



## Miami International Commercial Arbitration Court: Another Reason Why Miami is Becoming the Preferred Seat for Latin American Arbitrations

Miami rapidly is becoming the preferred venue for international commercial arbitrations involving Latin American parties. This is so not only because of Miami's geographical proximity to Latin America, large pool of legal professionals with Spanish and Portuguese language capabilities, and close cultural ties to the region, but also because Florida, and particularly South Florida, has become an arbitration-friendly jurisdiction. One example of that is the existence of a specialized court to hear issues related to international commercial arbitrations seated in Miami.

This *Commentary* provides an overview of Miami's international commercial arbitration court, the types of cases the court hears, and the benefits the court provides to parties who choose Miami as the seat for their international commercial arbitrations.

### Overview of Miami's International Commercial Arbitration Court

On December 3, 2013, the Miami International Commercial Arbitration Court ("MICAC") was created<sup>1</sup> in response to a proposal from a group of international

arbitration practitioners in Miami who felt a specialized court would promote Miami as a preferred venue for international commercial arbitration.<sup>2</sup> The court is part of Florida's state court system and falls within the already specialist Complex Business Litigation ("CBL") division of the Eleventh Judicial Circuit.<sup>3</sup> The MICAC is one of only three courts in the United States specializing in international commercial arbitration matters—the other two are in New York and Atlanta.

The conceptual driving force behind the decision to create the MICAC was the recognition that international commercial arbitration is "a specialized area of law" and that "designating particular *trained* judges to hear all international commercial arbitration matters will foster greater judicial expertise and understanding of this area of the law, will lead to more uniformity in legal decisions, and help establish a consistent body of case law...."<sup>4</sup> To this end, the MICAC judges were selected based on (i) their experience handling complex commercial matters and (ii) their completion of specific judicial education or training in the handling of international commercial arbitration matters.<sup>5</sup> In particular, the initial five judges selected to

hear MICAC cases—including Judge John Thornton, who heads the CBL division—received training at the University of Miami’s International Arbitration Institute.<sup>6</sup>

## Types of Cases the MICAC is Empowered to Hear

The MICAC judges are empowered to hear matters arising under the Florida International Commercial Arbitration Act (“FICAA”)<sup>7</sup> or the Federal Arbitration Act (“FAA”)<sup>8</sup>—except matters arising out of a relationship that is entirely between U.S. citizens, unless that relationship involves property located overseas, envisages performance or enforcement abroad, or has some reasonable relation to one or more foreign states.<sup>9</sup> The key function of the MICAC under the FICAA is to provide assistance to an arbitral tribunal where the state of Florida is the seat of the arbitration.

Thus, parties who have chosen Florida as the seat of their arbitration may turn to the MICAC, among other things, to determine the existence and validity of an arbitration agreement, to obtain interim measures, to secure the appointment or removal of arbitrators, and to hear applications to set aside, recognize, or enforce awards.<sup>10</sup> Although the FICAA applies primarily when the seat of the arbitration is in Florida,<sup>11</sup> there are notable exceptions allowing parties who have not designated Florida as the seat access to the MICAC. These include where they seek the assistance of the court to: pronounce on the validity of an arbitration agreement; grant, enforce, or reformulate interim measures; and recognize or enforce an award.<sup>12</sup>

Although the MICAC is relatively new and, therefore, has yet to hear a large number of cases, the court already has demonstrated its proficiency in handling international commercial arbitration matters. In March 2015, Judge Thornton affirmed the validity of an arbitration agreement between Samsung, a South Korean electronics manufacturer, and CT Miami LLC (“CT”), a Miami-based Samsung phone distributor.<sup>13</sup>

In this case, CT failed to pay several past-due invoices for cell phones that it had purchased from Samsung.<sup>14</sup> Samsung demanded arbitration, citing the arbitration clause in their

distribution agreement. CT filed a complaint in the MICAC alleging that Samsung breached its agreement to provide price protection for CT and seeking to stay the arbitration.<sup>15</sup> CT argued that the arbitration clause was not valid since Samsung never signed the distribution agreement that contained the clause.<sup>16</sup> Judge Thornton conducted an expedited hearing less than three months after CT filed its complaint. A week later, he ruled that the arbitration clause was controlling and ordered the parties to arbitrate the dispute.<sup>17</sup> On appeal, Florida’s Third District Court of Appeal upheld Judge Thornton’s decision,<sup>18</sup> signalling to future parties that Miami is capable of promptly and efficiently handling international arbitration issues through the MICAC.

