

WSG MEETING OF THE AMERICAS



MIAMI, FLORIDA



MOORE STEPHENS

Cifuentes, Lemus & Asociados, S.C.
RIF J-00296621-1



Designation of Miami as an International Centre for Arbitration

PANEL DISCUSSION

PANELISTS

Judge Jennifer D. Bailey, Administrative Judge, Circuit Civil Division,
Eleventh Judicial Circuit of Florida

Luis M. O'Naghten, Chair, International Litigation & Arbitration Practice, *Akerman LLP*

Zachary D. Rosenbaum, Partner, *Lowenstein Sander*



World Services Group conference

Perfect Proximity: Miami as a
Center for Commercial Disputes
Involving Latin America

Viceroy Hotel
Miami, Florida
February 21, 2014



Discussion Map

Discussion Topics

1. Selection of venue for dispute resolution: Miami
2. Selection of a dispute resolution mechanism
3. Selection of an institution
4. Selection of an arbitrator
5. Selection of counsel

Open Discussion Q&A

Venue selection



Selection of Venue for Dispute Resolution

Seat of Arbitration

- Law of contract v. Law of the arbitration
- *Lex arbitri*
 - law governing existence and proceedings of arbitral tribunal
 - law governing vacating an award
- Logistical concerns





Selection of Venue for Dispute Resolution

Legal Considerations

- Is the host country a **signatory to the New York Convention** (more than 140 countries)
- Do **local arbitration laws and courts support arbitration** (enforce arbitration agreements, prevent court proceedings where arbitration clause exists, limit judicial intervention into arbitrations)
- Choice of seat determines **procedural law** applicable to arbitration (*lex arbitri*)



Selection of Venue for Dispute Resolution

Civil v. Common law country

Differences re:

- document production
- interim measures
- cross-examinations
- written submissions

