

SETTLEMENT OF SHIPPING CLAIMS

Generally speaking, is it now usual in our practice in Spain to reach amicable settlements of commercial disputes on behalf of clients?



Unfortunately, Spanish market is not different and our current practice shows that the overall confidence levels in the shipping industry has significantly felt now also in Spain.



We are now seeing how banks, without a round of negotiations, are calling in their loans; shipping and yards are filing for bankruptcy proceedings without chances for their creditors; owners are being forced to start special proceedings to secure payment of freight and demurrage in spite of the rates being really down; ships are being more and more frequently arrested ...

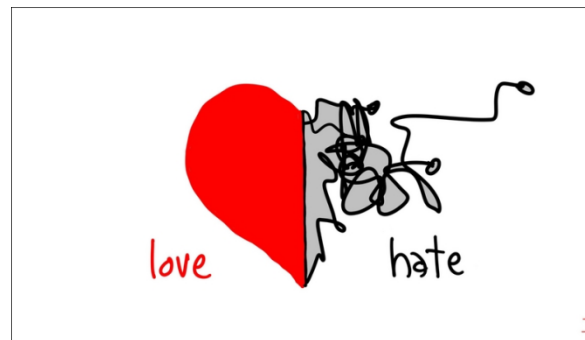
At the time when money is tight for everybody, amicably settlements have been drastically reduced and the Spanish courts are seeing a significant increase in their workloads.



What about arbitration proceedings?

Is there in Spain a tradition to refer
disputes to arbitration?

It is well known that arbitration is frequently the object of opposite feelings, either love or hate.



For some, it is the perfect form of dispute resolution distinguished by its flexibility, party control and many other advantages if compared with court litigation.

I like arbitration but dare to say that it, as all human things, is not perfect and may be improved, whilst my feeling is that international commercial arbitration proceedings are becoming increasingly long and costly.

In my view, this is due to many factors, including the rising size and more complex nature of the disputes brought to arbitration, the amount of documents which often have to be produced, toleration of delaying tactics by defendants, arbitrators being more and more busy, etc.

I hear to some of my colleagues around the world that arbitration is in crisis, although it is to be said that such crisis, if any, would be to a certain extent due to the enormous success of arbitration among its users in recent years.

Coming back to Spain, there is an attractive regulation of arbitration based on the freedom of the parties and governed by non-formalistic criteria.

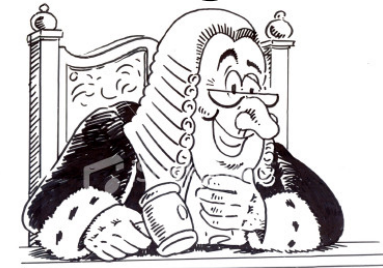


This is the Arbitration Act 60/2003, modified by the recent Act 11/2011 of 20th May which improves the previous one with some aspects that have merits.

Cannot go into details but can say that this regulation should encourage its use among entrepreneurs and traders as a quick and efficient tool for resolving commercial disputes.



In spite of this, my feeling is that the Spanish shipping players prefer court litigation than arbitration proceedings. Unless the choice of arbitration is already agreed in contract, Spanish players rarely make use of the arbitration as a way to resolve a commercial dispute. Instead, they usually choose the court litigation after claim.



Even, our experience shows that where the contract refers to arbitration then Spanish parties are quite often reluctant to appear in arbitration proceedings mainly when these are to be conducted out of Spain.



When we advise clients that they have already made their choice and cannot keep away from it we frequently hear from them the usual references to high costs, delays, lack of capable arbitrators with enough time, etc.

