

# Legal Alert

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## Speedread:

## Invalid arbitration clauses

### A private arbitration court is not a permanent arbitration court

- **An arbitration clause referring to the statute of a private arbitration court is invalid.**
- **The arbitration clause in the case of a procedure before a private arbitration tribunal has to include the direct appointment of the arbitrator.**

A significant change in the current practice of negotiating arbitration clauses and arbitration agreements occurred with the resolution of the High Court in Prague of 28 May 2009, file no. 12 Cmo 496/2008. The court ruled that the subject dealing with the arbitration procedure ("private arbitration court") is not a permanent arbitration court according to the Arbitration Act (Act no. 216/1994 Coll.), and therefore the arbitration clause that merely referred to a statute or rules of such a private arbitration court was invalid and therefore any dispute that arises would be settled in a civil court.

In this particular case, the parties negotiated in the contract that any disputes arising from the contract or in connection with it would be resolved by a single arbitrator. The contractual parties further agreed that the arbitration procedure will proceed according to the rules issued by a private company dealing with arbitration procedures and that the arbitrator will be selected by the plaintiff from a list of arbitrators maintained by the private arbitration court.

The High Court ruled that this arbitration clause is invalid because it circumvents the law for the following reasons:

- a private arbitration court is not a permanent arbitration court within the meaning of the law;
- a private arbitration court is therefore not entitled to keep its own list of arbitrators and issue its own statutes and rules for the appointment and selection of the arbitrators and the method of keeping the arbitrations;
- the particular arbitration clause did not include the direct determination of an arbitrator or specify a method for doing so, and in relation to the selection of the arbitrator and the selection of the arbitration rules, it only referred to rules of the private arbitration court;
- the reference to the rules of the private arbitration court in the arbitration clause is invalid.



## Continuation

According to the Act, the permission to keep its own list of arbitrators and to issue its own statutes and rules is granted exclusively to permanent arbitration courts. For these reasons it is advisable that in the future in arbitration clauses the contractual parties refer only to statutes, rules and lists of arbitrators kept by the following permanent arbitration courts:

- The Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic;
- The Exchange Court of Arbitration at the Prague Stock Exchange (in special cases only);
- The Arbitration Court attached to the Czech-Moravian Commodity Exchange Kladno (in special cases only).

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