

ARBITRATE OR LITIGATE?

In choosing between arbitration and litigation, the following chart may be useful:

| LITIGATION | ↔ | ARBITRATION |
|-------------------------------------|----------|---|
| Public | ↔ | Private |
| One party initiates | ↔ | Parties must agree on use |
| Adversarial | ↔ | Adversarial |
| Formal inflexible procedures govern | ↔ | Parties select & tailor procedures |
| Broad discovery | ↔ | Document production; interrogatories or depositions depend on arbitral rules selected |
| Generalist judge or jury decides | ↔ | Arbitrators with special expertise decide |
| Law and precedent govern decision | ↔ | Party-selected standards govern awards (e.g., law business standards or equity); decisions generally set no precedent |
| Broad right of appeal | ↔ | Final and binding; limited grounds to vacate or modify award absent party agreement |
| Full remedies available | ↔ | Can limit arbitrator's authority to award remedies & certain damages |
| High transaction costs | ↔ | Can reduce costs |
| Entails docket delay | ↔ | Hearings can start quickly; delay depends on selected arbitral rules, arbitrators' schedules and management skills. |

**Arbitrate or
Litigate Chart**