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InfoPAK℠

Litigation and Alternative Dispute Resolution in Colombia, Mexico, Panama, and Brazil

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This InfoPAK provides the reader with a general overview of the economic conditions in four pertinent Latin America countries: Colombia, Mexico, Panama and Brazil. It discusses, in detail, the elements of dispute mechanisms available in each of these nations: Litigation and Alternative Dispute Resolution. Further, this InfoPAK delves into an analysis of the pros and cons of each type of dispute mechanism, the composition and the means of enforcing a judgment.

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I. Introduction

(Authored By: Lloreda Camacho & Co.)

This InfoPAK is aimed to inform its readers about litigation and alternative dispute resolution ("ADR") in four of the most important economies in Latin America: Colombia, Mexico, Panama, and Brazil.

In order to comprehend the importance of these issues, it is relevant to provide general information of the countries involved, giving a general description of its economies, background, and relevance worldwide. These countries exemplify the economic growth and investment target that the Americas represent. This InfoPAK will give a general overview of three elements of each nation: Litigation, Arbitration, and Alternative Dispute Resolution. This discussion studies the judiciary branch of each, analyzing items such as courts' hierarchy, jurisdiction, courts' specialization in business disputes, and role of precedents. Likewise, the study examines the basic principles of litigation, such as the adversarial system, judge's powers and authority, production of evidence, and enforcement of court decisions, among others. To conclude this matter, the challenges of litigating in each country and its pros and cons are analyzed.

Furthermore, this InfoPAK provides the historic background and current status of arbitration as a dispute resolution mechanism, including policy in favor of arbitration and its current legal framework. Also addressed are issues such as limitations to arbitrate, the court's position on arbitration, arbitration institutions in these four countries in order to identify the advantages and disadvantages of arbitrating in such jurisdictions.

The InfoPAK also illustrates other ADR mechanisms available to parties in a dispute, including mediation, conciliation, and negotiation, as well as their application and relevance within each country.

This InfoPAK will provide the necessary tools to determine, for each case and each country, the most advisable mechanism to resolve a dispute in these jurisdictions.

The countries discussed in this InfoPAK have relevance for companies interested in doing business in Latin America. If companies around the world are interested in starting business activities or have current business in these countries, this InfoPAK will deliver a general overview of one of the essential matters when dealing with its business scheme — the advantages and disadvantages of entering into litigation, and the alternatives that are viable according to each country's legislation.

Why is it so important? Because companies worldwide should know all relevant aspects when negotiating and doing business in a country.

In-house counsel have to balance a number of aspects, including those be explained in this InfoPAK, to determine the appropriateness of choosing among ADR mechanisms, as well as whether and when it is in company's best interest to pursue a litigation claim before the judicial system of the country. It will also give in-house counsel tools when overseeing their litigation team, or the matters handled by outside counsel and experts. Litigation continues to evolve, and so do ADR mechanisms. Knowing the different options a company has, how these options work and apply on each country, and what pros and cons you are facing when deciding how to proceed on your deals will help in-house teams to identify the most qualified individual to handle each matter, the issues and factors you should care for, and how to choose the best option available.

This InfoPAK will allow the readers to:

- Get to know the countries' economies, background, and relevance worldwide;
- Understand the basic principles of litigation for each country;
- Identify arbitration's quality, costs, workload, arbitrators, timeframe, and similar issues;
- Evaluate the pros and cons of litigation and ADR mechanisms;
- Decide whether to use ADR mechanisms to resolve its disputes, or face litigation; and
- Recognize the importance of choosing the proper mechanism to resolve its disputes.

Readers will have a better knowledge of dispute resolution systems in Latin America, an up-and-coming market has demonstrated its importance to the world's business activities.

IV. Panama

A. Introduction

The Republic of Panama is a democracy divided into three branches: the Executive, led by a President appointed for a five-year term and assisted by a Council of Ministers; the National Assembly in charge of adopting laws; and the Judiciary in charge of the serving of justice. There is currently no immediate Presidential reelection. The Presidential election and election of legislators for the National Assembly take place at the same election period. Panama's economy is, in principle, liberal (or center-right) with a developing trend for subsidies for the popular classes. The political landscape is marked by the control of the Executive over the National Assembly, where the majority of the legislators are part of the Executive's political party. There is no central bank issuing local currency; the U.S. dollar is the paper currency. The country has allocated an estimate $2.954 billion for infrastructure work for the period 2011 -012.[60] In addition, the Panama Canal expansion works call for an estimated at $5.25 billion to be spent over the period 2007 -014.[61] In March and May 2010, the country obtained Class “BBB-” investment grade qualifications from Fitch Rating[62] and Standard & Poor’s[63] rating agencies, which is actively marketed by the country to attract international private investors and banks.

Panama's dispute resolution mechanisms are essentially divided into the judiciary and ADR mechanisms, notably in the form of arbitration.

B. Litigation

1. General Overview of the Judicial System

a. Courts' Hierarchy

The hierarchy of the Panamanian judiciary is organized as follows. At the lower level (small claims) are the Municipal Courts;[64] next are the Circuit Courts overseeing the majority of complex litigation and appeals of the Municipal Courts.[65]At a higher level are the Courts of Appeals for the Circuit Courts or Superior Tribunals,[66] followed by the Chambers of the Supreme Court of Justice serving as Courts of Appeals for the Circuit Courts and Courts for special proceedings.[67] And at the highest level, generally overseeing constitutional action, is the Plenary Assembly of the Supreme Court of Justice.[68]

b. Competence and Jurisdiction

Competence in the Panamanian judiciary is generally awarded in consideration of the following elements:

- The geographic circumscription;
- The amount in dispute, and/or;
- The nature of proceedings.[69]

The Municipal Courts are competent to try matters occurring within the Municipalities of the Provinces (the Republic of Panama has nine Provinces) where the amount in dispute does not exceed $5,000.[70] The Municipal Courts are also competent to try special cases such as occurs with the proceedings for eviction without consideration of the monetary amounts (or quantum).

The Circuit Courts are organized into "Judicial Circuits" and generally have jurisdiction in a Province with the exception of the Province of Panama (where the capital is located), which is organized into three Judicial Circuits thus reducing the scope of geographical competence.[71] The Circuit Courts are competent to try cases exceeding the quantum of $5,000, as well as special proceedings such as bankruptcy and property boundaries disputes.[72]

The Courts of Appeals are organized into "Judicial Districts" formed by two or three Provinces. There are four Judicial Districts in Panama,[73] and these are competent to decide writs of appeals against decisions of the Circuit Courts.

