



3rd International Conference on Arbitration in Libya

How arbitration and mediation (ADR) can promote investment and trade

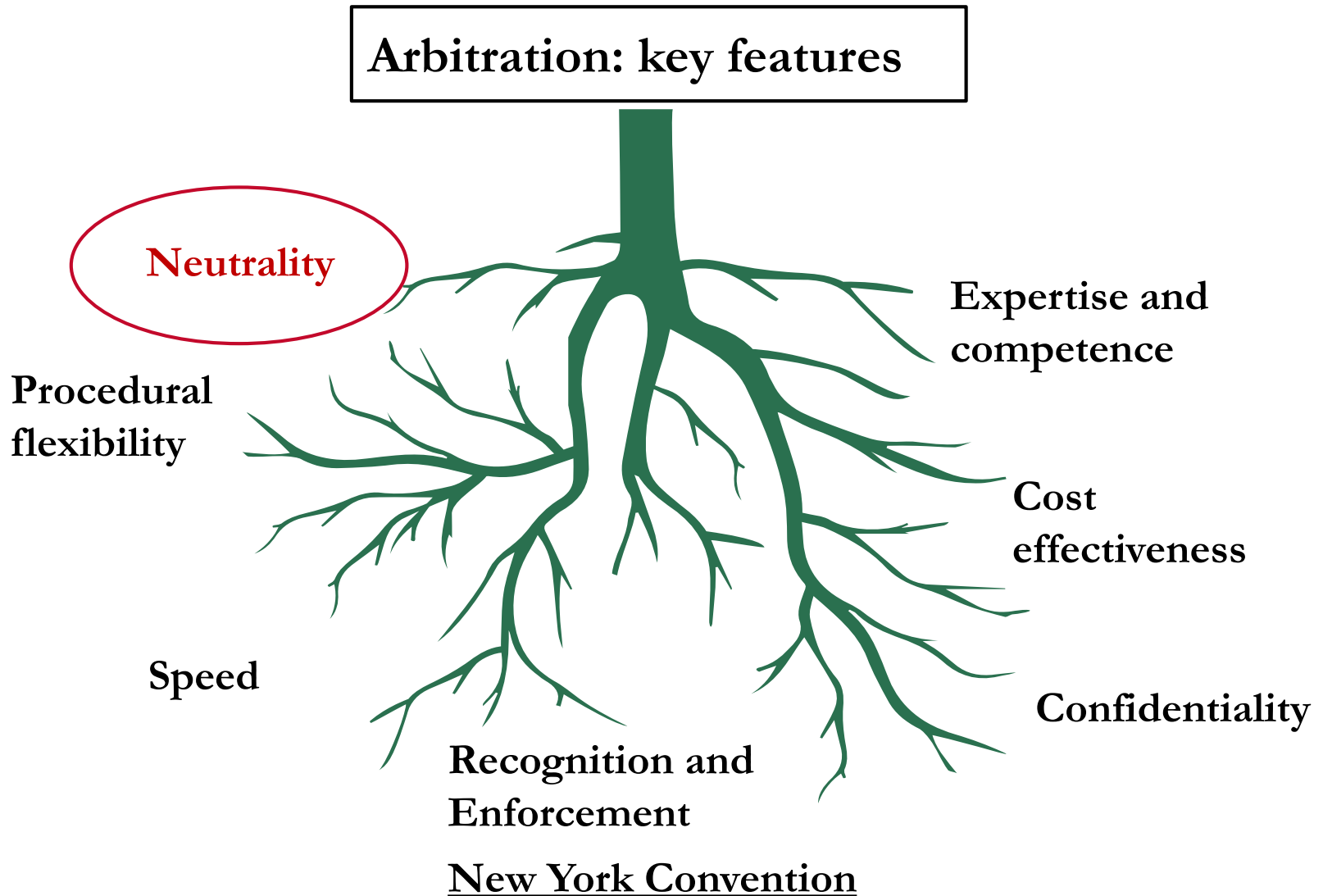
Milan, 19 November 2019

Paolo Di Giovanni

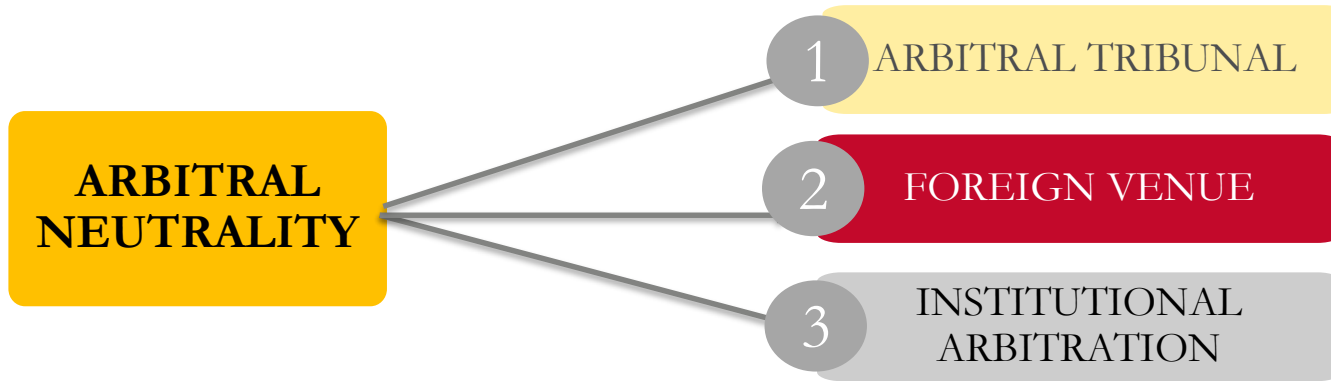
BonelliErede

with LOMBARDI

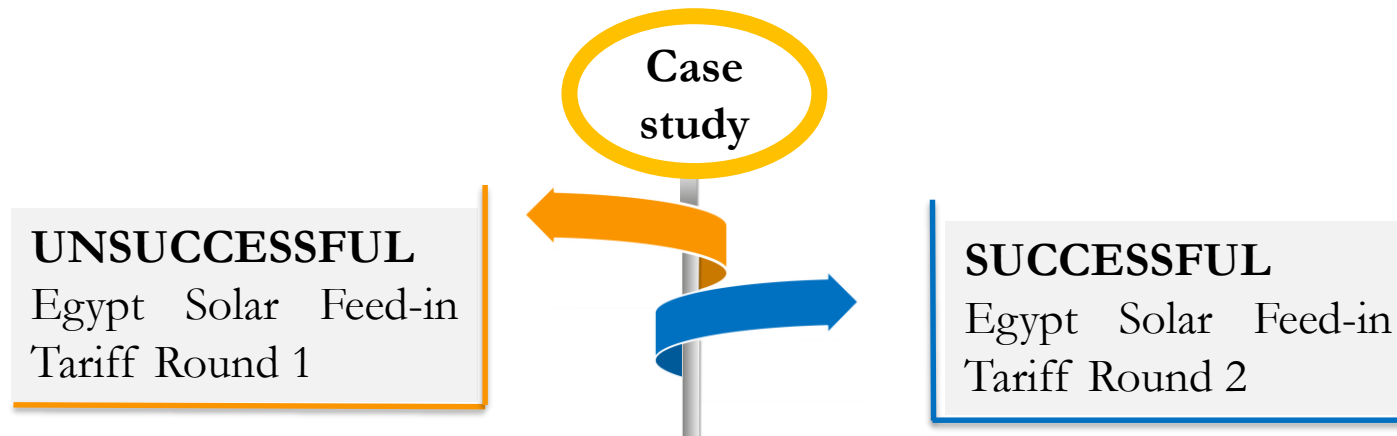
Arbitration as a key “booster” for investment and trade:
real advantages or stereotypes?



Arbitral neutrality as a tool to attract reliable investment



- In the eyes of foreign parties, an **arbitration seated in a foreign country** and **administered by an arbitral institution** ensures the degree of neutrality which is perceived to be lacking in State courts' jurisdictions
- Arbitral neutrality is key to the “**bankability**” of the investment



Arbitral neutrality as a tool to attract reliable investment

- Arbitral neutrality has become **Standard Business Practice**
- Foreign investors that may be willing to accept State Courts' jurisdictions:

Large multinationals
or experienced
companies that
already know there
is no risk



Foreign investors
desperate to do
business



Unsophisticated
foreign investors



Foreign investors
that are confident to
“unofficially”
manage potential
disputes....



