbitration provisions are a useful but contentious legal mechanism. They incorporate a commitment to consensual settlement into arbitration agreements which, if properly structured and adhered to, may lower costs, preserve business relationships, and improve the overall effectiveness of the process.

This article’s research shows that the validity of such provisions depends more on how precisely they are drafted, and on whether courts and tribunals are willing to give commercial intent purposive effect, than on their intrinsic character. Both national courts and arbitral tribunals have the power (and, it is argued, the duty) to ensure compliance where the provision is certain.

¹⁹Maryam Salehijam, *Mediation Clauses: Enforceability and Impact*, 31 SING. ACAD. L.J. 598 (2019).

Purposive construction, which aims to preserve rather than invalidate the parties' agreement, is the preferred method where the clause is ambiguous.

A word of caution is necessary. Unscrupulous respondents may exploit the enforceability of escalation provisions as a dilatory strategy, delaying the commencement of arbitration instead of making a sincere commitment to amicable resolution. Therefore, where it is clear that the earlier tiers have been exhausted in substance, if not in form, courts and tribunals should proceed to arbitration and remain alert to bad-faith invocations of the pre-arbitral requirement.

In the future, there will undoubtedly be a need for stronger institutional rules and model contracts that address the enforceability issue more precisely and reduce the scope for legal disputes about the interpretation and implications of escalation clauses. Multi-tier provisions serve the public-policy interest in amicable commercial dispute settlement, but only if they are carefully drafted, consistently applied, and shielded from misuse.

XI. BIBLIOGRAPHY

Primary Sources

- UNCITRAL Model Law on International Commercial Arbitration (1985).
- ICC ADR Rules (2001).
- UNCITRAL Model Law on International Commercial Conciliation (2002).
- The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

Secondary Sources: Articles

- E. Palmer, *The Use of Multi-Tiered Dispute Resolution Clauses in Latin America: Questions of Enforceability*, 14 AM. REV. INT'L ARB. 285 (2003).
- Kayali, *Enforceability of Multi-Tiered Dispute Resolution Clauses*, 27 J. INT'L ARB. 551 (2010).
- Jolles, *Consequences of Multi-Tier Arbitration Clauses: Issues of Enforcement*, 72 ARB. 329 (2006).
- Craig Tevendale, Hannah Ambrose & Vanessa Naish, *Multi-Tier Dispute Resolution Clauses and Arbitration*, 1 TURK. COM. L. REV. 31 (2015).
- Maryam Salehijam, *Mediation Clauses: Enforceability and Impact*, 31 SING. ACAD. L.J. 598 (2019).
- Maria Beatrice Deli & Veronica Proietti, *Art-Related Disputes and ADR Methods*, 17 BRAZ. J. INT'L L. 127 (2020).
- Prutha Pandya & Shashvata Shukla, *Multi-Tier Dispute Resolution Clauses: A Critical Analysis from a Practical Perspective*, 4 GNLU L. REV. 33 (2013).
- Klaus Peter Berger, *Law and Practice of Escalation Clauses*, 22 ARB. INT'L 1 (2006).
- Nathalie Voser & Aileen Truttmann, *Multi-Tier Dispute Resolution Clauses: Consequences of Non-Compliance with the Pre-Arbitral Procedure Requirement*, THOMSON REUTERS PRAC. L. 410 (2011).

Secondary Sources: Books

- ALAN REDFERN & MARTIN HUNTER, REDFERN AND HUNTER ON INTERNATIONAL COMMERCIAL ARBITRATION (6th ed. 2015).
- MANOJ K. SINGH, INFRASTRUCTURE ARBITRATION: A PERSPECTIVE (1st ed. 2020).

Internet Sources

- Shrishti Pareek, *Multi-Tier Arbitration Clause*, VIA MEDIATION CTR., <https://viamediationcentre.org/readnews/Njg2/MULTI-TIER-ARBITRATION-CLAUSE> (last visited Nov. 1, 2021).
- Prachi Agarwal, *Multi-Tier Arbitration Clauses*, RMLNLU L. REV. BLOG (Oct. 25, 2017), <https://rmlnlulawreview.com/2017/10/25/multi-tier-arbitration-clauses/>.
