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International arbitration: balancing legal efficiency and risk management

In today's global economy, businesses increasingly operate across borders, entering into partnerships with counterparts on multiple continents and negotiating contracts governed by diverse legal systems. These global operations expose them to geopolitical, regulatory, and economic risks that are often difficult to predict.

When disputes arise, domestic courts rarely offer a satisfactory solution: proceedings are lengthy, cross-border service is complex, and the enforcement of judgments abroad remains uncertain.

In this context, international arbitration has emerged as a preferred method for resolving transnational commercial disputes.

A neutral, chosen, and business-oriented form of justice

The foremost advantage of international arbitration lies in its neutrality.

Arbitration is generally anticipated well before any dispute occurs, at the contract negotiation stage. The arbitration clause, also known as the compromissory clause, is therefore of critical importance.

Drafting such a clause requires particular attention: it must specify the type of arbitration chosen (whether institutional, under the auspices of the ICC, LCIA, or another body, or ad hoc, the language of the proceedings, the number of arbitrators, the seat of arbitration, and the governing law.

A poorly drafted clause can undermine the effectiveness of the proceedings or lead to significant procedural complications.

When a dispute arises and arbitration must be initiated, the arbitrators are appointed in accordance with the provisions of the arbitration clause or, failing that, pursuant to the applicable rules of the chosen arbitral institution. These arbitrators are typically seasoned practitioners in international trade, selected for their

expertise in the relevant sector, such as energy, construction, distribution, or industrial joint ventures.

Their familiarity with international trade practices and their pragmatic approach to evidence often serve as decisive factors in building the parties' trust.

This contractual freedom gives international arbitration its distinctive global character, independent from any direct state influence.

A flexible, confidential, and often faster process

One of the hallmarks of arbitration is its procedural flexibility.

Rules of evidence, the procedural timetable, and even the conduct of hybrid hearings can be adapted to the parties' profiles and to the complexity of the dispute.

The goal is not to replicate domestic civil procedure, but rather to design a pragmatic framework centered on efficiency.

Another key feature is confidentiality.

Unlike public court judgments, arbitral awards are not typically published. Written submissions and hearings are held behind closed doors.

This enables companies to protect their reputation, prevent the disclosure of strategic information, and maintain a discreet dialogue even in the context of a dispute.

International recognition of arbitral awards

The strength of international arbitration also lies in the global reach and enforceability of arbitral awards.

Since the 1958 New York Convention, ratified by more than 170 countries, arbitral awards have benefited from an unparalleled level of international recognition and enforcement. This global framework provides a decisive advantage for businesses: a French company can, for example, enforce an award rendered in Paris against an Indian, U.S., or Algerian party with a degree of legal certainty rarely matched by domestic court judgments.

In France, the recognition of a foreign arbitral award is obtained through the exequatur procedure, which confers enforceability upon the award.

French courts do not re-examine the merits of the dispute but ensure that the award satisfies formal requirements and complies with international public policy, as provided under Articles 1514 and 1515 of the French Code of Civil Procedure.

Once exequatur is granted, the award becomes an enforceable instrument allowing the prevailing party to pursue compulsory enforcement measures.

The Paris Judicial Court now has exclusive jurisdiction over applications seeking the recognition and enforcement (exequatur) of foreign arbitral awards in matters of international arbitration.

The limitations of international arbitration

The benefits of arbitration in resolving international disputes should not obscure its constraints.

Cost is, first of all, far from negligible. In addition to attorney's fees, parties must bear institutional costs and arbitrators' fees, which are often proportional to the amount in dispute.

For substantial claims, the total cost can reach several hundred thousand euros.

Likewise, the duration of arbitral proceedings is not always shorter than that of court litigation. Complex cases can extend over two or three years, particularly when extensive expert evidence is involved.

Moreover, arbitral awards are not subject to appeal; they can only be challenged on limited procedural grounds through an action to set aside the award. While this absence of a second level of jurisdiction is a guarantee of expediency, it can be perceived as a rigidity when an error of assessment occurs.

Finally, enforcement, although facilitated by the New York Convention, can still prove challenging when the award is rendered against a sovereign state, a state-owned enterprise, or a non-compliant party with assets located abroad. Similar, if not greater, difficulties would likely arise in traditional court proceedings.

Despite these limitations, arbitration remains the preferred mechanism for resolving international disputes, offering greater legal certainty and reliability.