

TABLE OF CONTENTS

The Authors	IX
Preface	XI

CHAPTER 1

ARBITRATION IN THE SYSTEM OF JUSTICE. GENERAL FEATURES AND SOURCES

1. Definition of Arbitration: Public Service v. Private Service.....	1
2. Debate on the Nature of Arbitration: Jurisdictional Theory v. Contractual Theory.....	2
3. Arbitration and Mediation. Arbitration and <i>Arbitraggio</i>	4
4. Contractual Arbitration (<i>Arbitrato irrituale</i>).....	5
5. Sources of Arbitration.....	7
6. Institutional or Administered Arbitration.....	9
7. International Arbitration.....	11
8. Conclusions.....	13

CHAPTER 2

ARBITRAL CONVENTION. ARBITRABILITY

1. Non-arbitrable Disputes.....	15
2. Arbitrable Disputes Requiring Special Arbitration Rules.....	16
3. Arbitration Agreement: General Remarks.....	23
4. Subject Matter of the Arbitral Convention; Multi-contract Arbitration between the Same Parties.....	25
5. Arbitration in Company Matters.....	27
6. Consent.....	29
7. Written Form.....	31

8.	Interpretation and Duration of the Arbitral Convention.....	33
9.	Optional Content of the Arbitration Agreement.....	34
10.	Conclusions.....	34

CHAPTER 3

ARBITRAL TRIBUNAL

1.	Autonomy of the Parties in the Arbitrators' Choice..	37
2.	Appointment of the Arbitrators.	38
3.	Independence and the Impartiality of Arbitrators.....	39
4.	Preventive Measures to Ensure Impartiality.....	42
5.	Subsequent Measures to Ensure Impartiality.....	44
6.	Liability of the Arbitrator.....	49
7.	Replacement of an Arbitrator.....	49
8.	Conclusions.....	50

CHAPTER 4

ARBITRAL PROCEEDINGS

1.	Determination of the Rules Applicable of the Arbitral Procedure in Domestic Arbitration.....	53
2.	Determination of the Rules Applicable of the Arbitral Procedure in International Arbitration.....	56
3.	Seat of Arbitration.....	58
4.	Counsel to the Parties.....	59
5.	Language of the Proceedings.....	59
6.	Conduct of the Arbitral Procedure: Major Procedural Steps.....	60
7.	Particular Procedural Problems: Preliminary Issues and Set-off. Stay of the Proceedings.....	64
8.	Law Applicable to the Merits of the Disputes. Arbitration <i>ex aequo et bono</i>	67
9.	Interim Relief Measures.....	70
10.	Evidence: General Principles and the Taking of Evidence by the Arbitral Tribunal.....	72
11.	Forms of Evidence: Documents, Witnesses and other Means of Evidence.....	77
	11.1. Documentary evidence.....	77
	11.2. Witness testimony.....	79
	11.3. Other means of evidence.....	80
	11.3.1. Judicial admission.....	81
	11.3.2. Oath.....	81

12. Expert Opinion.....	82
13. Costs of the Proceedings.....	83
14. Conclusions.....	85

CHAPTER 5

THIRD PARTIES IN ARBITRATION

1. Introduction: Identification of the Parties.....	87
2. Extension of the Arbitration Agreement to a Third Party.....	89
3. Parties to the Arbitral Convention in Intra-Company Matters.....	94
4. Selection of Arbitrators in a Multi-Party Arbitration.....	95
5. Third Party Intervention in Arbitral Proceedings.....	96
6. <i>Ad Hoc</i> Provisions for Arbitration in Company Matters.....	99
7. Third Party Challenge of Arbitral Awards.....	101
8. Conclusions.....	103

CHAPTER 6

ARBITRATION AND THE JUDGE

1. Introduction to the Interaction between Arbitrator and Judge.....	105
2. <i>Exceptio compromissi</i> before the Court.....	106
3. Exception of Foreign Arbitration before the Court.....	110
4. Review of the Award and of the State Judgment.....	112
5. The <i>Lis Pendens</i> between Arbitrator and Judge.....	114
6. The <i>Translatio Iudicii</i> between Arbitrator and Judge.....	119
7. Conclusions.....	121

CHAPTER 7

ARBITRAL AWARD AND ITS REVIEW

1. The Nature of Arbitral Awards.....	123
2. Deliberation and Contents of Arbitral Award.....	125
3. Partial and Interim Awards.....	128
4. Communication and enforcement of Arbitral Award.....	130
5. Correction and Interpretation of Arbitral Award.....	131
6. Judicial Control of the Award: Types of Remedies.....	132

7. Appeal for Nullity of Arbitral Award: Grounds.....	135
8. Appeal for Nullity of Arbitral Award: Proceedings..	139
9. Conclusions.....	140

CHAPTER 8

RECOGNITION AND ENFORCEMENT OF A FOREIGN AWARD

1. Circulation of a Foreign Award.....	143
2. Notion of Foreign Award.....	145
3. Grounds for Refusal or Recognition and Enforcement in Italy.....	148
4. Formalities for Obtaining Recognition and Enforcement.....	152
5. Conclusions.....	155

ANNEXES

The Italian Code of Civil Procedure, Book IV, Title VIII – On Arbitration.....	159
Legislative Decree of 17 January 2003, No. 5, as Amended by Legislative Decree of 6 February 2004, No 37. Title V – On Arbitration.....	179