The Supreme Court has four Chambers. The First Chamber deals with civil matters, in particular the extraordinary writ of cassation against decisions of the Civil Court of Appeals, and Appeals of the Maritime Courts.[74] The Second Chamber deals with criminal law matters, namely the extraordinary writ of cassation, as well as appeals of Criminal Courts of Appeals decisions acting as trial courts.[75] The Third Chamber is competent to process claims for the annulment of administrative resolutions either affecting individual subjective rights or affecting the general population, as well as the extraordinary writ of cassation on Labor law matters.[76] The Fourth Chamber is competent to review and process letters rogatory from foreign courts, special petitions for foreign assistances (e.g., taking of evidence abroad), and writs of *exequatur*.[77]

Jurisdiction is adjudicated in consideration of the relevant legal statutes governing a determined situation. The major jurisdictions of the Panamanian judiciary are:

- Civil law matters,
- Criminal law matters,
- Family law matters,
- Labor law matters,
- Consumer protection, trade and competition law matters,[78]
- Maritime law matters, and
- Special administrative courts dealing with special matters such as taxation law matters and public contracting claims (although they are not formally part of the judiciary).

c. Courts' Specialization in Commercial Disputes and Others

The Panamanian judiciary has two specialized Courts of Commerce (originally part of the First Civil Circuit for the Province of Panama) at the Civil Circuit level, in addition to a Court of Appeals overseeing consumer protection, trade and competition claims, commercial disputes, and intellectual property ("IP") claims.[79]

The Consumer Protection Authority, organized consumer associations, and consumer rights protection entities have standing to file declaratory claims for breach of the Competition Law, even if they actually have not suffered damages.[80] Individual consumers (or competitors) also have standing to file a claim for breach of the Competition Law, provided they *have* suffered damages.

Class actions are not common in Panama. This may be, in principle, due to the costly and complex nature of such proceedings, and the fact that they need to comply with the mandatory prerequisites of the Competition Law as they relate to the organizing of consumer classes, as well as the need to produce *prima facie* evidence of standing for admission of the claim by the court.[81]

The Panamanian judiciary has two active international Maritime Courts with jurisdiction over all the territory of the Republic of Panama; its territorial waters, which extend 12 miles beyond the coastline; its navigable waters, rivers, and lakes; and the waters of the Panama Canal, in accordance with the United Nations Convention on the Law of the Sea.[82] The Maritime Courts have jurisdiction over claims arising from maritime trade occurring beyond Panamanian jurisdiction, in the following cases:

- In cases of *in rem* claims against a vessel or its owner, and the vessel is arrested within the jurisdiction of the Republic of Panama;
- When the Maritime Court has attached other property belonging to a defendant even if he is not domiciled in Panama (similar to "foreign attachment" in U.S. federal courts);
- When the defendant is located within the jurisdiction of the Republic of Panama and has been personally served with process within the Panamanian jurisdiction;
- When a vessel involved is registered in Panama, or Panamanian substantive law is deemed applicable by virtue of the contract in dispute or by operation of law; or
- The parties expressly or tacitly agree to submit themselves to the jurisdiction of the Maritime Courts of Panama.[83]

There are no specialized bankruptcy courts in the Panamanian judiciary. Bankruptcy proceedings are supervised by the civil circuit courts. Panama does not have special insolvency proceedings or special protection against bankruptcy. The Panamanian system allows a creditor of a single commercial obligation (which is for a sum certain, due and payable) to request the bankruptcy of its debtor, which would result in all of debtor's obligations becoming due.[84] Secured creditors (with a given mortgage or pledge security) have the benefit of foreclosing outside of bankruptcy proceedings.[85]

General matters related to, or resulting from commercial transactions (e.g., failure to honor a promissory note or check, breach of loan agreements, or financial facilities) are usually tried before the civil circuit courts. Special proceedings exist for the enforcement of secured and unsecured commercial and financial obligations alike. Such proceedings are known as special proceedings of execution (or "executory" proceedings) and usually require the creditor to support his claim through documents evidencing that the credit is due and enforceable, for a sum certain.[86] Such documents are listed in the Code of Civil Procedure[87] and certain special laws,[88] and include, among others, negotiable instruments (such as checks, notes, and bills of exchange), Panamanian public or notarial deeds, documents acknowledged before a Public Notary, a certified public accountant ("CPA") certified bank statement of balance owed, or final decisions rendered by the courts or arbitration panels. Mortgage and pledge (e.g., in the case of banking obligations) foreclosure proceedings are part of such special proceedings of execution, allowing the creditor to obtain a first-instance expedited judgment ordering the setting aside of the secured assets for judicial sale.[89]

d. Role of Precedents

The Panamanian judiciary is of civil law background. As opposed to case-law systems, precedents in the Panamanian judiciary are of a non-binding nature; nevertheless, they do have a relative and limited relevance. According to the Code of Civil Procedure,[90] three decisions on cassation on a same point of law will be considered "probable doctrine" and should be used by the courts to decide analogous matters.

This said, judicial decisions (precedents) are used regularly by litigants to fill voids in the law and/or to support their statements of claims and arguments. The courts also use these precedents to support their decisions. For instance, for many years, the statute of limitations for certain negotiable instruments (the promissory note or "*pagaré*") was determined and applied through precedents (two currents existed, one of five and another of three years).

Precedents, however, are of a final, binding and obligatory nature in certain circumstances. This is the case for Supreme Court rulings on constitutionality actions and on the legality of public administration resolutions. Precedents are also followed by the Supreme Court of Justice on its own decisions with regard to the formalities for admission of the extraordinary writ of cassation.

2. Basic Principles of Litigation

a. Adversarial System vs. Inquisitorial System

Civil proceedings have historically been adversarial in the Panamanian judiciary. As a general rule, the burden of proof is borne by the claimant. The claimant has to prove through evidence both the quantum and the facts of the claim.

In turn, historically inquisitorial criminal procedure has undergone major changes in the last two years. A new system has been adopted: The "accusatory system" incorporates elements of the adversarial system, thus requiring a more active role of the claimant, who previously could rely on the State Attorney-led prosecution to demonstrate the existence of criminal liability by the defendant.

Elements of the Inquisitorial system can also be found in jurisdictions where a "weaker party" exists, such as in the family and labor-law jurisdictions.

b. Judge's Powers and Authority

i. Contempt of the Court

In special circumstances, the judge can order the arrest of an individual who fails to comply with the orders of the court.[91] The individual may be detained for a period not to exceed one month. After this period, he will be released and provided with a 10-day term to comply with the order, and to submit evidence to such effect.[92] If he fails to comply, he may be again detained for a period of up to eight months.[93] Contempt sanctions are usually applied in the family law jurisdiction, in particular when an individual fails to provide alimony or pension payments. Contempt sanctions are also applied in civil matters in the construction sector, for example, where an order to suspend construction of a project has been issued.

The judge can impose fines on witnesses who, having been subpoenaed, fail to appear before the court. The fines per occurrence are in the range of $20 – $50.[94] The judge also can also order the arrest of the parties (or their counsel) in cases of disrespectful behavior to the court.

ii. Request the Production/Taking of Further Evidence

The judge can request, of his own initiative, the production/ taking of further evidence to determine the facts stated by the parties to assist him in the application of the law.[95] According to Supreme Court decisions, however, this capacity of the judge should not be used to correct deficiencies on claimant's burden of proof.[96] The judge has the authority to order third parties to produce or submit documents in their custody to the court.

iii. Independent Decision-Maker

Judges in the Panamanian judiciary have a special discretionary capacity to be applied when conducting their analysis of the evidence against the facts supporting the claim and the applicable law.[97] This is known as the principle of "critical analysis," and sustains the judge's capacity to order the taking of further evidence in an effort to have a clear understanding of the facts of the claim and the determination of the applicable law.