Judge Thornton’s decision demonstrates that the MICAC is ready and able to make knowledgeable decisions in aid of international arbitration in an expedited manner. Like Miami, New York and Atlanta also have assigned international arbitration-related matters to a specialist court or judge, reinforcing the value these specialized courts bring to the practice of international arbitration.<sup>19</sup> Although Atlanta’s specialized court was created only recently in June 2015<sup>20</sup> and has yet to be tested,<sup>21</sup> New York has been able to demonstrate convincing benefits from its specialized court.

In September 2013, the New York Supreme Court designated a single judge, Justice Charles Ramos, to hear all international arbitration disputes for cases filed in New York County’s Commercial Division court.<sup>22</sup> Within a year of his appointment, Justice Ramos already had heard seven international arbitration cases. In three of those cases, Justice Ramos confirmed the underlying international arbitration awards.<sup>23</sup> In another case, he compelled the parties to arbitrate with the American Arbitration Association (“AAA”) under the ICC Rules,<sup>24</sup> as the parties had provided in the underlying arbitration clause. Justice Ramos ordered that if the AAA was unable or unwilling to administer the arbitration in accordance with ICC rules, then the parties would have to arbitrate under AAA rules, thereby ensuring that the parties efficiently resolved their international dispute through arbitration, rather than through drawn-out litigation over the validity of the arbitration clause.

## **Miami's International Commercial Arbitration Court Makes Miami an Ideal Venue for International Commercial Arbitration Relating to Latin America**

The combination of the MICAC's specialized expertise and expeditious resolution of international arbitration-related disputes, along with Miami's geographical and cultural proximity to Latin America, make Miami an ideal venue for Latin American disputes.

One of the key benefits of the MICAC is the specialized training in international commercial arbitration that the assigned judges receive. Few federal judges, and perhaps even fewer state court judges, are familiar with the nuances of international commercial arbitration. As a consequence, parties in international arbitration who seek relief in federal or state court often face judges with little or no experience in this specialized area of law. The education prerequisite for the MICAC judges, however, greatly reduces this risk and ensures consistency and predictability of the process and decisions.

Another important benefit of the MICAC is its increased speed and efficiency as compared to other courts, as a result of its case management mechanisms. Cases are assigned to the MICAC once a party submits a notice to the court indicating that its case qualifies by (i) either arising under the FICAA or the FAA and (ii) involving a requisite international element.<sup>25</sup> This allows parties to avoid being placed at the back of the main and already crowded CBL docket. Once on the MICAC's docket, cases are heard expeditiously, as demonstrated by Judge Thornton's decision in the CT matter, where an expedited hearing was held less than three months after CT filed its action and Judge Thornton rendered his decision a week later. This expedited relief allows parties to achieve the key traditional goals of international commercial arbitration: quick and cost-effective resolution of disputes.

Finally, because of its close geographical, linguistic, and cultural proximity to the region, Miami is a natural hub for Latin America, including Latin America-related disputes. Significantly, many of the top-tier international law firms have established and expanded their Latin American practice, including their international arbitration practice, from Miami. Latin American-qualified attorneys also are able to participate in international arbitrations without having to be barred in Florida, thereby allowing them to service their Latin American clients in Miami,<sup>26</sup> although they would have to work with local counsel to appear before the MICAC. The expansion of the legal profession, enriched with bilingual capability, augurs well for the choice of Miami as a seat for arbitration and for the MICAC's resolution of international commercial arbitration-related disputes.

In fact, between 2011 and 2014, the number of international arbitrations seated in Miami under the AAA's International Centre for Dispute Resolution has doubled to 156.<sup>27</sup> Only time will reveal the extent of the MICAC's impact in making Miami a seat for international commercial arbitration. However, the fact that Miami recently was chosen as the seat of arbitration by the parties involved in \$1.6 billion in disputes arising from the expansion of the Panama Canal<sup>28</sup> certainly is an endorsement of all that Miami has to offer as a preferred hub for international arbitration.

