

# ARBITRATION

## Before you read

Discuss these questions.

- 1 Have you ever been in dispute with another person over an agreement or a contract? What was the problem?
- 2 What steps can you take, apart from going to court, to settle a commercial disagreement?

## Reading tasks

### A Understanding main points

Read the text on the opposite page about how international disputes between companies are resolved and answer these questions.

- 1 Why might you prefer not to go to court in the country of your business partner?
- 2 What are the three main business areas which have traditionally been resolved by arbitration?
- 3 How is a forum made up for a neutral arbitration?
- 4 What is the main difference between arbitration and litigation, according to the text?
- 5 Which are the main arbitration centres?
- 6 In which city would you choose to arbitrate an east-west trading dispute?
- 7 Which specific aspects of a contract are named in the text?
- 8 What do clients look for from an arbitration service?
- 9 What examples of expert witnesses are given in the text?
- 10 Do all the venues share the same arbitration rules?

### B Understanding details

Mark these statements T (true) or F (false) according to the information in the text. Find the part of the text that gives the correct information.

- 1 Disputes only arise in commercial transactions.
- 2 Commodities are things traders buy and sell, usually raw materials, like coffee, wool or copper.
- 3 A neutral forum has a balanced composition to ensure fairness to both parties.
- 4 New York is the only American arbitration venue named in the text.
- 5 Arbitration is a business in itself, for lawyers and their associates.
- 6 *Name recognition* for arbitration is like *brand awareness* for consumer goods.
- 7 International business depends on rapid resolution of contractual disagreements.
- 8 The courts of law in each country are less powerful than arbitration panels.

# Resolution in a neutral forum

Arbitration settles international commercial cases, says **Jeremy Winter**

**A** You have been in a conference room in your lawyer's office for the whole day, negotiating a crucial international contract. Term by term, detail by detail, the lawyers have argued it out. Someone says: 'What are we going to put in for dispute resolution?' When you started the negotiations you thought that the deal was a certain money-spinner for both parties, so no disputes could arise. Now you are not so sure. So what do you say? What do your lawyers advise? Ideally, you might want to be able to have recourse to the courts in your own country; the other party would probably like to do the same in its home country. Neither is acceptable to the other, for fear of home-team advantage or even local bias.

The answer is to opt for arbitration. This is not really a difficult decision, and that is why arbitration is the recognised way of resolving international commercial disputes. For at least a century, it has been the dominant force in dispute resolution in areas such as shipping, commodities and construction. You can opt for a neutral forum and have a panel of three arbitrators, one chosen by each party, and the third (the chairman) chosen either by the parties or the two party-appointed arbitrators. In addition, you can keep your disputes away from the public eye, because arbitration takes place in private, unlike litigation in the court.

The main centres for interna-

tional arbitration are: Paris, London, Geneva, Stockholm, New York, Hong Kong and Singapore. Which is used depends on the background and businesses of the parties. Stockholm, for example, was always the place for arbitrating east-west trade disputes, London for shipping and commodities. Singapore looks set for a busy time in the coming months and years after the Asian financial crisis. These locations, and the arbitration centres and lawyers working there, compete intensely. Arbitration bodies try hard to get their standard arbitration clause put into people's contracts, so they have a captive market once disputes arise. They do this by publicising their activities and their rules.

What they are looking for is 'name recognition'. In Europe, Paris (home of the International Chamber of Commerce and its rules) probably has the best name recognition, followed by London (home of the London Court of International Arbitration), and Geneva. What people look for in an arbitration is speed, cost effectiveness, confidentiality and reliability of the arbitrators and hence their decisions.

The choice of venue involves a complex balancing of a number of factors:

- the availability of good experienced arbitrators
- the availability of good experienced arbitration lawyers, and expert witnesses such as accountants and engineers



- the cost of these people
  - the support or otherwise that the local legal system gives to arbitration. (For example, if the arbitration gets bogged down as a result of delaying tactics by one party, what powers does the arbitrator, or court, have to speed things up? Will the courts readily interfere or overturn arbitrators' decisions?)
  - accessibility - basic things like flight access, good facilities (some of the best are now in the Gulf states), administrative back-up, good telecommunications, IT support and even climate.
- National legislation also has to lend its support to such an important economic activity as arbitration. England has taken steps to improve English arbitration law in the form of the Arbitration Act 1996, which came into force at the beginning of 1997.

