

Arbitration: A better option for resolving international conflicts

According to IESE's Carlos Sancho and Javier Santomá, arbitration is faster, less expensive and ensures a greater degree of confidentiality than a lawsuit.

May 10, 2013

In 2007, the Algerian firm Sonatrach and Spain's Gas Natural Fenosa disagreed on the interpretation of the agreement made a few years prior concerning a gas price adjustment.

In 2011, automakers Suzuki and Volkswagen accused each other of breaching the contract they had signed, with the Japanese company claiming it was entitled to buy back 20 percent of the shares previously acquired by its German counterpart.

In both cases, instead of going to court, the disputing parties took their claims to the International Court of Arbitration of the International Chamber of Commerce (ICC), which professors [Carlos Sancho](#) and [Javier Santomá](#) believe is the most effective international arbitration body.

The authors [highlight](#) the advantages of arbitration, explaining the procedures involved and laying out the standard clauses for sales and international distribution agreements. There are only seven cases in which an arbitration award could be thrown out, they say.

Arbitration is faster, less expensive and ensures a greater degree of confidentiality than a lawsuit. It also bypasses forum shopping, in which each party tries to choose the court most suitable for its needs, based on the proceedings and the law of the state in which it is located.

Six advantages of arbitration

There are a number of factors that make arbitration preferable to amicable resolution mechanisms or courts of justice.

Binding Decision. The arbitration award cannot be appealed. As such, it is more likely to be definitive than rulings of trial courts. It can be appealed, but the reasons to do so are strictly limited.

In the Algerian gas conflict, the award was very damaging for Gas Natural Fenosa, which turned to the Swiss justice system to halt its implementation while negotiating a comprehensive agreement with Sonatrach that satisfied both sides.

International Recognition. More than 140 countries have adopted the United Nations' Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which facilitates the enforcement of arbitration awards in all of the contracting states. As such, an arbitral award offers better security than a national court ruling.

Neutrality. The parties are free to agree on equal terms on five key areas: language; rules of procedure and applicable law; the nationality of the arbitrators; legal representation; and seat, which does not have to be the same location as the central offices of the arbitration body.

For example, Gas Natural Fenosa and Sonatrach chose Geneva as the seat, while Suzuki and Volkswagen opted for London.

Specialization of the Arbitrators. Arbitration gives disputing parties the possibility of appointing whomever they wish as arbitrators. Conversely, in national judicial systems, the conflicting parties cannot pick the presiding judges.

In such case, disputes can be resolved by specialists in the field, be it oil or gas or construction. The only requirement is that the arbitrator has to be independent with respect to the parties involved.

Speed and Cost. Arbitration is quicker and less expensive than judicial proceedings. Although a complex dispute resolution sometimes requires a considerable amount of time and money, the limitations on appealing arbitration awards translate into a clear advantage over normal legal proceedings, in which parties can engage in an endless succession of appeals.

For example, the ICC has been able to complete arbitration proceedings with several million dollars at stake in just two months.

Confidentiality. The hearings in arbitration courts are not public. Only the parties involved are privy to the award announcement.

To resolve conflicts that may arise through arbitration, the authors recommend introducing a clause in both distribution and international sale agreements, as well as providing some standard language for both types of contracts.

www.iese.edu/insight