HIGHER SCHOOL OF INSURANCE AND FINANCE - SOFIA

DOCTORAL DISSERTATION

ABSTRACT

ARBITRATION AS A FORM OF ALTERNATIVE DISPUTE RESOLUTION AND ITS APPLICATION IN FINANCIAL DISPUTES

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INTRODUCTION

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○ 1. SOCIAL JUSTICE FOR STUDYING THE TOPIC

Arbitration is a form of alternative dispute resolution where an impartial arbitrator makes a final and binding decision to resolve the dispute between the parties. Arbitration is used as an alternative to litigation as a means of resolving disputes without the involvement of the courts. Arbitration is essentially based on all parties agreeing to submit the dispute to arbitration, for example, by way of an arbitration agreement or a clause in the dispute settlement agreement.

Arbitration as a whole is faster than litigation, it can be cheaper and more flexible for companies to offer, and arbitral awards are generally unpublished and can be confidential and easier to enforce. Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. When choosing arbitration, the parties opt for a private litigation procedure instead of going to court.

○ 2. SUBJECT OF RESEARCH

The subject of research of this doctoral dissertation is the determination of the content of arbitration as a process of alternative dispute resolution in general and financial disputes.

The subject of dissertation research is also to prove the effectiveness of arbitration in resolving disputes.

The effectiveness of arbitration rules is a special subject of research.

The second special subject of research is arbitration in financial disputes.

○ 3. PURPOSE OF THE RESEARCH

The purpose of researching a doctoral dissertation is to prove that arbitration is a form of alternative dispute resolution that offers a fair resolution of disputes by an impartial third party without undue cost or delay.

Also, the purpose of research in this paper is to confirm that the parties to the dispute are free to agree on how their disputes will be resolved.

The aim of the research is also to study the differences between arbitration and other forms of alternative dispute resolution.

The research of this dissertation also aims to prove how the arbitration process is realized, as well as what are the procedures for confirmation of the arbitral award (the document that gives and explains the arbitrator's decision) and the procedure that gives effect to the judgment and effect of judgment. After trial in court, especially in financial disputes.

An additional goal of the research of this paper is to explain the advantages of arbitration expressed as decision maker, efficiency, privacy and flexibility.

○ 4. HYPOTHESIS

Basic (general) hypothesis:

The paper starts from the assumption that arbitration is an effective alternative settlement of disputes and in that framework especially of financial disputes.

First special hypothesis:

What are the basic issues related to arbitration as an alternative settlement of financial disputes?

Second special hypothesis:

Ensuring appropriate arbitration policies and measures as an alternative means of resolving disputes

Third special hypothesis:

How to plan and direct activities for the use of arbitration as an alternative means of resolving disputes, and within that of financial disputes.

Auxiliary hypothesis:

What are the new strategies for using arbitration as a form of alternative dispute resolution between different entities in the field of business, especially in business related to financial disputes?

○ 5. RESEARCH METHODS

For the purpose of successful processing and elaboration of the topic of the doctoral dissertation that requires a multidimensional approach, a number of research methods are used, which are:

historical - applying this method historically determines the emergence and development of arbitration as a form of alternative dispute resolution.

content Analysis - Applying this method analyses the results of conducting arbitration as a form of alternative dispute resolution

comparative method (comparative) - with the application of this, a comparative perception of the experiences in discovering the functioning of arbitration as a form of alternative dispute resolution is performed, domestically and internationally.

statistical method - by applying this method, the results of the implementation of arbitration as a form of alternative dispute resolution are processed.

synthesis - with the help of this method the data obtained with the help of the previous methods are combined.

The preparation of the doctoral dissertation is based on data provided by international literature which allows us to perceive the theoretical foundations of arbitration as a form of alternative dispute resolution.

In this part of the study, data available through the internet and with research conducted by competent authorities as well as the author's own observations are used.

➢ II. SCOPE AND STRUCTURE OF THE DISSERTATION

The dissertation has been developed in the volume of 161 pages, and the content is structured according to the set goal of the research and specific tasks and is in accordance with the subject of the research.

Structurally, the work consists of an introduction, main text in three chapters; conclusion; used literature 115 sources in total in - English and language,

✓ reference to major contributions;
✓ statement of authenticity and originality.

➢ III BRIEF JUSTIFICATION OF THE DOCTORAL DISSERTATION

○ PART ONE: THEORETICAL FOUNDATIONS OF ARBITRATION

○ 1.1. ARBITRATION THEORIES

Arbitration theories can be described as judicial and political. The first may be based on how arbitration should work, while the second is based on how it actually works:[1]

➢ ***Judicial theory*** implies that there is in fact a "fair" solution to the dispute and that it is the arbitrator's duty to decide on the principles and facts involved. The arbitrator sits as a private judge, called upon to establish the legal rights and economic interests of the parties involved, as these rights and interests are substantiated by the information provided by the parties themselves.
➢ ***Political theory***, on the other hand, sees arbitration as a continuation of both collective bargaining and, of course, collective coercion. The arbitrator functions

[1] The two main theories of arbitration may be described as judicial andh, (2020), ttps://gmatclub.com › forum › the-two-main-theories-of-

as a sensitive instrument, accurately recording the relative forces of the parties and ensuring that the lion gets his share.

○ 1.2. DEFINITION OF ARBITRATION

Arbitration is the process of hearing and resolving a dispute or resolving disputes between parties by a person or persons chosen or agreed by them:[2]

Arbitration is a private litigation process that parties can choose as an alternative to not going to court. The arbitration process is consensual in that the parties must agree to refer their dispute to arbitration. An arbitration agreement (commonly referred to as an "arbitration clause") is usually contained in the main agreement between the parties. However, the parties may agree to arbitration separately once a dispute has arisen. In arbitration proceedings, the dispute is resolved either by an arbitrator or by an arbitral tribunal (usually three in number). The arbitrator performs a similar role to the judge in that they are responsible for managing the proceedings to ensure that the parties to the dispute have a reasonable opportunity to present their case. At the end of the arbitration, a decision is made that is final and binding on the parties.[3]

○ 1.3. CONDUCT OF ARBITRATION

The beginning of the arbitration process involves one party giving notice to another of their intent to arbitrate a dispute, informing them of the nature and basis for the proceeding. The other party then gets a period of time to respond in writing, indicating whether they agree to resolve this dispute to arbitration. Once it is established that the disagreement will be resolved in an arbitration, the arbitration process itself begins, based on the rules and procedures selected by the parties or specified by contract:[4]

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[2] Arbitration Definition & Meaning | Dictionary.com, (2020), https://www.dictionary.com ›

[3] What is arbitration? (2021), https://www.adgmac.com › w.

