

ABSTRACT

This paper is about the new court means of settling disputes out in the banking and finance fields constituted by the Banking and Financial Arbitration , to resolve disputes in the banking area, and the conciliation and arbitration system instituted by Consob, to resolve disputes in the financial sector.

In the first chapter has briefly addressed the problems of the financial and banking sector, the proposed solutions on a procedural level, and the influence of Community law. Based on the premise that, at European level, does not use the distinction between consumer and investor (that is essentially as a kind of general consumer because of the fact that he is the final recipient of a standardized product even financial), it has been described in the evolution of the discipline consumer affairs field, highlighting the most indicative interventions. Therefore it was examined the evolution of ADRs specifically provided for in the Italian banking and financial sector through a process that develops in three stages (Ombudsman-Jury banking; litigation relating to the execution of cross-border bank transfers and procedure for the amicable settlement of disputes in the corporate sector, financial and credit; and finally, the establishment of the Chamber of Conciliation and Arbitration Arbitrator with Consob and Bank Financial).

This analysis focused on the identification of the peculiarities of structure and procedure of the Financial Bank Arbitration (established pursuant to art. 29 In 262/2005) and administered arbitration by the Chamber of Conciliation and Arbitration with Consob (established by art. 27 L. 262/2005) in order to verify the legitimacy and the problems of interpretation in the light of the fundamental principles that the mechanisms for dispute resolution must respect the importance and implications of new models in terms of achieving a high level of justice.

The Banking and Financial Arbitrator, described in Chapter II - established by art. 27 l. 262/2005 by which it was introduced in Title VI, dedicated to the transparency of contractual conditions of the Consolidated Act on Banking (Legislative Decree

September 1, 1993 No 385) art. 128-bis, which has been subsequently implemented by Resolution CICR No 275 of the 29th July 2008 and by press release from the Bank of Italy of the 18th of June, 2009 – it has been examined in its fundamental characteristics. The attention has focused on the nature and effects of the accession of the intermediary to the new body, the limits and the foundations of cognition of the ABF with specific reference to the doubts of constitutionality for breach of the principle of hierarchy of sources. Then it was examined in detail the structure and functions of this new institution focusing on the relationship between the new organism and the Bank of Italy. With regard to the strictly procedural aspects Special attention was paid to the exclusive legitimacy of the client to sue the Bank Financial Arbitrate. Finally, the analysis more involved the nature of the decision. Excluded that such an act could qualify as administrative action or decision it has been concluded to the nature of pro-veritate opinion of the decision adopted at the end of the procedure for Banking and Financial Arbitrator. Finally, the third chapter explains the rules of arbitration administered by the Chamber of Conciliation and Arbitration established by Consob art. 29 1. 262/2005 and implemented with the next legislative decree 179/2007 and the Regulations issued by Consob with resolution no 16763 of the 29th December, 2008. It was considered the objective and subjective scope of arbitration, highlighting new opportunities and possible restrictive interpretations or extensive profiles unconstitutional for violation of the principles of the hierarchy of sources. Then, after describing the structure and functions of the House, were examined relationships between the Chamber of Conciliation and Arbitration and Consob reporting the solution adopted by the Council of State which recognizes the instrumental nature of the chamber compared to Consob. From Unitary subjectivity between House and Consob procedure solutions in cases of disputes derived the question of compatibility of Consob System with the fundamental principles that have to inform any alternative mechanism for resolving disputes. So, analyzed the arbitration agreement, and drew attention to the binding nature of that one-sided of it, it has been illustrated the mode

of proceedings (ordinary arbitration and simplified) and related issues, with particular regard to the nature of compensation, contending that the nature of provisional of compensation.