

# Introduction to International Commercial Arbitration

Prof. Giorgio F. COLOMBO



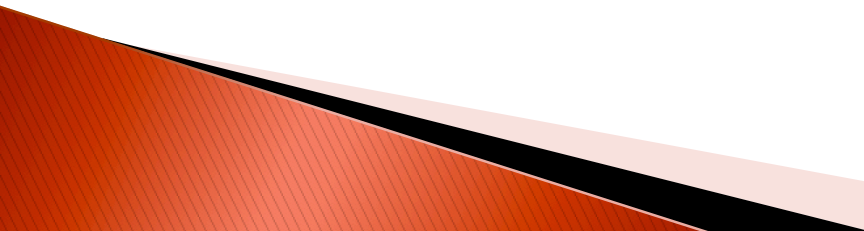
# Types of Arbitration

Lesson n.3

# Institutional (Administered) Arbitration vs. Ad Hoc Arbitration

- ▶ In the Arbitration Agreement, parties must choose whether they want their arbitration to be administered by an Arbitration institution or they want it to be *ad hoc*

# Institutional (Administered) Arbitration vs. Ad Hoc Arbitration

- ▶ In case of Institutional Arbitration, there is a specialized arbitral institution that administers the procedure according to its rules
  - ▶ In the case of *Ad Hoc* Arbitration, the procedure will be administered according to the rules set forth by the parties (or by the Arbitral Tribunal, upon agreement by the parties)
- 

# In any case...

- ▶ The Arbitration procedure will be always subject to the *lex loci arbitri*, *i.e.* the mandatory rules of the place of arbitration (which is something conceptually different from the law applicable to the merits of the dispute)
- ▶ The Arbitral Tribunal and the Arbitral Institution (in case of Institutional Arbitration) are two different entities

# Institutional Arbitration

## ▶ Main Features

- A set of pre-determined Rules that automatically apply to the procedure
- Administrative staff to take care of the clerical part of the proceedings (*e.g.* collecting fees, reminding time limits, etc.)
- Scrutiny of the Award from a formal point of view
- A list of Arbitrators (open/closed)

# Institutional Arbitration

- ▶ Disadvantages:
  - Cost
  - Sometimes closed list of Arbitrators
  - Predetermined rules, sometimes is not possible to derogate from them
  - Another subject is involved

# *Ad Hoc* Arbitration

- ▶ Main features
  - No fixed procedure. The parties have the possibility to decide their own rules (but they may choose a set of rules, *e.g.* the UNCITRAL Arbitration Rules)
  - No other entity involved, but the parties and the Arbitral Tribunal



# *Ad Hoc Arbitration*

- ▶ **Disadvantages:**
  - No support
  - No external control
  - All based on the cooperation by the parties (and the Arbitral Tribunal, once established)
  - It is difficult to contrast dilatory techniques

# Arbitration according to Law/ *Ex Aequo et Bono*

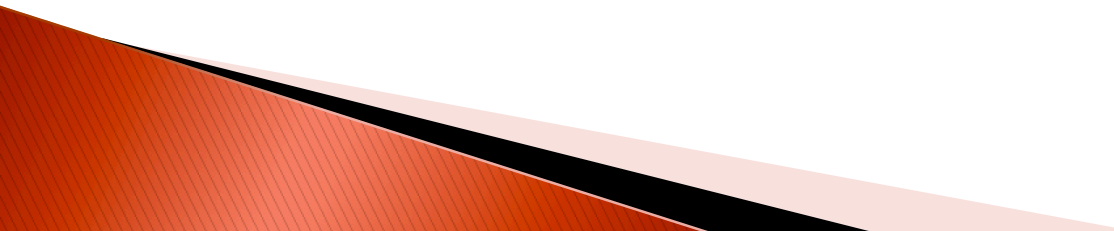
- ▶ In the first case, the Arbitral Tribunal shall decide according to the law
- ▶ In the second case, the Arbitral Tribunal shall decide *ex aequo et bono* (*i.e.* according to equity)

(this matter will be discussed again later during the Seminar)

# Arbitration involving States

- ▶ There are some institutions devoted to administer disputes between States and private entities
- ▶ The State may be allowed to enter into «private» arbitration agreements

# How to choose and Arbitral Institution

- ▶ Reputation
  - ▶ Permanency (incl. risk of closing down)
  - ▶ Rules
  - ▶ Staff
  - ▶ Charges
  - ▶ Regional expertise
- 

# Particular Trades / Particular Disputes

- ▶ Some institutions provide services for particular trades or particular disputes
  - Trade: *e.g.* Maritime Arbitration
  - Dispute: *e.g.* Intellectual Property (WIPO)

