

CORPORATE ARBITRATION  
BETWEEN CO-EXISTENCE AND CHOICE

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In dealing with a complex debate characterised by an objective transversality of the questions under discussion, ie. that of corporate arbitration, it is necessary to explain the reasons and methods of the study, in order that the choices made may be clear and justified and the *iter* followed in the research, logical. In the same way, it is useful to give account of the theory upheld right from the beginning, which constitutes at the same time, both the main theme and the intended aim of the thesis.

The data which constantly emerges concerns the nature of the institution, which only with a clearly forced interpretation can be brought back within the confines of the substantive commercial law or those of procedural law. In truth, based on the idea that was gradually formed during the study, corporate arbitration represents the closure of a sort of “micro-system”, of internal company rules, supporting the discipline of the corporate “trial”. It is therefore no coincidence that, legislative decree n.5 of 17 January 2003 having been revoked only six years after it came into force, the only “surviving” rules following the definitive demise of the corporate trial, are articles 34 and ss. of that same legislative decree n.5 of 2003, pertaining to arbitration. In fact, these represent the “internal justice” of the company.

There are various elements that provide valuable support for the theory upheld. Of those concerning aspects of the substantive discipline, the need for the arbitration clause to be included in both the deed of incorporation and in the company charter is particularly important, as proof that arbitration is adopted as a method of justice *in the* company and *by the* company and not merely as a means of resolving litigation between associates.

Those elements of a procedural nature are in even greater evidence. The discipline of intervention, the extension of precautionary power and the effectiveness of the arbitration award with regard to the company (which the discipline of corporate arbitration introduced well before the reform of common arbitration), on one hand, brought

corporate arbitration closer to the trial; on the other hand, demonstrate that litigation in a corporate context should be considered a matter which involves the whole company and must be resolved in such a way that the effects of the arbitration award represent the physiological reconstitution of intra-corporate relations. In this way, if the company is and remains a contract, it may not be totally out of the question to claim that the discipline of corporate arbitration represents it as an “institutionalised contract” or as a “contractual institution”.

The doctrine which has explored this subject, has dealt with almost every question which could be open to interpretational doubt, from the object of the submission to the practicability of the path of amicable arbitration; from the relationship between corporate arbitration and the reformed Common Law arbitration. This, often being divided according to the proposed solutions to the said doubts. Taking into account precisely the entirety of the doctrinal debate, the aim of this thesis is to identify a spirit common to all the contemplations, a kind of “constant” or “invariable”, that may provide a sufficiently plausible key to interpretation. The author found this in the cited “jurisdictionalisation” of corporate arbitration and in its construction as a complex mechanism of corporate justice. In the light of the direction and choice taken, the emphasis was more on a coherent approach to the research rather than on the extent of the treatment of the themes generally retraceable to the subject of the research. Thus, certain themes dealt with in studies dedicated to corporate arbitration have been referred to here minimally or not at all, as they are not relevant to the objective sought here. It was not the intention of the author for this to lead to praise for topics and themes which support the theory upheld and omission of those which put it in a critical light.