



## 1 - WHAT CAN BE SOLVED THROUGH ARBITRATION?

Conflicts involving available rights.

Some examples:

**Labor Law:** controversial amounts after termination of employment contract;

**Real Estate Law:** Lease - rental revisional - Conflict and condominium expenses - Purchase and sale of real estate – exchange;

**Civil Law:** - Default - Breach of contract - Compensation for material damages - Contractual breach - Collection - Contract on goods and services, Purchase and sale;

**Consumer Law:** - Contracts between suppliers, consumers and manufacturers, insurance in general - Charges;

**In Traffic:** - Traffic accidents, secondary conflicts;

**Family law:** Inventories, asset sharing.

**Commercial Law:** companies, social contract, etc.

### How Does CAMINTER Arbitral Procedure Work?

The plaintiffs are greeted by an Arbitrator, which examines the documentation, and the nature of the dispute, motive and reasons for the disagreement between the parties. The arbitrator is a professional trained in this technique of listening and assessing complaints about social conflict. In this interview the complaining party reports all about the problem and its claim. After signing the Arbitration Procedure Opening Term authorizing the CAMINTER (INTERNATIONAL ARBITRATION AND MEDIATION CENTER) to invite the party to attend the CAMINTER for the initial conciliation hearing.

## 2 - What about the claim as it reaches the Brazilian Arbitration Court?

In possession of the Arbitration Procedure Opening Term, the Scientific Letter will be delivered to the defendant, with AR (acknowledgment of receipt) inviting him / her to attend the local date and time for the initial Conciliation Hearing and signature of the Arbitration Agreement, since its attendance is not compulsory, if it is not bound by a contract containing the UNDERTAKING CLAUSE.

## 3 - NOT WHERE THE ARBITRATION IS COERCITIVE, ARE THE CONVOCATES APPEARING NOT HAVING AN UNDERTAKING CLAUSE?

Attendance is spontaneous. When the parties are summoned, by their own style of correspondence, they already know that they come to a mediation hearing for a friendly composition, where they will be treated equally by the mediating arbitrator.



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#### **4 - WHAT IS MEDIATION?**

Mediate means to cut in half or divide by two. It is an alternative form of attempted conflict resolution through an impartial third party, alien to the conflict, that will act as a kind of facilitator, without, however, interfering with the final decision of the parties that have chosen it. Its function is to establish a balance in the controversy, bringing the parties closer together and capturing the interests they have in common, in order to find a solution that is as fair as possible for both parties, where everyone wins.

#### **5 - WHAT IS COMMITMENT CLAUSE?**

Commitment Clause is a Clause contained in contracts involving negotiable law, where the parties voluntarily establish that future and eventual conflicts arising from said contract will be resolved by CAMINTER.

#### **6 - AND WHAT IS ARBITRATION?**

Arbitration is a form of dispute settlement, provided for in Law No. 9,307, of September 23, 1996. Arbitration is an extrajudicial, voluntary and timely alternative procedure between persons able to contract under the Available Property Rights, without the protection of the Judiciary when we are facing an impasse arising from a contract. The parties elect or accept an arbitrator of their trust, subject to the final decision imposed by the Court or Arbitrator, definitively, since in this mode there is no degree of appeal.

#### **7 - WHAT IS THE ARBITRAL INSTITUTION'S FUNCTION?**

The function is to settle disputes and pacify society in conflicts of interest regarding Available Property Rights. CAMINTER is a body specialized in alternative methods of conflict composition using the techniques of Conciliation, Mediation, Transaction and Arbitration of social conflicts.

#### **8 - WHAT ARE HERITAGE RIGHTS AVAILABLE?**

These are those rights that the citizen can freely dispose of (Private right) regarding trade, industry, service provision, rents, condominium, general purchase and sale, etc. And that do not involve the interest of the Municipality, State or the Union, as these are unavailable.

#### **9 - WHY IN THE ARBITRAL PROCEDURE DOES NOT FIT APPEAL?**

Because not only the procedure, but also the decisions are made by the parties, that is, the parties choose the arbitrators, the type of procedure, the



length of time, among other things, resulting in a decision resulting from the autonomy of the will, which does not hold questions.