Selection of Venue for Dispute Resolution

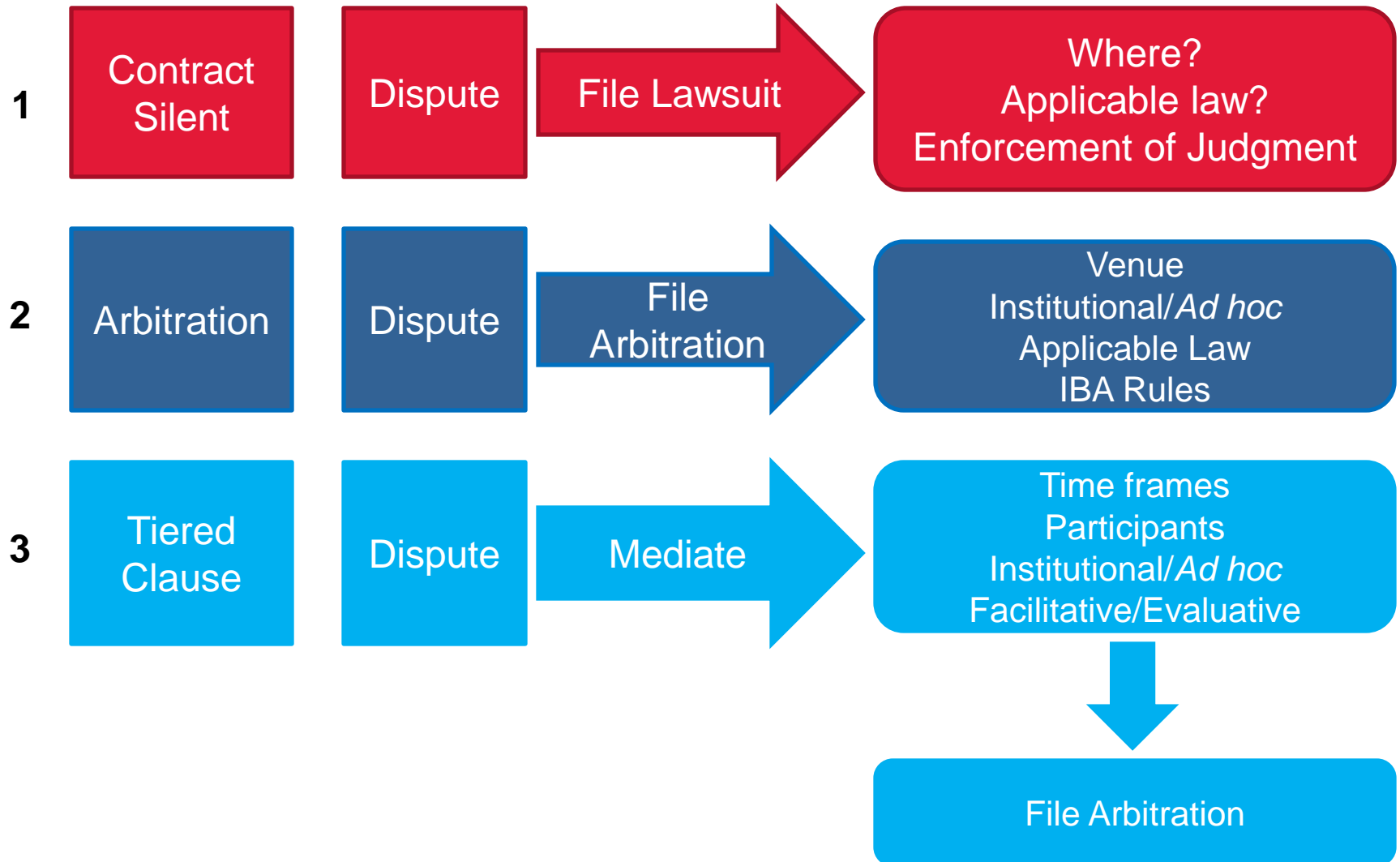
Seat of Arbitration

- Miami as a venue
 - 22% of ICC US arbitrations venued in Miami
 - as compared to 54% for NY
 - next closest is 6%
- Miami:
 - FAA and Florida's International Commercial Arbitration Act (Model Law)
 - ICA section in the 11th Circuit
- Logistical concerns



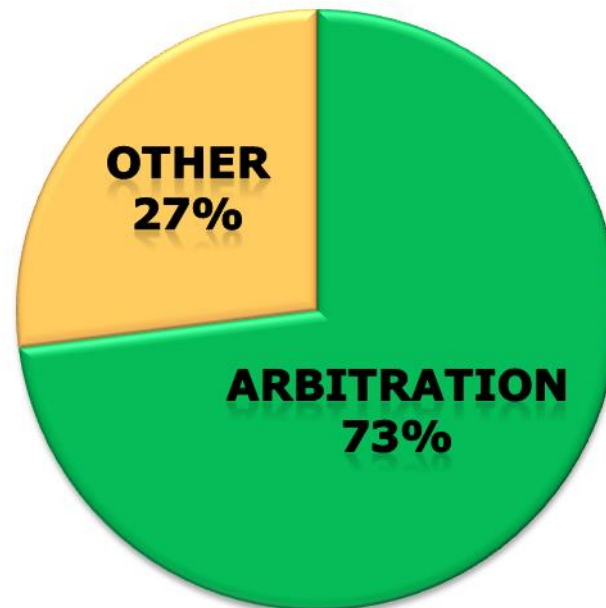
Dispute Resolution Mechanism

Selection of Dispute Resolution Mechanism



Selection of Dispute Resolution Mechanism

**73% of in-house counsel
prefer arbitration to resolve
cross-border disputes**



Selection of Dispute Resolution Mechanism

Disadvantages to international litigation



1. Not comfortable with foreign law, courts and lack of understanding of foreign procedure
2. **Difficulty in recognizing judicial awards**
3. **Perception that foreign courts may be corrupt**
4. Not wanting to deal with foreign language
5. Lack of confidentiality
6. Too much time
7. Too expensive

Selection of Dispute Resolution Mechanism

Advantages to international arbitration

1. **Ease of enforcement of arbitral awards (New York Convention)**
2. **Neutrality of arbitral tribunals**



Arbitral institution



Selection of an Institution

ICSID



Institutions



Ad Hoc



Selection of an Institution

Arbitral Institutions

- Corporations prefer institutional arbitration to *ad hoc* (76% use arbitral institutions)
- ICC, AAA/ICDR, and LCIA most popular institutions (**ICC the most popular institution with major corporations**)
- Use of regional arbitration centers increasing



