


Business Law – disputes

International private law – dispute settlement

General ways


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|--------------|----------------------|
| Negotiation | mutual |
| Mediation | mediated |
| Conciliation | |
| Arbitration | authoritative |
| Litigation | |



Business Law – International law

International private law – dispute settlement - arbitration

- property disputes (any kind)
- fast
- informal
- exclusion of public
- arbitrary clause / agreement – forum non conveniens objection
- 1 instance
- arbitrary award reviewable (very limited)
- recognition and enforcement – New York Convention




Business Law – International law

International private law – dispute settlement - arbitration

ICC model clause:
 "All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules."

proceeding stipulations (place, forms of deliveries, ...)
 specification of the arbiter
 documentary / oral proceedings
 possibility of appeal
 law applicable (beside choice of law clause) – amiable compositeur, !equity!



Business Law – International law

International private law – dispute settlement - litigation

procedural law – lex fori

jurisdiction – procedural norms, treaties, EC law (free movement of decisions)

44/2001 - civil disputes, recognition and enforcement

1347/2000 - marriage, parental disputes

1346/2000 - insolvency proceedings

1206/2000 – evidence in civil and commercial matters

734/2002 – general framework for cooperation in civil matters

(council decision 2001/470 – European judicial network)



Business Law – International law

International private law – dispute settlement - litigation

EC – recognition and enforcement of decisions – basic principles

44/2001, Article 33


1. A judgment given in a Member State shall be recognised in the other Member States **without any special procedure being required.**

2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 38 (1)

A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, **it has been declared enforceable** there.



Business Law – International law

International private law – dispute settlement – litigation - EC

Article 34

A judgment **shall not be** recognised:


1. if such recognition is manifestly contrary to **public policy** in the Member State in which recognition is sought;
2. where it was given in **default of appearance**, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. if it is irreconcilable with a **judgment** given in a dispute between the same parties in the Member State in which recognition is sought;
4. if it is irreconcilable with an **earlier judgment** given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Article 35 (3)

Subject to the paragraph 1, the **jurisdiction** of the court of the Member State of origin **may not be reviewed.** The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.

Article 36

Under **no circumstances** may a foreign judgment be reviewed as to its **substance.**



Business Law – International law

International private law – dispute settlement - litigation

EC – recognition and enforcement of decisions – basic principles

Article 41
The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 **without any review under Articles 34 and 35**. The party against whom enforcement is sought **shall not** at this stage of the proceedings be entitled to **make any submissions on the application**.

Article 56
No legalisation or other similar formality shall be required in respect of the documents referred to in Article 53 or Article 55(2), or in respect of a document appointing a representative ad litem.

translated title
declaration of enforceability (standard)

