

Introduction to International Commercial Arbitration

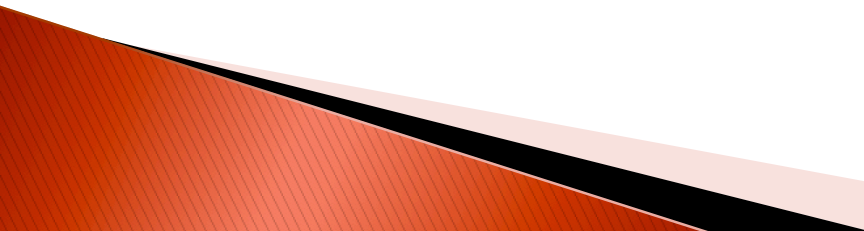
Prof. Giorgio F. COLOMBO



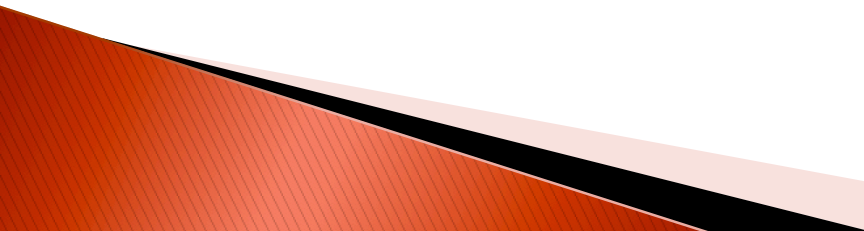
The Procedure

Lesson n.10

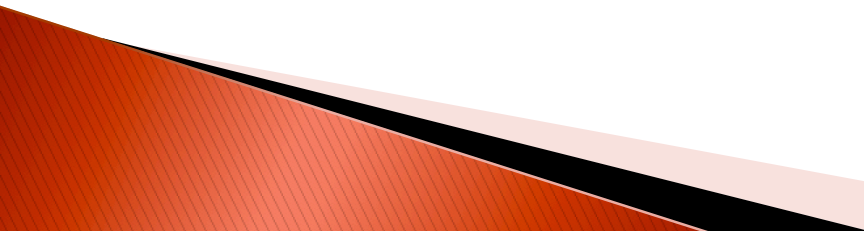
How the procedure is regulated

- ▶ As already mentioned, basically the procedure is regulated by the rules agreed upon by the parties
 - ▶ However:
 - The Applicable Law may have mandatory provisions that do apply
 - The rules of arbitration (Institutional Arbitration) may have some mandatory provisions
 - Once the Arbitral Tribunal is established, it has a leading role
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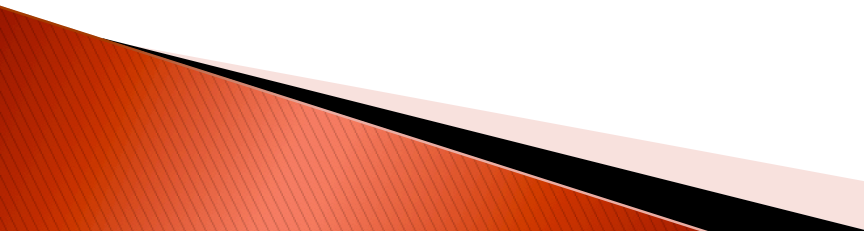
Usual Flowchart of an international arbitration

- ▶ 1) Request for (or Notice of) Arbitration
 - ▶ 2) Establishing the Tribunal
 - ▶ 3) Procedural Order no. 1 / Terms of Reference (ICC)
 - ▶ 4) Initial Written Submissions (unless already delivered)
 - ▶ 5) Exchange of Memorials
 - ▶ 6) Requests for additional documents
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Usual Flowchart of an international arbitration

- ▶ 7) Pre-hearing administrative conference
 - ▶ 8) Witness Hearing
 - ▶ 9) Post Hearing Briefs (simultaneous? How many?)
 - ▶ 10) Closure of the proceedings
 - ▶ 11) Award
 - ▶ 12) Post-award (correction, interpretation)
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Procedural Order n. 1

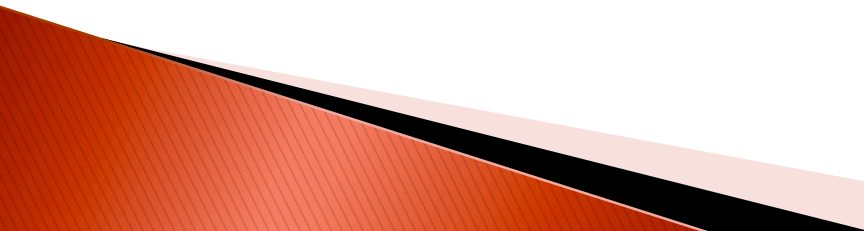
- ▶ In International Arbitration it is useful to issue a general Procedural Order to establish an overall procedural scheme for the arbitration
 - ▶ This document usually includes dates for delivery of memoranda, documents, witness statements, reports and a tentative schedule
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Terms of Reference

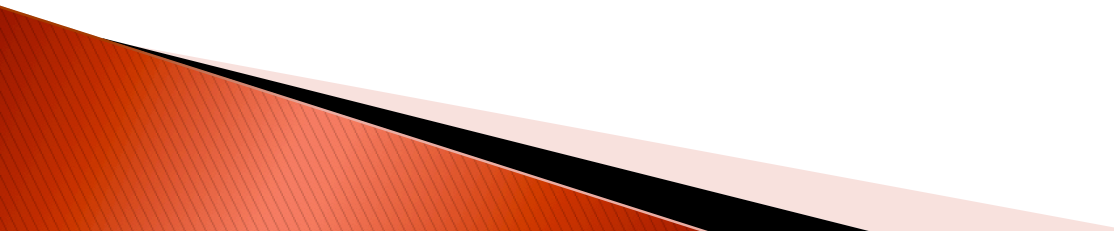
- ▶ In the ICC Arbitration System, the Arbitral Tribunal and the parties jointly sign a document called Terms of Reference

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Written Submissions

- ▶ Usually the introductory documents are not enough to fully instruct the case
 - ▶ Many defences and counterdefences will be based on documents or facts that are not completely known when the procedure starts
 - ▶ Also, parties need to convince the Arbitral Tribunal of the legal interpretation of (even acknowledged) facts
 - ▶ Therefore it is necessary to exchange further documents
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How many/When

- ▶ Introductory documents
 - ▶ Statement of claim/Response
 - ▶ Short comments on documents
 - ▶ Post hearing
 - ▶ Closing?
 - ▶ Deadlines?
- 

Evidence Gathering

- ▶ 1) Production of documentary evidence
- ▶ 2) Testimony of witnesses of fact
- ▶ 3) Opinions of experts
- ▶ 4) Inspections

Documentary evidence

- ▶ Problems related to disclosure
- ▶ Document requests: how to properly modulate them. Usually requests come from the parties

Witnesses

- ▶ Many national systems (especially in Civil Law jurisdictions) are unfamiliar with the possibility for witnesses to deliver written declarations

Ethics in International Arbitration

- ▶ In national procedures, lawyers and arbitrators must comply with national ethical standards
- ▶ What happens in international arbitration?
 - *E.g.* Preparing witnesses