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#YOUNGITATALKS CENTRAL AMERICA

THE NEW COSTA RICAN ARBITRATION LAW IN CORPORATE AND ARBITRATION PRACTICE

by Daniela García

On November 28, 2024, Young ITA (Institute for Transnational Arbitration) Costa Rica, in partnership with Aguilar Castillo Love, hosted a panel discussion addressing the upcoming Costa Rican Arbitration Law No. 10535, which is set to take effect on April 1, 2025 (the “New Arbitration Law”).¹ Eduardo Méndez Zamora (Aguilar Castillo Love), co-chair of Young ITA Central America, delivered the opening remarks, emphasizing the law’s potential to modernize dispute resolution in Costa Rica by offering faster and more flexible processes that could position the country as a regional arbitration hub. Its success, however, hinges on the effective implementation by all the users involved.

The first panel, titled “How Does the New Arbitration Law Affect My Corporate Client?” began with moderator Gabriel Chaves Corrales (Ministry of Foreign Trade, Costa Rica) outlining the significance of the New Arbitration Law. He described it as a substantial legislative advancement, with the panel focusing on the law’s impact on business activity and how this new legislation will enhance Costa Rica’s arbitration framework.

Esteban Agüero Guier (Aguilar Castillo Love) started the discussion by emphasizing the importance of tailoring arbitration clauses to the specifics of each contract and potential future disputes. Depending on the type of contract and the foreseeable issues, it might be advisable to recommend, for example, that the arbitration clause specify a seat outside of Costa Rica. This approach could ensure that the clause aligns with the client’s needs and helps safeguard the integrity of the arbitration process.

¹ Ley 10535, LA GACETA 182, Oct. 1, 2024 (Costa Rica) [hereinafter “New Arbitration Law”].



Marcela Méndez Castro (The Coca-Cola Company) offered an in-house counsel perspective, emphasizing the importance of efficient and transparent tools for addressing disputes. She explained how the new law strengthens Costa Rica's credibility as a jurisdiction favorable to arbitration, particularly for multinational corporations operating in the region. One of the most significant advancements, she noted, is the flexibility for arbitration proceedings to be conducted in languages other than Spanish.² This reform eliminates language as a potential barrier, providing greater freedom for international businesses whose contracts are often negotiated and executed in English.

Agüero further highlighted how the removal of translation requirements in Costa Rica-seated arbitrations—a costly and time-consuming process, especially in cases with a high documentary load—enhances arbitration's efficiency. Together, these changes not only make the process more cost-effective but also align Costa Rica's arbitration framework with the expectations of global investors, making the country a more attractive venue for resolving cross-border disputes.

The panelists also discussed notable reforms, including the introduction of emergency arbitrators to resolve urgent issues³ and the removal of procedural obstacles like the suspensive effect of jurisdictional challenges before the Supreme Court of Justice of Costa Rica (*Sala Primera*).⁴ Previously, parties could challenge the arbitral tribunal's jurisdiction in the arbitration and later appeal this decision to the Supreme Court, which suspended the arbitration proceedings. Under the new reform, the arbitration can proceed even if the tribunal's jurisdiction is challenged

² The current arbitration law for domestic arbitration requires proceedings to be conducted in Spanish. Ley 7727 art. 41, Dec. 9, 1997 (Costa Rica), available at PROCURADURÍA GENERAL DE LA REPÚBLICA, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NR TC&nValor1=1&nValor2=26393&nValor3=27926&strTipM=TCm [hereinafter Current Domestic Arbitration Law].

³ New Arbitration Law art. 17(3).

⁴ The Supreme Court (*Sala Primera*) has exclusive jurisdiction to resolve appeals concerning the jurisdiction of arbitral tribunals. New Arbitration Law art. 6; Current Domestic Arbitration Law art. 38.



before the Court.⁵

The inclusion of emergency arbitration under the New Arbitration Law recognizes the validity and enforceability of a critical mechanism to address urgent matters prior to the constitution of the arbitral tribunal. Emergency arbitrators are appointed swiftly to grant interim relief, such as for freezing assets or preserving evidence, in situations where immediate action is necessary to prevent irreparable harm to one of the parties. This mechanism aligns with the best international practices and enhances the efficiency of arbitration by reducing reliance on local courts for provisional measures. Currently, under the existing framework, arbitrators in Costa Rica are often reluctant to issue interim measures due to a lack of regulatory clarity.

