

M U N I
L A W

Arbitrability

International Commercial Arbitration

Syllabus

- Notion of arbitrability
- Examples from national laws

Arbitrability – definition

- **Capability of being settled by arbitration**
- In the hands of states to define the area of disputes that are arbitrable (arbitration laws x case law)
- Criteria usually used by states for definition
 - Economic nature of a claim x possibility to settle x combination

Arbitrability – applicable law

- No universal definition of arbitrability
- It is necessary to determine which national law (national definition of arbitrability) is decisive
 - Arbitrators – many approaches in the practice, prevailing approach – *lex arbitri* is applicable
 - National courts – their own law

Arbitrability – examples of national regulations (1)

- **Swiss law** – *„Any dispute of financial interest may be the subject of an arbitration.“*
(Article 177 of Private International Law Act)
- **French law** – *„All persons may enter into an arbitration agreement on rights of which they have the free disposal. One cannot enter into a compromise agreement about matters of status and capacity of the persons, matters relating to divorce and judicial separation or matters of disputes involving public bodies and institutions and more generally in all matters concerning public order. However, some categories of public institutions of an industrial or commercial character may be authorized by decree to enter into compromise agreements.“*
(Articles 2059, 2060 of Civil Code)

Arbitrability – examples of national regulations (2)

- **German law** – *„Any claim involving an economic interest can be subject to an arbitration agreement. An arbitration agreement concerning claims not involving an economic interest shall have legal effect to the extent that the parties are entitled to conclude a settlement on the issue in dispute.“* (Section 1030 of Code of Civil Procedure)
- **Czech law** – *„(...) property disputes (...) falling within the jurisdiction of courts (...). (...) dispute can be solved by concluding a judicial settlement.“* (Section 2 of Arbitration Act)

What is generally not arbitrable? (1)

- Divorce
 - x disputes concerning matrimonial property
- Criminal proceedings
 - x disputes concerning civil law consequences of criminal offence (e.g. private disputes affected by corruption)
- Insolvency proceedings
 - x commercial disputes – one of the parties has become insolvent

What is generally not arbitrable? (2)

- Succession proceedings
 - x disputes between heirs
- Public enforcement of antitrust law
 - x private enforcement of antitrust law

Sources for presentation

- Moses, M.L. *The Principles and Practice of International Commercial Arbitration*. 3rd ed. Cambridge: Cambridge University Press, 2017. Chapter 2.
- Lew, J.D.M., Mistelis, L. A., Kröll, S.M. *Comparative International Commercial Arbitration*. The Hague: Kluwer Law International, 2003, Chapter 9.
- Blackaby, N., Partasides, C., Redfern, A., Hunter, M. *Redfern and Hunter on International Arbitration*. 6th ed. Oxford: Oxford University Press, 2015, Chapter 2.