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## Vocabulary tasks

### A Definitions

Match these terms with their definitions.

- |   |   |
|---|---|
| 1 dispute resolution (line 8)           | a) unfair treatment                           |
| 2 a money-spinner (line 11)             | b) accelerate                                 |
| 3 have recourse to the courts (line 16) | c) reverse something already decided          |
| 4 home-team advantage (line 21)         | d) settling disagreements                     |
| 5 local bias (line 22)                  | e) make use of the legal system               |
| 6 financial crisis (line 55)            | f) benefit from being local or on home ground |
| 7 delaying tactics (line 93)            | g) meddle or get involved with                |
| 8 speed things up (line 95)             | h) something that makes profits for everyone  |
| 9 interfere (line 97)                   | i) ways of making things take a long time     |
| 10 overturn decisions (line 97)         | j) become operational                         |
| 11 take steps (line 108)                | k) serious money problems                     |
| 12 come into force (line 111)           | l) institute action                           |

### B Terms of disagreement and dispute

Use an appropriate word or phrase from the box to complete each sentence.

resolve resolution dispute settle arbitrate  
arbitration arbitrator agree disagree delaying tactics

- 1 There is a serious problem we must try to *resolve* .....
- 2 He was a distinguished lawyer who was an expert .....
- 3 The ..... process took far longer than the parties had expected.
- 4 This was due to the ..... employed by one of the companies involved.
- 5 The question is: how are we going to ..... this dilemma?
- 6 When the goods arrived in poor condition, a ..... arose over whose fault this was, and who should bear the cost.
- 7 The best way is not to go to court, which is public and costly, but to ..... an agreement.
- 8 I believe you are wrong on that point – we ..... on the interpretation.
- 9 There is always an answer if you try hard to find it: every difficulty has a .....
- 10 You cannot assume he will ..... to those terms: you must check with him first.

### C Parties to an agreement

In law, it is important to distinguish between the parties involved in a transaction or an action. Complete the sentences below, using words from the box. Not all the words will be needed.

signatories    buyer/seller    borrower/lender    supplier/producer    wholesalers/retailers  
lawyer/client    teacher/student    plaintiff/defendant    licensee/licensor  
franchiser/franchisees    undersigned    parties to the agreement

- 1 Everyone promises to obey the treaty – all major countries are ..*signatories*.. to it.
- 2 In the civil case, the ..... brought an action against the ..... for damaging his car on purpose.
- 3 The price was negotiated between the ..... and the ..... of the house, in a private sale.
- 4 The bank agreed that the ..... should pay 12% on the loan, so the ..... made a fair profit!
- 5 Manufacturers sell their goods to ....., and in turn, ..... buy from them.
- 6 The relationship between a ..... and ..... is bound by confidentiality.
- 7 The beer can be produced under licence but the ..... must fulfil all the requirements imposed by the .....
- 8 Some clothes companies sell their products on a franchise basis: each country has a main ....., with numerous people working as .....
- 9 A letter was sent to the manager complaining about working conditions. All the members wrote their names. The letter read: 'We, the ....., strongly protest about conditions at work.'
- 10 Many projects require the cooperation of various partners. If they all agree to work together, they become .....

### D Word families

Complete the chart.

verb	person	thing
arbitrate	1 .. <i>arbitrator</i> ...	2 .....
license	3 .....	4 .....
5 .....	6 .....	franchise

### Over to you

- 1 Recently there was a case of a mail-order company selling televisions over the Internet where the price of a top-line television was shown as \$3 instead of \$300. The web page was seen in many countries and several customers placed orders for the 'cheap TV', but the company said they had no obligation to supply as the price was a mistake. What do you think? Should the company honour the orders? Was it a contract? If it was, where was it made – in the country of origin or where the customer lives and ordered the goods? Is this a case for arbitration?