The second panel, titled “The Evolution of Arbitration in Costa Rica: Leaving Behind Old Judicial Practices,” was moderated by Ana Laura Alfaro Valverde (Aguilar Castillo Love). She began by emphasizing the positive outlook brought by the New Arbitration Law and invited panelists to reflect on the historical development of arbitration in Costa Rica.

Alberto Fernández López (BTA Legal) opened the discussion by recounting the country’s journey with arbitration, beginning in 1999 when practitioners relied heavily on the Costa Rican Civil Procedure Code. He explained the initial challenges, including the clash between the principles of written litigation and the oral nature of arbitration. Over time, reforms to arbitration regulations and the incorporation of international standards in local practices have helped Costa Rica mature in this area. Despite these advances, Fernández cautioned against overapplying procedural norms from the Civil Procedure Code to arbitration, as doing so undermines arbitration’s flexibility.

Karima Sauma Mekbel (DJ Arbitraje) shifted the focus to domestic arbitration, noting significant procedural changes introduced by the new law. One major improvement is the removal of the suspensive effect of judicial challenges regarding

⁵ New Arbitration Law art. 16.



an arbitral tribunal's jurisdiction, as mentioned above, allowing arbitration tribunals to proceed with their awards even when such challenges are pending.⁶

The elimination of the suspensive effect of these jurisdictional challenges before the Supreme Court (*Sala Primera*) under the New Arbitration Law is particularly significant in light of the operational delays historically associated with the Court. The delays stem largely from the broad jurisdiction granted to the Supreme Court by Costa Rican law, which encompasses not only arbitration-related appeals but also a wide range of civil, commercial, and contentious administrative matters.⁷ This jurisdictional breadth has resulted in a bottleneck, prolonging the resolution of disputes and diminishing the efficiency of the arbitration process. By removing the suspensive effect of judicial challenges, the New Arbitration Law addresses this structural issue, allowing arbitration tribunals to continue proceedings and issue final awards even when jurisdictional appeals are pending.

Sauma also highlighted cost reductions in domestic arbitration through a single arbitrator default rule instead of three,⁸ as well as the importance of addressing legal gaps, such as the absence of specific rules for investment arbitration in Costa Rica.⁹

Felipe Volio Soley (White & Case LLP) discussed the harmonization of domestic and international arbitration frameworks under the New Arbitration Law. He praised the unification of a previously dual system and highlighted the law's emphasis on uniform application, good faith, and party autonomy.

Volio explained the hierarchy of norms in arbitration where mandatory provisions take precedence, followed by party agreements and tribunal discretion. He did so to

⁶ *Id.*

⁷ See generally Luis Guillermo Rivas Loáiciga, *Los tiempos en la Sala I*, DELFINO (Dec. 13, 2021), <https://delfino.cr/2021/12/los-tiempos-en-la-sala-i>.

⁸ New Arbitration Law art. 10(2).

⁹ Cf. Karima Sauma & Mauricio Paris, *What Does Costa Rica's New Arbitration Law Mean for Domestic and International Cases*, KLUWER ARBITRATION BLOG (Nov. 11, 2024), <https://arbitrationblog.kluwerarbitration.com/2024/11/11/what-does-costa-ricas-new-arbitration-law-mean-for-domestic-and-international-cases/> (discussing that the current arbitration law establishes that it does not apply to investor-state disputes).



emphasize the importance of promoting uniformity in the application of the law, as outlined in article 2(a) of the New Arbitration Law.¹⁰ This principle ensures that both domestic and international arbitration are interpreted according to shared guidelines, such as good faith and party autonomy, avoiding inconsistencies and regional idiosyncrasies.