Institutional arbitration (as opposed to ad hoc arbitration)

Institutional arbitration as a booster for neutrality

Prevention of conflicts of interest
Arbitrators' disclosure duties



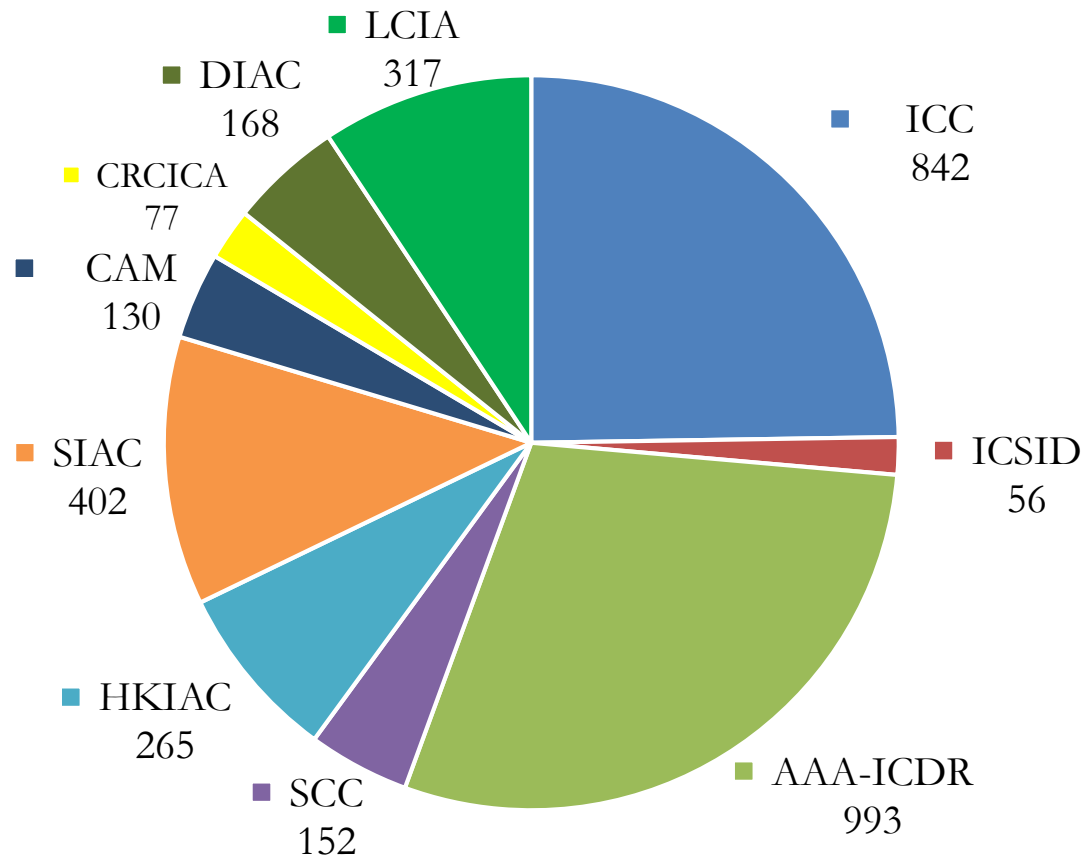
Reliability of decisions
In the framework of institutional arbitration, the reputation of the arbitrators is really at stake when rendering the award



Prevention of delay tactics
Administrative efficiency and timing are safeguarded throughout the whole arbitration proceedings