Except for objections on the existence of payment and statute of limitations, which mandatorily have to be raised by the defendant, the judge has a duty to declare the existence of causes of nullity that would result in dismissal of the claim, even if the party that would benefit from such declaration has failed to raise such objection.

iv. Limitation

The Judge is limited by the "*ultra petita*" principle.[98] This means he cannot grant the claimant more than what he has requested (e.g., where expert reports show damages are for a greater amount than the quantum of claim, the judge cannot award the greater amount).

c. Production of Evidence in Civil Proceedings

Civil proceedings governed by the Code of Civil Procedure are used as reference in cases of voids in proceedings of other jurisdictions, and therefore set the general standard on matters of procedure and production of evidence.

i. Production of Prejudicial Evidence

A potential claimant can request the production of prejudicial evidence, generally in the form of one or more of the following:

- Special requests for review of accounting books and other relevant documents (this is known in Spanish as "*diligencia exhibitoria*");
- Testimonies;
- Judicial inspections and expert reports; or

- Reconstruction of events.[99]

One requirement to obtain an order for the taking of prejudicial evidence is that the petitioner produce "*prima facie*" evidence on the immediate need to take the evidence (e.g., because it may be destroyed, impossible to obtain, or impractical to obtain at a later stage in the proceedings).[100] Other elements that may have to be considered, depending on the nature of the evidence to be taken, are the need to demonstrate a juridical interest in such evidence, and the existence of a substantive relation or connection to the cause of action.[101]

ii. Access to Evidence in Civil Proceedings

Only timely offered evidence related to the subject matter of the dispute will be considered admissible.[102] General requests for production of documents are not admissible; in accordance to the burden of proof principle, it is the petitioner's duty to produce the document, so rarely will the opposing party be required by the judge to produce a document at request of his adversary. If the material document relevant to the dispute is held by the opposing party or a third party, the petitioner will be required to furnish proof that such document is in possession of his adversary or he will otherwise have to recur to judicial inspections. In addition, privilege (e.g., attorney/client) and confidentiality rules apply (e.g., access to accounting records and financials not deemed relevant to the dispute) that restrict the degree of information that can be obtained through inspections.

iii. Submission of Evidence and Document Formalities

The ordinary proceedings do contemplate a special term for the submission of evidence.[103] Nevertheless, in traditional civil proceedings, generally all evidence has to be offered with the complaint or the answer to the complaint. More recent commercial proceedings (e.g., IP litigation, antitrust action, and consumer protection) stemming from the civil proceedings contemplate special hearings for the offering of evidence.

iv. Formal Requirements

As a general rule, documents have to be submitted in original counterpart,[104] and signatures and contents have to be acknowledged by the counterparty during evidence-taking sessions.[105] Only when it is not possible to submit the original can the parties submit notarized copies or simple copies. Documents granted or executed abroad have to be legalized either through Panamanian consulate[106] or through the Apostille (per the Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents of 1961).[107] As a general rule, documents in foreign language must be provided with their Spanish translation prepared by a local certified public translator, although it is also possible to make a special request to the court to order an official translation.[108]

v. Taking of Evidence

Upon review of the evidence offered, the judge will only admit evidence that complies with the formalities established by law discussed here. The term to take evidence ranges from 8 – 30 days. The court will set a calendar with dates for receiving testimonies and cross-examinations, for appointment of experts, interrogation on their reports and conclusions, dates for inspections, and the like. The parties have a duty to produce the evidence they have submitted within said periods of time. Evidence not submitted for reasons beyond the litigants' control can be resubmitted at the appellate level (e.g., taking of a testimony of a summoned witness who does not show up at the Court).[109] Evidence that is timely requested but not received within the term set to practice evidence (e.g., report of a public office or institution), can be introduced to the case file, and will be considered as "timely taken" even after the relevant term has expired.[110] Once the term for taking evidence has concluded, the parties will move to closing statements.[111]

With regard to witnesses admitted by the court, leading questions will not be admitted,[112] and all queries have to be related to the subject matter of the case. Testimonies are to be taken before the judge; video testimonies, affidavits, and other means of providing statements will usually neither be accepted nor considered to have the effect of court-taken testimony.

Witnesses may be denounced as "suspect" in the following cases:

- Family members;
- Spouses;
- Employees in favor of their employer;
- Close friends or known enemies;
- Counsel or other agents for their principal;
- The curator or tutor on behalf of the minor or pupil;
- The seller of the asset in dispute;
- A partner in the business dispute;
- Debtor against creditor, and vice versa;
- A party with an interest in the outcome of the proceedings;
- A person of dubious reputation or condemned for perjury; or
- Individuals who, in the judge's opinion, may find themselves in situations similar to those already mentioned or who may have a biased view on the matter.

Despite an objection on the grounds that the testimony may be suspect, the judge may nevertheless order the taking of the testimony as part of his critical analysis and duty to determine the facts of the case.[113] In many cases, suspect testimony has favored the objecting party[114]; witnesses who being conscious of the fact that they are rendering testimony under oath will prefer to relate the facts, or their understanding of events, as they have occurred.

Participation of expert witnesses is accepted on matters that cannot be determined or understood directly by the judge (e.g., an expert on Panamanian civil law will not be admitted by the court, as the judge is considered able to interpret and apply Panamanian law; note that determining the degree of physical impairment or emotional distress will require intervention of experts).[115] Experts have to personally study the matter submitted to their analysis in the form of a questionnaire prepared by counsel; [116] this would bar corporate entities, such as auditing firms, from serving as experts. Experts will be responsible for submitting a report with conclusions to be submitted to the court within a date set in the calendar for the taking of evidence. The experts will be examined and cross-examined on their conclusions by counsel to the parties, and they may also ask questions to the other experts.[117] All experts are considered agents of the court, and not of any given party.

The parties are authorized to appoint up to two experts to render evidence on any given matter, and the judge will appoint an expert on behalf of the court. Expert fees, in principle, are paid by the respective appointing party, and the court-appointed expert fees are usually paid by the party primarily interested in the expert analysis.[118] Expert fees and expenses can be recovered by the prevailing party against the losing party.

Experts have to meet requirements of their profession (e.g., licensing qualifications) and field of expertise; further, and as a general rule they have to be locally qualified before the Panamanian jurisdiction. On rare occasions, experts from foreign jurisdictions have been admitted by the Panamanian courts subject to the petitioner demonstrating there are no locally qualified experts in the field.[119]

vi. Other Jurisdictions

In contrast with the highly formal civil jurisdiction, other jurisdictions have adopted more-flexible systems for evidence production and submission. Such is the case of the maritime jurisdiction, which grants a party the right to request from his adversary the production of documents and information,[120] as well as the taking of out-of-court depositions and witness interrogations in terms similar to U.S. discovery.[121] In this jurisdiction, the formalities of documents are considerably reduced. The Maritime Courts regularly admit as evidence simple copies of documents, the contents of which have not been formally objected to by the adversary (without further requirement for the acknowledgment of signature and contents by the author).

The consumer protection, trade and competition law jurisdiction also has more-flexible rules of evidence than the ordinary civil courts. Hearings and pre-trial conferences are becoming increasingly relevant in these trade related jurisdictions. In contrast to the civil jurisdiction, where closing statements are normally submitted through written briefs, closing statements in these jurisdictions are submitted orally at the conclusion of the trial hearing.

d. Enforcement of Court Decisions

Once a final judgment has been rendered, the defendant will have six days to comply with the relevant decision.[122] If the defendant fails to comply, claimant may request the judicial enforcement of the decision by the court.[123] If the decision orders the payment of monetary sums, then the claimant may request the garnishment of defendant's bank accounts, and the court may order the post-judgment attachment of assets, including credits and even the administration of the defendant's business.

