



# ARBITRATION PROCEEDINGS

**S arbitrážním řízením se stále častěji setkáváme ve zprávách. Co se pod tímto termínem schovává, vám vysvětlí LUKÁŠ NÝVLT a RADEK DVOŘÁČEK.**

Parties have various ways of resolving disputes, and whereas the most visible are usually those resolved by the common courts, in recent years parties have often used alternative means. These include negotiation, mediation, conciliation, and arbitration. Arbitration has become better known in the Czech Republic in recent years as a result of several arbitration claims filed against the state by foreign investors as compensation for lost investments.

Under Czech law, only property disputes may be resolved by means of arbitration. These may include all sectors of business. Matters of criminal law or status law are generally not considered to be arbitral in nature.

Arbitration and common court proceedings differ in several ways. One of the differences is that the parties before an arbitration tribunal are at liberty to choose a neutral person to resolve the dispute. The parties may entrust resolving the dispute to ad hoc arbitrators or to institutional arbitration courts. And since arbitrators need not be lawyers, parties have room to appoint an arbitrator with expertise fitting to the nature of the dispute.

A dispute is usually resolved by a sole arbitrator or by an arbitration tribunal consisting of three arbitrators. In the latter case, each party nominates one arbitrator with the third, the chairman, usually appointed by the two other arbitrators.

Privacy and confidentiality are another typical feature of arbitration. Whereas proceedings before common courts are generally open to the public, arbitral proceedings are closed to the public and the parties, as well as the reasons for and background of the dispute, may remain confidential.

As opposed to common court proceedings, which are distinguished by strictly formal procedures, one of the noted advantages of arbitration proceedings is their speed and less formal attitude of the arbitrators. Similarly to common court proceedings, arbitration is fixed by laws, codes and rules, or is set by the arbitral tribunal by means of procedural orders. It is worth mentioning that the parties may agree and instruct the arbitrators to resolve on the principles of equity,

meaning that the arbitrators are not bound by substantive law and are empowered to resolve the dispute at their discretion to reach a fair solution. This is substantially different from common court proceedings.

On the flip side, by choosing arbitration, parties waive their right to appeal the decision to the appellate court. The arbitration award is final and binding to the parties.

Resolving disputes by means of arbitration is conditioned on all parties to the dispute agreeing to resolve it in such manner. Such agreement must be expressed in written form either as an arbitration clause or arbitration agreement. The difference in the two forms is when they are entered into: an arbitration clause is negotiated before a dispute arises; an arbitration agreement, with the subject matter of the dispute, is usually entered into after a dispute has already arisen.

Whereas the arbitration agreement represents a separate contract between the parties, the arbitration clause is incorporated into the body of the agreement. It is usually placed in the final provisions of the agreement.

Whether in an arbitration clause or arbitration agreement, parties agree on the particular conditions of the proceedings, such as selection of the arbitration court, rules, language and the venue of the proceedings, as well as the composition of the arbitration tribunal.

Arbitration proceedings are considered commenced as of the date a notice of arbitration is delivered by the claimant. From there the process is similar as in court proceedings: The parties submit all relevant materials and the arbitrators decide based upon the rules or law chosen by the parties, or in accordance with the principles of equity.

The arbitration tribunal hands down the arbitral award, which is deemed final and binding on the parties. In general it is not possible to appeal the decision, preventing any subsequent court proceedings on the same matter between the same parties. Under Czech law, parties may, however, agree to have the arbitration award reviewed by other arbiters.

In the Czech Republic, domestic arbitral awards are enforced by the courts or the executor. Enforcement of foreign awards is made in a similar way as domestic awards, made possible according to the provisions of the New York Convention, a multilateral international convention, to which the Czech Republic is a party. Among permanent domestic arbitration courts, the Arbitration Court attached to the Chamber of Commerce of the Czech Republic and Agrarian Chamber of the Czech Republic enjoys the most reputable position. It is also one of the few courts worldwide authorized to resolve internet domain disputes.

<b>arbitration clause</b> [ɑ:bi,treiʃn 'klɔ:z]	rozhodčí doložka
<b>arbitration proceedings</b> [ɑ:bi,treiʃn prə'si:dnɪz]	rozhodčí řízení
<b>at liberty: be ~ to do sth.</b> [æt 'lɪbəti]	mít volnost, svobodu k
<b>bound: to be ~</b> [baʊnd]	být závazný
<b>claimant</b> ['kleɪmənt]	žalobce, navrhovatel
<b>common court</b> ['kɒmən kɔ:t]	obecný soud
<b>confidentiality</b> [kɒnfɪ,denʃi'æləti]	mlčenlivost, důvěrnost
<b>discretion</b> [dɪs'kreʃn]	úvaha, volnost rozhodování
<b>equity: principles of ~</b> ['ekwəti]	zásady spravedlnosti
<b>hand down the arbitral award</b> [ˌhænd ˌdaʊn ði: ˌɑ:bitrəl ə'wɔ:d]	vydat rozhodčí náleze
<b>substantive law</b> [səb'stæntɪv lɔ:]	hmotné právo
<b>subject matter: ~ of the dispute</b> [ˌsʌbdʒækt ˌmætə]	předmět sporu

Tento text byl připraven  
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