

International Commercial Arbitration: Opportunities and Recent Developments in Panama

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Opportunities and Recent Developments
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Background

- Rules of arbitration in the civil procedure context.
- First autonomous rule of commercial arbitration: Decree Law No. 5 of July 8, 1999.
- Model arbitration law proposed by UNCITRAL and ICC Rules of Arbitration.



Background



- Constitutional amendment of 2004:
 - Express recognition of arbitral jurisdiction and of the competence-competence principle.
 - Recognition of arbitration agreements signed by the state.
 - Removal of the requirement of approval by the Cabinet Council and a prior favorable opinion from the Attorney General of the Nation.

Justification for new rules

- Progress in international trade.
- Concurrence of gaps and inaccuracies in the Decree Law as regards to international commercial arbitration.
 - Lost opportunities.
 - Waste of Panama's potential as a seat of international arbitration.

Opportunities for Panama's development as an international arbitration center

- Implementation of policies to attract foreign investment.
- Economic boom and economic stability.
- Panama's absence from the OECD tax-haven blacklist.



Panama's Commercial and International Arbitration Law

- Bases for Act 131 of December 31, 2013.
 - UNCITRAL model law on international commercial arbitration (2006).
 - Foreign law: laws of Peru (2008), France, Spain (2011), and Costa Rica (2011), among others.
 - Opinions of the Panamanian Chapter of the ICC and its arbitrators.

Panama's Commercial and International Arbitration Law

- Purpose.
 - *"...To bring national arbitration law into consonance with developments in international arbitration; standardize and universalize arbitration rules in accordance with the premises established by UNCITRAL, lend autonomy to the international arbitration process as a specialized requirement of world trade, and strive for judicial centralization as regards challenges and the execution of international arbitral awards."*

Scope of application

- Applies to national and international arbitration proceedings whose seat is in Panamanian territory, without prejudice to treaty provisions.

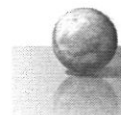
International arbitration under Panamanian law

- Arbitration will be international when the parties to an arbitration agreement are established in different states at the time of that agreement.
- Plurality of establishments.
- Lack of establishments (usual residence).



International arbitration under Panamanian law

- When the following are located outside the state in which the parties have their establishments:
 - The seat of arbitration.
 - The place of execution of a substantial portion of the obligations in a commercial relationship.
 - The place to which the matter in dispute is most closely related.



International arbitration under Panamanian law

- When the parties expressly agree that the matter under arbitration is related to more than one state.
- When the matter under arbitration involves the provision of services, the disposal of assets, or the transfer of capital with transboundary or extraterritorial effects.

National arbitration under Panamanian law

- When the tribunal has its seat within the territory of the Republic of Panama and the arbitration does not meet any of the criteria for international arbitration.

International arbitral award

- Act 131 of December 31, 2013, defines it as *"an award issued outside the territory of the Republic of Panama, or issued within Panamanian territory in the course of international commercial arbitration..."*.



Matters subject to arbitration under Panamanian law

- Matters governed by the discretion of the parties under law.
- Matters authorized by law, treaties, or international agreements.
- In international arbitration, the state, or a corporation, organization, or firm controlled by the state, cannot invoke the prerogatives of its own law to escape obligations stemming from the arbitration agreement.

Relevant aspects

- Scope of judicial intervention
 - Places a clear limit on the scope of judicial intervention.
- Type of arbitration
 - The arbitral tribunal shall decide according to the applicable law, unless there exists a clear agreement that it shall act as amiable compositeur.

Arbitration agreement

- Legal definition.
 - *"Mechanism to which the parties decide to refer their dispute, or certain disagreements that may have arisen, or that may arise, between them, as regards a given legal, contractual, or non-contractual relationship."*

Arbitration agreement

- Forms
 - Arbitration clause/ bilateral agreement
- Arbitration agreement requirements
 - Must be in writing
- Compatibility with the adoption of precautionary measures prior to the proceeding.

Arbitrators

- Introduces the criteria to be met by the arbitrator.
- Establishes grounds for disqualification and challenge.

Precautionary measures and preliminary orders

- Authority of the tribunal to order them.
- Conditions to be met for their execution.
- Effect of precautionary measures or preliminary orders issued by an arbitral tribunal whose seat of arbitration is in the Republic of Panama.

“Arbitration proceeding”

- The law empowers the parties to convene the proceeding at their discretion.
- In the lack of an agreement, the arbitral tribunal may conduct the arbitration in the manner it deems appropriate.



Evidence

- Broad authority of the arbitral tribunal to decide exclusively on the admissibility, relevance, submission, and value of evidence and to order the presentation of evidence at any time.

Precautionary measures and preliminary orders

- Lists the grounds for refusing to recognize or execute precautionary measures and preliminary orders issued by arbitral tribunals whose seat of arbitration is abroad.

Default of a party

- Should not be considered an acceptance of the claimant's allegations, but the proceeding shall continue in the absence of the defaulting party.

Issuance of the award

- In international arbitration, a ruling on the dispute shall be issued, and notice shall be given, within the timeframe established by the parties, by the applicable rules of arbitration, or, in their absence, by the arbitral tribunal.
 - Possibility of extension.

Issuance of the award

- The arbitral tribunal shall issue its ruling in a single award or in as many partial awards as it deems necessary, unless the parties have agreed otherwise.
- The law establishes the form and content of the award.
- Correction and interpretation of the award.
- Challenge and execution of the award.

Recognition and execution of international arbitral awards

- International arbitral awards shall be recognized and executed in Panama as prescribed by the treaties on recognition and execution of international arbitral awards.
- Unless the parties have agreed otherwise, the treaty shall be the one most favorable to the party requesting recognition and execution of an international arbitral award.

Recognition and execution of international arbitral awards

- Awards issued under international arbitration processes whose seat is in the Republic of Panama shall not be subject to the recognition proceeding and may be executed without it.



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