

**CAMERA ARBITRALE NAZIONALE
E INTERNAZIONALE
DI MILANO**



PROGETTO MEDITERRANEO

*The National and International Chamber of Arbitration of Milan
At the service of the Mediterranean operators*

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1. THE ARBITRAL CHAMBER OF MILAN

The National and International Chamber of Arbitration of Milan established in 1985 is a special department of the Chamber of Commerce of Milan completely independent and operates for the promotion and development of the use of methods for resolving disputes alternative to state court proceedings (known as ADR instruments, Alternative Dispute Resolution).

The alternative resolution services offered by the Chamber are in the specific Arbitration, Mediation and a on line service known as “Risolvionline”.

All of the above mentioned methods share the fact that they guarantee rapid, cost saving and calculable resolutions to commercial disputes through private and flexible procedures.

The Chamber of Arbitration of Milan is a concrete answer for all the entrepreneurs that are interested in avoiding high costs and un-calculable terms for seeking resolutions.

It can't be denied that the business class has to consider, when having to take certain decisions, the risk related to disputes and to the uncertainty arising in terms of time and costs. Not only this is true in a national context but appears to be fundamental on the international scene, since one of the main issues is having to deal with foreign legal systems, very often unknown and expression of deep cultural differences.

Specially in the international context operators can nowadays rely upon a useful and efficient method for resolving disputes that allows to calculate the risks that could arise out of the conflict and to submit the matter to a neutral judge, possibly of a different nationality from the parties' one.

The entrepreneur that works on a international context is aware that the risks of conflicts is highly probable and cannot be found unable to deal with such eventuality; it is important for him to calculate all kind of costs related to his business, even the ones arising out of disputes, in order to chose the most efficient method for resolving and managing the conflict.

When dealing with commercial disputes the most efficient method is surely arbitration.

2. THE “PROGETTO MEDITERRANEO”

It is now a few years that the Arbitral Chamber of Milan has started to structure a concrete activity aiming at internationalizing its own services and focussing on the Institution¹. One of the reasons is to offer a concrete and efficient answer to the business world. As a consequence, several projects concerning certain geographical areas, considered to be strategic for the development of international relations, have been elaborated.

The Chamber of Arbitration of Milan considers the Mediterranean area fundamental for its own growth and for becoming the principle seat of international arbitrations (it is nowadays already one

¹ The Chamber of Arbitration of Milan is also a well recognized international authority on the scientific and cultural profile. We can briefly mention that the Institution has taken part to the drafting of the Model Law on international commercial arbitration advanced by UNCITRAL (United Nations Commission on International Trade Law); its membership to IFCAI (International Federation of Commercial Arbitration Institutions); due to the work of its Centre of Studies, many works have been published by Kluwer Law International; role as country report for the newsletter ITA Monthly Report, Institute for Transnational Arbitration).

of the most important institutions in Europe on the basis of the number of administered cases; during 2006 more or less 110 cases were submitted and in the first six months of 2007 on a basis of 46 cases 30 % is international)

The Chamber of Commerce of Milan has indeed committed itself to encourage and support several relations through and out the Mediterranean, offering the business community a wide choice of financial and informative devices (we can mention the Fondo Euromed established by the Chamber of Commerce of Milan with the support of Finlombarda Gestioni SGR s.p.a., Regione Lombardia and several other credit institutions amongst the most important ones in Italy, in order to increase and facilitate investments in the Mediterranean countries on behalf of Italian companies).

The Mediterranean Basin is a critical and primary area even for the European Union. The European Union has established a Euro-Mediterranean partnership, involving EU countries and 10 countries from the Mediterranean Basin (Palestine, Algeria, Egypt, Jordan, Israel, Lebanon, Marocco, Syria, Tunisia, Turkey) making this Area subject to a specific cooperation strategy aiming at creating a Euro-Mediterranean Free Trade Area).

The Euro-Mediterranean trade is already very intense and it will surely grow, together with the **need** to deal with commercial disputes, being able to offer **alternative methods of resolution**.

The above mentioned issue is well known to the Euro Mediterranean partners and this is one of the reasons why they have chosen to cooperate in establishing the alternative methods for resolving disputes, entrusting several arbitral institutions (such as Italy) with the task to operate in order to facilitate the business relations and arising consequences amongst North and South Mediterranean.

This is precisely the effort and the project followed by the Chamber of Arbitration of Milan with the “Progetto Mediterraneo”: to provide through the use of an administered arbitration an efficient alternative for resolving commercial disputes to all the Mediterranean operators.

Those that decide to recur to arbitration as the method for resolving commercial disputes, generally and preferably, undertake during the drafting of the agreement to submit future possible disputes arising out of their business relations to one or more arbitrators, that will apply the law chosen by the parties them selves, in this way avoiding state court procedures.

a) Why arbitration

Follows a brief list of reasons why parties decide to recur to arbitration:

–**Neutrality**: the possibility to rely on a neutral judge when dealing with international disputes, is a fundamental issue. An arbitral board incorporating arbitrators of different nationalities is able to guarantee a major level of neutrality (this achievement wouldn't be possible if recurring to ordinary state justice).

–**Celerity**: this element must be taken into consideration when compared with ordinary justice length of procedures. Nevertheless arbitrations that appear to be exceedingly long are mostly due to the complexity of the matter such as joint venture agreements or supply ones or IT issues.