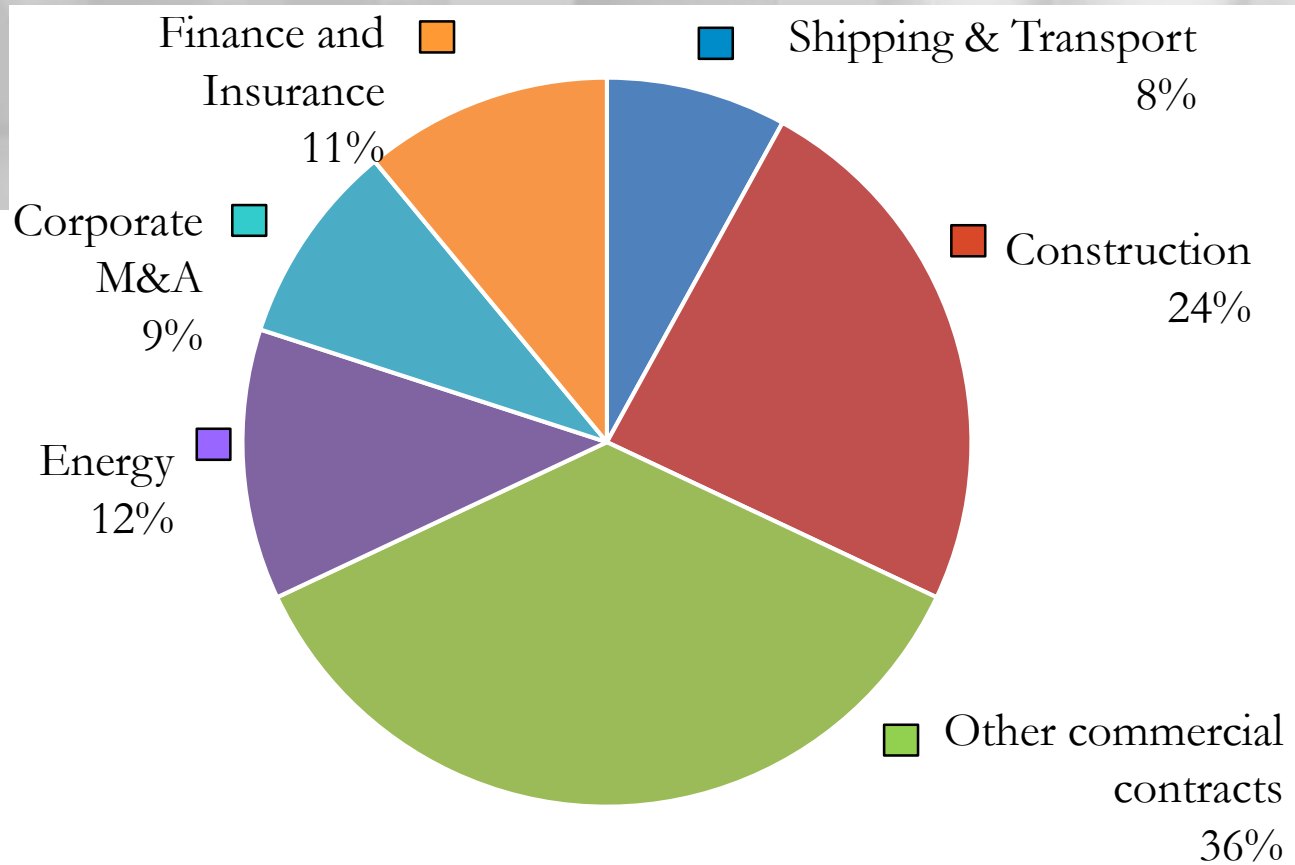
Institutional arbitration: a history of success

Administered arbitrations in 2018 (total new cases: 3234)



Institutional arbitration: a history of success

Industries in which arbitral disputes arose (in 2018)



Institutional arbitration: a history of success

Value of disputes in 2018



Institution	Aggregate Value of pending cases Total (USD)
ICC	203 billion

Institution	Total Value of arbitrations commenced in 2018(USD)
SIAC	7 billion
ICDR	8.2 billion
SCC	14.7 billion
HKIAC	6.7 billion
CAM	0.98 billion
Total	37.5 billion

Mediation

Mediation: A non-adjudicatory method of dispute resolution involving a neutral third party



✓ It promotes settlement

✓ Parties may withdraw at any time

✓ It does not jeopardize the position of the parties in a subsequent litigation/arbitration

Mediation

LCICA's Mediation Rules



“ Art. 21

[...] **The mediator shall not testify** in any judicial or arbitral proceedings in dispute origin, without the written consent of the parties and the mediator. ”

