ARBITRATION WATCH
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Laws & Treaties

New arbitration law comes into effect in Costa Rica

On 2 April 2025 the Law No. 10535 para Armonizar el Arbitraje Costarricense ("Harmonization Law") came into effect in Costa Rica. The Harmonization Law brings to an end the dualist system that governed (domestic and international) arbitration disputes in Costa Rica for nearly two decades.

While the Harmonization Law still differentiates between domestic and international disputes, it introduces common rules and clears the potential of inconsistencies. The highlights are summarised as follows:

- Formation of the arbitral tribunal: Unless it is otherwise agreed by the parties, a three-person arbitral tribunal will be formed in international disputes and a sole arbitrator will in domestic ones.
- Power of appointment: Arbitral institutions are now allowed to appoint arbitrators, at the request of a party, when the parties cannot reach an agreement.
- Qualifications of the Arbitrators: Unlike domestic ex aequo et bono cases and international arbitration disputes, domestic disputes require arbitrators to hold a law degree, have at least five years of experience, and be members of the Costa Rican Bar with authorization from the Ministry of Justice and Peace.
- Non-Signatories: Arbitral jurisdiction may unfold over parties who have not signed the arbitration agreement but conduct themselves in a manner such as to be bound by it.
- Interim Measures: Arbitral tribunals are empowered to grant interim measures in domestic arbitration proceedings and, by the parties' agreement, in international ones.

UK issues general licence for arbitration costs

On 28 March 2025 the UK's Office of Financial Sanctions Implementation (OFSI) issued General Licence INT/2025/5787748 under Regulation 64 of the Russia (Sanctions) (EU Exit) Regulations 2019 ("the Russia Regulations") and Regulation 32 of the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 ("the Belarus Regulations").

This General Licence allows designated persons from Russia and Belarus to make payments up to a maximum of £500,000 per case to Arbitration Associations and Arbitrators to cover fees and expenses for their arbitration services. The General Licence also permits Arbitrators and Arbitration Associations to direct payment of, receive and use such payments to cover Arbitration Costs.

OFSI has the power to issue General Licences for country sanctions regimes under the Sanctions and Anti-Money Laundering Act 2018 ("the Sanctions Act").

Arbitration centres

A Guideline on the use of AI in arbitration is published

The Chartered Institute of Arbitrators ("CIArb") has recently published The Guideline on the Use of AI in Arbitration (2025). The Ciarb AI Guideline helps to use IA in arbitration in an effective and ethical manner. It allows dispute resolvers, parties, their representatives, and other participants to take advantage of the benefits of AI, while supporting practical efforts to mitigate some of the risk to the integrity of the process, any party' procedural rights, and the enforceability of any ensuing award or settlement agreement.

CIArb AI Guideline is based on current and known developments in the industry and the procedural issues to which the use of AI gives rise and may give rise in the future. Part I outlines the benefits and risks of the use of AI in arbitration. Part II sets out general recommendations on the use of AI in an arbitration. Part III addresses arbitrators' powers to give directions and make rulings on the use of AI by parties in arbitration. Part IV addresses the use of AI in arbitration by arbitrators. Appendix A includes a template Agreement on the Use of

AI In Arbitration. Appendix B includes a template Procedural Order on the Use of AI in Arbitration.

Ciarb AI Guideline is intended for use in conjunction with, and does not supersede, any applicable laws, regulations or policies, or institutional rules related to the use of AI in an arbitration.

Investment Arbitration

EU Commission finds that arbitration award ordering Spain to pay compensation in favour of Antin is illegal and incompatible State aid

Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. ('Antin') had invested in renewables installations in Spain, which benefitted from the 2007 scheme. Following the modifications to the legal framework, Antin initiated an arbitration procedure claiming compensation for the support it would have received on the basis of the 2007 scheme, had it not been modified. In 2018, an arbitral tribunal found that Spain had infringed the Energy Charter Treaty ('ECT') and ordered Spain to compensate Antin for losses allegedly suffered as a consequence of the modifications of the 2007 scheme. The compensation amounts to €101 million, plus interest. Spain notified the arbitration award to the Commission for assessment under the EU State aid rules.