# Some famous Arbitration Institutions

- ▶ ICC
  - ▶ LCIA
  - ▶ AAA
  - ▶ CIETAC
  - ▶ WIPO
  - ▶ ICSID
- 



## Arbitration & ADR

Expand All Collapse All

### Arbitration

Rules

Standard clauses

Practice notes, forms,  
checklists

Procedure

Filing a request for  
arbitration

Emergency arbitrator

Costs and payment

ICC as appointing  
authority

Home > Products and Services > Arbitration and ADR > Arbitration >

## Arbitration

- ▶ Introduction to ICC Arbitration
- ▶ Who can use ICC Arbitration and how to draft an ICC Arbitration clause
- ▶ Ten good reasons to choose ICC Arbitration
- ▶ Opportunities and materials for arbitrators and legal practitioners
- ▶ Statistics
- ▶ Reference material on international arbitration

**ICC Arbitration is a flexible and efficient procedure for resolving domestic and international disputes. The awards are binding, final and susceptible of enforcement anywhere in the world.**

Established in 1923 as ICC's arbitration body, the International Court of Arbitration



# ICC Promotional Material

- ▶ 10 reasons to choose ICC
  - Reputable
  - Global
  - Neutral
  - Accessible
  - Flexible
  - Controlling time and costs
  - Predictable fees
  - Interim measures
  - Confidential
  - Scrutiny of the Award



# ICC Cost

Amount in dispute US\$	200000	
Procedure	<input checked="" type="radio"/> Ordinary	<input type="radio"/> Expedited
Number of arbitrators	<input checked="" type="radio"/> 1	<input type="radio"/> 3
<input type="button" value="Calculate"/>		

Requested estimation	
Amount in dispute	200000
Number of arbitrators	1
Year (scale)	2017
Fees per arbitrator	
Min	\$5756
Avg	\$14618
Max	\$23479
Advance on costs (without arbitrator expenses)	
Average fees multiplied by number of arbitrators	\$14618
Administrative expenses	\$8485
Total	\$23103

# ICC Cost



MENU

COSTS AND PAYMENTS

Cost calculator

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The estimation has no legal implications and should not be considered as fix in any given case.

Furthermore, the estimation does not include a budget for the arbitrator's front as part of the advance on costs.

Amount in dispute US\$ 200000

Procedure  Ordinary  Expedited

Number of arbitrators  1  3

Requested estimation	
Amount in dispute	200000
Number of arbitrators	3
Year (scale)	2017
Fees per arbitrator	
Min	\$5756
Avg	\$14618
Max	\$23479
Advance on costs (without arbitrator expenses)	
Average fees multiplied by number of arbitrators	\$43854
Administrative expenses	\$8485
Total	\$52339

<https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/cost-calculator/2017/11/6>

## Arbitration

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### ▶ Arbitration

[LCIA Arbitration Rules \(2014\)](#)

[LCIA Arbitration Rules \(1998\)](#)

[Schedules of Costs](#)

[Recommended Clauses](#)

[Ad hoc proceedings](#)

[Online Filing](#)

[Fundholding](#)

## LCIA Arbitration

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The LCIA arbitration rules are universally applicable, being suitable for all types of arbitrable disputes. They offer a combination of the best features of the civil and common law systems, including in particular:

- ▶ Maximum flexibility for parties and tribunals to agree on procedural matters
- ▶ Speed and efficiency in the appointment of arbitrators, including expedited procedures
- ▶ Means of reducing delays and counteracting delaying tactics
- ▶ Emergency arbitrator provisions
- ▶ Tribunals' power to decide on their own jurisdiction
- ▶ A range of interim and conservatory measures
- ▶ Tribunals' power to order security for claims and for costs
- ▶ Special powers for joinder of third parties and consolidation
- ▶ Waiver of right of appeal
- ▶ Costs computed without regard to the amounts in dispute
- ▶ Staged deposits - parties are not required to pay for the whole arbitration in advance

# CIETAC

**中国国际经济贸易仲裁委员会**  
CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

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International Brand of Chinese Arbitration

**国际仲裁的中国经验**  
Chinese Experience of International Arbitration

Application Domain Name  
Rules Online Arbitration  
Fee Calculator CIETAC Publication  
Arbitrator Search Newsletters  
Statistics Research Report

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Decision of the China Council for the Promotion of International Trade (China Chamber of International Commerce) on the Reorganization of the China International Economic and Trade Arbitration Commission South China Sub-Commission and China International Economic and Trade Arbitration Commission Shanghai Sub-Commission ( PDF Download )

China International Economic and Trade Arbitration Commission Announcement On the Reorganization of CIETAC South China Sub-Commission and CIETAC Shanghai Sub-Commission ( PDF Download )

**活动发布** 中国国际经济贸易仲裁委员会

# Arbitration Institute of the Stockholm Chamber of Commerce



DISPUTE RESOLUTION ABOUT THE SCC NETWORKS STATISTICS

SV | PYC | 中国



EFFICIENT DISPUTE RESOLUTION FOR A STRONG ECONOMY. IN SWEDEN AND GLOBALLY.