Attached assets will be sold through judicial sale (public auction). For this purpose, an invitation to the public has to be published on a local newspaper for three consecutive days.[124] For judicial sale of real property, a mandatory 15-working day term following the last publication has to be observed before judicial sale can be held (judicial sale date).[125] The judicial sale is to be held from 8:00 a.m. through 5:00 p.m. of the judicial sale date.[126] Bids can be submitted until 4:00 p.m. on that day. Between 4:00 p.m. and 5:00 p.m., the participants will be able to competitively increase their bids until the highest offer is received.[127] The highest bidder will be provisionally awarded the attached asset(s). In order to participate as a bidder, a bond in the amount of 10% of the base sum for judicial sale has to be consigned with the court.[128] The creditor who has been favored by the judgment does not need to consign a bond, and can bid for his credit as recognized in the relevant court decision.[129] The judgment creditor can be awarded the asset(s) even if he is the only bidder.[130]

Final adjudication will be awarded the moment the offer is paid (the general rule is two working days after provisional adjudication).

The asset(s) will be sold if an offer equal to two-thirds of the base price of the judicial sale is obtained.[131] If such offer is not obtained, a new judicial sale date will be called for, and a bid for one-half of the base price will be admitted. If an offer is not obtained in the second attempt, then a third bid date will take place the following day, and the asset will be sold for the highest amount offered at such time.

As to non-monetary decisions, the court may in certain cases "step into the shoes" of the judgment debtor and specifically enforce the judgment. It may order the demolition of buildings and, to such effect, instruct the local police authority to enforce the order (e.g., common in evictions). In certain cases where the defendant is required to personally comply with the order, the court may declare the defendant in contempt of the court and apply contempt sanctions, such as temporary arrest, if the condemned party fails to abide by the judgment.

It is also possible to commence special proceedings for enforcement of the judgment, to join other proceedings of enforcement initiated by third parties, or to even request the bankruptcy of the debtor (e.g., in civil obligations after three separate proceedings of enforcement, and in commercial obligations if one commercial debt which is for a sum certain, and which is due and payable, is not timely and fully honored).

e. Allocation of Costs and Applicable Interest Rates

i. Bar Tariff

The Panamanian Bar Tariff was adopted through a resolution of the General Assembly of the Panama Bar on February 19, 2000.[132] The Bar Tariff serves two main purposes: to set the default "minimum" fees to be applied when counsel and client have not executed a legal services agreement; and to serve as reference when the court has to set the mandatory legal fees in consideration of the proven quantum or declaration.

Concerning litigation, the tariff is progressively set in consideration of the nature of the proceedings and quantum. The legal fees of the tariff are set by applying a percentage to the quantum acknowledged by the court decision in a range of 25% – 7.5% (decreasing as the quantum increases). There are also default retainer fees to be applied in matters where no quantum is involved, as well as a default hourly rate of $150 for matters not expressly addressed by the tariff.

ii. Losing Party Pays

The court has the duty to apply the Bar Tariff when rendering judgment. Such amounts will be part of the final quantum to be paid by the defendant. The court may, however, release the losing party from paying the mandatory legal fees if it concludes — and so states in its decision — that such party acted in "evident good faith"[133] (e.g., because the parties settled the dispute, because the dismissed claimant had the right to submit the claim, or because the defendant abided by the allegation of claimant and did not delay the proceedings).

Legal fees are also applied when a party that submits an appeal, objection, motions for early dismissal, or other challenges or special petitions fails to have such motion granted.[134] Although such legal fees are usually nominal when compared to the judgment legal fees (e.g., $200), failure to pay such fees may have relevant and adverse implications in the proceedings: The losing party, at the request of its adversary, may be prevented from being heard until the court set fees and costs are paid[135] (this includes the ability to lodge appeals and other pleadings). Considerable pre-judgment legal fees may also be applied when the court determines that a party has abused its right of defense or is otherwise actively seeking to delay the proceedings through motions lacking legal basis.

iii. Applicable Interest Rate

The court will acknowledge interest accrued until the rendering of judgment. Interest will continue to run until payment is received by the claimant. If the defendant fails to pay in a timely manner, then (at the request of claimant during the stage of collection or enforcement) the court will issue resolutions updating the amount of interest accrued, in addition to awarding legal fees arising in the course of enforcement of the judgment.

In contractual disputes, the court will apply any contractually agreed interest rate. In extra-contractual claims (e.g., damages from tort) or cases where the parties have not agreed to an interest rate, the court will apply the default statutory interest rates, which are currently deemed to be 6% in civil matters[136] and 10% in commercial matters.[137] In principle, statutory interest starts to run from the moment the claim is served on the defendant and the litigation is deemed to have formally begun, although there are other Supreme Court decisions that have acknowledged that such interest would start to run from the moment of filing of the complaint, regarldess of whether it has been served on the defendant.[138] Also, compensatory interest at the commercial default rate (10%) can be applied to unpaid contractual interest. The Supreme Court (Civil Chamber) has ruled that such interest represents damages, and not compounded interest.[139]

f. Government Privileges

There are certain privileges granted to the Panamanian State (including its autonomous institutions and municipalities) in litigation. The State cannot be condemned to pay legal fees (or "costs"), and its assets cannot be the subject of precautionary measures, except for pre-trial petitions for the taking of evidence.[140] State Attorneys have a duty to file appeals against any adverse decision; even if an appeal has not been submitted, the decision will still have to be consulted at the superior judicial level.[141]

Special proceedings to collect against the State are complex. Once the claimant has obtained a final judgment against the State, that claimant can request the court to send a certified copy of the decision (order to pay) to the Executive Branch, through the Ministry of Economy and Finance or the representative of the relevant institution, in order for such representative to instruct payment, if he has the capacity to do so.[142]

If the representative does not have the capacity to instruct payment, then the representative will have to send the order within the 30 days following its receipt either to the Council of Ministers, or to the relevant municipality or institution for processing. If a year lapses without payment having been received by the claimant, the court will have to petition the President of the Supreme Court to request either the President of the Republic, the mayor of the relevant municipality, or head of the relevant corporation to take appropriate measures to comply with the order.

If payment has not been made after three years since the judgment was rendered, the judgment creditor may request the court to instruct the National Bank of Panama to set aside the sums at the court's instruction from the relevant institution's account.[143] The National Bank of Panama has a month to comply with such order. Once it confirms that funds are "available" (which will eventually depend on budgeting approvals by the Executive Branch and the National Assembly), the court should order payment to the creditor from the segregated funds in question.

g. Cost of Litigation

i. Court and Legal Assistance Fees

In the criminal jurisdiction, gratuitous legal assistance is available for those individuals who are the subject of prosecution and cannot afford the services of a private practitioner.[144] These services are provided by public defenders from the State's Institute for Legal Defense.

Although legal assistance on matters other than criminal proceedings is not regulated, there are various legal assistance offices active in Panama, acting on a pro bono basis or on minimum fee arrangements.