[4] The Arbitration Process - FindLaw, (2016), https://www.findlaw.com › adr. p. 1

➢ One of the reasons that arbitration is often thought of as quicker and cheaper than litigation is that the paperwork involved in a dispute is cut down sharply when compared to litigation. The procedures for many arbitrations cut down sharply on some of the burdensome and expensive litigation tools collectively known as "discovery". The discovery process is intended to allow for exchanges of documents and evidence between parties in a dispute. The arbitration process usually cuts down significantly on discovery, allowing an arbitrator to take a more active role and possibly curtail excesses.

➢ After this, the process is somewhat similar to a courtroom trial. Parties make arguments before the arbitrator(s), call witnesses, and present evidence to establish and defend their respective cases. The rules for an arbitration hearing may differ from those of a courtroom, however, and opportunities to question or cross-examine witnesses may be more limited. Once the hearing is concluded, an arbitrator or panel is given a certain amount of time in which to consider the decision and make a ruling.

▪ 1.3.1. Court arbitration

Judicial arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with resolution that is earlier, faster, less formal and less expensive than a trial. The arbitrator's award may either become the judgment in the case if all parties accept it or if no trial de novo (new trial) is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date of the complaint.[5]

▪ 1.3.2. Contractual arbitration

Contractual Arbitration is when parties to a contract agree to resolve future disputes via binding arbitration rather than in court or otherwise. In these cases, either party

[5] Arbitration | Superior Court of California - County of San Diego, (2021), https://www.sdcourt.ca.gov › sdcourt › civil2 › adr2 › arb. p. 1

can initiate an arbitration pursuant to the clause in their agreement - the party that initiates the dispute is called the invoking party.[6]

In general, contractual arbitration includes enforcement of arbitration between the parties to an agreement, defending against arbitration clauses, participation in arbitration pursuant to an arbitration clause, and judicial proceedings to compel arbitration and subsequent awards.[7]

▪ 1.3.3. Arbitration by stipulation

Arbitration by stipulation is based on an amicable settlement dispute between the parties with which they have agreed to arbitrate after their dispute has arisen. The parties must then choose which set of rules and procedures to follow in order to conduct the proceedings. Arbitration with a provision is typically binding and the arbitrator's decision is final, except in certain exceptional circumstances. There is a growing tendency in transnational contracting to include an agreement that the parties will arbitrate any disputes that may arise. The parties usually assume that, in the unlikely event a dispute arises, arbitration will be a faster and cheaper process resolution than civil litigation.[8]

▪ 1.3.4. Purpose of the arbitration hearing

An arbitration hearing must be conducted in a manner which is fair to all parties. This means that the parties must know their rights and responsibilities in advance so they may properly prepare and present their positions. Procedures are required to assure an orderly hearing. But procedures may and should be modified as interests of justice and truth dictate. However, in modifying established

6 What is Contractual Arbitration - Fair Claims, (2019), https://fairclaimshelp.zendesk.com › en-us › articles › 360. p. 1

7 Beverly Hills Contractual Arbitration Attorney - Law Offices, (2021), https://www.atrizadeh.com › contractual-arbitration, p. 1

8 Contractual Stipulation for Judicial Review and Discovery, (2014), https://digitalcommons.law.seattleu.edu › view content, p. 1

procedures, care must be taken to assure that the rights and interests of all parties are protected.[9]

The purpose of the arbitral award is to give each party a full and equitable opportunity to present its case before the arbitrator. At the hearing, the arbitral tribunal has the right to be heard, to present evidence of controversy and to question witnesses appearing at the hearing.[10]

An arbitration hearing is usually more informal than a civil trial in court.

A traditional arbitration hearing takes place in a manner similar to a court hearing. The parties give opening statements about the case, call witnesses to testify, and then give closing statements with copies of the legal authorities.[11]

▪ 1.3.5. Arbitration rules and procedure

A contract that includes an agreement to arbitrate disputes typically outlines some key aspects relating to any potential future arbitration. The rules and procedures that are used in an arbitration are typically part of agreement. If an outside (third party) service will be used to handle an arbitration, the contract may specify whether that service's already-established rules and procedures will be used. Because of the variety of arbitration services, as well as the flexibility provided to parties to draw up their own rules, there is no single set of rules or procedures that apply to all arbitrations. However, regardless of the rules used, the following are some of the key issues that are typically addressed.[12]

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9 Code of Ethics and Arbitration Manual, Part 12: Outline of Procedure for Conduct of an Arbitration Hearing, (2021), https://www.nar.realtor › part-12-outline-of-procedure-for. p. 1-3

10 Jay E. Greening., Rocco M. Scanza, Conducting the Arbitration Hearing - Chapter 9, (2013), https://arbitrationlaw.com › c

11 Conduct of the Arbitration Hearing (Part 5 – Labour Management Arbitration in Canada), (2017), https://law.missouri.edu › con. p. 1-3

12 Arbitration Rules and Procedures - FindLaw, (20210 https://www.findlaw.com › adr, p. 1-2

○ 1.4. THE ARBITRATION PROCESS

Arbitration involves submitting a dispute to an independent, neutral third party chosen by both parties to settle the dispute and making a final binding decision:[13]

➢ To initiate the arbitration process, the claimant submits an arbitration claim, arbitration requirement or court order to ADR Services, and the opposing party (the respondent) can respond to the claim. The neutral arbitrator gathers evidence and listens to the arguments of both parties, and then issues a verdict. Pre-hearing conferences determine procedural issues for the arbitration hearing (such as whether the arbitration should be confidential). At the arbitration hearing, the parties present introductory words, evidence such as documents and material objects, and witnesses who testify and are cross-examined. Closing remarks can be made at the hearing or then submitted in the form of a briefing after the hearing. The arbitrator will then make a decision. The arbitrator's decision consists of a written decision, which may simply consist of a statement of release granted to either party, or may include a written explanation of the arbitrator's findings. An appeal or review of an arbitrator's decision is limited and must be based on extraordinary circumstances.

➢ For anyone facing an arbitration dispute, it is important to know how arbitration works and what to expect during the process. It has its similarities to the traditional court case, but it is fundamentally a different process. In this section, you can find resources and links to information on using arbitration to resolve your legal issues and what to expect at an arbitration hearing. Some basic information about the rules and procedures involved in arbitration is also given to better understand how one goes through this method of dispute resolution.

