



American Conference Institute's

Practical Strategies for Structuring, Negotiating & Enforcement in

International Commercial Arbitration

Corporate Counsel's guide to effective resolution of cross-border and international disputes



April 30 – May 1, 2008 • The Carlton on Madison Avenue • New York, NY

Gain insight from and network with industry leaders from:

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International Chamber of Commerce

Skadden, Arps, Slate, Meagher & Flom

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And more...

Featuring an Arbitrator's Roundtable—practical advice for presenting the most effective case

Industry Experts Will Provide Insights On:

- Reducing cultural missteps when presenting evidence in an unfamiliar forum
- Clearly defining the scope of the matters subject to arbitration
- Incorporating protective clauses into the arbitration agreement when conducting business with sovereigns, state owned entities and quasi-government parties
- Streamlining the discovery process to minimize the risk of inadvertent spoliation
- Knowing what the arbitrator *really* wants to hear—fundamentals for presenting a persuasive case

Featuring Pre and Post-Conference Workshops:

- A- Resolving International Commercial Disputes through Online Arbitration
- B- Latest Cases and Trends in Federal and State Law in International Arbitrations

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Discover how you can make effective use of international arbitration as a real alternative to foreign litigation.

Join your peers at American Conference Institute's *Negotiating, Structuring and Enforcement in International Commercial Arbitration* taking place on April 30-May 1, 2008. This special event is designed to provide practical strategies to help you ensure your company is able to conduct successful business cross-borders and overseas.

As arbitration clauses become an integral part of any international commercial business contract, the negotiation and drafting of these agreements have only become more intricate and complex. From specifying the place of arbitration, through determining the governing procedural and substantive laws, to dealing with the numeric increases in state-party arbitrations, even the most seasoned litigators find it hard to predict the agreement's enforceability at a later time. But that doesn't mean it can't be done. It means you need to fully understand where your agreement is vulnerable and then take the appropriate measures to protect your company.

Our outstanding faculty of experts represents major arbitration centers and experienced practitioners from leading corporations who will discuss key practical steps you can take to avoid drafting pitfalls. They will share with us their proven strategies that have helped ensure enforceable outcomes.

Come and learn how others are successfully:

- Minimizing the risk of foreign litigation – employing key language for drafting an air-tight arbitration clause
- Incorporating protective clauses into the arbitration agreement when conducting business with sovereigns, state-owned entities and quasi-government parties
- Designating the appropriate forum - how to accurately pinpoint which forums will provide fair and reliable outcomes
- Obtaining critical information during an expedited discovery process
- Effectively negotiating for jurisdiction outside an SOE's home country
- Using and applying case law to determine available grounds for vacatur

To further build upon this learning experience, we have selected two issues which came up again and again during our program research and have developed deep-dive workshop sessions around them: **Latest Cases and Trends in Federal and State Law in International Arbitrations** and **Resolving International Commercial Disputes through Online Arbitration**, to customize and enhance your overall conference attendance!

This is the ideal time for those involved in international commercial arbitrations to come together, learn, network and discuss the most recent developments in international commercial arbitrations. Reserve your place and register now by calling 1-888-224-2480; fax your registration to 1-877-927-1563 or online at www.americanconference.com/internationalADR

DISTINGUISHED FACULTY

CONFERENCE CO-CHAIRS

Arthur W. Rovine
International Arbitrator & Fordham
University School of Law

John L. Gardiner
Partner, Skadden, Arps, Slate,
Meagher & Flom LLP

PARTICIPATING FACULTY

Dr. Horacio A. Grigera Naón
International Arbitrator
*Former Secretary General,
International Court of Arbitration
of the International Chamber
of Commerce*

Merton E. Marks
Commercial Arbitrator & Mediator

Sophie Nappert
Arbitrator
3 Verulam Buildings
Gray's Inn (London)

Robert B. von Mehren
International Arbitrator, Retired Partner
Debevoise & Plimpton LLP

Judge Ronald Hedges
Counsel, Litigation & Dispute
Resolution, Nixon Peabody LLP

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Partner, Baker Botts LLP

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Co-head of the firm's International
Department and Arbitration
& ADR Practice Group,
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Special Counsel
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Tom Bayko
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Partner, King & Spalding LLP

Lorraine M. Brennan
Partner, Kilpatrick Stockton LLP
*Former Director of Arbitration
and ADR, North America, ICC,
International Court of Arbitration*

Henry Guy Burnett
Partner, Co-Head of the Latin
America Practice Group
Fulbright & Jaworski, LLP

Greg V. Etter
International Arbitrator

David U. Gourevitch
Law Office of David
Gourevitch, P.C.

