

Case Studies – Settlement of International Disputes

Case A: Drafting of Arbitration Clause

Two parties enter into an international sales contract. The Seller proposes to insert an arbitration clause in the contract, so that all disputes arising out of or in connection with the contract will be resolved through arbitration. In response to the Seller's proposal, Buyer drafts the following clause, and submits it to the Seller for comments:

Any and all disputes arising under the agreement contemplated hereunder will be referred to mutually agreed mechanisms or procedures of international arbitration, such as the rules of the London Arbitration Association.

Question A: Is the draft proposed by Buyer adequate and satisfactory for Seller?

Case B: Unwritten choice of court

A and B are two companies with a long-standing business relationship, established respectively in Italy and the Netherlands. A is a supplier of raw materials, which B uses in its industrial production processes. Back in 1987, when B started acquiring raw materials from A, the parties entered into a written contract for each order, which occurred approximately every three months. All of those contracts contained the following clause:

The courts of Milan (Italy) are exclusively competent for all disputes arising out of this contract.

Up until 2020, this practice has not changed. In 2020, however, due to the pandemic, A and B have had trouble to manage their correspondence, and they have stopped signing a written contract for each order. However, B still orders raw materials every three months.

Question B: With respect to the orders placed 2020, are the parties still bound by the choice of Italian courts?

Case C: Exclusivity of a jurisdiction clause

Consider the following clause, from a model agreement of the Loan Market Association:

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement [or any non-contractual obligation arising out of or in connection with this Agreement]63) (a "Dispute").

(b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) This Clause Notwithstanding paragraph 40.1(a) is for the benefit of the Finance Parties only. As a result above, no Finance Party shall be prevented from taking proceedings relating

to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

Question C: Is this an exclusive choice-of-court clause, and why is this relevant?