

**EUROPEAN FEDERATION OF FOUNDATION CONTRACTORS**

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**Dispute resolution / Germany**

**Out of court dispute resolution**

The following are possibilities for extra-judicial dispute settlement:

* Negotiations just between the two parties (negotiation)
* Negotiations where - under supervision of a third, neutral party - an agreed solution will be reached (mediation)
* Negotiations, where an arbitrator presents a draft dispute settlement

Please note that these three possibilities are not based on German statutory law and rely only on voluntary action of the parties involved. The negotiations between the conflicting parties are intended to reach a settlement, ie an agreement, that is binding on both sides.

In German civil construction law, § 18 No. VOB/B(Verdingungsordnung für Bauleistungen, Part B : "Tendering and performance stipulations in contracts for construction works"), there is a provision for an extra-judicial dispute settlement. In the case of a conflict with a public client, the contractor should first address the immediate superior authority.

This procedure is not comparable to a negotiated dispute settlement because it only meets conflicts between the contractor and public (but not private) clients. Further, because of the internal administrative review, pertinent neutrality is not guaranteed.

**Arbitration procedure**

Parties to the contract have the possibility to submit the dispute to a settlement by arbitration upon signing the contract. That means:

* The constitution of the court of arbitration, in case of disagreement among the parties, will be set up by an impartial body
* The court of arbitration, in principle, is not bound to the applications of the parties
* The arbitration procedure opens the way to a faster and cost-advantageous solution, compared to court ruling
* The decision of the court of arbitration has the same effect as a final judgement (not subject to appeal)
* Only experts shall be appointed as referees, who have a profound knowledge in the field of construction law
* The procedure is non public

**Judicial difference of opinion in the court**

* Procedure is focused on the Code of Civil Procedure
* All parties have to produce evidence to support their case
* Legal proceedings can involve three bodies (Regional Court, Higher Regional Court, BGH-Federal Court of Justice) and can be very expensive and time consuming
* The court in most cases does not have a specific knowledge in construction matters, but has to rely on experts during the trial.
* The procedure is public