▪ 1.4.1. Pre-arbitration process

The dispute usually goes through "grievance steps" in an attempt to resolve the dispute before it is submitted to arbitration. These steps include meetings or informal hearings between the employee (or the union if represented) and gradually higher levels of management. A pre-arbitration dispute resolution clause essentially provides that; the parties will attempt to resolve the dispute through

[13] The Arbitration Process | Joshua M. Javits, (2021), https://joshuajavits.com › arbitration-process, p. 1

other means such as negotiation, mediation, or deliberations. In other words, it can be understood as an agreement between the parties to engage in a multi-tier dispute resolution process:[14]

▪ 1.4.2. Issues to be covered

Arbitration is legally binding and includes all of the information about the case, along with the arbitrator's decision regarding fees, damages, or disciplinary actions to resolve the case. Arbitration is a simpler process and it's less expensive than going to court. The arbitrator can be an independent arbitrator who is unaffiliated with either side or any group that provides arbitration services, or the involved parties can choose to designate an organization. Each party can represent their own interests or hire a lawyer to make their case. Conflicts in the workplace, breaches of company policy, and legal employment requirements may be covered; everyday "interventions" should be ruled out or resolved in the earliest grievance steps.[15]

▪ 1.4.3. Covered side

Parties refer their disputes to an arbitrator who reviews the evidence, listens to the parties, and then makes a decision. Most arbitrations arise because of an arbitration clause in a contract, in which the parties have agreed to resolve any disputes arising out of the contract through arbitration. Arbitration clauses can be simple—stating that claims will be settled according to applicable arbitration rules and then enforced by a local court. Coverage may not include all groups of employees and may or may not include superiors or managers.[16]

▪ 1.4.4. Detection parameters

In arbitration there is a minimal right of disclosure; less than in litigation, but sufficient for both parties to have the opportunity to obtain the necessary

[14] Visa's Chargeback Pre-Arbitration Process, (2022), https://www.chargebackgurus.com › blog › understanding, p. 1

[15] What Is Arbitration and How Does It WorkInsureon, (2022), https://www.insureon.com › insurance-glossary › arbitration, p. 1

[16] Repa, K. B., Arbitration Basics, (2022), https://www.nolo.com › arbiter, p. 1

information to present their case. Arbitration technology is used in various spheres of arbitration where it offers advantages like efficiency in work, effectiveness of the work and convenience it provides while completion of the work. It increases efficiency by decreasing the cost of the work. One party does not have to travel all the way to meet the other party; they can do the same through video call. Similarly, in the case of documents, data can be stored online instead of handling huge piles of papers in the form case files. This not only makes arbitration effective and efficient but convenient also by facilitating easy accessibility to the documents by storing them in a digital form.[17]

▪ 1.4.5. Selecting an arbitrator

In choosing an arbitrator, it is important to take into account the candidate's legal and jurisdictional background (e.g. civil law or common law), relevant industry sector knowledge, and the language of the arbitration. The candidate's professional standing, reputation and integrity are also important (not least as this will have an impact on the amount of influence the party-nominated arbitrator is able to exercise over the other tribunal members), as well as his or her experience of international arbitration practice and procedure. Availability should not be overlooked, as it is important to have an arbitrator who is able to focus on the case at the appropriate times.[18]

Most institutional rules do not provide much guidance with respect to the qualifications or skills needed to be an effective arbitrator, other than to say an arbitrator must be independent and impartial. Expanding on the institutions' guidelines, we have detailed an additional four factors to consider when selecting a candidate.[19]

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[17] Role of Technology in Arbitration | VIA Mediation Centre, (2022), https://viamediationcentre.org › read news › MzQ4 › Role-, p. 1

[18] Tirado, J., (2014), Selecting an arbitrator: Avoiding the pitfalls - Expert Guides, https://www.expertguides.com, p. 1

[19] Stadwick, J., (2013), Four factors to consider when selecting an arbitrator, https://www.tamimi.com › law-update-articles › four-facto. p. 1 - 2

▪ 1.4.6. Arbitration hearing

Arbitrations usually involve one or more hearings before the tribunal, where the parties' lawyers put forward arguments and question the other party's witnesses and experts. Hearings can last from half a day to many weeks or even months depending on the issues at stake. During the arbitration hearing, each party presents evidence through the testimony and documents of witnesses and can be recorded shorthand. Strict rules of proof usually do not apply. Although the hearing is somewhat informal, it is held in an orderly manner with the possibility of opening and closing remarks, cross-examination, rebuttal testimony, written submissions and optional representation (the representative may or may not be a lawyer.[20]

The purpose of the arbitration hearing is to give each party a full and fair opportunity to present its case to the arbitrator. At the hearing, the party to the arbitration has the right to be heard, to present evidentiary material on the controversy and to cross-examine witnesses appearing at the hearing.[21]

▪ 1.4.7. Arbitration decision

The arbitrator's final decision on the case is called the "award." This is like a judge's or jury's decision in a court case:[22]

➢ Once the arbitrator decides that all of the parties' evidence and arguments have been presented, the arbitrator will close the hearings. This means no more evidence or arguments will be allowed. The arbitrator writes the award and sends that to the parties once it is ready.

➢ Under rules, parties agree that the arbitration award can be entered as a judgment in any state court with jurisdiction. This means that the court can enforce

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[20] What is Arbitration? Processes & Steps Explained - Stewarts, (2022), https://www.stewartslaw.com › ... › International Arbitration, p. 1

[21] Grenig, E. J., Scanza, M.R., Conducting the Arbitration Hearing - Chapter 9, 2013), https://arbitrationlaw.com › c., p. 1

[22] What Happens After the Arbitrator Issues an Award, (2022), https://www.adr.org › AAA229_After_Award_Issued. p. 1 - 2

it like it was any other court judgment. The arbitrators are not involved in the case anymore after the final award is sent to the parties.

- The arbitral award provides a remedy and explains the reasons for the arbitral award. The decision can be appealed only on narrow grounds. Legal error, rather than factual error or bias, usually forms the basis for a complaint.

○ 1.5. TYPES OF ARBITRATION

Unlike civil or criminal cases, the dispute is sent to an arbitral tribunal. The tribunal resolves the dispute and the final decision cannot be appealed, making it binding on both parties. No court proceedings are involved to ensure a speedy resolution of disputes. The following are the different types of arbitration according to the jurisdiction of the case:[23]

- Domestic arbitration,
- International arbitration
- International commercial arbitration,
- Ad-hoc Arbitration,
- Fast track Arbitration,
- Institutional Arbitration.

▪ 1.5.1. Domestic arbitration

Domestic Arbitration is a form of alternative dispute resolution (ADR) where one or more person(s) are appointed to hear a case that takes place within one jurisdiction. The award is binding and enforceable in court:[24]

- Domestic arbitration plays an important role in the business world. Arbitration goal is to provide a direct route to justice that avoids lengthy and expensive proceedings. Therefore, decisions of arbitral panels are usually not subject to appeal but instead the national courts only have a limited scope for review. Domestic arbitral awards – i.e. awards rendered in arbitration proceedings with the seat of an arbitration domestic country– are directly enforceable.

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[23] Arbitration - types and significance - iPleaders, (2021), https://blog.ipleaders.in › arbitration-type-significance

[24] Domestic Arbitration | Comprehensive Support - Konrad, (2022), https://www.konrad-partners.com ›, p. 1

➢ The enforcement procedure for a domestic arbitral award is the same as for court judgments, making them equal in force and as binding as any ruling rendered by national courts.

➢ In domestic arbitration, both parties must be from the country, and the proceedings take place within the country itself. Domestic arbitration is when the parties agree to resolve any disputes that arise in the country. The procedure must be conducted on domestic territory and must be in place of procedural and substantive law in the country.