#### **10 - DOES THE ARBITRAL PROCEDURE COST?**

The parties pay fees set out in a table of values that vary according to the complexity and value of the claim.

#### **11 - What is the timeframe for solving a question on CAMINTER?**

If the parties and the arbitrator have not agreed another time, the claim must end in 180 (one hundred and eighty) days according to the Law.

#### **12 - WHAT IS THE SPEED OF THE ARBITRAL SENTENCE?**

The Arbitral Award has the same effectiveness as the judgment rendered by the Judiciary, and if it is condemnatory, it is enforceable.

#### **13 - WHO IS LOOKING FOR CAMINTER?**

CAMINTER is sought by people who have conflicts of interest in various areas such as: commerce, industry, service, buying and selling, rents, condominiums and others. Between individuals and companies that want agility and secrecy in the resolution of their conflicts.

#### **14 - IS IT POSSIBLE TO REFER TO ARBITRATION, FOR EXAMPLES FROM FAMILY RIGHT?**

No. These are typically unavailable rights. The Procedure that disposes about them will have to be Judicial, with intervention of the Public Prosecution Service and, therefore, cannot be resolved in the Arbitral Court.

#### **15 - WHEN DOES AN ARBITRAL PROCEDURE DEPEND ON A TECHNICAL EXPERTISE FOR ITS CONCLUSION, HOW DOES ARBITRATION PROCEED?**

CAMINTER is made up of professionals from various specialties. If technical expertise is required, the parties shall be notified by the arbitrator of their use.

#### **16 - IS THE ARBITRATION PROCEDURE CONSTITUTIONAL?**

Yes. The Federal Supreme Court has already declared the Constitutionality of Law 9.307 of September 23, 1996.

#### **17 - Are commercial disputes between private companies eligible for arbitration?**



Yes. Such conflicts are Available Rights of persons able to compromise and, therefore, may be resolved by the Arbitral Tribunal.

#### **18 - WHAT DO YOU DO TO ADOPT ARBITRATION?**

In the contracts, the parties must provide that, if there is any dispute arising from their execution, it will necessarily be resolved by the Arbitral Court. This provision, called Commitment Clause, has binding force between the contractors, so that any dispute arising in the course of the execution of the contract will have to be resolved by the Arbitration Court and will be required to comply with the contract, and cannot bring legal action.

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#### **19 - What can be the writing of a commitment clause?**

The contracting parties elect by common agreement the CAMINTER, its arbitration rules and its arbitrators to settle future and eventual disputes through Arbitration in accordance with Federal Law 9307/96, arising from the interpretation or execution of this agreement, waiving any other however privileged it may be .. (\_\_\_\_\_) (\_\_\_\_\_) "Party visas"

"In the Adhesion contracts, the contracting parties shall bold this initial and initial it next to make it effective."



## **20 - WHO JUDGES, WHAT IS THE QUESTION: THE CAMINTER OR REFEREE?**

Who will judge will be an arbitrator, or several arbitrators, always in an odd number chosen by the parties. The arbitrator may be any person of legal age in the domain of his mental powers who has the confidence of the parties. It must also be independent and impartial, ie, it can have no interest in the outcome of the claim and cannot be bound by either party. CAMINTER's role is to monitor and regulate procedures and bring together the most qualified arbitrators in its staff so that interested parties can choose those on whom they can trust their cause.

## **21 - SHOULD THE ARBITRATION PROCEDURE BE FOLLOWED BY A LAWYER?**

Article 21, paragraph 3 of Law 9.307 / 96 provides: "The parties may postulate through Lawyers, always respecting the faculty of designating who represents or assists them in the Arbitral Procedure".

## **22 - IS THERE A CONSTITUTIONAL WARRANTY OF DUE LEGAL PROCEEDINGS?**

Yes. Article 21 paragraph 2 of the referred Law ensures: "The Principles of the Contradictory, Equality of the Parties, the Impartiality of the Arbitrator and his Free Agreement shall always be respected in the Arbitral Procedure".