Arbitrator selection

Selection of an Arbitrator

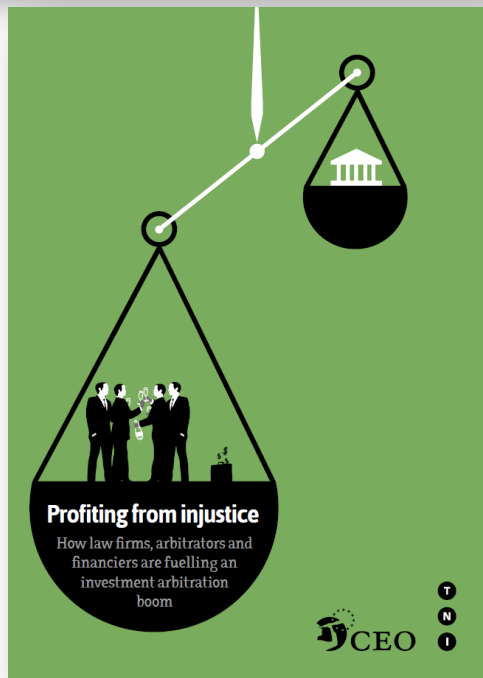


Chartered
Institute of
Arbitrators

CIArb

Arbitrators

- Selection:
 - list method
 - party nominated v. appointed by institution
- Independence
- Conflict of interests (issues)
- 1 or 3
- Availability





Selection of an Arbitrator

Arbitrator independence

1. **ICC Article 11 (1):** Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.
2. **ICDR Article 7(1):** Arbitrators acting under these Rules shall be impartial and independent.
3. **New York Convention, Article V(d)(1):** Composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties

Arbitration counsel



Selection of Counsel



Arbitration Counsel

- expertise
- cost
- language
- transnational legal culture



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Luis M. O’Naghten

Chair, Akerman’s International Litigation and Arbitration Practice

Practice Area: International complex commercial litigation and arbitration before United States courts and international arbitration panels (under ICC, AAA/ICDR, and UNCITRAL rules); handles a wide range of disputes in several countries in Latin America and Spain; focus on international financial frauds, energy disputes, corporate disputes; fluent in Spanish; 20+ years in field

Clients: Foreign sovereigns, parties adverse to foreign sovereigns, major international banks, US based and foreign multinational corporations, US energy companies

Professional affiliations: ICC Commission on Arbitration
ICC Task Force on Revision of Rules
USCIB Arbitration Florida Sub-Committee
Fellow, Chartered Institute of Arbitrators
Adjunct Professor, University of Miami Law School
Adjunct Professor, Universidad Panamericana (Mexico)

Education: Georgetown University; Columbia Law School

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Akerman's International Litigation and Arbitration Practice

Akerman has a well-recognized practice group specializing in International Litigation and Arbitration. Akerman is recognized by *U.S. News - Best Lawyers* as a national ranked law firm for International Arbitration (2012, 2013, 2014), by *Chambers Global* (2013, 2014) and *Chambers Latin America* (2013, 2014) as a leading firm in International Arbitration. For many years we have successfully represented U.S.-based businesses and foreign entities as parties to litigation before U.S. federal and state courts, and in arbitration proceedings under the auspices of a wide range of arbitral bodies such as the International Chamber of Commerce (ICC) and the International Centre for Dispute Resolution / American Arbitration Association (ICDR/AAA).

Members of our team form part of the ICC Commission of Arbitration and have worked on several of its task forces, including the task force that revised the ICC Rules of Arbitration. Similarly, included among the members of our practice group are the Chair of the USCIB's Arbitration Commission in Florida, the Founder/Director of the Miami International Arbitration Society (MIAS), and the Chairman of the Host Committee of the ICCA Miami 2014 Congress. Further, due to our commitment to the positive development of International Arbitration and, as such, members of our team teach arbitration, including at the University of Miami and the Universidad Panamericana in Mexico, and regularly serve as panelists and speakers in programs with universities and institutions in the U.S., Latin America and Europe.

Luis M. O'Naghten

Chair, International Litigation & Arbitration Practice

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