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## Endnotes

- 1 The Eleventh Judicial Circuit, Miami-Dade County, Florida, [Administrative Order No. 13-08](#) (hereinafter “Order No. 13-08”).
- 2 See [Eleventh Judicial Circuit Establishes International Commercial Court](#), Media Advisory, Dec. 17, 2013.
- 3 See *id.*
- 4 Order No. 13-08, Preamble (emphasis in original).
- 5 *Id.* ¶ 2.
- 6 Carolina Bolado, [“Miami Builds International Arbitration Chops with new Court,”](#) Law360, Feb. 16, 2016.
- 7 § 684 et seq., Fla. Stat. (2012). The FICAA is modelled after the UNCITRAL’s Model Law on Commercial Arbitration. Jose M. Ferrer, [“A New Destination for International Arbitration,”](#) Law360, Apr. 3, 2014.
- 8 9 U.S.C. §1 et seq.
- 9 Order No. 13-08, § 1(b).

- 10 § 684 et seq., Fla. Stat. (2012).
- 11 *Id.* § 684.0002(2).
- 12 *Id.*; see also *id.* §§ 684.0009, 684001, 6840026, 6840027, 6840028, 6840047, 6840048.
- 13 *CT Miami, LLC v. Samsung Elecs. Latinoamerica Miami, Inc.*, No. 3D15-641, 2015 WL 5247160, at \*3-\*4 (Fla. Dist. Ct. App. Sept. 9, 2015).
- 14 *Id.* at \*2.
- 15 *Id.*
- 16 *Id.*
- 17 *Id.* at \*3-\*4.
- 18 *Id.* at \*10.
- 19 The MICAC is second only to a similar court in New York. Sasha Funk Ganai, [“Florida: A Bright Destination for International Arbitration,”](#) Lexology, Oct. 3, 2014. In May 2015, as part of an effort to make Atlanta an international arbitration hub, the Supreme Court of Georgia created a specialized court within its business division as well, although it is unclear whether specialized judges will be assigned to that court. See Lacy Yong, [“Atlanta Creates Specialist Arbitration Court,”](#) [globalarbitrationreview.com](http://globalarbitrationreview.com), July 28, 2015 (subscription required).
- 20 Atlanta designated the Superior Court of Fulton County’s Business Division (“FCBD”) to hear cases involving international commercial arbitration issues. Media Release, Fulton Co. (Ga.), [“Superior Court of Fulton County’s Business Court Division is Now Home to International Commercial Arbitration”](#) (June 17, 2015). Like Miami’s CBL, the FCBD handles complex commercial disputes and resolves disputes more quickly than a non-specialized court. *Id.*
- 21 Atlanta hopes that the FCBD will become known as a hospitable jurisdiction for the enforcement of international arbitration awards. See Press Release, Ga. State Univ. College of Law, [“Fulton Business Court Rule Change Could Aid Arbitration Center”](#) (July 28, 2015). The FCBD is partnering with Georgia State University College of Law, which houses the Atlanta Center for International Arbitration and Mediation, to strengthen its expertise in these issues. *Id.*
- 22 Administrative Order of Chief Admin. Judge of Cts. (NY) AO/224/13, Sept. 16, 2013.
- 23 Aníbal Sabatar & Mark Stadnyk, [“New York’s International Arbitration Judge, One Year Later,”](#) N.Y.L.J., Nov. 17, 2014.
- 24 *Id.*
- 25 Order No. 13-08, § 1(b).
- 26 Rules Regulating The Fl. Bar, Rule 1-3.11 (2016).
- 27 Monika Gonzalez Mesa, [“What’s Not to Like? Miami as Arbitration Seat,”](#) Daily Business Review, Feb. 11, 2016.
- 28 See Elizabeth Olson, [“Cities Compete to be the Arena for Global Legal Disputes,”](#) N.Y. Times, Sept. 11, 2014; Sasha Funk Ganai, [“Florida: A Bright Destination for International Arbitration,”](#) Lexology, Oct. 3, 2014.

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