–**Technical skills**: parties are entitled to appoint arbitrators and this faculty will guarantee the possibility to choose individuals highly qualified and competent in the subjects arising out of the disputes.

–**Confidentiality**: one of the main differences from ordinary justice, public and transparent, is that arbitration allows the procedure to be confidential and low profile.

–**Flexibility**: parties are entitled to determine themselves the procedural rules that arbitrators will apply to the arbitration. This element allows the procedure to be less formal than the one followed

by ordinary judges. In addition parties have the faculty to choose the seat of the arbitration and the law applicable to the merits of the dispute.

–**Costs**: the fees are relatively inferior to the ones borne in ordinary procedures, that could even last 10 years if considered the gap between first grade of justice up till the Supreme Court.

Celerity often means cost saving as well.

–**Recognition of the award**: in the majority of cases the awards are fulfilled by the parties, nevertheless several international treaties exist, in particular we must mention the New York Convention signed in 1958 and ratified by 100 countries (amongst which Italy)², that allow to ease the recognition of foreign awards. Where there is no trace of treaties or bilateral agreements this achievement is in many cases easier for awards than for ordinary court decisions.

b) Why choose the National and International Chamber of Arbitration of Milan

to all those operating in the Mediterranean Area that are interested in recurring to arbitration the Arbitral Chamber of Milan offers:

- free **assistance** during the drafting of the arbitral clause to be inserted in the agreement or of the arbitration agreement once the dispute has arisen³, through the proposal of standard clauses and typical submission agreements;
- assistance during the critical phase of the relation, due to the management and the administration of the arbitral procedure;
- assistance in favour of the functionaries of the Institution's Secretariat, which with no increase to expenses will attend the constitution of the arbitral board, wherever the seat of the arbitration is established.

As for the management of the arbitration, the Arbitral Chamber of Milan acts through a Secretariat and an Arbitral Council, composed of 9 members (2 foreign), all highly qualified in the economic or law field.

The administration of the entire procedure implies the application of the **Arbitral Rules**, from when the request is filed until the award is rendered; the Rules are drafted according to functionality and flexibility and the text is available in **Italian, French, English and Arab**.

Parties are free, in compliance with the Arbitral Rules, to determine not only the seat of arbitration, but its language, the applicable law, to appoint the arbitrators, choosing number and formalities for appointment. Every single appointment forwarded by the parties or by third individuals, shall be confirmed by the Arbitral Council which will previously verify the statement of independence required to the arbitrators when accepting the appointment in order to guarantee a neutral procedure.

Parties are able to deal and manage all the arising relations in addition to the dispute itself, since they may adapt the procedure, in all the single phases, to their needs, given the large autonomy with which they are empowered.

² If you are interested in consulting the complete list of countries that have entered into the New York Convention of 1958 please refer to the Uncitral web site: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html.

We underline that all the countries involved by the Progetto Mediterraneo have already signed the above mentioned Treaty except Libya that is taking part to the Barcellona process as an "Observer".

³ The arbitral clause is normally introduced when drafting the agreement and has a preventive character whilst the submission agreement has a specific reference to the already arisen dispute between the parties.

On the other side, parties are comforted by the institution that will supervise the arbitration in terms of duration, costs, neutrality and independence of arbitrators, always ready to intervene in case of deadlock of the procedure such as lack of arbitrators appointment, absence or failure to appear of one of the parties, appointment of arbitrators in multiparty arbitrations.

The Institutions also warrants that the award (the decision rendered by the arbitral board) will be filed within 6 months from the first hearing or following deferments granted by the Arbitral Council upon parties' request. In this way companies and entrepreneurs can count on a decision that will be immediately enforceable on the market, given several international treaties, in addition to the advantage of saving time.

As to the costs, the Chamber has established a fee table, enclosed with the Rules, which is structured in single brackets depending on to the value of the dispute. According to the relevant bracket, parties will be able to appraise the costs of the procedure.

The final goal is to render a decision or arbitral award that can be considered final, perfect in its formulation, certain and enforceable without the need of any further step: in other words a definite solution to the dispute.

3. PROMOTIONAL ACTIVITIES

In order to give information on and develop the arbitral culture, in and out the Mediterranean Basin, the Arbitral Chamber of Milan has planned a series of events/initiatives:

- publishing articles (in Italian, English, French and Arab) on resolving disputes;
- to enter into several agreements encouraging cooperation with other arbitral institutions and /or local chambers (up till today, a collaboration agreement with the Regional Centre of Cairo for International Commercial Arbitration, with the Chamber of Commerce of Beirut, of Lebanon and with Syrian Union of Chambers of Commerce have been signed)
- organizing missions and "Road Show" in North African and Middle East Countries⁴;
- organizing and attending Congresses, Seminars, Meetings in all the Euro-Mediterranean Area;
- organizing training courses on alternative dispute resolutions methods.

The importance of this project has been recognized by the Italian Government that has encouraged all the Italian Embassies to support the initiatives related to it.

⁴ The "Progetto Mediterraneo" will involve in its first phase the following countries: Algeria, Egypt, Lebanon, Libya, Marocco, Syria, Tunisia, Turkey.