#### HOW MUCH DOES IT COST?

Use the calculator to estimate the costs in an SCC case.



#### MODEL CLAUSES

The SCC offers tailored model clauses available in several different languages.



#### LEGAL RESOURCES

SCC Practice, Legislation, Conventions, Court Decisions and the Swedish Arbitration Portal.

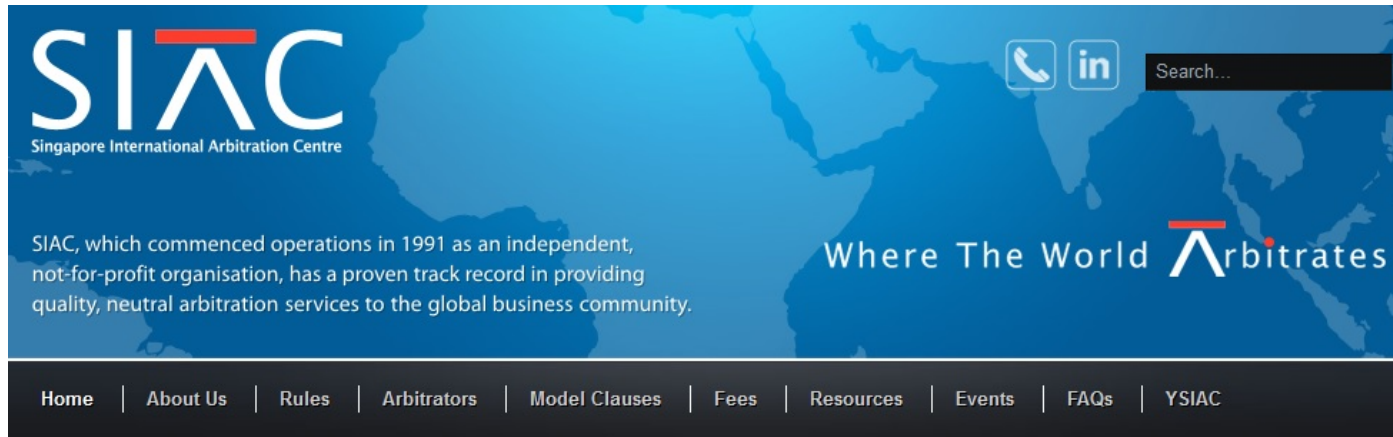


#### INVESTMENT DISPUTES

The SCC is the second largest institution in the world for the administration of investor-state disputes.

<http://www.sccinstitute.com/> 2017/11/6

# SIAC



**SIAC**  
Singapore International Arbitration Centre

SIAC, which commenced operations in 1991 as an independent, not-for-profit organisation, has a proven track record in providing quality, neutral arbitration services to the global business community.

Where The World **Arbitrates**

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**SIAC** 25 - 27 MAY  
Singapore International Arbitration Centre  
CONGRESS WEEK 2016

**ysiac**  
LUNCHTIME TALK  
WITH TOBY LANDAU QC  
25 MAY 2016 | 12.00 PM TO 2.15 PM | SINGAPORE

**SIAC**  
Singapore International Arbitration Centre  
CONGRESS  
2016  
27 MAY 2016 | 8.00 AM TO 5.00 PM | ST. REGIS SINGAPORE

**SIAC** **SIAC - CIArb DEBATE**  
GARY BORN | PROF RENEARD MANOTIAU | TOBY LANDAU QC | LUCY REED  
26 MAY 2016 | 6.15 PM TO 8.15 PM | SINGAPORE

<http://www.siac.org.sg/> 2017/11/6

# HKCIAC

The image shows the top portion of the HKIAC website. At the top left is the HKIAC logo, which consists of a blue globe icon with the letters 'HKIAC' to its left. To the right of the logo is the text '香港國際仲裁中心' and 'Hong Kong International Arbitration Centre'. To the right of the logo and text is a navigation menu with the following items: 'HK45 | Facilities & Services | Events | News | Users' Council | About Us | Contact Us'. Further to the right are the language options '简体 | 繁體' and a search icon. Below the navigation menu is a horizontal line with the text 'Arbitration | Mediation | Adjudication | Domain Name Disputes'. Below this line is a large banner image showing a view of the Hong Kong skyline through a window. The banner image has the word 'ere' partially visible on the left side. Below the banner image is a navigation bar with four buttons: 'Arbitration', 'Mediation', 'Adjudication', and 'File Domain Name'. The 'File Domain Name' button is partially cut off on the right side.

HKIAC 香港國際仲裁中心  
Hong Kong International Arbitration Centre

HK45 | Facilities & Services | Events | News | Users' Council | About Us | Contact Us 简体 | 繁體

Arbitration | Mediation | Adjudication | Domain Name Disputes

ere

Arbitration Mediation Adjudication File Domain Name

<http://www.hkiac.org/> 2017/11/6

# Group Discussion

On the basis of which criteria would you choose an Arbitral Institution?