In civil and commercial cases, when the defendant cannot be personally served with process (e.g., his domicile is not known by the claimant or he otherwise fails to appear before the court), the court will appoint a default party defender.[145] The absentee party defendant's fees for the entire proceeding will range between $200 – $500, and will have to be provided by claimant. Failure to pay the default party defender's fees may lead to dismissal of the case.

ii. Gratuitous Principle

In its Chapter on the Judiciary, the Panamanian Constitution provides that access to justice is gratuitous.[146] This essentially means that briefs can be submitted in simple (non-stamped) paper, and that no other taxes are to be paid for accessing the courts. The same applies to the submission of appeals and the filing of constitutional actions, where the petitioner is generally not required to consign funds in order for his submission to be received and considered. The gratuitous principle also applies to labor claims, where the employee cannot be condemned to pay legal fees.

There are certain relevant limitations to this principle, such as when a third party to the proceedings lodges an appeal that may affect the interests of the claimant and defendant, as well as in maritime proceedings where the condemned defendant will have to consign or place a bond for the quantum (including legal fees) of the judgment in order for her appeal to be heard by the Civil Chamber of the Supreme Court, This is currently the appellate court for judgments from the Maritime Courts at trial level. Also, as discussed, a party may be prevented from being heard if he fails to consign legal fees resulting from the dismissal of an adverse ruling to a challenge, motions, or other ancillary petitions.

With regard to the evidentiary value of documents (e.g., a promissory note, a contract, and other documents that may be subject to stamp taxes), as a result of the application of the gratuitous principle, the absence of stamp taxes or other tax formalities will not prevent the court from considering the document's relevance in demonstrating the existence, validity, and enforceability of the claimed obligation.

Injunctive relief generally is not gratuitous. Injunctions and petitions for pre-judgment attachments are subject to surety bonds that will have to be consigned at the court's instructions, to ensure against damages that may be caused to the defendant in case the claimant fails to obtain a favorable judgment.[147] Surety bonds usually range between 20 – 50% of the requested quantum or the amount requested in attachment (lesser than or not to exceed quantum). Certain special proceedings allow gratuitous injunctions ("freeze orders"), as may occur with the proceedings for challenging shareholders' resolutions adopted in breach of the law, the articles of incorporation, and bylaws,[148] as well as in administrative proceedings where the claimant can request the staying of the relevant administrative act (e.g., adjudication of a public bid) pending resolution of the litigation or challenge.

3. Challenges of Litigating

a. Court's Independence and Impartiality

Supreme Court Judges are appointed by the Executive Branch and confirmed by the Legislative Assembly.[149] As part of their appointment, the Supreme Court Judges will be required to renounce their political party or affiliation; nevertheless, their independence is often questioned due to the usual political affiliations between Supreme Court Judge appointees and the designating President of the Republic, as the head of the Executive Branch. This independence is further questioned when the confirming legislature is of the same political party or in alliance with the President. The same applies to the Attorney General and Counsel General of the Republic (as the chief investigative officer for criminal prosecutions) and the Attorney General for the Administration (as the chief investigative officer and counsel in defense of the complaints and actions against the administration and challenging the legality of administrative actions).

The career stability of judges and personnel has not been successfully implemented. This has also affected the judiciary's independence and impartiality, as judges and court system personnel can be subject to political pressures that put the stability of their tenures at risk. The judiciary's independence and impartiality is, therefore, not absolutely free of political influence.

The Panamanian judiciary also has been affected by cases of corruption. It should be noted, however that steps have been taken in recent times to attack this scourge. Counsel have successfully lodged criminal complaints against judges acting in breach of the law, and the higher courts have taken a more active role in supervising lower court judges' behavior, and they have ordered separations and removals of such court judges from office.[150]

This said, judges will normally exercise independent and impartial judgment in private, civil, and commercial disputes without political overtones.

b. Appellate Review and Timeframe

It is difficult to estimate the timeframe for proceedings in Panama. Civil proceedings may last anywhere from 3 to 10 years or more before they are finally resolved. In criminal proceedings, certain detainees have served more than their time in preventive detention before sentencing.[151] The labor jurisdiction has caps on the amount of months of wages that may be claimed by employees requesting reinstatement. The timeframe will greatly vary depending on the parties' (in particular the defendant's) capacity and will to delay the proceedings, namely through the use of pre-judgment remedies such as motions for early dismissal followed by their appeals, in addition to the seeking of protection of constitutional rights allegedly breached by court orders.

Assuming there are no (or limited) special motions or objections to the proceedings, the timeframe for trial in civil proceedings is generally within the range of 18 – 24 months. Appellate review is also in the range of 18 – 24 months, and the extraordinary writ of cassation will usually require 24 – 36 months.

4. International Issues

a. Taking Evidence Abroad

In the absence of a treaty otherwise addressing the issue, in order to request the taking of evidence abroad, the court will be required to ask the Ministry of Foreign affairs to send letters rogatory to the judiciary of the relevant country. As an alternate option at the request of the petitioner, the court can ask the Ministry of Foreign Affairs to instruct the Panamanian Consul in the country where the evidence is to be gathered to take, accept, or hear the same.[152] Also, if the litigating parties are in agreement, they can commission qualified counsel in the foreign jurisdiction to gather the evidence.[153] The transcripts of depositions, documents, or reports gathered or produced abroad will have to be legalized through the Apostille (1961 Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents) or by a Panamanian Consulate in order to be validly submitted to the court.

Because evidence to be taken abroad has to be effectively gathered during the proper evidentiary period within the Panamanian proceedings, and because the processing of such requests may prove time-consuming, the parties may request an extraordinary extension of this period to gather evidence abroad.[154]

Evidence gathered in cases tried abroad can also be introduced in cases tried before the Panamanian judiciary. Such evidence will be considered admissible and complete if the opposing party has also intervened in its production in the foreign proceedings.

b. Enforcing a Foreign Decision

Subject to the issuance of a *writ of exequatur* by the Supreme Court of Panama (Fourth Chamber), a final judgment will be recognized as conclusive and enforceable in the courts of the Republic of Panama without re-trial or reconsideration of the merits of the case if the following requirements are met:

- The *writ of exequatur* will be subject to the foreign court granting reciprocity to the enforcement of judgments of courts of the Republic of Panama, which is presumed to be the case;
- The party against whom the judgment was rendered, or its agent, was personally served in such action;
- The judgment arises out of a personal action against the defendant;
- The obligation in respect of which the judgment was rendered is lawful in the Republic of Panama, as the courts of Panama will not apply or give effect to any provision of foreign law that violates the public policy of Panama;

- The judgment is properly authenticated by diplomatic or consular officers of the Republic of Panama or pursuant to the Apostille, and
- A copy of the final judgment is translated into Spanish by a licensed translator in the Republic of Panama.[155]

The term "enforceable" means that the obligations assumed by the party against whom enforcement is sought are of a type which the courts of Panama will enforce. It does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms. In particular, enforcement may be limited by applicable bankruptcy, insolvency, fraudulent transfer, banking intervention, reorganization, forceful liquidation, moratorium and other similar laws affecting creditors' rights generally, or by concepts of materiality, reasonableness, good faith, and fair dealings.

Often, U.S. Divorce Court decisions are declared non enforceable in Panama, if the cause of divorce is considered to violate the special causes of divorce of the Panamanian Family Code (e.g., a minimum two-year wait for mutual consent or separation). Violation of proper service of process (the due process principle) is also a cause for denial of exequatur for the enforcement of a foreign decision.

Exequatur proceedings are held with the participation of the Attorney General, who will present his recommendation on the enforceability of the decision in Panama, as well as with the intervention of the party against whom enforcement is required.

