

Introduction to International Commercial Arbitration

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What is International Commercial Arbitration?

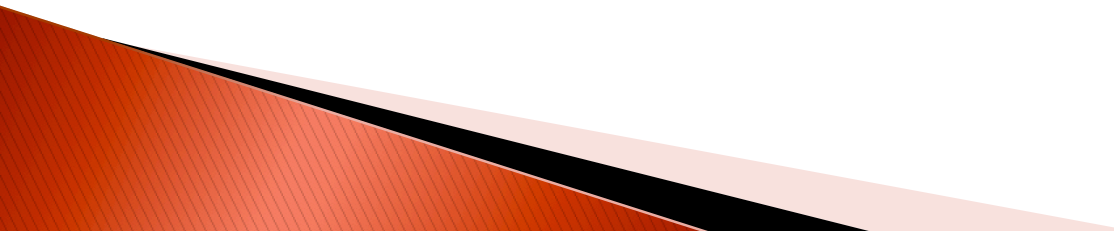
Lesson n.2



General Definition

- ▶ International Commercial Arbitration is a private form of adjudication by which entities involved in commercial activities decide to solve a business dispute of an international character

«International»

- ▶ International Arbitration vs. Domestic Arbitration
 - ▶ Subjective Internationality: parties from different States. What does «from» mean?
 - ▶ Objective Internationality: international nature of the obligation *e.g.* place of performance
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«International» (2)

- ▶ The definition adopted in the most widespread model:

An Arbitration is International if

- (a) The parties [...] have their place of business in different States;
- (b) One of the following places is situated outside the State in which the parties have their place of business:
 - I. The place of arbitration [...]
 - II. Any place where a substantial part of the obligations of the commercial relationship is to be performed [...]
- (c) The parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

«Commercial»

- ▶ Distinction in *Civil Law* countries between civil and commercial matters (Civil Code vs. Commercial Code)
- ▶ Wide interpretation of «Commercial»
- ▶ «Commercial» as opposed to «Consumer» or «Labour»

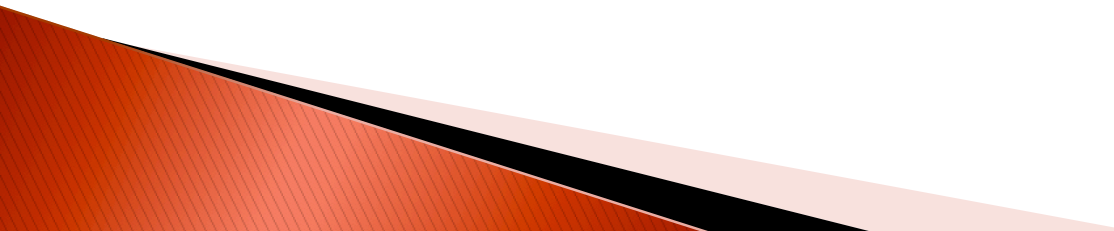
Key Elements of an International Arbitration

- ▶ According to *Redfern and Hunter*, the key elements of a (Commercial) International Arbitration are:
 - The agreement to arbitrate
 - A dispute
 - The appointment of an arbitral tribunal
 - The arbitral proceedings
 - The decision (award) of the tribunal
 - Enforcement of the award

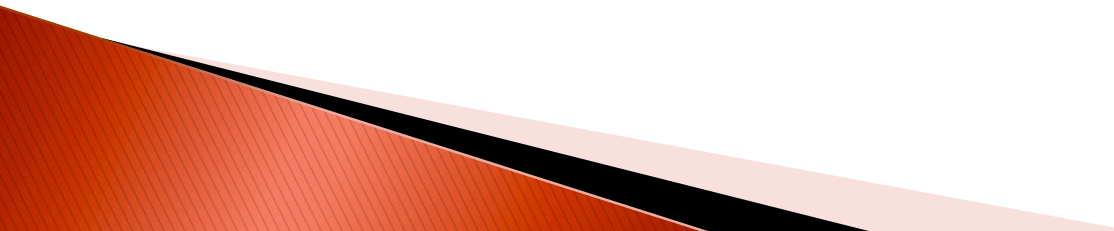
Why arbitration?

- ▶ Main advantages of arbitration are:
 - Neutrality of the forum
 - Confidentiality
 - Professionalism
 - Quickness
 - (but is it really so?)
 - Enforceable decision

Why not?

