

Barcelona CLA Summer Law Conference



THE ARBITRATION IN ITALY

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THE ARBITRATION:

- an alternative procedure to solve a dispute;
- used to settle commercial and civil disputes.

REASON TO CHOOSE IT:

- 1) arbitrators are highly qualified;
- 2) rapid solution of the disputes;
- 3) a more effective award;
- 4) independence and impartiality of the arbitrators.

THE AGREEMENT TO ARBITRATE:

Contents:

- 1) the compromise = the parties agree to resort to the arbitration;
- 2) the arbitration clauses = an optional clause of the original contract by which the parties agree, in writing and ahead of time, to resort to the arbitration the moment a dispute arise.

“All disputes - included those of not contractual nature - arising out of, related or connected to this agreement shall be settled by arbitration, by a sole arbitrator / three arbitrators, appointed in accordance with the Rules, which are deemed to be incorporated by reference into this clause.”
- 3) the law applied to the merits of the disputes, the location and the language;
- 4) how to contest an award;
- 5) arbitration cost;
- 6) privacy policy.

LEGISLATION:

Art. 806 c.p.c. (Italian's code of civili procedure):

“the parties can choose an arbitrator who will settle their disputes, providing that the disputes don't concern inalienable rights and the law doesn't forbid the recourse to the arbitration”

Art. 807 c.p.c.: written form (for the compromise, the arbitration clause, the application and the counterparty's reply).

ARBITRATORS:

- one (a single arbitrator) or more (arbitral panel) but always an odd number to guarantee an impartial award;
- they must be neutral and impartial;
- they must follow the Code of Ethics established by the Chamber of Arbitration;
- they set the dates and way of conducting the hearings;
- they can suggest an amicable transaction or a conciliation.

THEY CAN BE RECUSED WHEN:

- 1) they don't have the right qualifications;
- 2) they or their spouses are **a)** related up to the fourth degree to one of the parties, their legal representative or one of the counsels or **b)** they're living together with one of these subjects;
- 3) they or their spouses have a pending litigation or strong enmity with one of the parties, their legal representative or counsels;
- 4) they are affiliated to one of the parties, to a company founded or managed by them or to a subsidiary controlled by a parent company belonging or managed by one of the parties.

THE CHAMBER OF ARBITRATION OF MILAN

Step 1 - Application to the arbitration:

Content (art. 10 of the Arbitration Rules):

- a. The names and address of the parties;
- b. A description of the dispute;
- c. A statement of the claims and of their economic value,
- d. The appointment of the arbitrator or any other relevant indications as to the number of arbitrators and the method for their selection;
- e. An indication of the evidence, if any, relied on in support of the request and any document the party deems appropriate to produce;
- f. A brief statement, if any, as to the rules applicable to the proceedings, the rules applicable to the merits of the dispute or as to the *ex aequo et bono* decision, the seat and the language of the arbitration;
- g. The power of attorney conferred on counsel, if any;
- h. The arbitration agreement.

Stamp tax: € 16,00 every four pages of the application for each counterparty.

Example:

- ° claimant + 1 counterparty = € 16,00 x 2 every four pages;
- ° claimant + 2 counterparties = € 16,00 x 3 every four pages.

The application must be digitally signed by the party or its counsel with the power of attorney and sent, with stamp tax and all the documents, by PEC to a specific electronic address.

- ° PEC = an electronic and certified email that can be used to prove the identity of the sender.

The Administrative Office will send it to the counterparty within five days from its deposit.

Step 2 – Reply:

- the respondent must file its reply to the request for arbitration, with counterclaims if any, within thirty days from the receipt of the request.
- the respondent can object to the validity of the request only in its first written act or during the first hearing.

COST OF THE ARBITRATION

- The fees for the administration of the procedure and for the Arbitral Tribunal are determined according to the value of the dispute, which is the sum of the claims filed by all parties, in compliance with the schedule of fees attached to the Rules.

Example:

value range € 250.000,00 - € 500.000,00

- Chamber of Arbitration's fee = € 7.000,00;

- Arbitral panel's fee = € 25.000,00 - € 40.000,00.

APPOINTMENT OF THE ARBITRATORS

- they are appointed in accordance with the procedures established by the parties in the arbitration agreement and the Rules.
- The request for appointment must contain:
 - 1) the names of the parties and their counsels;
 - 2) the qualification required from the arbitrators;
 - 3) a brief description of the subject of the dispute, the requests of the parties and the value of the dispute.
- the constitution of the Arbitral Tribunal takes place by an act dated and signed by the arbitrators.

PROCEDURE:

- The Arbitral Tribunal will set the conditions and time limits to conduct any further steps of the proceedings.
- The parties may attend at the hearing either in person or through duly empowered representatives and may be assisted by counsels.
- Optional: witnesses, official technical consultancy, information from the public administration.
- The Arbitral Tribunal leads the case by taking all the relevant and admissible evidence adduced in the manner it deems appropriate and it freely evaluates all evidence, with the exception of that which constitutes legal proof.
- When the Arbitral Tribunal deems that the case is ready for issuing the final award, it closes the phase for discussing the case.
- Optional: it may set a time limit for filing final statements, for rebuttal statements and may schedule a final hearing.

THE AWARD (“LODO ARBITRALE”)

- The award must be deliberated within the time limit chosen by the parties or within 6 months from the date of appointment of the arbitrators.
- It can grant or reject the request of one of the parties.
- It can be founded on the law or a judgement about fairness.
- It's deliberated by the majority.
- Content:
 - a. The arbitrators, the parties and their counsel;
 - b. The arbitration agreement;
 - c. The seat of the arbitration;
 - d. The conclusions of the parties;
 - e. The reasons upon which the decision is based, even in summary;
 - f. The decision (dictum);
 - g. The decision on the allocation of the costs of the proceedings, with reference to the decision on the costs of the Arbitral Council, and on the legal costs of the parties.



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