



Private International Law

Latest Developments

Simplified Incorporation

The General Assembly adopted a resolution in 2017 to take note of the *Model Law on the Simplified Corporation*, instructed the CJI and DIL to disseminate this Model Law as widely as possible and invited OAS Member States to adopt those aspects of the Model Law that are in their interest, in accordance with their domestic laws and regulatory framework, with collaborative support from DIL (AG/RES.2906 (XLVII-O/17)).

As its name suggests, the Model Law offers a simplified corporate structure and, in doing so, expands the benefits of incorporation to many small and medium-sized enterprises (“MSMEs”) without the complexity (and associated costs) often required under existing corporate codes in the domestic legislation of many States. Simplified incorporation can serve as a useful first step in simplification of the entire business registration process. It can help to:

Encourage migration of businesses from the informal into the formal sector;

Improve access to credit and other financial services, particularly for women who are 3 times more likely than men to be working in the informal sector and have more limited credit;

Attract foreign businesses seeking to expand into the domestic market, stimulating improved economic growth.

In furtherance of its mandate, DIL has requested Member States to consider the appointment of a Focal Point for the Model Law to enable a channel of communication with those offices, ministries or bodies responsible for the modernization of corporate legislation and simplification of business incorporation. By means of this mechanism, a network will be established for the effective dissemination of the Model Law throughout the hemisphere and exchange of lessons learned in the course of its implementation.

Electronic Warehouse Receipts

In 2018, the General Assembly considered a report by the CJI and accompanying draft *Principles for Electronic Warehouse Receipts for Agricultural Products* (CJI/doc. 505/16 rev. 2) and requested that the work be continued in light of new developments (AG/RES. 2926 (XLVII-O/17)). The CJI has appointed a new Rapporteur to advance the topic with technical support from DIL.

Warehouse receipt financing is a form of asset-based lending where the stored (“warehoused”) products are used as collateral, which increases lender confidence in loan recovery. Because producers receive needed cash against the warehouse receipt, which is issued as soon as the goods are delivered, they are no longer forced to sell their farm products immediately upon harvest and can delay sale until prices are more favorable. Improved performance of the agricultural sector has been shown to be essential in many countries as a way to stimulate economic growth and development.



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Activities of the Organization of American States (OAS) in private international law are carried out through initiatives by the political organs, studies by the Inter-American Juridical Committee (CJI) as the juridical advisory organ, the process of the Inter-American Specialized Conferences on Private International Law (CIDIP) and supportive work of the General Secretariat through the Department of International Law (DIL) of the Secretariat for Legal Affairs, and conducted in collaboration with other international organizations engaged in the furtherance of private international law.

**Department of International Law
Secretariat for Legal Affairs**

Tel: +1 (202) 370 0664

dil@oas.org

www.oas.org/en/sla/dil/international_law.asp

Secured Transactions

The Model Inter-American Law on Secured Transactions and its accompanying Model Registry Regulations:

Form the basis for a predictable, fair and efficient system of asset-based financing by enabling use of a wide range of collateral and thereby improving access to credit;

Are of particular importance to many MSMEs, especially those operated by women, without access to traditional forms of collateral such as land and large equipment;

Also impact larger businesses that must operate in a highly competitive global environment where cross-border lending is becoming increasingly prevalent.

The General Assembly has instructed DIL to continue promoting this Model Law among Member States, (International Law AG/RES. 2909 (XLVII-O/17)).

Arbitration

OAS Member States have reaffirmed the importance of and support for the Inter-American Program for the Development of International Law (originally adopted in 1997 and updated in 2011). DIL has been instructed to continue to implement the actions called for in this Program, including, to extend the training for judges and other public officials on the effective implementation of international treaties on enforcing decisions and arbitral awards.

International Contracts

The CJI is currently developing a draft *Guide on International Contracts in the Americas*, with the objective being to produce an effective tool that will improve the legal system applicable to international contracting in the Americas. The topic was added to the agenda of the CJI in 2014, the year which marked the 20th anniversary of the *Inter-American Convention on the Law Applicable to International Contracts* (“Mexico Convention”), due to concerns over the lack of progress within the Americas on this matter. DIL serves as technical secretariat on this topic.

Recognition and Enforcement of Foreign Judgments

Challenges can arise when one seeks to enforce a judgement or arbitral award in another jurisdiction. Although the *New York Convention* (1948) and the *Montevideo Convention* (1979) as well as current work underway by the Hague Conference on Private International Law (HCCH) on a convention for the recognition of foreign judgments are important in this regard, such instruments address only one aspect; another set of challenges is created by the internal or domestic recognition procedures. It is this aspect that the CJI has recently decided to investigate with a view towards creating an instrument to standardize these internal procedures within the region. DIL serves as technical secretariat on this topic.

Inter-organization Collaboration

The OAS recognizes the importance of collaboration as reaffirmed recently in International Law (AG/RES. 2909 (XLVII-O/17)), which instructs DIL to promote greater dissemination of private international law among OAS member states, in collaboration with other organizations and associations that work in this area, including the United Nations Commission on International Trade Law, the HCCH, the International Institute for the Unification of Private Law, and the American Association of Private International Law.

Collaboration reinforces and strengthens efforts to further develop the field of private international law, ensures consistency, maximizes use of resources and avoids duplication. Accordingly, DIL endeavors to foster its relationship with these and other organizations.

Future of Private International Law in the Americas

During its regular sessions in recent years, the CJI has undertaken discussions with invited experts and academics on the path forward for the OAS, the CIDIP process and the role of the CJI in the furtherance of private international law throughout the region. Similar discussions will be included in the agenda as appropriate.