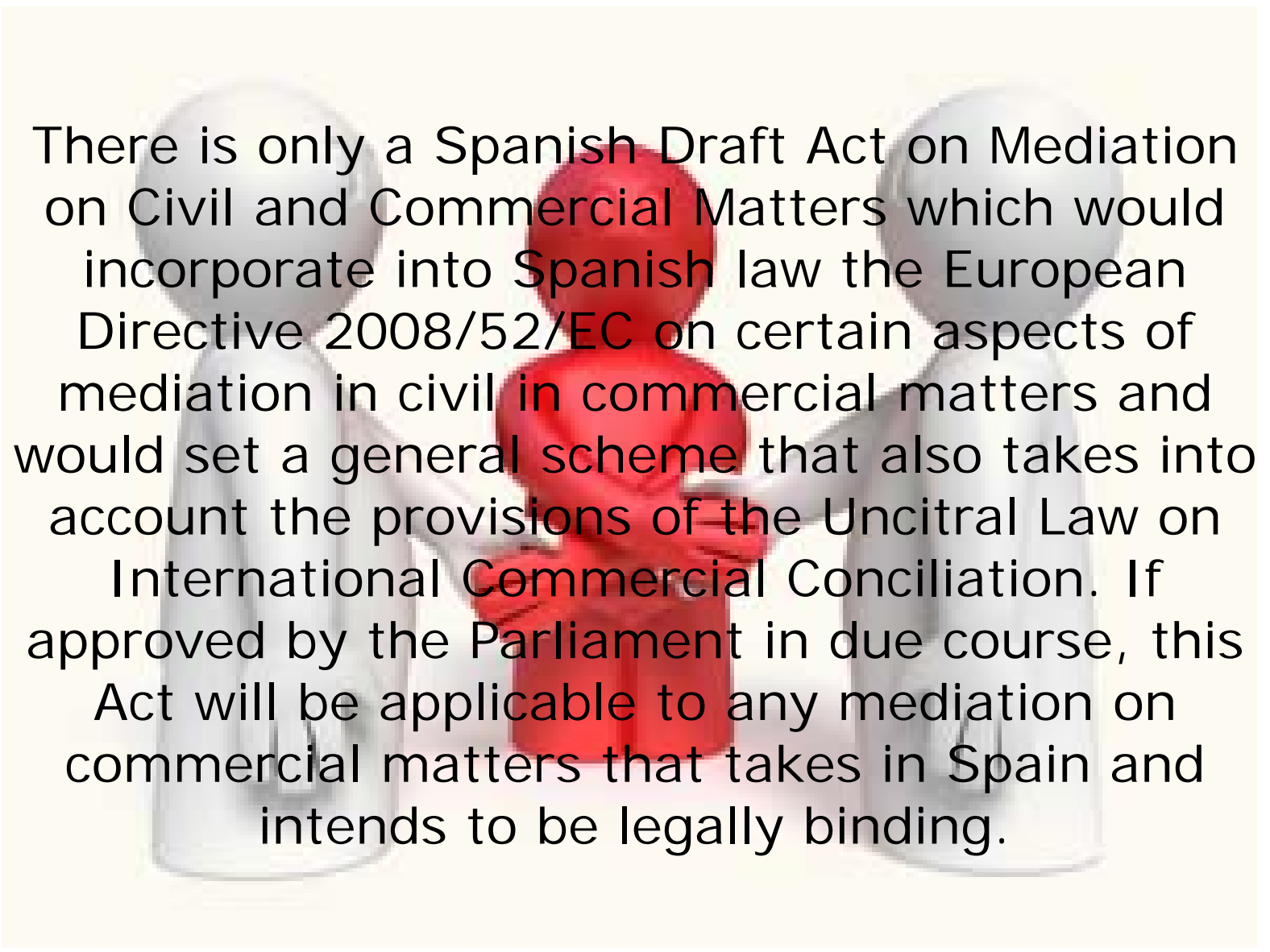
In these cases, a comparative study of advantages and disadvantages between arbitration and court proceedings help.

After said comparative study, some of them, leaving aside their contractual agreement to refer the dispute to arbitration, believe that going to arbitration is better than court proceedings.

Other do not believe so and you will agree with me that it is very difficult, if not impossible, to say which is better.

As far as ADR schemes,
Mediation and Conciliation are
not traditional in Spain for
commercial matters.





There is only a Spanish Draft Act on Mediation on Civil and Commercial Matters which would incorporate into Spanish law the European Directive 2008/52/EC on certain aspects of mediation in civil in commercial matters and would set a general scheme that also takes into account the provisions of the Uncitral Law on International Commercial Conciliation. If approved by the Parliament in due course, this Act will be applicable to any mediation on commercial matters that takes in Spain and intends to be legally binding.

Up to now, Spanish courts have the power to conciliate and in the event that the conciliation attempt during the preliminary hearing of the proceedings is successful, then the settlement is recorded and may have the status of a binding judgment.



However, these conciliations
by court in Spanish
proceedings are seldom
successful.



THANK YOU
FOR YOUR ATTENTION

