

Settling Business Disputes: Arbitration and Alternative Dispute Resolution

SECOND EDITION



International
Trade
Centre

TRADE IMPACT FOR GOOD

© International Trade Centre 2016

The International Trade Centre (ITC) is the joint agency of the World Trade Organization and the United Nations.

Street address: ITC
54-56, rue de Montbrillant
1202 Geneva, Switzerland

Postal address: ITC
Palais des Nations
1211 Geneva 10, Switzerland

Telephone: +41-22 730 0111

Fax: +41-22 733 4439

E-mail: itcreg@intracen.org

Internet: <http://www.intracen.org>

SETTLING BUSINESS DISPUTES

ARBITRATION AND ALTERNATIVE DISPUTE
RESOLUTION

2ND EDITION

ABSTRACT FOR TRADE INFORMATION SERVICES

ID= 43164

2015

F-05.07.01 SET

International Trade Centre (ITC)

Settling Business Disputes: Arbitration and Alternative Dispute Resolution - 2nd ed.

Geneva: ITC, 2016. XI, 67 pages.

The second revised edition of the handbook focusing on available methods of commercial arbitration and dispute resolution - deals with different types of disputes encountered in international trade and describes methods for preventing or resolving them; covers the fundamental principles and practicalities of international commercial arbitration. This second edition provides some tools and useful information for business operators new to international trade as well as more experienced business people and lawyers. It describes the types of disputes that can arise in international trade and the dispute resolution mechanisms, some of recent origin, available to resolve them.

Descriptors: **Arbitration; Dispute Resolution; Commercial Law.****English, French, Spanish (separate editions)**ITC, Palais des Nations, 1211 Geneva 10, Switzerland (www.intracen.org)

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the International Trade Centre concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Digital image on the cover: © shutterstock

Doc. P348.E/DBIS/TFPB/16-II**ISBN 978-92-9137-430-4**
United Nations Sales Number E.16.III.T.2

© International Trade Centre 2016

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, electrostatic, magnetic tape, mechanical, photocopying or otherwise, without prior permission in writing from the International Trade Centre.



FOREWORD

With the rapid growth of international trade, businesses – including small and medium-sized enterprises (SMEs) – are increasingly exposed to new partners, countries, cultures, legal systems and trade practices. These new opportunities can bring new risks, especially if vital information and market intelligence is missing.

Business dealings can always give rise to disagreements and disputes. This is why dispute prevention and effective dispute resolution are vital components of risk management for any company. In the international context, there are additional difficulties involving various jurisdictions, different legal traditions, laws and procedures, and sometimes multiple languages. International trade disputes entail high costs, which particularly affect small firms trading across borders. How can businesses avoid or resolve disputes during various contractual phases, from negotiation through to performance?

This second edition is a significant revision from the first edition published by the International Trade Centre in 2001. It provides updated information for businesses, especially those that are now embarking on commercial activities across borders. It describes the types of disputes that can arise in international trade and the dispute resolution mechanisms, some of recent origin, available to resolve them.

Arbitration remains the most popular method for resolving international trade disputes, but mediation is growing in popularity. With arbitration and mediation institutions now existing in most countries and regions of the world, this publication provides greater transparency on how these processes work and how they can provide relatively inexpensive and quick access to the resolution of disputes for small firms in developing countries.

Greater awareness and use of various arbitration and alternative dispute resolutions mechanisms will lead to stronger and smoother trade and to a more transparent and efficient business environment. ITC stands ready to support this and enhance alternative dispute resolution services for the benefit of small firms.

A handwritten signature in black ink, appearing to read 'Arancha', written in a fluid, cursive style.

Arancha González
Executive Director
International Trade Centre

ACKNOWLEDGEMENTS

The first edition of this book was written by Herman Verbist, Christophe Imhoos and Jean-François Bourque with Geoffroy Loades as editor.

This second edition reflects the growing role of mediation and arbitration in resolving business disputes, and was prepared by Herman Verbist and Jean-François Bourque. David Watkiss made additional contributions.

Ezequiel Lizarraga Guicovsky, ITC's senior officer managing mediation and trade facilitation initiatives, provided guidance to this edition.

Herman Verbist, a Belgium-trained lawyer, serves as an international arbitrator and as counsel for parties in arbitration. He has been a counsel at the International Court of Arbitration of the International Chamber of Commerce. An author of books and articles on arbitration, he is also a trainer in arbitration seminars and workshops.

Jean-François Bourque, ITC's former senior legal advisor, was previously special counsel at the International Court of Arbitration of the International Chamber of Commerce.

David Watkiss is a US-trained lawyer specialized in international trade, including mediation and arbitration. He was also an editor of the Harvard Law Review.

Victoria Sarant, Juris Doctor candidate and Natalie Domeisen, ITC revised and provided comments to the manuscript.

The book was edited by Dianna Rienstra, with editorial contributions from Evelyn Seltier and Carmelita Endaya. Kristina Golubic was responsible for design. Serge Adeagbo and Franco Iacovino provided digital printing services.

CONTENTS

FOREWORD	iii
ACKNOWLEDGEMENTS	iv
ACRONYMS	viii
USING THIS HANDBOOK	ix

PART 1 - ABOUT INTERNATIONAL BUSINESS DISPUTES

1

TYPES OF INTERNATIONAL BUSINESS DISPUTES	2
Sale of commodities and goods disputes	2
Distributorship, agency and intermediary disputes	2
Construction, engineering and infrastructure disputes	3
Procurement disputes	4
Intellectual property disputes	4
Domain name disputes	5
Joint venture disputes	7
Maritime disputes	7
Disputes with preshipment inspection agencies	7
Disputes with customs authorities	8
Disputes involving banks	8
Employment contract disputes	9
Disputes involving states or state-owned entities	9
PREVENTING AND RESOLVING COMMERCIAL DISPUTES	11
Contract negotiation	11
Exemption and adaptation clauses	11
Non-jurisdictional means of settling disputes	12
Dispute review boards and dispute adjudication boards	14
Jurisdictional means of resolving disputes	17
Arbitration or mediation?	22

PART 2 - MEDIATION

25

MEDIATION	26
What is mediation?	26
Some history and context	26
The mediation process	27
Role of the mediator	27
Role of legal representatives	27
Questions and answers	28

PART 3 - ARBITRATION

31

ARBITRATION	32
Institutional arbitration	32
Ad hoc arbitration	33
THE ARBITRATION AGREEMENT	35
Is an arbitration clause necessary?	35
An arbitration clause should be in writing	35
Functions	35
Arbitration clause or submission agreement?	35
Incorporating the clause by reference	35
Who can enter into an arbitration agreement?	36
Separability of the arbitration clause	36
Law applicable to the arbitration agreement	36
Arbitrability rules differ	37
Content of the arbitration agreement	39
Arbitration clauses to avoid	47
Recommended drafting for arbitration agreements	48
CONSTITUTING THE ARBITRAL TRIBUNAL	49
Institutional arbitration	49
Ad hoc arbitration	49
Multi-party arbitration	50
ARBITRAL TRIBUNAL POWERS, DUTIES AND JURISDICTION	52
Powers and limitations	52
Duties of an arbitral tribunal	52
Jurisdiction	53
Emergency arbitrators	53
ARBITRATION PROCEEDINGS	55
General principle – party autonomy	55
Procedures decided by the tribunal	55
Hearings and evidence	55
APPLICABLE LAW	58

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_22951