▪ 1.5.2. International Arbitration

International arbitration is similar to domestic court litigation, but instead of taking place before a domestic court it takes place before private adjudicators known as arbitrators. It is a consensual, neutral, binding, private and enforceable means of international dispute resolution, which is typically faster and less expensive than domestic court proceedings. Unlike domestic court judgments, international arbitration awards can be enforced in nearly all countries of the world, making international arbitration the leading mechanism for resolving international disputes.[25]

▪ 1.5.3. International Commercial Arbitration

International trade arbitration can be understood as arbitration that takes place due to a dispute arising from a trade agreement where one of the parties resides in a foreign country or is a foreign citizen; or the basic steering committee of an association, company or body of individuals is controlled by foreign individuals. International commercial arbitration (ICA) is a private dispute resolution process in which parties from different countries choose to have their disputes decided by one or more arbitrators, without the involvement of the courts of a particular country.[26]

[25] What Is International Arbitration? (2022), https://www.international-arbitration-attorney.com ›, p. 1

[26] Gualtier, S., 2021, International Commercial Arbitration, https://www.nyulawglobal.org › p. 1 - 2

▪ 1.5.4. Ad-hoc arbitration

Ad-hoc arbitration refers to when the parties by mutual consent decide on arbitration to resolve the dispute. It is the most common form of arbitration used due to reasonable costs and adequate infrastructure. The arbitration is conducted without any institutional procedure, i.e. it is not in accordance with the rules of the arbitration institution. The parties have the opportunity to choose the rules and the procedure to be followed. This form of arbitration can be used for international commercial transactions and domestic disputes. Jurisdiction is of the utmost importance because most issues are resolved in accordance with the applicable law regarding the seat of arbitration. An ad hoc arbitration is any arbitration in which the parties have not selected an institution to administer the arbitration. This offers parties flexibility as to the conduct of the arbitration, but less external support for the process.[27]

▪ 1.5.5. Quick Arbitration

Rapid arbitration can be seen as an effective solution to the problems they face due to delays and time-consuming procedures in other forms of arbitration. It does not involve any time-consuming procedure that supports the main purpose or arbitration, i.e. resolving a dispute in a short period of time. The expedited arbitration has a period of six months. The arbitrator uses only the written submission and unlike other forms of arbitration; a single arbitrator is sufficient to resolve the dispute. Fast track arbitration can be defined as a full arbitration process compressed into a shorter period for a quicker resolution of the dispute. The conditions for the application of a fast-track arbitration vary in each jurisdiction and arbitral institution but have notably in common to apply when the amount in dispute does not exceed a certain threshold.[28]

[27] Ad hoc arbitration - an introduction to the key features of ad hoc arbitration, (2022), https://www.lexisnexis.co.uk › legal › guidance › ad-hoc-. p. 1 - 2

[28] Chahine, H. J., (2020), Fast track arbitration: a time-efficient procedure that could hinder the award, https://blog.jusmundi.com › f., p. 1

▪ 1.5.6. Institutional arbitration

In institutional arbitration, the parties are free to choose a particular arbitration institution in the arbitration agreement itself. The governing body of the institution or the parties may appoint one or more arbitrators from a panel of arbitrators previously agreed upon. The institution selects one or more arbitrators who possess the skills and experience applicable in a given case when the parties themselves do not appoint an arbitrator. On the other hand, if the parties decide to nominate one themselves, they can choose from the list provided by the institution. An institutional arbitration is one in which a specialized institution intervenes and takes on the role of administering the arbitration process.[29]

○ 1.6. ADVANTAGES FROM ARBITRATION

In businesses, partnerships and investment transactions, many do not anticipate future litigation. However, when a dispute does indeed arise, there are many options to resolve it. Arbitration is essentially a paid private trial, in other words, a method to resolve disputes without going to court.[30]

○ 1.7. OTHER FORMS OF ALTERNATIVE DISPUTE SETTLEMENT

In addition to arbitration, there are the following forms of alternative dispute resolution:[31]

- Independent negotiation,
- Mediation,
- Reconciliation.

[29] Institutional vs. 'ad hoc' arbitration - Pinsent Masons, (2021), https://www.pinsentmasons.com › Out-Law › Guides, p. 1

[30] The Advantages and Disadvantages of Arbitration - SAC, (2022), https://www.sacattorneys.com › Articles, p. 1 - 2

[31] What Are the Four Types of Alternative Dispute Resolution, (2021), https://brittontime.com › what., p. 1

▪ 1.7.1. Independent negotiations

Parties to the negotiation are able to achieve their interests or objectives without assistance from another party. That is, the negotiator focuses on personal interests or objectives without regard to the interests or objectives of the other parties.[32]

Two or more parties can enter into negotiations to reach a compromise that will satisfy everyone. This type of alternative dispute resolution is typically less formal than arbitration or mediation and does not involve an objective third party.[33]

▪ 1.7.2. Mediation

Mediation, commonly also referred to as facilitation, leaves control of the outcome to the parties. An impartial mediator helps the parties try to reach a mutually acceptable resolution to the dispute. The parties control the substance of the discussions and any agreement reached. A typical session starts with each party telling their story. The mediator listens and helps them identify the issues in the dispute, offering options for resolution and assisting them in crafting a settlement.[34]

▪ 1.7.3. Conciliation

Conciliation is generally used for work situations instead of commercial disputes. Reconciliation is a mandatory process before an individual want to apply to the Employment Tribunal. The conciliator discusses the issues and tries to help the parties reach an agreement, often giving his opinion after assessing the situation and the various arguments.[35]

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[32] Gordon, J., (2022), Dependence Level in Negotiation, https://thebusinessprofessor.com › dependence-level-in-ne. p. 1

[33] What Are the Four Types of Alternative Dispute Resolution, (2021), https://brittontime.com › what, p. 1

[34] Law, M., (2020), Types of ADR - Alternative Dispute Resolution | Miller Law Firm Https://millerlawpc.com › Legal Topics, p. 2

[35] What Are the Four Types of Alternative Dispute Resolution, (2021), https://brittontime.com › what, p. 3

Conciliation means 'bringing opposing parties or individuals into harmony to settle the dispute. Apart from commercial transactions, the mechanism of conciliation is also adopted for settling various types of disputes such as labour disputes, service matters, antitrust matters, consumer protection, taxation, excise, etc.[36]

➢ PART TWO: ARBITRATION AGREEMENT

○ 2.1. Definition of the arbitration agreement

An arbitration agreement is an agreement of the parties to submit to arbitration all or certain disputes that have arisen or which may arise between them in relation to a defined legal relationship, whether it is agreed or not. The arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The arbitration agreement is in writing. The contract is in writing if it is contained in a document signed by the parties or in the exchange of letters, telex, telegrams or other telecommunications means providing a record of the contract, or in the exchange of statements of claim and defence in which the existence of a contract is claimed by one party, and another does not deny it. The reference in the contract to a document containing an arbitration clause is an arbitration agreement provided that the contract is in writing and the reference makes that clause part of the contract.[37]

▪ 2.1.1. Purpose of arbitration agreements

The purpose of the arbitration agreement is to make the litigation process faster and more accessible than litigation. Cases are less formally represented than legal proceedings. However, there are pros and cons to signing an arbitration agreement that you should be aware of.[38]

The purpose of an arbitration agreement is setting specific terms and requirements for arbitration, including how the arbitrator will be found, what rules of arbitration will apply, the number of arbitrators, and the place where arbitration shall occur.

