

## Arbitration Corporate Peacemakers

Breaches of contract, payment defaults and intellectual property theft – businesses are increasingly reverting to alternative methods for the resolution of these types of commercial conflicts, and Malta is positioning itself in the multi-billion dollar arbitration market. Arbitration is fast establishing itself on the island as a welcome alternative to traditional litigation, enabling disputes to be resolved in a more informal, yet legally sound and confidential, environment. Malta is being seen as an emerging arbitral venue due to its geographically convenient location, its sophisticated physical and political infrastructure, as well as its legal framework that is on par with the best international practices and meets the needs of the global arbitration community.

### From the Cold War to Global Corporations

Despite being a small island in the Mediterranean Sea, Malta has a history of being the venue of international conflict resolution: the country hosted the famous Bush-Gorbachev summit in 1989 that ended the Cold War. Today, global corporations are turning to the island to solve commercial disputes of all kinds within the energy, construction, infrastructure, trade and commodities sectors. It also has expertise in shipping and insurance arbitrations, while disputes between investors and the government of countries in which they invest can also be solved in Malta.

#### INSIGHT

##### Turning the Tide

Malta's neutrality and peacefulness helped convince US President George H. Bush and Soviet leader Mikhail Gorbachev to attend a superpower summit on board a cruise ship, anchored off the coast of Marsaxlokk Harbour. This summit, in December 1989, effectively ended the Cold War.

# 150

countries have signed the New York Convention which enforces an arbitral award across borders

It is unfortunate, yet true, that commercial disputes have become an inevitable feature of the business landscape in recent years. Nevertheless, the silver lining of this particular black cloud is that this trend has given birth to a thriving industry of international arbitration. Arbitration is a form of voluntary dispute resolution by a private 'judge' instead of a state court. An arbitrator, who is a neutral third party, renders a final and binding award – a method that is especially useful in international commercial transactions where parties are often unfamiliar with foreign legal systems. In arbitration, both parties control the process from the outset, leading to significant cost-savings compared to litigation; they themselves mutually choose the arbitrator, who often has special expertise in the subject matter, and decide on issues such as the venue and the language of the proceedings.

Located strategically between Europe and North Africa and within easy reach of the Middle East, Malta offers companies from the region the right environment to solve commercial disputes. In 1996 the island implemented the Arbitration Act, which is based on the Model Law on International Commercial Arbitration set out by the United Nations Commission on International Trade Law (UNCITRAL). This created a legal framework which gave parties all the necessary flexibility for arbitral proceedings, acting as a precursor for the establishment of the Malta Arbitration Centre (MAC) which started its operations in March 2000. Today, all arbitrations in Malta have to be carried out under the auspices of the MAC.

### Wealth of Experience

The MAC manages over 450 arbitrations a year, a fact that clearly demonstrates that the local arbitrators have become very experienced in this field. The majority of disputes being referred to the MAC are of a domestic nature so far. This is due to the introduction of mandatory arbitrations in 2004, where certain disputes, such as motor insurance claims, are by law referred to arbitration. Since the introduction of mandatory arbitrations, over 3,300 cases have been referred to the MAC, of which 2,600 have already been settled. The MAC has also provided for around 300 commercial disputes between local companies. Many firms repeatedly use the Centre's services and appreciate the confidentiality of the proceedings. The appeal of Malta as a destination for international arbitrations is also steadily increasing.

The high percentage of local arbitration is unusual when compared to other countries, since the courts traditionally

remain the arena of choice for the vast majority of domestic commercial disputes. This shows, however, that arbitration has become a true alternative to litigation in Malta and, as a useful by-product, has given the country's arbitrators valuable experience and a thorough understanding of the arbitration process in general.

### Informal Proceedings

Once the case is filed with the MAC, a consultation between the parties is held in order to deal with all preliminary matters, including the appointment of the arbitral tribunal to hear and decide the case, thus ensuring that the arbitral proceedings commence right away. The parties are free to agree whether one arbitrator or a panel of three arbitrators should be appointed. The MAC will only intervene should the parties fail to agree on an arbitrator.

One of the key advantages of arbitration is that the parties can appoint an arbitrator with knowledge and understanding of the subject matter of the dispute. The MAC has a number of Panels of Arbitrators with expertise on offer, ranging from specialist insurance, construction and taxation professionals to experts in the maritime, finance and accounting sector. Alternatively, parties can also engage a foreign arbitrator who can also be chosen from the Panel of International Arbitrators maintained by the MAC.

The arbitration hearings themselves are much less formal than court proceedings. The time, date, deadlines and location are all selected at the behest of the parties themselves, and it is their decision as to whether lawyers or other experts are to be involved. Awards delivered are final and binding and, once registered with the MAC, they constitute an executive title and can thus be enforced as court judgements. An award can be appealed in a court of law on a point of law, which appeal will then render the award public. This right of appeal, however, can be excluded by agreement between the parties.

### Significant Advantages

Although the exact cost of arbitration depends on the duration of the proceedings, the number of witnesses and the expert analysis required, it is still usually cheaper than litigation. The parties agree a fee directly with the arbitral tribunal, making costs more calculable. Registry fees are lower in Malta than in other arbitration centres, such as London or Paris, which makes the country an ideal location for arbitration of trans-border contracts whose parties wish to avoid the risk of having to litigate in the other party's courts. In addi-



■ Malta is ready to become a popular location for the resolution of commercial conflicts, as arbitration is steadily gaining ground as an alternative to court litigation.

tion, the entire process is underpinned by an efficient infrastructure which is comprised of educated English-speaking professionals who have experience in dealing with international businesses.

The law in Malta is strongly pro-arbitration. To ensure the enforceability of awards, the Malta Arbitration Act incorporates the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which has been signed by some 150 states, the 1923 Geneva Protocol on Arbitration Clauses, the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. These international agreements help the successful party in arbitration to enforce the award in the country in which the losing party has assets. A handful of international arbitration awards have already been enforced in Maltese courts.

### Poised for Growth

While the MAC has been seen primarily as a domestic arbitration centre, progress has been made in recent years to enhance confidence in Malta as an international arbitration hub. However, the Maltese government believes that much more can be done to promote Malta, in particular as a location for arbitration of disputes arising in the emerging markets of North Africa. The MAC is keen to expand its activities and is also pointing out the benefits of arbitration to a wider audience, including eGaming operators and agribusinesses.

Arbitration in general is expected to grow. One in four companies are said to have experienced commercial disputes in the past two years and, as more small and medium-sized businesses are expanding their cross-border transactions, the number of disputes resulting from this activity is likely to increase. One of the long-term goals of the MAC is to formulate a separate set of rules for international arbitrations to ensure that Malta's framework reflects the very best of modern practice in international arbitration.

Arbitration is fast becoming a popular choice for international businesses because it remains as legally binding as court action but can be conducted in a more flexible, affordable and timely manner. Given the growing interest in its myriad advantages, a central Mediterranean location such as Malta is sure to see an increase in the number, size and complexity of international arbitration cases handled over the coming years. ■