Christian Leathley
Counsel
Clifford Chance LLP

A Must Attend Event For:

- Corporate Executives involved in cross-border and international dispute resolution including:
 - Chief Arbitration Counsel
 - Corporate Counsel
 - Chief Hearing Officer
 - International Counsel
- Outside Counsel specializing in:
 - International Commercial Arbitrations
 - International ADR
 - International Litigation
 - Oil and Gas Dispute Resolution
- International Commercial Arbitrators & Mediators

Continuing Legal Education Credits



Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements.

This *transitional* course is appropriate for both experienced and newly admitted attorneys.

ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of the 12.0 hours. An additional 3.5 credit hours will apply to workshop participation.

ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 10.0 hours. An additional 3.0 credit hours will apply to workshop participation.

ACI has a dedicated team who process requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

MAIN CONFERENCE DAY 1

8:00 Registration & Continental Breakfast 🍴

8:45 Co-Chairs' Opening Remarks

Arthur W. Rovine

International Arbitrator, Fordham University School of Law

John L. Gardiner

Partner, Skadden, Arps, Slate, Meagher & Flom LLP

9:00 Structuring and Negotiating Enforceable Arbitration Clauses in International Agreements

Lorraine M. Brennan

Partner, Kilpatrick Stockton LLP

Former Director of Arbitration and ADR, North America, ICC, International Court of Arbitration

Greg V. Etter

International Arbitrator

Merton E. Marks

Commercial Arbitrator & Mediator, Merton E. Marks, PC

Robert B. von Mehren

International Arbitrator

Retired Partner, Debevoise & Plimpton LLP

- Key language necessary for a sufficiently broad but enforceable agreement
 - Clear language that reflects intent of parties
 - Ambiguous or vague language rejected by courts
- Defining the scope and matters subject to arbitration
 - How much specificity is required?
 - How to anticipate and account for related but not explicitly defined circumstances
- Benefits/disadvantages/limitations of ad hoc vs. institutional arbitration
 - Structuring ad-hoc arbitrations
 - What to consider when selecting controlling procedural law
 - Ensuring a “fair” arbitrator selection process
 - Disclosures to require from panel members
- Specifying the governing substantive law
- Clearly and accurately defining the types damages permitted in the arbitration agreement

10:15 Practical Insights for Selecting the Arbitration Forum

Sophie Nappert

Arbitrator, 3 Verulam Buildings, Gray's Inn (London)

Henry Guy Burnett

Partner, Co-Head of the Latin America Practice Group
Fulbright & Jaworski, LLP

- Key considerations for determining in what country arbitration will be held and whose law will apply
- Comparing and contrasting different arbitration forums around the world:
 - AAA/ICDR; LCIA; HKIAC; UNCITRAL Rules
 - Understanding and assessing the different procedural rules in each
 - Determining the appropriate forum for particular types of actions (construction, oil and gas, joint investments)

- Gaining a sense of familiarity and comfort with the arbitration panels
 - Which forums show consistent patterns of regularity and fairness
 - How to avoid panel biases and varying degrees of reliability
- Unique issues that arise when selecting a forum with a government party/entity
- Negotiating for jurisdiction outside the SOE's home country

11:15 Morning Coffee Break 🍴

11:30 Preventing Cultural Missteps in Arbitration Agreements and Hearings

Christian Leathley

Counsel, Clifford Chance LLP

- Accounting for cultural differences when negotiating arbitration clauses
- Presenting your case in a code country — key differences in legal framework
- Cultural sensitivities that arise in the context of investments, energy and other key areas
- Determining when and where cross examination and leading questions are appropriate
- Steering clear of “inappropriate” or culturally insensitive questions/comments
- Reconciling differing privacy considerations in foreign jurisdictions
 - Presenting evidence in an unfamiliar forum-respecting language and cultural biases

12:30 Networking Luncheon Breakout Sessions

To facilitate your networking and conference experience in this unique luncheon, conference attendees will choose a table dedicated to an in-depth discussion for arbitrating each respective industry:

- Oil and Gas
- Construction
- Finance
- Chemical
- Technology

1:30 Focus Session Short-Cut Strategies for Obtaining Critical Information During an Expedited Discovery Process

Judge Ronald Hedges

Counsel, Litigation & Dispute Resolution
Nixon Peabody LLP

David U. Gourevitch

Law Office of David Gourevitch, P.C.