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[36] Conciliation as A Process to Resolve Business Disputes, (2016), https://blog.ipleaders.in › con. p. 1

[37] Article 7 - Definition and form of arbitration agreement - UiO, (2021), https://www.jus.uio.no › html

[38] II. The Arbitration Agreement - Konrad Partners, (2022), https://www.konrad-partners.com › p. 1

The purpose of an arbitration agreement is to limit litigation costs and keep disputes confidential.[39]

▪ 2.1.2. Pros of signing an arbitration agreement

Arbitration agreements have several distinct advantages. Regardless of the business in which you practice, you can take advantage of the inclusion of an arbitration clause in the contract. These are the pros of signing an arbitration agreement:[40]

- ✓ Avoids hostility to the civil court,
- ✓ Cheaper than civil litigation,
- ✓ Resolutions are generally faster,
- ✓ The process is more flexible than litigation,
- ✓ The procedures are not in the public records,
- ✓ Evidence rules do not apply,
- ✓ The parties may mutually agree with an arbitrator.

▪ 2.1.3. Disadvantages of signing an arbitration agreement

However, there are drawbacks to arbitration agreements. It is best to discuss them and how they affect you with an arbitration lawyer: [41]

- ✓ Limited form of legal compensation,
- ✓ Not always a level playing field,
- ✓ Objectivity is questionable,
- ✓ The process is not always transparent,
- ✓ Arbitration costs are rising,
- ✓ Decisions can be made on speculation,

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[39] What is an Arbitration Agreement? (2022), https://www.iowafirm.com › p. 1

[40] Arbitration Agreement Form | Create a Free Arbitration Agreement, Templates, (2020), https://legaltemplates.net › form, p. 6 - 7

[41] Arbitration Agreement Form | Create a Free Arbitration Agreement, Templates, (2020), https://legaltemplates.net › form, p. 8

✓ Fewer opportunities to appeal the decision.

○ 2.2. TYPES OF ARBITRATION AGREEMENTS

There are three types of arbitration agreements:[42]

- ➢ Arbitration clause,
- ➢ Filing / Arbitration Agreements,
- ➢ Arbitration agreement incorporated by reference.

▪ 2.2.1. Arbitration clause

An arbitration clause is a clause in a contract that requires the parties to resolve their disputes through an arbitration process. Although such a clause may or may not specify that arbitration occurs within a specific jurisdiction, it always binds the parties to a type of resolution outside the courts, and is therefore considered a kind of forum selection clause.[43]

▪ 2.2.2. Submission Agreements / Arbitration Deeds

A submission agreement provides for the referral of disputes for resolution by arbitration. A submission agreement may be used in circumstances where the parties have not previously included a dispute resolution clause in their contract and/or it may be used to supersede and replace prior dispute resolution agreements. There may be circumstances where parties to a proceeding currently before a court find it appropriate to refer a matter out to arbitration. These sample agreements may be used to refer a current court proceeding to arbitration.[44]

[42] 3 Types of Arbitration in UAE | Arbitration Agreements & Clauses, (2013), https://www.tamimi.com › kn. p. 1

[43] 3 Types of Arbitration in UAE | Arbitration Agreements & Clauses, (2013), https://www.tamimi.com › kn. p. 1

[44] ACICA Sample Submission Agreements - Australian Centre for International Commercial Arbitration, (2021), https://acica.org.au › acica-sample-submission-agreements, p. 1

▪ 2.2.3. Arbitration agreement incorporated by reference

The question about whether or not an arbitration clause incorporated "by reference" must be regarded as valid and binding between the parties has been, and still is, central to an animated debate in most European jurisdictions.

Traditionally, a distinction has been drawn by jurisprudence between two categories of arbitration agreements incorporated by reference, in respect of which a different approach has been taken by courts.[45]

○ 2.3. CHARACTERISTICS OF THE ARBITRATION AGREEMENT

The formation of an arbitration agreement occurs when two parties enter into an agreement in which the agreement states that any dispute that has arisen between the parties should be resolved without going to court with the help of a neutral person, a third party, appointed by both parties., known as Arbiter, who would act as a judge. The arbitrator so appointed should have been mentioned earlier in the contract they made. They should also indicate who should be chosen by the arbitrator, in terms of the type of dispute that the arbitrator should decide, and the place where the arbitration would take place. Furthermore, they should list the other types of proceedings mentioned or to be required during the arbitration agreement.[46]

▪ 2.3.1. Fundamentals of an arbitration agreement

It is very possible to write an arbitration agreement in a contract by correspondence with the Government. But even then such an agreement through correspondence with the Government should be concluded by a government official who is duly

[45] Villani, A., (2015), Arbitration Clauses Incorporated by Reference: An Overview of the Pragmatic Approach Developed by European Courts, http://arbitrationblog.kluwerarbitration.com ›, p. 1

[46] Significance of the Arbitration agreement - iPleaders, (2020), https://blog.ipleaders.in › significance-of-the-arbitration-a.

authorized to conclude an agreement on behalf of the Government. An agreement of any person not authorized by the government for such an issue is invalid.[47]

▪ 2.3.2. Common elements of the arbitration agreement

The following are some of the common elements included in the arbitration agreement, which is generally not considered an essential element but will be included if the parties wish to mention it in the agreement.[48]

The presence of a dispute between the parties is an essential condition for the realization of the contract. Another essential importance is the written contract. An agreement related to arbitration must always be in writing.[49]

▪ 2.3.3. Important provisions in the arbitration agreement

There are several important provisions in an arbitration agreement, and they are:[50]

➢ *Written agreement* - As stated as an essential condition, there must be a written agreement. Each contract must be in the form of a written document or even in the form of any kind of communication whether those communications take place via telegrams, telex or even other telecommunication devices provided. that there must be records of communication.
➢ *Appointment of arbitrators* - The arbitrator may be appointed freely to the parties to the contract. In the event that the parties fail to decide on the appointment of an arbitrator, the Chief Justice shall be approached, in the case of domestic arbitration, and the Chief Justice of the Supreme Court, in the case of international commercial arbitration.