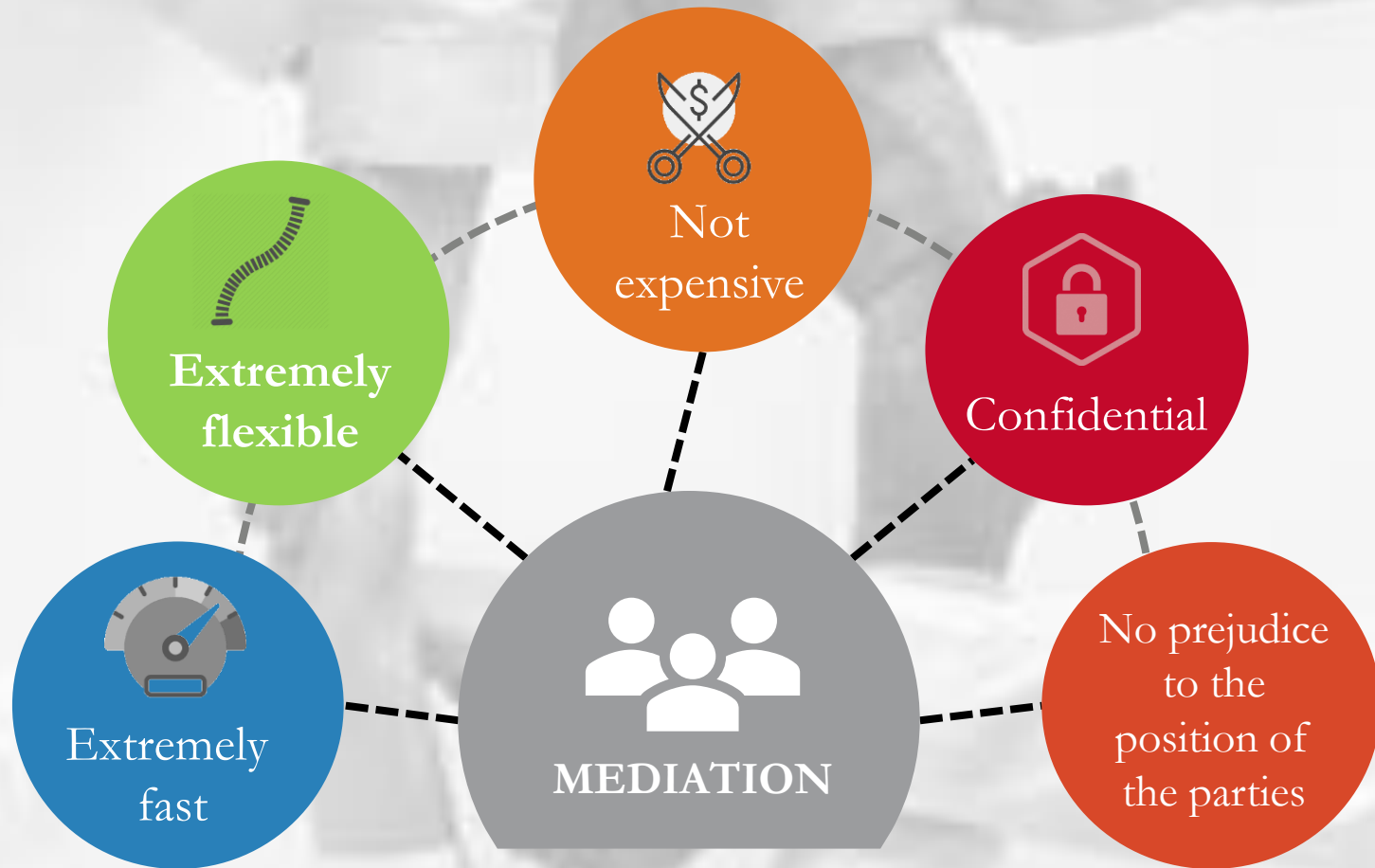
“ Art. 22

The parties to the dispute shall not, when resorting to any judicial or arbitral proceedings, unless otherwise required by law or agreed by the parties, **provide as evidence:**

- **Invitation** by one of the parties **to participate** in the mediation proceedings, or if one of the parties is willing to participate in the mediation proceedings.
- **Views or proposal** made by one of the mediation in order to settle the dispute.
- **Statements of representations** made by one party during mediation proceedings.
- **Suggestions** from the mediator.
- Any **acceptance declaration by one of the parties for the settlement** proposal submitted by the mediator.
- **A document** prepared for mediation proceedings purposes. ”

Mediation

Mediation: main features



Conclusions on mediation

CIVIL LAW vs COMMON LAW

In civil law systems, there still is a widespread sentiment of **skepticism** for mediation, while in common law countries this method of dispute resolution is commonplace

ITALY

In Italy, recent reforms have promoted recourse to mediation and this has proven to be a **successful** means of dispute resolution

CAM EXPERIENCE

This is demonstrated by CAM's statistics: 850 mediation proceedings in 2018, of which 18% were **voluntary mediation**