It is possible to request the implementation of pre-judgment remedies in aid of enforcement, such as attachments in-aid of execution and injunctions, subject to bonding requirements. Once the *writ of exequatur* has been granted, claimant will have to initiate executory or summary judgment proceedings before the Circuit Courts to obtain enforcement.

c. Jurisdiction over Foreign Parties and Application of Foreign Law

i. Foreign Parties

As a Constitutional principle, all nationals and foreign citizens in Panama are subject to the Panamanian Constitution and the national laws and regulations.[156] In order to do business in Panama, foreign corporations are required to establish a branch or subsidiary in Panama, and to submit to the jurisdiction of the Panamanian judiciary.

In civil matters, the parties are expressly authorized by the rules of civil procedure to preemptively determine the competent court that will resolve their eventual disputes, without regard to their domiciles or place of residence.[157] This would allow foreign parties (even those residing abroad) to choose the Panamanian jurisdiction as a "neutral" venue for the resolution of their disputes, without a need to otherwise have a formal or substantive connection to Panamanian jurisdiction.

ii. Foreign Law

The Panamanian legal system allows the application of substantive foreign law (e.g., applicable law of the contract is foreign) in local proceedings. Foreign law is a matter of evidence. The parties will be required to prove substantive foreign law through different means, such as legal opinions issued by qualified foreign counsel, legalized copies of decisions from the foreign courts, and extracts of the relevant statutes.[158]

5. Conclusion

Advantages of litigating:

- Effective access to pre-judgment remedies, such as preventive attachments ("*secuestros*") and injunctions (subject to bonding requirements);
- Foreign law may be applied by local judges; and
- Except for limited circumstances, the access to the Panamanian judiciary is gratuitous.

Disadvantages of litigating:

- Civil proceedings are time-consuming, and there are no immediate results;
- Lack of specialization on complex matters (e.g., bankruptcy, securities, trade and commerce claims) which may result in contradictory decisions;
- Risk of political influence and corruption in cases with political overtones; and
- Lack of trained personnel and sufficient equipment leading to clerical and even substantive or procedural errors.

C. Arbitration

1. General Overview

Although arbitration has been a generally accepted mechanism for the resolution of commercial and private disputes since the early 1980s, it was not until the year 1999 that the first special law of arbitration, Law Decree No. 5 on Arbitration, Mediation and Conciliation, was passed.[159] Law Decree No. 5 remains the applicable arbitration law.

During the years 2001 – 2003 the Panamanian Supreme Court issued a serious of decisions that raised serious doubts as to the practicalities of arbitration in Panama, especially within the context of international commercial arbitration. Due to Constitutional and legislative amendments made in 2006,[160] however, the trend in favor of arbitration is growing significantly. This topic will be discussed in more detail in the section on the courts' position on arbitration.

2. Arbitration Legal Framework

a. Panamanian Law of Arbitration

Law Decree No. 5, Panama's law on Arbitration, Mediation and Conciliation (the "Panamanian Law of Arbitration"), was enacted in 1999. The law was inspired by the UNCITRAL Model Law and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[161]

Issues covered by the Panamanian Law of Arbitration include the following:

- Arbitration in law or equity (if the type of arbitration is not defined by the parties in the arbitration clause or afterwards, the arbitration will be considered to have been agreed in equity [*ex aequo et bono*]);[162]
- Institutional or ad-hoc arbitration;[163]
- International and domestic arbitration;[164]
- Concept and validity of the arbitral agreement;[165]
- Constitution of the arbitral tribunal;[166]
- Rules regarding the arbitral award;[167] and
- Recognition and enforcement of domestic and foreign arbitral awards.[168]

b. Rules Applicable to Domestic and International Arbitration

Article 5 of the Panamanian Law of Arbitration governs the issue of whether an arbitral proceeding is international. According to this article, a commercial arbitration is international if its subject matter or legal business contains sufficiently relevant foreign elements or connections to characterize it as such, or if the forum's conflict of law rules qualify it as international.

Additionally, for the purpose of the Panamanian Law of Arbitration, a commercial arbitration shall also be considered international if at least one of the following conditions is met:

- The parties to the arbitration agreement have, upon execution of such agreement, their place of business or offices in different countries;
- The place of arbitration agreed upon in the arbitration agreement or in accordance with its terms is located outside of the country in which the parties have their place of business;
- The place where the obligations that arise from the legal relationship must be performed lies outside the country in which the parties have their place of business;
- The place with which the dispute has the closest relationship is located outside of the country in which the parties have their place of business; or
- The subject matter of the arbitration has a civil or commercial international nature and/or relates to more than one State and/or consists of the rendering of services, the sale or disposition of assets, or the transfer of capital which generates cross-border or extraterritorial effects.[169]

c. Procedural Rules

According the Panamanian Law of Arbitration, the procedural rules applicable to a particular arbitration will depend on the special rules chosen by the parties or in accordance with the applicable regulations.[170] In the absence of an agreement regarding the applicable procedural rules, the arbitral tribunal shall have the power to decide which rules will be applicable to a particular arbitral proceeding.

d. Conventions

Panama enacted the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") through Law No. 5 of October 25, 1983. The grounds for refusing recognition and enforcement under the New York Convention, as listed in Article V, have been also incorporated into the Code of Civil Procedure[171] and the Panamanian Law of Arbitration.[172]

In addition to the New York Convention, Panama is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "Washington Convention")[173] and a party to the Inter-American Convention on International Commercial Arbitration adopted through Law No. 11 of October 23, 1975.[174] This convention is also known as the "Panama Convention."

e. UNCITRAL Model Law

Even though Panama has not formally adopted the Model Law of the United Nations Commission on International Trade Law ("UNCITRAL, the Panamanian Law of Arbitration was inspired by and follows the guidelines of this model law.

3. Arbitrability

As a general rule of the Panamanian Law on Arbitration, matters that are not considered discretionary or of free disposition cannot be submitted to arbitration. This includes matters dealing with public interest, as well as the protection of individuals governed or entitled to the protection of special laws. Public policy would include the State's right to adopt taxes and its rights to exercise sovereign domain, such as the termination of a public concession (although arbitration to seek indemnification for unjustified termination of a government contract or concession is generally available under bilateral treaties and under certain special laws).

As it relates to consumer protection laws, the Panamanian courts have declared void arbitration clauses inserted into standard insurance contracts with consumers.[175] The principle is that in such relations, the consumer's bargaining or negotiating power is substantially reduced; generally, the insurance contract is considered a contract of adhesion. In recent times, the Law on Consumer Protection has adopted a special arbitration regime known as "consumer matters arbitration" in an effort to allow consumers interested in pursuing their claims through arbitration to access this procedure.[176] As of this writing, this special regime has yet to be regulated.

In labor relations, a special arbitration regime is also available for the resolution of disputes related to collective bargaining agreements (e.g., union and severances claims) that may be implemented to resolve protests that could otherwise lead to or cause a strike.

Bankruptcy claims also cannot be arbitrated, as one effect of the declaration of bankruptcy is that the debtor will lose his capacity to manage and dispose of his assets. Such management will pass to the court-appointed bankruptcy trustee for the benefit of all the creditors (all payments made, and all actions taken by a bankrupt debtor with respect to the bankruptcy estate after the date of the declaration of bankruptcy, are null and void).