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47 Arbitration agreement and its attributes. | VIA Mediation Centre, (2021), https://viamediationcentre.org › read news › MzIz › Arbiter. p. 3 - 4

48 Arbitration agreement and its attributes. | VIA Mediation Centre, (2021), https://viamediationcentre.org › read news › MzIz › Arbiter. p. 5

49 Significance of the Arbitration agreement - iPleaders, (2020), https://blog.ipleaders.in › significance-of-the-arbitration. p. 1 - 2

50 Arbitration agreement and its attributes. | VIA Mediation Centre, (2021), https://viamediationcentre.org › read news › MzIz › Arbiter. p. 8

➢ *Temporary relie*f - A request for exemption can be made if there is prima facie evidence that there is an agreement on arbitration. The parties may, if they so wish, move to the Court before the arbitral proceedings commence or even after the arbitral award has been rendered, but before its execution. At the request of the parties, the tribunal may order the party to take interim measures, as it deems appropriate and necessary in relation to the subject matter of the dispute.
➢ *Finality of the arbitration* - The decision given by the arbitration is final and binding on the parties to the contract. Once the decision is made by the court, it will be enforceable.
➢ *Appeal* - If the parties are not satisfied with the decision of the arbitrators, an appeal is filed against the order for award or refusal to grant any measure as well as against the refusal to revoke the decision. An appeal may also be lodged against the order of the tribunal accepting the application for acceptance or refusal to grant an interim measure. However, there is no provision for appeal against the appointment of an arbitrator.

➢ PART THREE: IMPLEMENTATION OF THE ARBITRATION PROCEDURE

○ 3.1. ARBITRATION PROCEDURE

The arbitral proceedings shall begin on the date on which the request is made that the dispute be referred to arbitration by the other party.[51]

Arbitrations generally are intended to streamline the process and decrease the costs when compared to resolving a dispute in court. Arbitration is generally thought to be more informal than litigation, and is typically intended to provide a more streamlined, time-saving, and cost-effective method for resolving potential legal disputes.[52]

[51] How are arbitral proceedings conducted - iPleaders, (2020), https://blog.ipleaders.in › Arbitration Act, p. 1

[52] Arbitration Rules and Procedures - FindLaw, (2016), https://www.findlaw.com › adr, p. 1

○ 3.2. STEPS INVOLVED IN ARBITRATION PROCEDURE

Arbitration has five main steps:[53]

- Filing and initiation. One party files a Demand for Arbitration, which starts the process.
- Arbitrator selection. Both parties work to select an arbitrator, one they can agree on and who can meet their needs based on the nature of their dispute.
- Preliminary hearing. Parties meet to discuss substantive case issues, information exchange, witness lists, etc. Information exchange and preparation. Parties share information and arbitrators handle any related challenges.
- Hearings. Parties present evidence and testimonies before the arbitrator. Posting hearing submissions. If necessary, parties submit additional information to the arbitrator.
- Award. The arbitrator renders a decision (award) and closes the case.

➢ PART FOUR: USING ARBITRATION IN FINANCIAL DISPUTES

○ 4.1. CHARACTERISTICS OF ARBITRATION IN FINANCIAL DISPUTES

The increasing complexity and sophistication of financial markets and financial products all call for a larger variety and more sophisticated methods of dispute resolution in cross-border banking and finance transactions. Recent years have seen an increase in the use of arbitration in the financial sector. Arbitration is sometimes considered more appropriate for resolving disputes in some industrial sectors than in others. Although long used in transportation, insurance and construction, it has traditionally been less popular with banks and other financial institutions.[54]

Financial institutions as commercial parties, besides their role in credit supply, often participate in commercial transactions as any other corporate entity. They purchase products, supply services, invest in equity stakes in other companies, agree to engage in joint venture projects with other financial or nonfinancial

[53] Daniel F. Q., (2020), What is Arbitration? Processes & Steps Explained - Stewarts, https://www.stewartslaw.com ›, p. 1

[54] Use of arbitration in finance disputes | Ashurs, (2021), thttps://www.ashurst.com › qu, p. 1

entities, discount their long-term receivables, or issue shares to the public, all of which are common business transactions that involve no idiosyncrasies unique to banking.[55]

The continuing globalization of the finance market entails that parties from emerging jurisdictions are increasingly involved in cross-border transactions. These parties may refuse to submit future disputes to the courts where a vast majority of financial disputes were historically resolved. Arbitration may be the result of a compromise between parties who do not accept the risks of litigating in the courts of their counterpart's jurisdiction. In addition, financial institutions and other stakeholders have become more alert to the complications associated with the enforcement of court judgments beyond. The rise of arbitration would therefore appear to be largely related to the prospects of obtaining a decision that will be recognised in the places where the assets are located.[56]

▪ 4.1.1. Reasons for using arbitration in financial disputes

Reasons for using arbitration as a means of resolving disputes in the finance sector include:[57]

- the comparable ease with which an arbitral award can be enforced thus potentially reducing significantly the enforcement risk often associated with parties in emerging markets;
- the provision of a neutral forum (where the alternative would be unreliable local courts);
- the greater finality of arbitration, with limited rights of appeal;
- the potential for keeping the existence of the dispute and its details confidential; and

[55] Blogger, G., (2018), Arbitration in banking and finance deconstructed - LexisNexis, https://www.lexisnexis.co.uk › p. 1

[56] Banking and finance arbitration on the rise – a trend to follow? (2013), https://www.financierworldwide.com › p. 1

[57] Freeman, J., Fisher, L., (2022), The rise and rise of Arbitration in banking and finance disputes, https://www.allenovery.com › en-gb › global › publications, p. 1 - 2

- the fact that arbitration agreements and procedures can be tailored to suit the circumstances of the specific transaction or business
- arbitration offers a great deal of flexibility to its users. In order to make a success of arbitration, it is important to make the right choices, both in the arbitration agreements and in the arbitration, procedures subsequently applied – choices which suit the needs of the particular financial transaction.

▪ 4.1.2. The future of arbitration in the financial sector

Financial institutions value the ability of national courts to quickly dispose of claims that have little basis or prospect of success, or are undisputed debt claims, through relatively quick and inexpensive processes such as aggregate or default. Historically, this has been one of the main reasons for financial institutions to prefer litigation to arbitration. Whether this perception is fair is a moot point.[58]

Financial institutions have traditionally favoured court litigation as a means of resolving their contractual disputes. However, there are situations in which financial institutions may want to consider opting for arbitration for certain types of deals, especially in light of recent developments in arbitral procedure designed to make arbitration more attractive to the banking community. In addition, financial institutions are increasingly alive to the protections available under investment treaties in the event of government action that adversely affects their investment.[59]

○ 4.2. ARBITRATION IN INTERNATIONAL BANKING AND FINANCE

▪ 4.2.1. Basic features of arbitration in international banking and finance

International arbitration is an independent dispute resolution mechanism. In this process, claims arising out of significant contractual matters are decided by party-appointed arbitrators. The process and operation of international arbitration is not

[58] Arbitration of banking and financial disputes | Practical Law, (2021), https://uk.practicallaw.thomsonreuters.com ›