## **23. HOW CAN I APPOINT A REFEREE OR COURT WITHOUT KNOWING THE PROCEDURE AND RULES FOR DISPUTE SETTLEMENT?**

A good choice is crucial. The success of the Arbitration will depend directly on the appointment of a serious entity that brings together Arbitrators who are technically capable of being well acquainted with the dispute, preferably a specialist in the matter under judgment. And if in doubt hire a lawyer you trust to advise you.

## **24. WHAT ARE THE ADVANTAGES OF DISPUTE RESOLUTION BY ARBITRATION?**

The advantages are remarkable.

- a) speed: the arbitration will settle the matter within the time limit set by the parties and, if nothing is provided for it, determines the law that will be in six (6) months;
- b) Confidentiality: Arbitration is confidential. Nothing dealt with may be disclosed to third parties. The parties and the arbitrators shall keep confidentiality; unlike, therefore, the judicial process that is public.
- c) specialty: the referee may be an expert in the field. Thus, expertise may be waived because the referee has the professional ability to understand and decide the issue.
- d) and the possibility of being able to follow the Procedure and speak directly with the Referee.



## **25. HOW DOES THE ARBITRAL PROCEDURE END?**

If the Procedure ends in the Conciliation phase, the Referee delivers a ruling on the agreement pursuant to Article 28 of the Law. If he goes to Arbitration, he ends with a decision.

## **26. WHAT TO DO IF THE LOST PARTY DOES NOT COMPLY WITH THE ARBITRAL SENTENCE?**

Arbitral Award is an enforceable title; if the unsuccessful party fails to comply, the judgment will be enforced, as it would be the case for a Judicial Award.

## **27. IS THE ARBITRAL JUDGMENT IRRECURABLE?**

Yes. According to Federal Law 9.307 / 96, the Arbitral Judge is a de facto and de jure Judge and the sentence he gives is not subject to approval or appeals to the Judiciary, that is, once there is an arbitration clause or arbitration commitment between the parties, the arbitral tribunal shall have sole jurisdiction to settle the dispute in question.

The Arbitral Judge is not just a conciliator, because in addition to approving a signed agreement, if this agreement is not possible, he has the power to sentence and his sentence is condemnatory. Thus, in the exercise of his function or by reason of it; once the arbitral judge has been established by the parties; he has both the powers and duties of the Touched Judge, even equating with the civil service for the fulfillment and obedience of the penal code with regard to obedience, contempt, bribery, etc.

## **28. WHO FIXES THE ARBITRAL PROCEDURE RULES?**

The rules are free and may be set by the parties, the Arbitral Entity, the Lawyers of the parties and the Arbitrators. However, there are limits that must be respected. These are understood as fundamental to a true legal process: the Contradictory Principle, Equality of the Parties, Impartiality and Free Arbitration of the Arbitrator. These principles, which must also be respected in the Judicial Process, if not observed, may cause the nullity of the Arbitral Award.

## **29. How Should Businesses Prepare for the Adoption of Arbitration?**

It is beyond doubt that the practice of Arbitration, after the issuance of Law 9.307 / 96, has been disclosed among us. Although Companies have Specialized Legal Assistance, it is important that senior employees know the Arbitration mechanisms: they may negotiate Arbitration Clauses in contracts; choose the Arbitral Organs; appoint the Referees; advise the Legal Assistants and represent the Company in the Arbitral Procedure. Hence the importance of being encouraged to attend Arbitration Training Courses.



### **30. BUT, IF ARBITRATION HAS SO MANY ADVANTAGES, WHAT IS THE REASON TO BE UNKNOWN AMONG US?**

Arbitration is not a new institute in Brazilian law. From the Imperial Constitution of 1824 until today has always been present in the legal system, with the denomination of arbitration or compromise. The low use of arbitration was mainly due to Legislative Deficiency. In the previous legal regime (1916 Civil Code and 1974 Civil Procedure Code), when the contractors provided for Arbitration in their contracts, this Clause was not binding, meaning that there was no obligation to resolve the issues arising through it, which encouraged the defaulter to refuse arbitration and go to the much longer common court.