- Defining discovery guidelines: what to include/exclude for specific forums/types of cases
- Establishing a role for the arbitrator in facilitating discovery
- What to get from the client prior to commencing the arbitration
- Effectively communicating with the client to determine the “necessary” documents to be collected during discovery
 - Obtaining documents from a witness in a foreign jurisdiction
 - Reliance on the smoking gun-when to and not to

- Noticing and taking depositions in Europe, Latin America, Asia and the Middle East: time frames, cost considerations and cautions
 - Making proper discovery requests for depositions under the Hague Convention
- Determining which witnesses are crucial to the case
- Using the opposition's requests to craft your strategy
- Deciding to incorporate a Claw Back Agreement to protect against inadvertent discovery
- Strategies to avoid potential harm/lack of relevant information to case

2:30 Arbitrating with Sovereigns, State Owned Entities and Quasi -Government Parties

Jay L. Alexander

Partner, Baker Botts LLP

Tom Bayko

Senior Partner, Jones Day

Ethan Berghoff

Partner, Baker & McKenzie

- Understanding the capacity and power of the government entity
- Incorporating protective clauses into the arbitration agreement to account for political instability when conducting business in foreign countries
 - stabilization clause
 - re-negotiation clauses
 - waiver of state immunity
- Special considerations in state-party arbitrations:
 - Understanding the broad range of functions and its interest in arbitration
 - When can states seek to avoid liability for conduct of state entities?
 - When do disclosure privileges apply?
 - Under what grounds can states resist enforcement?
 - Incorporating an explicit waiver of immunity clause to ensure award if fully executed and enforced
- The importance of negotiating with a signatory to the New York Convention
- Minimizing potential risks by proceeding under a bilateral or multilateral treaty instead of a contract

3:45 Afternoon Break

4:00 Protecting Against Inadvertent Spoliation

Judge Ronald Hedges

Counsel, Litigation & Dispute Resolution
Nixon Peabody LLP

Thomas I. Barnett

Special Counsel, Sullivan & Cromwell LLP

- Special challenges for collecting and maintaining documents during e-discovery
 - Developing a methodical data preservation system to protect against possible spoliation of evidence
 - Developing an efficient system to back-up electronic data
 - Recovering old documents in a timely manner
 - Data maintenance, preservation and retaining evidence overseas
 - Avoiding sanctions or preclusion of evidence for lost e-documents

- Inadvertent production of e-documents-strategies to preserve the attorney-client privilege
- Use and legitimacy of Claw Back Agreements within the arbitration context
- Under what circumstances will witness testimony be precluded from inadvertent disclosure?

5:00 Day One Wrap-Up and Co-Chairs' Closing Remarks

5:15 Conference Adjourns

MAIN CONFERENCE DAY 2

8:00 Continental Breakfast 🍽️

8:40 Co-Chairs' Opening Remarks

Arthur W. Rovine

International Arbitrator, Fordham University School of Law

John L. Gardiner

Partner, Skadden, Arps, Slate, Meagher & Flom LLP

8:45 International Arbitrations and Non-Signatories

Arthur W. Rovine

International Arbitrator
Fordham University School of Law

John P. Bowman

Partner, King & Spalding LLP

- Exploring circumstances in which non-signatories may be brought into or join the arbitration:
 - Agency
 - Third-party beneficiary
 - Assignee
 - Alter ego/piercing the corporate veil
 - Conduct
 - Group of companies doctrine
- Anticipating and avoiding factors that may cause an award to be refused recognition or set aside
- Strategies to contest an arbitration award against a non-signatory

9:30 Ask The Arbitrator – Insider Advice on Presenting the Most Effective Case in the Unfamiliar Environments of International Arbitration

Moderator:

