



Why Arbitration ?

state courts vs. arbitration

advantages + disadvantages



case
dispute between Austrian + Serbian company
how to enforce a judgment ?

- **Award/Judgment by – “Handelsgericht Wien” – state court in Vienna**
 - cannot be executed in Serbia

- **Award/Judgment by - state court in Belgrade**
 - cannot be executed in Austria



execution of arbitral awards

- **arbitration award**
 - can be executed in Austria + Serbia
 - at banks in New York, Dubai, London, Frankfurt
 - under US law goods can become property of buyer – immediately execution against goods in a US harbour – goods purchased by this Serbian company
- **this is made possible on the legal basis of:**
 - ➔ **UN Convention on Recognition + Enforcement of Foreign of Arbitral Awards 1956 – participating nations - 156**
- **foreign arbitral awards = local court judgements = executable**



what is arbitration?

- **the arbitral tribunal - is a private court which derives its power through „arbitration agreement“ (arbitration clause) between the parties**
- **the judgment of the arbitral tribunal - arbitral award**
 - is binding between the parties
 - enforceable by a national executioner/bailiff
 - can only be appealed at state courts - for very limited reasons



Advantages of arbitration

- confidentiality of proceedings – if wanted by both parties
- choice of arbitrators - experts
- flexibility of arbitral proceedings
- international recognition + enforcement of arbitral awards
- choice of language - of arbitral proceedings
- fewer translations – reduced mistakes
- duration of proceedings
- no appellate court – save time + cost



Advantages of arbitration

- choice of place of arbitration
 - neutral country – CASE: machinery export from Austria to Croatia
- state court proceeding mostly in country of one party – independence?
- judges often influenced by politics
- judges influenced by hands-outs & corruption
- court judges often not familiar with international business
- judges speaks only local language, everything must be translated
(contract often in English)



Disadvantages of arbitration

- costs – in small cases
- costs higher than state court of 1st instance
 - if no appeals
- appeals – only based on few reasons



where can arbitration be used

- infrastructure projects – also against government entities
- machinery - plant engineering
- finance of projects in difficult countries
- international sales contracts + finance
- international distributors contracts
- joint ventures + finance
- post M&A disputes
- corporate disputes
- investment disputes + finance



reasons for appeals to state courts - against arbitral awards

- **dispute not arbitrable** – labour law, consumer disputes
- **invalidity of arbitration agreement**
- **violation of - right to be heard**
- **arbitration tribunal has not been properly constituted**
- **arbitrators have a conflict**
- **violation against “ordre public”**
- **something is attributed – which had not been claimed –**
arbitral award extra petita



time needed

- **Austria – state courts**
 - 1st instance – 1 year+
 - high court – 6 – 12 month
 - supreme court – 6 – 12 month
- **...state court in India + Italy - 10 years +**
 - appeals – 10 years +
- **arbitration**
 - 6 – 24 month
 - appeals – not frequent



costs - state court vs. arbitration

■ state courts – Austria - ...until supreme Court

- amount in dispute € 100.000 - total costs € 17.900
- € 1 Million - total costs € 121.000
- € 10 Million - total cost € 1.093.000

■ arbitration – ICC

- amount in dispute € 100.000 - total costs € 20.000
- € 1 Million - total costs € 80.000
- € 10 Million - total cost € 380.000



Macro - Cost of Disputes

cost of court, lawyers, in-house-costs

- **2 – 5% court or Arbitration tribunal**
- **15 – 25% - cost of lawyers**
- **70 – 80% - in-house costs of the parties to a dispute**



bigger business - prefers arbitration

- **approx. 90% of international contracts contain an arbitration clause**
- **high amounts in dispute**
 - YUKOS vs Russia: USD 103 billion
 - Conocco vs Venezuela: USD 30 billion
 - Germany vs Toll Collect: USD 6,7 billion
 - T-Mobile vs Vivendi: USD 4 billion
 - Areva u. Siemens vs Teollisudden: USD 3,4 billion
 - Vattenfall vs Germany: USD 2,0 billion



important arbitration centres

- bigger institutions
 - **ICC – International Chamber of Commerce** – only international
 - **AAA - American Arbitration Association** – many local disputes
 - **CIETAG – China** – many local disputes
 - **London Court of Arbitration**
 - **Singapore Arbitration Association**
 - **VIAC – Vienna International Arbitral Centre** – only international
- preferred places of arbitration
 - **Europe:** Paris, London, Zurich, Geneva, Stockholm, Frankfurt, Vienna
 - **Americas:** New York, Washington DC, Miami
 - **Asia:** Singapore, Hong Kong



without arbitration clause in underlying contract – no arbitration possible

- **ICC - “All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”**
- **to be added**
 - place of arbitration
 - applicable law
 - language of arbitration



how to select an arbitrator

- **qualifications**
 - experience in arbitration + experience in subject matter
 - knowledge of all languages involved
 - back-office + project management-ability

- **independence + impartiality**
 - IBA Guidelines on Conflicts of Interest in International Arbitration
 - not from country of parties
 - no business connection to parties – or affiliates
 - CASE: arbitrator of international law firm – Paris - Singapore
 - mentality, cultural background – balanced
 - Germany vs. Austria, Serbia vs. Netherlands, US vs. Iran



end of proceedings

- **by agreement**
 - agreement by parties – after background negotiations
 - agreed upon - arbitral award

- **by arbitral award**
 - **interim** – or - **partial** – or - **final arbitral** award

- **statistics**
 - 30% - settled after „Terms of Reference“
 - 30% - settles during proceedings
 - 40% - by arbitral award



for further information

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