

Kluwer Arbitration Blog

Costa Rica Has A New Arbitration Law

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Costa Rica has a new Arbitration Law, which is based on the 2006 version of the UNCITRAL Model Law. The relative speed with which the new Arbitration Law was adopted came as a surprise to many. Only a few months ago, at the Second International Arbitration Congress organized by the ICC Costa Rica in San José on 23 February, several colleagues from Costa Rica had predicted that adoption of the Law would probably take many more months or even years. Instead, Congress passed the Law only a month later and it entered into force on 25 May 2011, the date of its official publication.

As a result of the enactment of the new Arbitration Law, international arbitrations are no longer governed by Law 7727 and its regulations, which contained several provisions that had the effect of making Costa Rica a rather unappealing seat: arbitration proceedings had to be conducted in Spanish, were governed as a default by Costa Rica law and had to be conducted exclusively by arbitrators who were members of Costa Rica's bar. As a result, while the use of domestic arbitrations in Costa Rica has steadily increased over the past decade, there have been few, if any, international arbitrations.

The new Arbitration Law constitutes a drastic improvement and offers a modern framework for international arbitrations. The Law incorporates the 2006 revisions to the Model Law, such as the requirement to interpret the Law having regard to "its international origin and to the need to promote uniformity in its application." Terms such as "ordre public" and "impartiality and independence" will therefore need to be interpreted by the competent courts in accordance with internationally accepted principles. The Law also includes the much discussed provisions of the 2006 Model Law on interim measures and preliminary orders, which permit ex parte applications for preliminary orders and establish a regime for the recognition and enforcement of interim measures.

Interestingly, the new Arbitration Law designates the First Chamber of the Costa Rica Supreme Court as the only competent court for the setting aside of arbitral awards. This provision not only ensures that the most distinguished and experienced judges in the country will decide applications for setting aside, but will above all ensure the development of a uniform jurisprudence.

The Law authorizes the First Chamber of the Supreme Court to designate a competent authority for the recognition and enforcement of interim measures. However, the Law does not designate, nor authorize the Supreme Court to designate, a specific court for the recognition and enforcement of awards. It is therefore to be presumed that awards will be enforced before the competent courts pursuant to the applicable rules of civil procedure.

The two final provisions of the new Arbitration Law are not based on the UNCITRAL Model Law. First, the new Law provides for the confidentiality of arbitration proceedings. In court proceedings

relating to the arbitration, only the parties and their counsel will be permitted to have access to the arbitration files. However, absent an agreement to the contrary, the award itself will be public, although it will identify the parties only by their initials. Second, the Law includes a broad definition of arbitrability providing that the parties are free to submit any dispute to arbitration in conformity with the applicable civil and commercial rules.

With the new Arbitration Law, Costa Rica aspires to become a regional hub for international commercial arbitration. Several countries in the region (Guatemala, Honduras and Nicaragua) have arbitration laws that are based on the 1985 UNCITRAL Model Law, although none have yet managed to establish themselves as a credible seat for international arbitrations. Panama, which enacted a new arbitration law in 1999, is currently the only other country on the isthmus with the ambition and potential to develop into a regional hub for international arbitration over the next decade.

Costa Rica has much to recommend itself as a seat: political stability, legal security, a sophisticated judiciary and bar, active arbitration institutions, good flight connections within the region and the rest of the Americas and – for arbitral tourists – a geography unparalleled in its beauty. While the adoption of the new Arbitration Law has been an important first step, Costa Rica still has a long way to go to establish itself as a reliable seat. Above all, its courts will need to prove that they are able to successfully make the transition from the particularities of domestic arbitration, which in many respects continues to resemble domestic litigation proceedings, to the arena of international commercial arbitration and to develop a consistent pro-arbitration jurisprudence firmly rooted in the new Law and the New York Convention.

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