

Arbitrability

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Arbitrability

- Definition:
 - “The characteristic of being arbitrable; the ability to be arbitrated.”

Subjective Arbitrability

- The term “subjective arbitrability” refers to the competence of the parties that enter into an agreement to arbitrate.
- Under some jurisdictions, some parties cannot enter into the arbitration agreement.
- The state and its bodies are usually barred from entering such agreements
 - Notable exception: In the investment arbitration, the state is always the respondent.

Objective arbitrability

- The term “objective arbitrability” refers to the types of disputes that can be resolved through the arbitration proceeding
- Significant distinctions between the countries
- Usually non-arbitrable:
 - Affecting third parties
 - Regarding the status of persons
 - Family law
 - Insolvency, bankruptcy
- The selected fields are non-arbitrable because of a protection of the public order

Arbitrability - why is it important to examine it?

- Non-arbitrable disputes cannot be resolved by arbitration, belong exclusively to the courts

Arbitrability - why is it important to examine it?

- National courts can be less impartial than arbitral tribunals.
- National courts tend to protect public interest – family law, criminal law, even protection of national companies
- Litigation is more expensive and time consuming..
- More pros and cons mentioned earlier

Problems with non-arbitrability

- One party may allege that arbitral tribunal has no jurisdiction
- One party may apply to courts for injunction that subject is not capable of arbitration
- One party may commence legal proceedings at the court

Problems with arbitrability

- Court must examine, whether the arbitration clause is valid, null, void, inoperative or incapable of being performed
- Presumption in favour of the validity of arbitration agreements
- Not valid AC → Award of arbitral tribunal may be unenforceable

Arbitrability in different countries

- Czech republic – zákon o rozhodčím řízení – procedural law
- Slovakia – zákon o rozhodcovskom konaní – procedural law
- Germany – Zivilprozessordnung – procedural law
- France – Code civile – substantive law
- UK – Arbitration act – substantive law
- USA – United states federal arbitration act – substantive law