Building on this framework of party autonomy and tribunal discretion, Volio emphasized that certain procedural aspects, such as timelines, can be varied or agreed upon by the parties to better suit the specific needs of a case.¹¹ He noted that the timelines provided by the law are not mandatory or binding, further allowing for this flexibility. In his opinion, these adjustments should reflect the complexity or monetary value of the dispute, ensuring that the arbitration process is tailored to the particularities of each case rather than rigidly tied to distinctions between domestic and international arbitration.

The panel concluded with reflections on arbitration as a collaborative and evolving practice. Fernández underscored the role of counsel in fostering dialogue between parties, while Sauma emphasized raising the professional standard of arbitration services in Costa Rica. Volio also expressed optimism about the potential establishment of a specialized arbitration court, citing its success in other jurisdictions as a model for Costa Rica to follow.

The discussion concluded with a shared optimism about the New Arbitration Law's potential to position Costa Rica as a leading arbitration hub. However, panelists emphasized that the law's success depends on its proper implementation, continuous training for legal professionals, and the readiness of arbitral institutions to adapt to the changes introduced by the law.

¹⁰ New Arbitration Law art. 2A(1) (*"En la interpretación de la presente ley habrá de tenerse en cuenta su origen internacional y la necesidad de promover la uniformidad de su aplicación y la observancia de la buena fe. Este principio de interpretación será aplicable tanto a arbitraje internacional como al doméstico."*).

¹¹ *Id.* arts. 13, 16, 33 (regarding arbitrator challenges, jurisdictional challenges, and award correction and interpretation).



DANIELA GARCÍA is a Paralegal at Aguilar Castillo Love. Her practice focuses on Corporate Law and Litigation, with particular emphasis on civil, commercial, and contentious-administrative litigation. She completed her law studies at la Universidad de Costa Rica in 2023 and is currently finalizing her graduation thesis to incorporate as a lawyer. She worked as a teaching assistant for the International Contracting and International Trade courses, part of the Master's Program in Business Law at the Universidad para la Cooperación Internacional, in 2022 and 2024. She has contributed to the publication and drafting of academic articles, including: "Liberation of the 5G Spectrum in Costa Rica" (2023) and "The Implementation of the Electronic Apostille in Costa Rica" (2022).

INSTITUTE FOR TRANSNATIONAL ARBITRATION OF THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

The Institute for Transnational Arbitration (ITA) provides advanced, continuing education for lawyers, judges and other professionals concerned with transnational arbitration of commercial and investment disputes. Through its programs, scholarly publications and membership activities, ITA has become an important global forum on contemporary issues in the field of transnational arbitration. The Institute's record of educational achievements has been aided by the support of many of the world's leading companies, lawyers and arbitration professionals. Membership in the Institute for Transnational Arbitration is available to corporations, law firms, professional and educational organizations, government agencies and individuals.

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Founded in 1986 as a division of The Center for American and International Law, the Institute was created to promote global adherence to the world's principal arbitration treaties and to educate business executives, government officials and lawyers about arbitration as a means of resolving transnational business disputes.

II. WHY BECOME A MEMBER?

Membership dues are more than compensated both financially and professionally by the benefits of membership. Depending on the level of membership, ITA members may designate multiple representatives on the Institute's Advisory Board, each of whom is invited to attend, without charge, either the annual ITA Workshop in Dallas or the annual Americas Workshop held in a different Latin American city each year. Both events begin with the Workshop and are followed by a Dinner Meeting later that evening and the ITA Forum the following morning - an informal, invitation-only roundtable discussion on current issues in the field. Advisory Board Members also receive a substantial tuition discount at all other ITA programs.

Advisory Board members also have the opportunity to participate in the work of



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The primary public program of the Institute is its annual ITA Workshop, presented each year in June in Dallas in connection with the annual membership meetings. Other annual programs include the ITA Americas Workshop held at different venues in Latin America, the ITA-ASIL Spring Conference, held in Washington, D.C., and the ITA-IEL-ICC Joint Conference on International Energy Arbitration. ITA conferences customarily include a Roundtable for young practitioners and an ITA Forum for candid discussion among peers of current issues and concerns in the field. For a complete calendar of ITA programs, please visit our website at www.cailaw.org/ita.

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