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## Resolution of Conflicts using Arbitration and Conciliation Clauses

**It is a common habit of Finnish enterprises to agree that any disputes be resolved by arbitration courts instead of the regular national courts. In business-to-business relations, there is in fact no reasonable alternative to arbitration, especially where disputes relating to international transactions are concerned. Only by the use of arbitration can the parties ensure that their dispute is dealt with by persons suitably qualified to master the complexities of the subject-matter at hand, that a decision will be made within a reasonable timescale, and that business secrets are kept out of the public domain.**

by  
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In Finland, the use of arbitration is more common than in many other countries. In regular proceedings before the national courts, it may easily take several years for final judgment to be given. One of the main reasons for such delay is that the procedural code used by the courts is essentially the same for civil and for criminal proceedings, and was designed with the needs of unrepresented as well as represented litigants in mind.

Another factor is the lack of court organisation of a kind that would make it easier for judges to accrue specialised expertise in the area of business law. A judge at a regular court is concerned with criminal proceedings as well as with all kinds of civil litigation and non-contentious civil cases. In business contracts, Finnish enterprises agree on arbitration clauses almost without exception. The Finnish market has obviously come to the conclusion that arbitration courts offer the more beneficial solution as compared to the national courts, despite the possibly higher costs. The same considerations are usually valid

also for foreign enterprises doing business in Finland.

### 1. Arbitration agreements

Unlike the rulings of national courts, the awards of an arbitration court are generally final, i.e. an appeal is not possible. This has decisive effect on the duration of the proceedings as well as on the overall costs. While arbitration proceedings are usually more expensive than a single instance before a national court, the parties to the arbitration avoid the additional costs and delays arising from repeated appeals against judgments.

Arbitration clauses usually submit the administration of the procedure to the arbitration rules published for this purpose by arbitration organisations of the local chambers of commerce, the International Chamber of Commerce (ICC) in Paris, or other similar institutions that have been established by the business associations of certain business sectors; for example, the construction sector.

The central task of the institutions is the appointment of an impartial arbitrator. The institutions therefore observe the markets in order to be informed as to which experts are appropriately qualified for which type of arbitration. Since the fees paid to the arbitrators are based on market prices, it is usually possible to find a suitably qualified expert to take the role of arbitrator.

The fact that parties engaged in arbitration do not need to worry about the prying eyes of their competitors may be regarded as a particular bonus. Arbitration proceedings are confidential – as opposed to regular civil proceedings, which are entirely public under Finnish law.

### 2. Conciliation clauses

Conciliation clauses are sometimes used in conjunction with arbitration clauses. Conciliation proceedings are similar to arbitration proceedings, but do not result in an enforceable award being made. Instead, the conciliator makes a recommendation,



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and it is left to the parties to decide whether to comply with this recommendation. The transition between conciliation and arbitration proceedings may, however, be fluid. A conciliation award cannot be enforced, but the parties may confer binding force on the award by agreement. One possible variation is, for example, a preliminary obligation of the parties to comply with the award until it has been reviewed by an arbitration court.

Whether and to what extent conciliation is useful depends on the circumstances of each individual case. If both contract parties have in-depth knowledge of their industry and are in receipt of advice from qualified advisers, a conciliator may not be able to contribute anything useful in order to achieve a compromise. Conversely, in various situations the persuasiveness of a neutral conciliator can help achieve resolution of the dispute. Of course, for this purpose the conciliator's expertise must be obvious beyond any shadow of doubt. It is reasonable to ascertain whether such conciliators are available before agreeing on a conciliation clause.

### **3. Permanent dispute resolution bodies**

In the context of longer lasting co-operations, for example in a joint venture between two partners or in the relation between the contractor and the client in an industrial plant construction project, it is often necessary to make provision in order to prevent disputes from endangering the progress and success of the project. In these cases, it may be

reasonable to install a permanent dispute resolution body with the purpose of achieving preliminary solutions to disputed questions within a very short time frame.

The main advantage of a permanent dispute resolution body is that it is established at the time the contract is made, or at least shortly after that. The conciliators are constantly updated on the progress of the project and are therefore able to form a competent expert opinion quickly if conflict arises. It is useful for the parties to agree that the conciliator's decision is binding at least preliminarily, i.e. up to the point when the decision may possibly be varied by the decision of an arbitration court that would have to be sought within a short time after the decision of the conciliator. In the construction industry, established examples of such procedures include Consulting Engineer according to the FIDIC terms, or, more generally, the ICC rules of 1.9.2004 relating to the Dispute Review Board.