

ABSTRACT

This study focuses on the arbitrability of the claims regarding the deliberations of a company assembly.

In the first chapter the theories described in the literature and in the courts practice are analysed. Such analysis demonstrates these theories cannot be fully accepted. Despite the different solutions, they present the same fault: the arbitrability depends on elements different from the nature of the subject matter (according to art. 34 d. lgs. 5/2003 and art. 806 c.p.c.).

Therefore, the second chapter investigates the definition of the legal parameter of arbitrability (“diritto disponibile”). This analysis demonstrates that a subject matter is capable of settlement by arbitration whenever the parties are able to regulate the matter on which the dispute has arisen, autonomously.

The third chapter discusses the application of the above definition to the claims regarding the deliberations of a company assembly. This analysis focuses on the peculiar structure of the relationships in a company and on the power of the assembly. The demonstration that the power of the assembly is similar to the power that people have to regulate their own affairs autonomously offers the solution of the issue. Such claims can be submitted to arbitration whenever the assembly can regulate the subject matter by deliberation.

Finally, this solution is confirmed by the comparison with the literature and the courts practice in Germany.