After its in-depth investigation, the Commission has now concluded that the arbitration award, to be paid by Spain in favour of Antin, or any other entity that that has acquired or may acquire the award or any right thereunder, is incompatible aid under EU State aid rules. The Commission considered that the arbitration award, and in any event, its implementation, payment, or execution, constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ('TFEU').

State aid is prohibited unless it is approved by the Commission as compatible with the functioning of the internal market. A measure that breaches other provisions of EU law cannot be declared compatible under State aid rules. Intra-EU arbitration - a dispute brought against a Member State by an investor from another Member State before an investor-State arbitration tribunal - violates fundamental rules of EU law on the ultimate jurisdiction of the Court of Justice of the European Union (CJEU) and the general principle of autonomy of the EU legal order. The dispute leading to the arbitration award was an intra-EU dispute: the two investors bringing the dispute against Spain are registered in Luxembourg and the Netherlands, respectively.

In the decision, the Commission instructs Spain not to pay any compensation based on the arbitration award. The decision also requires Spain to ensure that no payment, execution, or implementation of the arbitration award otherwise takes place. The decision recalls the obligation for national judges to assist Spain to ensure compliance with the Commission's decision, including by taking all measures necessary to prevent the recognition, execution, or implementation of the arbitration award in third countries.

The Commission considered that the arbitration award, and in any event, its implementation, payment, or execution, breaches Article 19(1) TEU and Articles 267 and 344 TFEU, as well as the general principle of autonomy of the EU legal order, and cannot be found to be compatible with the functioning of the internal market.

Case note: England & Wales

Destin Trading Inc v Saipem SA [2025] EWHC 668 (Ch)

Facts: Saipem SA, a French engineering company, and Destin Trading Inc., a Panamanian company which provides management and logistical services, concluded 3 Frame Agreements related to the Congo River Crossing Project, a major infrastructure undertaking aimed at transporting natural gas from offshore wells to the Angola LNG plant in Soyo, Angola. The said agreements provided that the parties were bound by Saipem's General Terms and Conditions for Agreement Documents ("GTCs"), which incorporated clauses providing for ICC arbitration seated in London. A dispute arose over the amount owed to Destin, and a Settlement Agreement was entered into under which the parties terminating the Frame Agreements. The Settlement Agreement contained a clause providing for the Courts of England and Wales to have exclusive jurisdiction to settle any dispute arising out of or in connection with the Settlement Agreement.

In the present dispute, Destin alleges that it was induced to enter the Settlement Agreement by fraudulent or negligent misrepresentations by Saipem to the effect that, in exchange for entering into the Settlement Agreement, Saipem would award Destin further contracts for years to come. Destin contends that for that reason the Settlement Agreement must be rescinded, and that it is further entitled to payment of certain amounts that would have been due to it but for the Settlement Agreement. Saipem, in response, applied for a stay under section 9 of the Arbitration Act 1996 on the ground that parts of Destin's claim are matters to be referred to ICC arbitration. Destin resisted the application on the basis that the entirety of its claim is encompassed by a jurisdiction clause in the Settlement Agreement which superseded the arbitration agreements.

Held: The issue of whether or not Destin's claims are within the scope of the jurisdiction clause of the Settlement Agreement "turns ultimately on the correct construction of the parties' contractual provisions rather than on the application of a hard and fast principle that dispute resolution clauses in a subsequent settlement or termination agreement supersede a dispute resolution clauses in an earlier agreement." There is, nevertheless, "clear authority for the proposition that dispute resolution clauses in a settlement or termination agreement should generally be construed on the basis that they are intended to have a superseding or overriding effect". In this situation, it was inferred that the parties intended that the jurisdiction clause in the Settlement Agreement would replace and supersede the ICC arbitration clause in the Frame Agreements. Saipem's stay application was accordingly dismissed.

Tip of the month

☑ What is the "reciprocity reservation" in the 1958 New York Convention

Pursuant to article I (3) of the 1958 New York Convention, the Contracting States may declare that they will apply the Convention to the recognition and enforcement of awards "*made only in the territory of another Contracting State*". This is known as the "*reciprocity reservation*". For the purposes of establishing reciprocity, the parties' nationality is irrelevant. What matters is that reciprocity exists between the State where the award was rendered and the State where recognition and enforcement is sought.

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