[59] Arbitration and financial institutions - Fresh fields Bruckhaus, (2022), https://www.freshfields.com › p. 1

attached to any state or government. Arbitrators, who have been elected by parties, have the authority to render an award by applying the appropriate law, which is chosen by the parties. Considering the globalization of lending and other services offered by banks, more jurisdictions are involved in cross-border transactions and cross-border dispute resolutions are unavoidable.[60]

Historically, financial institutions have preferred to settle disputes before national courts in established financial centres, avoiding not only courts in emerging markets but also arbitration sites. The global financial crisis of 2008 has greatly changed the perception of financial institutions about the value of arbitration. The crisis has resulted in increasing claims between and against financial institutions. Additionally, the post-crisis belt tightening has brought new rigor to disputed cost management. Financial institutions thus take a fresh look at arbitration as an alternative means of resolving disputes.[61]

Financial institutions are increasingly open to arbitration due to the changing (and often increasingly stringent) regulatory environment and the consequences faced by banking and financial institutions after the global financial crisis that brought "an unprecedented wave of claims against and against financial institutions, as well as between them.[62]

▪ 4.2.2. Financial institutions and international arbitration

Financial institutions, which traditionally prefer litigation in certain select jurisdictions, are increasingly open to the use of international arbitration for cross-border banking and financial disputes. A majority prefer using institutional

[60] Alamdari, H. B., (2016), The emerging popularity of international arbitration in the banking and financial sector – Is this a fashionable trend or a viable replacement? https://sas-space.sas.ac.uk ›, p. 17 -20

[61] International Arbitration by Financial Institutions - Thompson, (2021), http://www.thompsonhine.com › uploads › doc, p. 3 - 4

[62] Financial institutions and international arbitration, (2021), https://www.nortonrosefulbright.com ›

arbitration owing to the settled procedural rules and proven ability to handle complex and high-value disputes.[63]

Financial institutions tend to use international arbitration when: the transaction is particularly complex; confidentiality is a concern; the counterparty is a state-owned entity; or the counterparty is in a jurisdiction where the enforcement of an arbitral award is easier than enforcement of a court judgment. Financial institutions express the following key preferences when opting for international arbitration.[64]

○ 4.3. REASONS FOR ACCEPTING INTERNATIONAL ARBITRATION IN BANKING INSTITUTIONS

Banks and financial institutions favour arbitration as the means of resolving international disputes for these reasons which given include:[65]

- financial disputes typically involve straightforward payment claims and do not involve complex legal questions or fact finding, with the latter more suited for arbitration;
- arbitration does not provide for the possibility of default judgments or summary judgments, and as a result arbitration is not as efficient and cost effective as court proceedings;
- disputes about the tribunal's jurisdiction may lead to unnecessary delays;
- arbitrators tend to render more equitable decisions than judges;
- the flexibility of the arbitral process creates legal uncertainty;
- banks appreciate control of decisions by higher courts on appeal;
- arbitration can permit unnecessarily extensive document production (particularly compared with civil law courts);

63 Stothard, P., (2017), Financial institutions and international arbitration, https://www.nortonrosefulbright.com ›, p. 1

64 Salomon, C., (2016), What Financial Institutions Think of Int'l Arbitration, https://salomonarbitration.com › uploads › 2020/11, p. 1

65 Sheppard, A., (2009), Arbitration of International Financial Disputes, http://arbitrationblog.kluwerarbitration.com ›, p. 1

- arbitration is problematic in multi-party disputes;
- arbitral confidentiality means that proceedings cause less embarrassment to the debtor; and
- awards have limited precedential value.

○ 4.4. INDICATORS FOR ARBITRATION IN THE BANKING AND FINANCIAL SECTOR

International Centre for Settlement of Investment Disputes (ICSID), the World Bank's arbitration institution, published its annual statistics of arbitration:[66]

- The statistics show that, in the period from its first case, registered in 1972, to 31 December 2021, has registered 869 arbitration and conciliation cases under the ICSID Convention and Additional Facility Rules.
- In 2021, are registering 66 new cases. The majority of these new cases (i.e., 58%) continue to involve claims brought under bilateral investment treaties (BITs). Cases brought under the Energy Charter Treaty (ECT), a multilateral treaty protecting energy investments, accounted for 8% of cases registered in 2021.
- Energy and Mining Remain Top Sectors for Disputes, with Construction Cases and Telecoms Cases on the Rise
- In terms of sector distribution, the energy and mining sectors continue to dominate with a total of 47% of the new cases, followed by construction disputes (16.5%) and telecommunications (11%). Disputes in the latter two sectors are on the rise compared to their historical average.
- The data reveals a relative historical stability in a balanced resolution of Investor-State cases. In 31% in 2021, the tribunal upheld at least some of the investor's claims, 33% of concluded cases were dismissed (either on the merits or on jurisdiction), while the remaining 36% of cases were discontinued for various reasons. At the same time, the statistical data reinforces the utility of the current neutral dispute resolution system provided by existing investment treaties, thereby calling into question the need for a permanent multilateral investment court system.
- In terms of gender and geographical diversity of arbitrators, the data shows a slight improvement on gender diversity, but still a considerable way to go to

[66] World Bank Arbitration Statistics, (2022), https://www.cms-lawnow.com ›, p. 1

achieve gender parity: women represented only 27% of arbitrators, ad hoc committee members, and conciliators appointed in 2021.

- Geographical diversity showed that 43% of arbitrators, ad hoc committee members, and conciliators hailing from Western Europe, and 20% from North America.

○ 4.5. SETTLEMENT OF FINANCIAL BUSINESS DISPUTES BY ARBITRATION

People or firms engaged in any type of business today need to know something about the system of the resolution of disputes. The resolution of disputes is very expensive, time consuming and frustrating. But proper planning will help reduce the financial risk, position the business better to favourably resolve the dispute and lessen the financial exposure. Resolution of Business disputes are resolved today, by:[67]

(1) Voluntary negotiation and settlement or work-out;

(2) Court litigation in either State or Federal Courts;

(3) Mediation, or

(4) Arbitration.

▪ 4.5.1. Benefits of resolving financial business disputes through arbitration

In an increasingly globalized world of complex multi-jurisdictional trade links, underlying treaties and more closely enmeshed logistics, supply and value chains, sharp increases in the level and significance of commercial disputes have inevitably ensued. This new paradigm has frequently laid bare the limits of

[67] Arbitration Is Usually Better for Business - HG.org, (2022), https://www.hg.org › legal-articles › arbitration-is-usually-, p. 1

litigation as a viable, practical and cost-effective means of solving contentious international matters.[68]

▪ 4.5.2. Types of arbitration for resolving financial business disputes

The types of arbitration that the parties may select are different:[69]

➢ In its simplest form, the parties may simply agree on the identity of a third neutral party who will hear their respective arguments and evidence and make a binding decision. In most cases, however, the parties submit the matter to arbitration under the auspices and according to the rules of one of the long-standing organizations that exist worldwide to provide arbitration services.