According to the rules of Civil Procedure, all pending proceedings (with the exception of secured creditors' claims) will have to be continued before the bankruptcy court, with the participation of the bankruptcy trustee in lieu of the debtor.[177] In theory, this could include pending arbitration proceedings (although there are no clear precedents on the matter).

In addition, the bankruptcy court can relate back the effective bankruptcy date if there is evidence that the debtor became insolvent or generally stopped making payments to his creditors on debts for a sum certain and due and payable before the date of filing of the bankruptcy petition with the court. The relation-back period may not exceed 4 years, plus an additional 30 days for certain suspect transactions (e.g., voidable preferences and fraudulent conveyances).[178] The purpose of this related-back date would be to minimize the effectiveness of certain transactions that could be considered suspect or defrauding creditors' rights, as would be made once the debtor is deemed insolvent and generally unable to pay its debts. Such would be the case of payments made by the bankrupt debtor after the effective bankruptcy date on obligations not yet due and payable, gratuitous payments representing an undue benefit or preference to an existing creditor, or the granting of a pledge or mortgage to secure antecedent debts. An arbitration clause or agreement could also be affected by this suspect period, if it were part of a voidable transaction as already described.

4. Courts' Position on Arbitration

a. Arbitration Friendliness and Interventionism

Generally speaking, Panamanian courts currently are pro-arbitration; however, the intervention of Panamanian courts in arbitral proceedings has been substantial in the following issues:

- The principle of *Kompetenz-Kompetenz*, as will be discussed;
- Actions for protection of constitutional guarantees (in Spanish, "*amparo de garantías constitucionales*"); and
- The stage of setting aside or annulling the arbitration award.[179]

Regarding the actions for protection of constitutional guarantees, the Supreme Court of Justice has issued many decisions stating that the arbitrators are public servants[180] and that these types of constitutional actions therefore are available against resolutions issued by the arbitrators within the context of arbitration proceedings. In opposition to this view, in a recent decision in *Palliser Holdings, Inc. v. Las Brisas de Amador, S.A.*,[181] the Supreme Court of Justice held that arbitrators are not public servants and, therefore, the action for protection of constitutional guarantees is not available in these cases.

When setting aside an arbitral award, Panamanian courts will take into consideration the circumstances specified in the Panamanian Law of Arbitration,[182] which are similar to the standards for enforceability of a foreign arbitral award under the New York Convention. In addition to those listed in the New York Convention, Panamanian courts will set aside an award if it violates Panama's public policy or laws, or if the award was obtained under fraud, violence, or bribery. Under Panama law, the parties are not entitled to waive their right to seek the annulment of the arbitral award before the award has been rendered by the sole arbitrator or arbitral panel. The proceedings to set aside an arbitral award in Panama shall be conducted before the Fourth

Chamber of the Supreme Court of Justice.[183] The timeline for these proceeding are generally within the range of 12 – 18 months.

b. Principle of Kompetenz-Kompetenz

The original text of the Panamanian Arbitration Law expressly stated that the arbitrators were able to decide upon their own competence. Three years after the enactment of the law, however, the Panamanian Supreme Court of Justice declared unconstitutional the article governing the principle of *Kompetenz-Kompetenz*. In 2004, the Panamanian Constitution was amended to expressly recognize arbitration as a valid system for the resolution of disputes alternative to the courts, and to settle the issues that the arbitral tribunal itself was entitled to decide on its own competence.[184] In addition to this Constitutional amendment, article 17 was reinstated to the Panamanian Law of Arbitration, through Law No. 15 of 2006, to reenact in the law the principle of *Kompetenz-Kompetenz*.[185]

5. Enforcement of a Foreign Arbitration Award

As a general rule, final, non-reviewable foreign awards issued by an arbitrator or an arbitral panel should be enforceable by the Panamanian courts without review of the merits, prior recognition thereof through the writ of exequatur before the Supreme Court of Panama, and provided that the award meets the standards for enforceability of a foreign arbitral award under the New York Convention.

6. Arbitration Institutions in Panama

a. Preparedness and Quality

Panama has two qualified and well-known centers in the field of arbitration. First, the Center for Conciliation and Arbitration of Panama (in Spanish "*Centro de Conciliación y Abritraje de Panamá*" or "CeCAP"), sponsored by the Chamber of Commerce, Industries and Agriculture of Panama (in Spanish "*Cámara de Comercio, Industrias y Agricultura de Panamá*") handles commercial or civil disputes, or contractual disputes with the State. Then there is the Center for Solution of Conflicts (in Spanish "*Centro de Solución de Conflictos*" or "CESCON"), sponsored by the Panamanian Chamber of Construction (in Spanish "*Camara Panameña de la Construcción*") for disputes related to the construction and infrastructure sector.

b. Costs

The administrative costs, fees of arbitrators and secretary of the arbitral tribunal are set by the Arbitration Institutions[186] in accordance to the amount in dispute.

c. Workload

Both CeCAP and CESCON handle domestic and international arbitration.

d. Arbitrators

Both administrative institutions manage lists of arbitrators, and will provide information on arbitrators and their fields of expertise upon request.

e. Timeframe

According to the regulations of the CeCAP, if the parties have not otherwise agreed, upon a time period for the award to be rendered, the period to issue the arbitral award is of four months after the constitution of the arbitration panel.[187] CESCON regulations state that the arbitration panel shall issue the arbitral award within a period of three months once the period to submit closing arguments has elapsed.[188]

7. Conclusion

Advantages of arbitrating:

- In comparison to civil proceedings, arbitration proceedings are faster;
- The parties may choose arbitrators specialized in the subject matter of the dispute;
- Confidentiality,
- The resolutions issued by the arbitral panel are non-appealable and the only available remedy against the arbitral award is the petition for nullity with limited causes; and
- A foreign arbitral award would be usually easier to enforce than a foreign judgment due to the high number of signatory countries of the New York Convention.

Disadvantages of arbitrating:

- Risk of political influence and corruption if a request for annulment is made by any of the parties (e.g., if the government is a party to the arbitration);
- Actions for protection of constitutional guarantees have been admitted in certain cases; and
- Certain matters cannot be arbitrated.

Note that the first two disadvantages also apply to litigation in the court system.

D. Other ADR Mechanisms

1. Conciliation

The conciliator will work with each of the parties to understand their issues and seek their objectives, as well as assist them in making concessions as part of the effort to reach an agreement. Conciliators have to be certified, and can be part of private entities (approved by the Ministry of Government) or public institutions. As occurs with mediation, matters that can be settled, negotiated, or voluntarily dismissed can be submitted to conciliation. The conciliation agreement is also enforceable through the court system.

In addition, the conciliation agreement can also be elevated to the rank of an arbitration award. Conciliation can be requested by the parties during the course of ordinary proceedings before judgment. Conciliation is also available in public contracts where arbitration is available. Dispute resolution centers, such as CeCAP and CESCON, have certified conciliators and have adopted special rules incorporating (or recommending in their standard arbitration clauses) a default conciliation stage the parties have to go through prior to commencing arbitration. The judiciary has also an ADR program that incorporates certified conciliators.

Conciliation is effective in family law and criminal matters, as well as in labor disputes and consumer protection claims.