### **31. HAS THIS TABLE CHANGED?**

With the issuance of Law 9.307 / 96, the Arbitration Clause inserted in the contracts has binding force between the parties and the Arbitral Judgment has the same effectiveness as the Judicial Judgment, not needing any type of homologation.

### **32. HOW TO PROCEED BEFORE A DISPUTE WHEN I HAVE A CONTRACT THAT PROVIDES FOR ARBITRATION?**

Verify the content of the arbitration clause and act as set forth therein. When it is an institutional arbitration should be followed what says the regulation, which establishes all steps of arbitration, from communication, appointment of arbitrators, form of defense, filing of documents, etc. When ad hoc arbitration, notify the other party that wishes to institute the arbitration and indicate the probable arbitrator.

### **33. IF I HAVE AN UNDERTAKING CLAUSE AND A CONFLICT ARISES AND THE OTHER CONTRACTING PARTY DOES NOT MEET THE ARBITRAL CALL, WHAT DO I DO?**

Your question is answered in Art. 22 paragraphs 2 of Law 9.307 / 96. In the event of unjustified disregard for the summons to give personal testimony, the Arbitrator or Arbitral Tribunal shall take into account the behavior of the defaulting party in giving its judgment; if the hearing is of witnesses, under the same circumstances, the CAMINTER Referee or President may request the Judicial Authority to conduct the surrendering witness, proving the existence of the Arbitration Convention.

### **34. IN CASE OF URGENCY CAN CAMINTER OR THE REFEREE DETERMINE COERCITIVE OR CAUTIONARY MEASURES?**

No. But you may request them from the Judicial Branch, as prescribed in art. 22, § 4 of the Arbitration Law.

Their answer is also found in Article 22, paragraph 4 of the same Law. "Except as provided in paragraph 2... if there is a need for coercive or precautionary



measures, the Arbitrators may request them from the Judicial Branch, which was originally competent. to judge the cause. ”

### **35. IS ARBITRATION USED IN ANY CASE AND FOR ANY PEOPLE?**

No. These must be available rights and people must have full capacity to contract, to have their rights (Article 1 of Law 9.307 / 96).

### **36. DOES THIS MEAN TO SAY THAT MINORS, FOR EXAMPLE, CANNOT USE ARBITRATION?**

Yes. Just like the incapable in general. There are legal provisions that protect the interests of these people, as the law assumes that they are unable to dispose of their interests without their assistance or representation. Arbitration can only be agreed upon by larger and more capable people.

### **37. WHAT ARE THE ADVANTAGES OF SUBMITTING A CONFLICT OF ARBITRATION?**

Given the simplicity of the procedure, the advantages are speed, confidentiality, low cost, and the parties can personally follow the progress of the process.

### **38. THE LAWYER WAS PREPARED TO DEAL, AND ARBITRATION IS AN INSTITUTE FOR WILL AGREEMENT, ARE THEY NOT AGAINST THE ARBITRAL INSTITUTION?**

No, the class of lawyers is made up of professionals of the highest technical and cultural level, sensitive to the problem of society. How can a lawyer stand against a social pacification institute as important as Arbitration? This is a universal procedure of recognized public utility; These are changes inherent in globalization and the rule of democratic law. It is an irreversible world trend. Brazil was widely criticized abroad for not adhering to the International Arbitration Conventions. Any arbitration case may have counsel follow-up.

### **39. CAN ARBITRATION BE USED EVEN WHEN THERE IS NO CONTRACTUAL CLAUSE PROVIDING FOR IT?**

Yes, the law allows that even without a contractual clause providing for the use of arbitration, it can be used. To this end, after the dispute has arisen, the parties must agree and sign a private document in the presence of two witnesses or by public deed. The legal name of this provision is arbitration.

### **40. WHAT IS THE ARBITRATION CONVENTION?**

It is the way in which arbitration can be instituted. The Arbitration Convention may take the form of an arbitration clause or arbitration agreement, as explained above.