➢ If the Parties' contracts do not provide for specific procedures as to how arbitration is to occur and the parties cannot informally agree between themselves as to procedures, most states have statutes that provide binding procedures for how the arbitration is to occur. Most states allow the Parties to alter those procedures by mutual agreement.

▪ 4.5.3. Arbitration Procedures in Resolving Financial Business Disputes

In recent years, many companies have adopted the practice of including arbitration clauses upon entering into agreements. They stipulate that in the event of a dispute between the parties, it shall not be resolved by State courts but referred to a third party, that is to say, an expert of their choice. In general, the arbitration panels are usually comprised by more than one person, typically attorneys[70]

▪ 4.5.4. Commercial arbitration

Arbitration customarily has been used for the settlement of disputes between members of trade associations and between different exchanges in the securities and commodities trade. Form contracts often contain a standard arbitration clause

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[68] Arbitration: The More Business Savvy, Practical International Bedfellow of Litigation, (2021), https://www.dfdl.com › arbiter., p. 1

[69] Arbitration of Business Disputes | Stimmel Law, (2022), https://www.stimmel-law.com ›, p. 1

[70] Six reasons for choosing commercial arbitration, (2020), https://connectamericas.com ›. p. 1 - 2

referring to specific arbitration rules. Numerous arrangements between parties in industry and commerce also provide for the arbitration of controversies arising out of contracts for the sale of manufactured goods, for terms of service of employment, for construction and engineering projects, for financial operations, for agency and distribution arrangements, and for many other undertakings.[71]

○ CONCLUSION

Arbitration is a purely consensual method of resolving disputes. In the present circumstances, the parties may choose to drop the civil suit to enter into arbitration which may resolve disputes more quickly or more easily adopt measures such as social distancing.

A key advantage of arbitration is the ability to choose institutional rules or ad hoc rules that are suitable for effective dispute resolution. Finding expert arbitration advice is crucial in determining which set of institutional rules or ad hoc rules should be adopted. Arbitrations allow parties to calibrate the right balance of procedural protection to efficiency.

The parties may also select arbitrators who are most suitable for resolving their dispute. An arbitrator with relevant industry experience and knowledge can significantly speed up dispute resolution. This is especially true for industries that involve a high degree of technical knowledge.

Arbitration can be done easily and virtually. Procedural hearings and case conferences are already usually done by teleconferencing in arbitration.

Arbitration can have significant benefits for financial institutions. This is especially true for clients, partners and service providers in an international context. An arbitral award is better enforceable than a court decision. Arbitration in financial disputes provides a higher degree of confidentiality. Arbitration may be the preferred choice for financial institutions if the client or business partner is unwilling to agree to litigation. Arbitration can be invoked as a neutral alternative to agreeing with the legal systems of foreign courts. Not only can the risk of a biased court be avoided, but also proceedings with a very long duration. Even in

[71] Domke, M., (2022), Commercial arbitration | law - Encyclopaedia Britannicahttps://www.britannica.com ›, p. 1

legal systems with a judicial system that is known to be effective, the possibility of a few appeals makes arbitration more attractive with its very limited possibilities for appealing the judgment.

Other advantages of arbitration are that arbitrators with specific expertise and experience in banking law and / or financial litigation can be selected and that the proceedings can be conducted in English.

International arbitration is a private and effective method to resolve disputes. And it is an alternative dispute resolution method (ADR), in general, voluntarily chosen by the parties. Nowadays, it tends to be the preferred means for settling disputes within the international business community.

Confidentiality and trust between adversaries based this a special system to settle the disputes in accordance with the privacy of international commercial and its requirements.

Unlike litigation proceedings, commercial arbitration proceedings are usually confidential. Decisions, awards, and other documents relating to arbitration proceedings are generally not published, and there is no centralized database or publication for researching arbitration proceedings.

Arbitration is viewed as an outstanding type of dispute resolution process. The law necessitates that consent to mediate must be recorded as a hard copy and marked by the parties who have the legitimate ability to discard the contested right. Without such an understanding recorded in the agreement, a party can't refer the matter to arbitration. The Arbitration Law expresses that the arbitral court has the force, on the use of any party or an outsider to permit a third party to intercede or be participated in the arbitration, if it is involved with the intervention understanding.

In the end note, the most significant organizations overseeing the arbitration particularly in the region of universal commercial disputes should keep the procedures and methodology as straightforward and less perplexing as conceivable in comparison with litigation with the goal that the engaging quality arbitration cases would not be lost and endeavour to accomplish an increasingly uniform, universally even arrangement of international arbitration to guarantee simplicity of enforcement of arbitral awards.

➢ IV USE OF THE SCIENTIFIC AND PRACTICAL RESULTS

Returns:

1. Proposed model for improving the possibilities of providing an efficient system of effective system of arbitration for the resolution of financial disputes.

2. A model of a system of measures and activities for the successful application of arbitration in the resolution of financial disputes is proposed.

3. Proposal of activities for the use of arbitration in the resolution of financial disputes.

4. Proposal for the improvement of contractual conditions for arbitration of financial disputes between business organizations.

5. Developed measures for the promotion of arbitration mediation and resolution of financial disputes without the use of court proceedings.

6. Proposed and designed activities for the promotion of arbitration in the resolution of financial disputes. through Hi-tech communication systems.

7. The methods and aspects of arbitration in the resolution of financial disputes have been researched and empirically proven.

8. Research was conducted to improve coordination and cooperation between the competent authorities in the implementation of arbitration in the resolution of financial disputes.

For constant monitoring of the functioning of arbitration in the resolution of financial disputes, the data published as information should be studied:

- Arbitration courts,
- International arbitration and legal institutions,
- International organizations for monitoring arbitration disputes between business organizations.

○ LIST OF PUBLICATIONS RELATED TO THE DISSERTATION

1. Settlement of financial and banking disputes by arbitration

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➢ DECLARATION OF ORIGINALITY AND TRUST

((according to Art. 27, paragraph 2 of the ZP of ZRASRB)

By **Xhenis Sina MSc,** born in 21.02.1995, in Tirana, Albania, self-study PhD student at the "Finance Department of Higher School of Insurance and Finance (ВСУФ) - Sofia".

I declare that the dissertation presented by me on the topic, "***Arbitration as a form of Alternative Dispute Resolution and its application in financial disputes"*** for awarding the educational and scientific diploma "Doctor" is an original paper and contains results obtained from my research, with the support and help of my supervisor.

I declare that the results obtained, described and / or published by other scientists are properly cited in the bibliography, subject to copyright requirements.

I am informed that in case of finding plagiarism in the submitted dissertation, the defence committee has the right to reject it.

I declare that the dissertation has not been presented at other universities, institutes and other higher education institutions for obtaining an educational and scientific diploma.

Tirana, **Declarant:**

Xhenis Sina, MSc