- ▶ Cost
 - ▶ No appeal (exceptions)
 - ▶ (Possible) need to cooperate with national courts
 - ▶ Joinder
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Arbitration ≠ Litigation

- ▶ Arbitration Agreement
 - ▶ Private (and confidential)
 - ▶ Many voluntary features (appointment of arbitrators, procedural rules, etc.)
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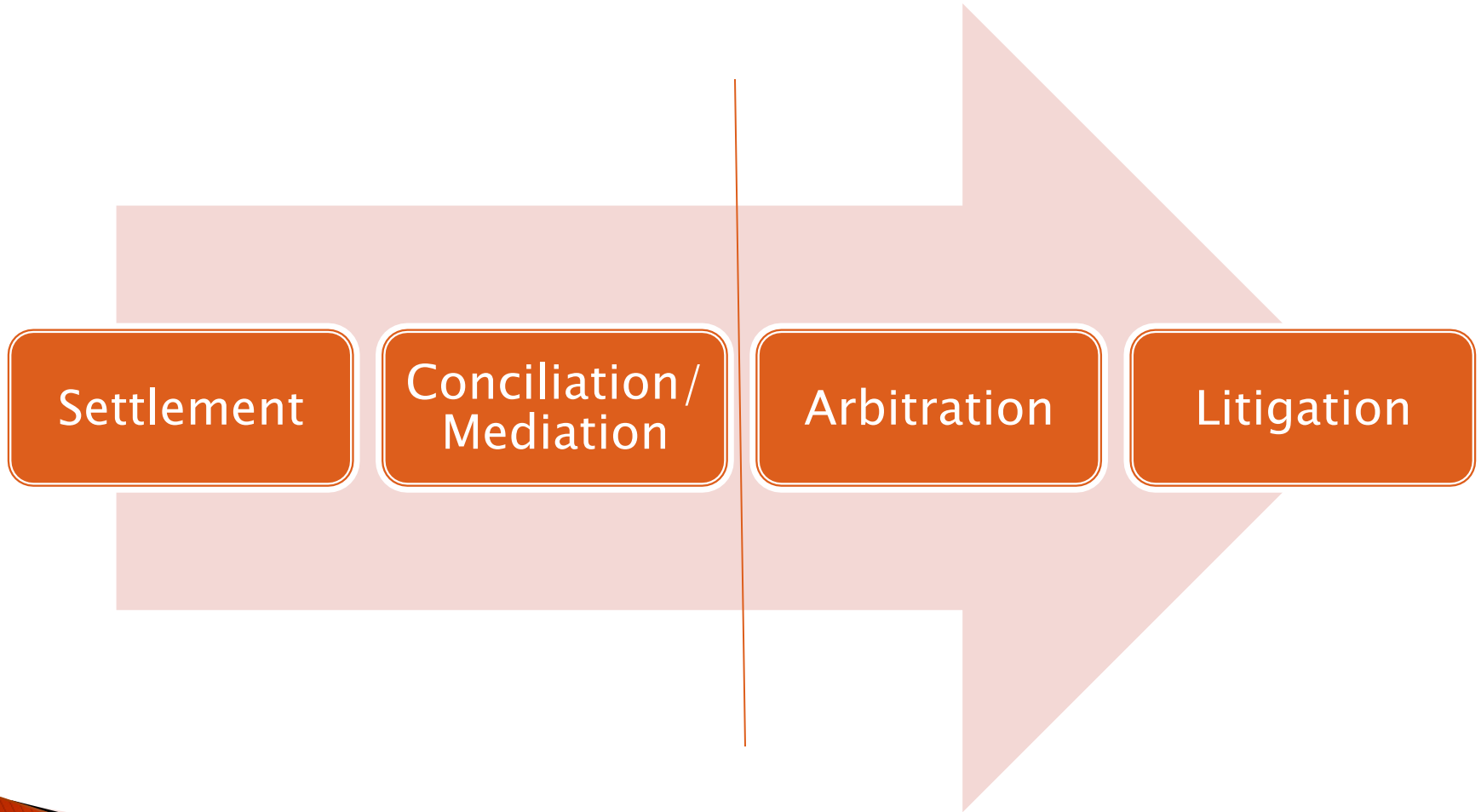
Arbitration \neq Conciliation

- ▶ Formal (even procedurally)
- ▶ Adjudicative

Is Arbitration ADR?

- ▶ Until some years ago, the acronym ADR was read as *Alternative* Dispute Resolution
 - → it included everything that was not court litigation (arbitration, conciliation, med-arb, ODR)
- ▶ Now in many international documents (*e.g.* EU Directives, ICC Rules), the acronym is given the meaning of *Amicable* Dispute Resolution
- ▶ Being an adjudicative procedure, arbitration is excluded

Dispute resolution techniques



Sources of International Commercial Arbitration

- ▶ International Sources
 - Multilateral conventions
 - Bilateral treaties (BITs)
 - Regional treaties (*E.g.* Panama Convention, 1975)
 - Sectorial treaties (*E.g.* Washington Convention, 1965)
 - Model laws (*E.g.* UNCITRAL Model Law)
- ▶ National sources
 - National legislations
- ▶ Private sources
 - Arbitration rules
 - Arbitration awards (?)