MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

How to manage commercial disputes efficiently

Turkey-Italy

MILAN CHAMBER OF COMMERCE
INDUSTRY, HANDICRAFTS
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How to manage commercial disputes efficiently

Entrepreneurs and professionals know how adversely disputes can affect their business both economically and in terms of image and planning: no one can afford to be caught off guard.

Moreover, when it comes to small and medium sized enterprises, the risk of disputes can affect not only their entrepreneurial choices, but sometimes the possibility of survival itself.

On the other hand, an efficient disputes management has remarkable effects on the competitiveness of enterprises and their capability in facing international markets.

A modern and competitive enterprise cannot be passive regarding commercial disputes, but has to implement prevention and management measures capable to minimize the relevant risks. The question is: how?

First of all, companies have to be aware that there are several remedies to be considered when facing an international commercial dispute and that therefore resorting to state courts is not the only viable and inescapable pathway.

Which are the alternatives to state courts?

In **Italy** as well as in **Turkey**, the law allows parties to make choices regarding the remedies to be used to resolve disputes arising from contracts or, more generally, from commercial relationships.

This kind of decisions can be made once the dispute has already arisen, but it would be advisable to consider the matter at the negotiation stage. This is the right moment to choose with the counterparty whether to refer future disputes to ordinary justice or to a system of "private justice", that is, **arbitration**.

In addition and before resorting to the judge or to the arbitrator, parties can also consider to use another dispute resolution tool: **mediation**.

Evidently, there are different options to be considered in order to choose the most appropriate solution for the case at hand.

What is Mediation?

Mediation is a voluntary and confidential procedure during which the mediator – a neutral, impartial and independent person – helps the parties to deal with the dispute and reach an agreement.

The mediator is neither a judge nor an arbitrator, but an expert in the management of conflicts and disputes who helps the parties to explore different options so as to find the best solution to the problem.

The mediation meeting ends with a settlement agreement which has the value of a contract between the parties and it is generally spontaneously fulfilled because it is the result of a 100% satisfying arrangement between them.

It is worthy of remark that mediation has extremely low costs, consents to explore solutions usually not contemplated in a legal/judicial context and does not prevent from using other dispute resolution tools whenever it is unsuccessful.

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If you want to know more about mediation visit the pages of the Milan Chamber of Arbitration's website dedicated to mediation on www.milanmediation.it.

What is Arbitration?

Arbitration is a private process whereby the parties decide to entrust the resolution of a dispute to one or more arbitrators – that they are free to appoint –, thus ruling out recourse to the ordinary courts.

The decision of the arbitrators (the award) is an enforceable judgement. It is noteworthy that the New York Convention of 1958 ensures the enforcement of arbitral awards. This Convention has been ratified by over 140 states, among which Italy and Turkey.

The parties can appoint the arbitrators – who are experts in the issues in dispute – the seat of the arbitration – which can be established in a third country, neutral to both parties –, the language and the procedural and substantial rules that will govern the proceedings.

Arbitration is commonly seen as an onerous tool. Obviously arbitrators are to be paid for their work, but greater speed and flexibility of the procedure and expertise of the arbitrators means a foreseeable and efficient cost-management, especially if the proceedings are administered by a reliable institution.

If you want to know more about arbitration visit the Milan Chamber of Arbitration's website on **www.camera-arbitrale.com**.

Which tool should one use to manage an international dispute?

Arbitration and mediation are profoundly different tools.

Mediation helps parties to **build up together a solution** which satisfy their respective interests according to **a win-win approach**. The outcome is a settlement agreement.

Arbitration aims at **deciding** the dispute by **establishing the "rights and wrongs"** of the case. The outcome is the award, an arbitral decision which defines incontrovertibly the dispute.

Different tools, and different results. So, how to make the right choice?

Parties to a dispute should take into consideration some crucial aspects: do they want to preserve the business relation and not to jeopardize future opportunities? What are the relations of force at play? What do they really want to obtain from the dispute? Do they need an enforceable decision? Do they want to establish a precedent or instead they are afraid of creating precedents?
It should be pointed out that mediation and arbitration may also be used together. Parties may initially attempt mediation, and if they fail to reach an agreement, they can proceed with arbitration.

To help businesses with these choices, the Chamber of Arbitration of Milan makes its expertise available in the form of a free consultancy service.

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The Milan Chamber of Arbitration and the Istanbul Chamber of Commerce Arbitration Center

When choosing the most appropriate tool, parties can request the intervention of an institution which administers the proceedings by applying a set of pre-established rules and fees which are public and predictable.

Usually the institution offers the parties the necessary logistic assistance throughout the proceedings, also taking care of the relationships among the parties and the arbitrators or mediators, being in charge of the exchanging of documents, scheduling of the arbitral hearings or mediation meetings, etc.

The Milan Chamber of Arbitration is a special branch of the Milan Chamber of Commerce and has been working for several years in the Mediterranean to spread the knowledge and use of ADR tools and to adapt the offer of arbitration and mediation services to the need of this particular area's firms.

Specifically, the Milanese institution offers:

- free assistance when drafting the dispute resolution clause to be inserted in the contracts;
- in case of mediation, free assistance during the first contact between the parties: following the request of one party, the Mediation service of the Milan Chamber of Arbitration contacts directly the other party to join the mediation table;
- a specialised staff that gives the necessary assistance to parties, their counsels and to arbitrators and mediators;
- assistance out of Italy whenever arbitration and mediation is conducted in a Mediterranean country.

In **Turkey**, the Milan Chamber of Arbitration works in strict connection with the **Istanbul Chamber of Commerce Arbitration Center** (www.itotam.com). The two institutions have undersigned a Cooperation Agreement on January 2008 with the objective of collaborating for the promotion of arbitration and mediation and for the management of cases involving Italian and Turkish parties.

In the wake of this Cooperation Agreement the two institutions have established a partnership to offer an effective mediation service to Turkish and Italian companies (see page 5)[1]. If you wish to know more about this service contact directly the institutions.

As far as arbitration is concerned, companies and counsels can make reference to the model clauses drafted by the two institutions available here below (page 6).

Before using arbitration and mediation model clauses it is highly recommended to seek assistance from the side of the institution which has issued the models.

For additional information:

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Mediation

CAM Mediation Model Clause

Parties agree to submit all disputes arising in connection with this agreement to the mediation attempt managed by the Mediation Service of the Milan Chamber of Arbitration to solve the dispute with a mediation agreement in accordance with its Rules.

How the ITOTAM-CAM partnership on mediation works

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Arbitration

CAM Arbitration Model Clause
*"Any dispute arising out of or related to the present contract shall be settled by arbitration under the Rules of the Milan Chamber of Arbitration (the Rules), by a sole arbitrator / three arbitrators **, appointed in accordance with the Rules.The Arbitral Tribunal shall decide in accordance with the rules of law of ... / ex aequo et bono.The seat of the arbitration shall be ... .The language of the arbitration shall be ...".*
*** alternative choice, to be made considering the circumstances of the case at hand and, inter alia, the value of the dispute.*

ITOTAM Model Arbitration Clause
"Any dispute or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of Arbitration of The Istanbul Chamber of Commerce Arbitration Center (ITOTAM).

PARTIES SHOULD CONSIDER ADDING THE CLAUSES BELOW:
The language to be used in the arbitral proceedings shall be .....
The law to be applied to the merits of the dispute shall be ……."

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