Arthur W. Rovine

International Arbitrator
Fordham University School of Law

Panel:

Dr. Horacio A. Grigera Naón

International Arbitrator
Former Secretary General, International Court of Arbitration of the International Chamber of Commerce

C. Mark Baker

Senior Partner and Co-head
International Department and Arbitration
& ADR Practice Group
Fulbright & Jaworski LLP

PANEL SESSION

Merton E. Marks
Commercial Arbitrator & Mediator

Robert B. von Mehren
International Arbitrator & Retired Partner
Debevoise & Plimpton LLP

- Determining your arbitration strategy: incorporating cultural considerations, language barriers and international & local restrictions into the presentation of your case
- Exploring the most commonly seen mistakes made by US attorneys across arbitral forums – and knowing how to avoid them
 - Less is more:
 - streamlining/summarizing the information for the arbitrator
- Shaping the style and delivery of your presentation to account for cultural and regional sensitivities and regulation
 - Knowing what constitutes acceptable practice regarding questioning and cross examination tactics
- Conducting effective discovery in the face of severe time constraints and limited discovery guidelines
 - What inferences are drawn when parties don't produce requested discovery?
- Calling in the Arbitrator: Under what circumstances is it appropriate? To what extent might this affect your case?
- What criteria does the arbitrator use to determine witness credibility and how can this differ from region to region?

11:00 Morning Coffee Break ☕

11:15 Case Studies: Vacating An Award: Under What Circumstances Vacatur Challenges Succeed And Fail

Sophie Nappert
Arbitrator, 3 Verulam Buildings, Gray's Inn (London)

In this session, our faculty will draw upon their past experience and explore recent cases in diverse arbitral forums in which available grounds for vacatur were invoked most frequently. From these cases you will better understand under what circumstances vacatur challenges succeed and fail, with respect to the following considerations:

- Invalid arbitration agreement
- Particular issue not subject to arbitration
- Statutory grounds

12:30 Main Conference Adjourns

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PRE-CONFERENCE WORKSHOP A
April 29, 2008 • 2:00 - 5:00 PM

Resolving International Commercial Disputes through On-line Arbitration

The use of online dispute resolution is generating interest around the world and is re-shaping traditional arbitral practices and procedures. In this interactive workshop our faculty will provide guidance on how and under what circumstances parties can use online arbitration to resolve international disputes. Topics to be explored include:

- Determining the feasibility of online arbitrations
 - Validity of online arbitration agreements
 - Under what circumstances can arbitration be conducted by electronic means
 - Is an electronically rendered arbitration award enforceable?
- What institutions have adapted existing arbitration rules for online arbitration
- Where has the UNICITRAL model law been adopted in whole or part?
- How is it used to facilitate and provide guidance for online arbitrations?
- A look at WIPO's usage of electronic arbitration communications
 - procedural applications of online arbitrations
 - document production
 - submission deadlines
 - Communicating electronically with arbitrator and adversary
- Case studies: exploring party satisfaction with online arbitrations
- Unique security concerns when using online arbitrations to resolve disputes
 - Authenticating documents over the internet
 - Transmitting confidential documents over the internet

POST-CONFERENCE WORKSHOP B
May 1, 2008 • 2:00 - 5:00 PM

Latest Cases and Trends in Federal and State Law in International Arbitrations

Jay L. Alexander
Partner, Baker Botts LLP

David U. Gourevitch
Law Office of David Gourevitch, P.C.

In this interactive workshop our faculty will discuss the most current case law affecting international arbitrations. You will gain a thorough understanding of the most recent developments and case rulings in New York and the Second Circuit and gain insight as to which other United States jurisdictions have considered similar laws of their own. Topics to be discussed include:

- The latest Second Circuit decisions on arbitrations
- New York's Prejudgment Judgment Attachment Statute – How to make it work for you
- Anti-Suit injunctions and arbitration
- 28 USC § 1782 – Discovery in aid of foreign arbitrations
- Enforcing and challenging arbitrability of disputes
- Privilege issues in arbitrations
- Enforcement of foreign judgments

American Conference Institute's Presents

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Corporate Counsel's guide to effective resolution of cross-border and international disputes



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Registration Fee

The fee includes the conference, all program materials, continental breakfasts, lunches and refreshments.

Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

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