#### **41. WHAT IS INSTITUTIONAL ARBITRATION?**

It is one of the ways to operationalize arbitration. When in a contract the arbitration clause refers to an Arbitral Institution to administer the arbitration proceeding. It is also called administered arbitration. This Institution has a Regulation that determines how the Arbitration should proceed.

#### **42. WHAT IS AD HOC ARBITRATION?**

This is the other way to practice arbitration. In this case, the parties shall determine the rules and manner in which the arbitration proceedings will be conducted in that particular case. The arbitral proceeding shall not follow the rules of an Arbitral Institution, but the provisions laid down by the parties, or in the absence of any disposition, the proceeding shall be that determined by the Referee. The Latin phrase “ad hoc” means “for this”, “for a particular act”.

#### **43. ARE THERE PARAMETERS SET IN THE LAW FOR ARBITRAL PROCEDURE?**

Yes. In both institutional and ad hoc arbitration, legal principles must be observed that cannot be dismissed. The law determines that the parties will be treated equally, and will have the right to speak up to defend themselves. The arbitrator shall be independent, impartial and substantiate his decision.

#### **44. WHAT IS ARBITRATION OF LAW?**

Arbitration of law is one in which arbitrators will decide the dispute based on the rules of law.

#### **45. WHAT IS EQUITY ARBITRATION?**

Equity arbitration is where the arbitrator decides the dispute outside the rules of law, in accordance with his or her real knowledge and understanding. You may reduce the effects of the law and decide at your own discretion. In order for the arbitrator to decide on equity, the parties must, prior and expressly authorize him.

#### **46. HOW TO APPOINT A REFEREE?**

The arbitrator to be appointed to resolve a dispute shall:

- a) being independent, for example, cannot be employed by one of the parties;
- b) be impartial, that is, cannot have an interest in the result of the demand;



c) must be 21 years old, technically prepared and have perfect command of the conflict.

The referee to be appointed may:

a) being an expert in the disputed matter, for example, the issue involves a problem in property, the arbitrator may be an engineer, a geologist or another qualified professional.

#### **47. WHO PAYS ARBITRATION EXPENDITURE?**

The arbitration is funded by the parties, which may dispose of it in advance. They may provide that these shall be halved or the referee shall decide.

#### **48. ARE THE ARBITRATOR'S FEES PAID BY THE PARTIES?**

Yes. In ad hoc arbitration, the parties must first provide for it. In institutional arbitration the Rules of Procedure establish how to proceed.

#### **49. CAN ONE PARTY REFUSE TO INSTITUTE ARBITRATION WHEN THE CONTRACT HAS AN UNDERTAKING CLAUSE?**

No. The agreed arbitration clause is binding and binding. The issue cannot be brought to the judiciary.

#### **50. Should the REFEREE RESPECT A CODE OF ETHICS? WHAT CONTROL MECHANISMS APPLY TO ARBITRAL ACTIVITY?**

Yes. The referee must be independent, impartial, competent, diligent and discreet. The law states that the arbitrator equates with the civil servant for criminal purposes, that is, if the arbitrator for example is bribed to rule the matter in favor of a party, will be prosecuted criminally and the arbitral award will be overturned. The arbitrator may also be held civilly liable, for example, when there was a time limit to give the award and the arbitrator does not decide within the given time frame, when he could do so.

#### **51. What is the legal remedy that fits against an arbitration? What are their effects?**

The law states that the arbitral award may be annulled when:

- a) who is an arbitrator was prevented;
- b) when the judgment is not substantiated;
- c) when not deciding the whole controversy;
- d) when it has been proven to have been given by prevarication, concussion or passive corruption;
- e) when it did not observe the principles of equality of the parties and the right of defense;



f) when it is delivered after the deadline.

In some situations the Judge may order the arbitrator to issue a new arbitral award.

If you have further questions, please visit a Prosecutor for further clarification, or contact us.

## **52. WHAT IS THE DEADLINE TO TAKE OFF THE ARBITRAL JUDGMENT?**

Ninety days.

