

1. The issue at hand

- ### Online Arbitration
- ① The issue at hand
 - ② Solution: Use of ICT (Information and Communications Technologies) for dispute resolution
 - ③ Establishment of Virtual Arbitration Centers
 - ④ Model Rules for Online Arbitration in Colombia
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- ### A Slow Justice System
- Judicial congestion in Colombia:
 - As reported by the *Superior Council of the Judiciary*, the Colombian judicial system currently has an inventory of more of 2,000,000 processes pending decision by a Judge.
 - Judicial enforcement of a standard contract in Bogotá takes approximately 1,346 days (3.5 years), according to the Doing Business 2012 Report of the World Bank.
 - Consequences of the slowness in contractual enforcement:
 - Informality among contractual relationships.
 - Higher transaction costs for Colombian contracts.
 - Raise of the legal uncertainty.
 - Parties may look to take justice into their own hands.

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NO Justice for low value high Volume claims

- ◆ Low value claims follow the same long and wasteful declarative procedure used for high value claims.
- ◆ Inexistence of an "easy way" to avoid unnecessary red tape.
- ◆ When facing low value claims, people prefer not to go to court, but rather to settle their disputes outside the legal solutions.
- ◆ For low value claims, appearing before a judge is, in most cases, too expensive:
 - ◆ Costs of attorneys and of the procedure are generally higher than the actual value of claims.
 - ◆ Emotional burden of going to court.
 - ◆ Waste of money and time.

Perception of Arbitration: Expensive and Complex

- ◆ Common belief that arbitration procedure is an expensive dispute resolution mechanism.
- ◆ Currently, the cost of an arbitration is about 6% of the value of the claim.
- ◆ Plus costs related to lawyers and administrative matters.
- ◆ Less than 600 arbitral procedures in Colombia per year.
- ◆ Most lawyers and judges treat arbitration as a judicial procedure:
 - ◆ Mandatory accomplishment of a series of procedural phases similar to a trial.
 - ◆ Mandatory hearings.
- ◆ Poor diffusion of ADR in Colombia, including arbitration.

2. Solution: Use of ICT (Information and Communications Technologies)

Statute on National and International Arbitration: Law 1563 of 2012

Article 23. *Use of electronic means.* Within the arbitral process, electronic means may be used for all procedural acts, in particular, for all communications of the tribunal with the parties and third parties, the notification of decisions, the submission of memoranda, the realization of hearings as well as their recording for subsequent reference.

Uses of ICTs

- ◆ Presentation of pleadings and memoranda.
- ◆ Notifications.
- ◆ Hearings via tele or videoconferences.
- ◆ Technological management of documents (files)
- ◆ Model of trial management (statistics, journal of the trial), *inter alia*.

3. Establishment of Virtual Arbitration Centers

Online Arbitration and Amiable Composition

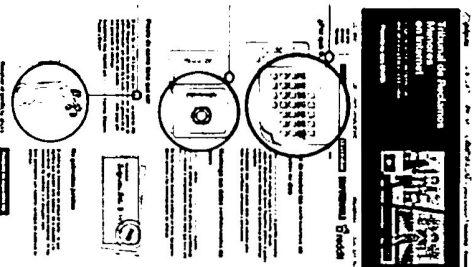


How it works

Completely online procedure
Notice and confirmation are made online and by e-mail.

Confidential
Only the sole arbitrator and the parties have access to the virtual record.

Adequate to needs
Selection of the sole arbitrator based on the needs of the case



Two Main Aspects to Highlight

- Private providers will create appropriate ODR platforms, adapted to the Colombian market and needs.
- Online arbitration will be implemented by each Virtual Arbitration Center according to the Colombian Law, with the main purpose of offering a low-cost arbitration as a real alternative to State justice.

Requirements for Establishment of Virtual Arbitration Center

1. Technological platform, which must contain :
 - Mechanisms for generating, sending, receiving, storing and communicating data messages.
 - Mechanisms to guarantee legitimacy of signatures and users' identities.
 - Security mechanisms for information entered into the system.
 - Mechanisms to guarantee the acknowledgment of receipt of the notifications.

Requirements for Establishment (2)

2. Domain Name System (DNS) of the internet Website that will host the platform.
3. Quality, security, availability and accessibility conditions of the website hosting the platform.
4. Arbitration Procedural Rules, which must include:
 - Automated negotiation phase (via online without the intervention of a mediator).
 - Simplified arbitration phase.

4. Model Rules for Online Arbitration in Colombia

Procedure and Costs

- ◆ The "fast track" procedure should be as follows:
 - ◆ Complaint send by e-mail with a description of the facts and the claim, accompanied by the respective evidence.
 - ◆ Reply by e-mail as well, accompanied by the respective evidence.
 - ◆ Decision *ex aequo et bono* made by the arbitrator in less than a month. (to avoid legal discussions).
- ◆ Estimated cost per case:
 - ◆ Actually an international arbitration cost USD \$ 300.

5. Analysis of the Colombian Online Arbitration Policy

S.W.O.T Analysis

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> - Recent approval by the Congress of the National and International Arbitration Statute - There are no expeditious mechanisms to solve low value claims. 	<ul style="list-style-type: none"> - Arbitration is perceived as an expensive dispute resolution procedure; - Low use of arbitration in Colombia
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> - Progressive increase of internet access in Colombian homes and businesses. - Private initiative from the Bogota Chamber of Commerce and <i>Confederación de las Colombianas (Confederación of the Colombian Chambers of Commerce)</i> following the 	<ul style="list-style-type: none"> - General distrust an anathy towards online dispute resolution mechanisms. - Cultural issues

Political and Legal Risks

- ◆ Abusive clauses (one-sided contracts)
- ◆ Consumer protection
- ◆ Ignorance
- ◆ Lack of continuity of the project
- ◆ Lack of political will.
- ◆ Non enforcement of decisions:
 - ◆ Legal Actions (annulments) and writ of mandamus (*tutelas*) in order to invalidate the decisions.
 - ◆ Need for a judge to enforce the award.
- ◆ Not suitable for the payment of minor debts.
- ◆ Merely a declarative trial.

Expected Impact

- ◆ Massive publicity for ADR mechanisms, particularly arbitration.
- ◆ Increase of the number of online arbitration for low value claims.
- ◆ Relief of the Colombian judicial system correlative to the number of online arbitral procedures.
- ◆ This may be the future of justice!

6. Parallel between the Colombian Project and the UNCITRAL ODR Rules

Similarities

- | SIMILARITIES |
|--|
| <ul style="list-style-type: none"> ◆ Model Rules for expeditious dispute resolution. ◆ Open mechanism that allows for the participation of multiple goods and services providers. ◆ Two phases: Negotiation (direct settlement) + Arbitration ◆ Arbitration <i>ex aequo et bono</i> + contract terms ◆ Sole arbitrator, not necessarily a lawyer. ◆ Expeditious decision making, without any evidence stage such as "discovery", unless the arbitrator decides otherwise. ◆ Concern about the prevention of the informatic fraud: Implementation of security protocols related to identity and encryption of the information. |

Differences

UNCITRAL	COLOMBIA
<ul style="list-style-type: none"> • Rules applicable to B2B and B2C commercial disputes • Does not include other disputes • Low value high volume claims. • 2 T/14 s.k. ? • Award may have to undergo the procedures of recognition and enforcement of the 1958 New York Convention. 	<ul style="list-style-type: none"> • Applicable to any kind of arbitral dispute: <ul style="list-style-type: none"> • Including e-commerce and consumer disputes. • No limitation on value • 0-5 T/14 c.c • Arbitration award enforceable as a judicial decision as a matter of domestic law.

