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03



# THE FUTURE OF INVESTMENT DISPUTE SETTLEMENT

by Bob Juchter van Bergen Quast,

Entrepreneurs engaging in international investments face several issues when they are accused of a breach of contract. When the investment agreement does not provide solid provisions for dispute settlement, endless legal discussions and expensive court cases in unfamiliar jurisdictions can be the result. This article provides simple solutions for both investor and beneficiary to avoid such issues.

The solution to avoiding<sup>1</sup> endless legal battles is to insert an arbitration clause in the investment agreement (out of court legislation). Arbitration has numerous advantages.

- 1) Unlike in court, parties can select an arbitrator with an appropriate degree of practical experience. For example, a Court of Arbitration has a list of arbitrators who are experts in the field of digital commerce.
- 2) Arbitration is faster than litigation in court, and a time limit can be placed on the length of the process.
- 3) Arbitration is cheaper and more flexible, more commercial and less formal than court.
- 4) Unlike court rulings, arbitration proceedings and arbitral awards are confidential.
- 5) Unlike in court, there are very limited avenues for appeal of an arbitral award, which limits the duration of the dispute and any associated liability.
- 6) Due to the provisions of the New York Convention 1958, arbitral awards are far easier to enforce in other nations than court judgments. From an international perspective, there are several courts of arbitration that offer an effective way to solve investment disputes. Below are examples (in alphabetical order).

## Astana International Financial Court (AIFC Court)

The AIFC Court, in Kazakhstan, provides a common law court system that operates to the highest international standards to resolve civil and commercial disputes in the Astana International Financial Centre. It adjudicates exclusively all claims arising out of the AIFC and its operations and other claims in which all parties to the dispute agree in writing to the jurisdiction of the AIFC Court.

The AIFC Court has its own court of final appeal, its own procedural rules, and a special fast track for small claims. Its Chief Justice and judges are among the most experienced and distinguished judges from the common law world, with global reputations for independence, impartiality, integrity, unconditional application of the rule of law, and incorruptibility. The judges, procedures, practices and standards at the AIFC Court will be familiar to businesses currently operating in major financial centres around the world. Website: <http://aifc-court.kz>

## Dubai International Financial Courts (DIFC Courts)

The laws establishing the DIFC Courts were designed to ensure the highest international standards of legal procedure, thus ensuring that the DIFC Courts provide the certainty, flexibility and efficiency expected by the global institutions operating in, with and from Dubai and the UAE. The laws enacted provide for a court system capable of resolving all civil and commercial disputes, ranging from sophisticated, international financial transactions to debt collection and employment disputes.

The DIFC Courts deal exclusively with all cases and claims arising out of the DIFC and its operations and any other claims where all parties agree in writing to

use the DIFC Courts. The DIFC Courts carry out their functions in an independent manner, in accordance with the provisions of the DIFC laws and regulations. Website: <https://www.difccourts.ae>

## Court of Arbitration of the European Chamber of Digital Commerce (ECDC Court)

As an activity of its parent organization, the Swiss Chamber of Commerce in The Netherlands, founded in 1933, the Court of Arbitration of the European Chamber of Digital Commerce plays a crucial role in today's digital world. Issues specific to digital technology include fintech, blockchain, cybersecurity, digital currencies, and intellectual property. Fairness has always been a business tradition observed in Europe, making the region so prominent as an arbitration location. The Court of Arbitration is conveniently located at Schiphol International Airport, in The Netherlands.

The Court of Arbitration applies the UNCITRAL Arbitration Rules of the United Nations Commission on International Trade Law, which meet international legal standards. The rules are concise and easy to understand, comply with current national and international legal developments, and are published in several languages.

Unless parties do not agree otherwise, the Court will apply the neutral UNIDROIT Principles of International Commercial Contracts to judge the dispute. Website: <https://european-chamber-of-digital-commerce.com>

## London Court of International Arbitration (LCIA)

The LCIA is one of the world's leading international institutions for commercial dispute resolution. The LCIA provides efficient, flexible and impartial administration of arbitration and other ADR proceedings, regardless of location, and under any system of law. The international nature of the LCIA's services is reflected in the fact that typically over 80% of parties in pending LCIA cases are not of English nationality.

The LCIA has access to the most eminent and

experienced arbitrators, mediators and experts from many jurisdictions with the widest range of expertise. The LCIA's dispute resolution services are available to all contracting parties without any membership requirements. Website: <https://www.lcia.org>

## Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) has developed into one of the world's leading forums for dispute resolution. The SCC was established in 1917 and is part of, but independent from, the Stockholm Chamber of Commerce. The SCC consists of a Board and a Secretariat and provides efficient dispute resolution services for both Swedish and international parties. The SCC was recognized in the 1970s by the United States and Soviet Union as a neutral centre for the resolution of East-West trade disputes. Also, China recognized the SCC as a forum for resolving international disputes around the same time. The SCC has since expanded its services in international commercial arbitration and emerged as one of the most important and frequently used arbitration institutions worldwide.

Website: <https://sccinstitute.com>

## Conclusions

When you want to avoid legal dramas unfolding from an investment agreement, check the websites above and copy the relevant clause into the agreement before signing. Another option is to persuade the counterparty to allow an already arisen case to be settled by one of these arbitration institutions.

About the author: Bob Juchter van Bergen Quast, LL.M., F.S.S., is the President of the Court of Arbitration of the European Chamber of Digital Commerce.

Juchter van Bergen Quast has the right of audience before the AIFC. He is Chief Executive Officer of the Swiss Chamber of Commerce in The Netherlands and the European Chamber of Digital Commerce.

[www.Verifin.eu](http://www.Verifin.eu)