

Abstract.

The study engages in the discussion about the automatic transfer of arbitration clause after the transfer of the main contract.

The subject gives rise to significant theoretical and practical questions that, in spite of the case law and scholarly discourse, still remain largely undetermined.

The aim of the examination is to reveal whether or not the transferee needs to have specifically consented to the arbitration clause contained in the main contract.

In short, the work is organized in three main sections.

In the first section, which is divided in two parts, first, an introductory reconstruction of the transfer contract pattern is presented, in accordance with the articles 1406 et seq. of the Italian Civil Code; second, the analysis proceeds with a general introduction of the arbitration.

Two different aspects of the arbitration are examined in particular: first of all, the role of private justice is highlighted, as it enhances the control of the individuals about civil relationships; second of all, the issue of the clause's principle of separability is analyzed.

In the second, and most important, section, the aim of examination is to justify the bounding of the transferee to the arbitration clause, by finding the consent in the contract transfer pattern, in accordance with the articles 1406 et seq. of the Italian Civil Code and according with the argument of the function of the arbitration clause.

Indeed, it is assumed that the transferee substitutes the transferor and assumes its legal position, all together and in exactly same terms. Thus, in case where this terms include an arbitration clause, the transferee will be bound by it as well.

To achieve that solution, it is also specified how the autonomy of the clause should be interpreted, in order to combine its autonomy with the assertion of its transfer along with the main contract.

In addition, the assertion is supported by the finding that the need for circulation of the contract is increasingly felt, especially in commercial practice. Therefore, denying the

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joint transfer of the clause, as a result of the transfer of the main contract, would discourage, or at least hinder, the contracts circulation, especially for those contracts which have transnational elements.

In the final section, divided in two part as well, the transfer of the arbitration clause is analyzed in the “contractual connection” and in two particular contracts (transazione e negozio di accertamento) which present commonality with the transfer of the contract pattern.

The examination of such cases is functional to enhance the results achieved on the main theme of the study.

The “contractual connection” is, in fact, related to the topic of the transfer of the contract, as well as the other two contracts analyzed (transazione e negozio di accertamento).

In the end, the result of the comparison is to emphasize the peculiarities of the transfer of the contract and, in conclusion, to comfort the argued solutions suggested on the main subject.