2. Mediation

Mediation is the most flexible ADR mechanism, set to allow the parties to have a direct discussion of their unresolved issues with the participation of a certified mediator. Mediation sessions can be of a private or public nature, depending on whether the mediator is appointed by the state (e.g., by the Judiciary Mediation and Conciliation Program) or instead by a mediator of a private institution or other certified professional. Matters that can be submitted to mediation are those which allow for settlement, voluntary dismissal of legal action, and others of free disposition by the parties in dispute.

Mediation sessions require the execution of a non-disclosure agreement, and the contents of the session cannot be used in evidence by any of the parties in litigation. Although mediation agreements are enforceable against the relevant party through the court system, (e.g., through summary proceedings), the effectiveness of this ADR mechanism is often questioned as, in general, the parties most often fail to reach a formal settlement of the dispute.

3. Negotiation

Negotiation is not an expressly regulated ADR mechanism; nevertheless, it is used frequently in the resolution of commercial disputes in the private sector. A high number of civil and commercial claims are settled through negotiation in Panama. As part of a strategy to gain leverage, or in order to preserve its rights (e.g., statute of limitation), a party may choose to commence litigation and then await its adversary's response in order to identify its position and weaknesses before engaging in negotiations. The parties that choose to negotiate will normally request a stay of the proceedings for a period ranging from 1 – 3 months that may be extended for similar periods. In principle, one must have the capacity to voluntarily withdraw a complaint, to waive rights, or to settle a claim in order to engage in negotiations for the resolution of a dispute.

4. Conclusion

Other ADR mechanisms in Panama are effective whenever there is a genuine interest in resolving a dispute out of court, and when the parties' positions are not too far apart. ADR mechanisms are effective in the resolution of family and labor law disputes and for certain criminal claims, as well as in consumer protection matters. In the absence of a genuine interest to resolve the dispute, ADR mechanisms may be time-consuming and may create even more animosity between the parties while not leading to a solution.

Conciliators and mediators may not be prepared to assist in the resolution of complex cases or multi-party claims; for the resolution of such conflicts, arbitration would probably be the better option.

VII. Endnotes

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2 Andrea Jaramillo & Bill Koenig, Colombia's Credit Rating Raised to Investment Grade by Moody's; Peso Gains, Bloomberg (May 31, 2011), http://www.bloomberg.com/news/2011-05-31/colombia-s-credit-rating-raised-to-investment-grade-by-moody-s-peso-gains.html

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4 "Since then, BRIC has become the mantra for every business expansion strategy. But in this decade to come, a new group of emerging market dynamos will also emerge. Personally, I like the prospects for the CIVETS.CIVETS are named after the cat-like animals found in many of these countries. These are the new BRICS: Colombia, Indonesia, Vietnam, Egypt, Turkey and South Africa. Each has large, young, growing population. Each has a diverse and dynamic economy. And each, in relative terms, is politically stable. Each has a very bright future." Taken from the speech "From West to East" by Michael Geoghegan, Group Chief Executive from HSBC Holdings plc, to the American Chamber of Commerce in Hong Kong. Retrieved from HSBC: http://www.hsbc.com/1/PA_esf-ca-app-content/content/assets/emi/2010/1007_emi_report_geoghegan.pdf.

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13 Civil Procedure Code, Article 39, http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17755.

14 *Id.*

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17 Acuerdo No. 1887 of 2003, http://portal.uexternado.edu.co/irj/go/km/docs/documents/UExternado/pdf/Derecho/derecho_procesal/providenciaReferenciada/B7C2.pdf.

18 Law 1394 of 2012, http://www.secretariasenado.gov.co/senado/basedoc/ley/2010/ley_1394_2010.html

19 Political Constitution of Colombia, Article 86: "Toda persona tendrá acción de tutela para reclamar ante los jueces, en todo momento y lugar, mediante un procedimiento preferente y sumario, por sí misma o por quien actúe a su nombre, la protección inmediata de sus derechos constitucionales fundamentales, cuando quiera que estos resulten vulnerados o amenazados por la acción o la omisión de cualquier autoridad publica." Also please refer to Colombian Constitutional Court Judgements T-613 of 2005 (http://www.corteconstitucional.gov.co/relatoria/2005/T-613-05.htm) and T-125 of 2012 (http://www.corteconstitucional.gov.co/RELATORIA/2012/T-125-12.htm) from the Colombian Constitutional Court.

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35 Civil Procedure Code, Articles 693, 694, and 695, http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17755.

36 Sentencia T-058/09, http://www.corteconstitucional.gov.co/relatoria/2009/T-058-09.htm.

37 Articles 20 and following, Law 640 of 2001: http://www.secretariasenado.gov.co/senado/basedoc/ley/2001/ley_0640_2001.html#20.

38 Diario Oficial No. 43.380 (Sep. 7, 1998), http://www.secretariasenado.gov.co/senado/basedoc/decreto/1998/decreto_1818_1998.html.

39 Statistical data referenced in this introductory section can be found by the proclamations of the Mexican Department of Foreign Affairs (Secretaría de Relaciones Exteriores), available online at http://www.sre.gob.mx/index.php/the-mexican-economy-at-a-glance

40 The Federal Congress is the body of government where the legislative branch lies. It is divided in two chambers: the Chamber of Representatives (known in Mexico as Deputies) and the Chamber of Senators.

41 Federal Constitution, Article 20, Section V "…The parties have equal procedural to support the prosecution or the defense, respectively".

42 The writ of amparo is one of the most important institutions in the Mexican judicial system. By means of its procedural guarantee, citizens can protect their federal constitutional rights.

43 On June 18, 2008 was published in the Official Journal of the Federation an Decree amended the articles 16, 17, 18, 19, 20, 21 and 22; fractions XXI and XXIII of Article 73, the fraction VII of Article 115 and paragraph XIII of paragraph B of Article 123, all of the Mexican Federal Constitution regarding the implementation of the oral system.

44 The Federal Code of Civil Procedures, in articles 559 to 563, states the general requirements for the admission of evidence abroad.

45 For example, the Inter-American Convention on the taking of evidence abroad (done in Panama on January 30, 1975), signed and ratified by Mexico and other Latin American countries, established that rogatory letters derived from civil or commercial matters for the purpose of taking evidence or obtaining information abroad and addressed by a judicial authority of one of the States Parties to the Convention to the competent authority of another, shall be executed in accordance with the following: 1. The procedure requested is not contrary to legal provisions in the State of destination that expressly prohibit it; 2. The interested party places at the disposal of the authority of the State of destination the financial and other means necessary to secure compliance with the request.

46 This international efforts are the Following: (i) Inter-American convention on jurisdiction in the international sphere for the extraterritorial validity of foreign judgments: signed in Montevideo on may 8, 1979; (ii) Additional protocol to the Inter-American convention on the taking of evidence abroad signed on 1975; (iii) Inter-American Convention on Letters Rogatory and Additional Protocol to the Inter-American Convention on Letters Rogatory, signed at Montevideo; (iv) Inter-American Convention on Proof of and Information on Foreign Law; (v) Inter-American Convention on extraterritorial validity of

foreign judgments and arbitral awards : signed in Montevideo, Uruguay, May 8, 1979 at the Second Inter-American Specialized Conference on Private International Law.

47 The professionalization of the judicial system is one of the principal efforts to combat corruption. Likewise, the Council of Federal Judiciary is in charge to carry out specific actions to combat the corruption of judicial employees and to admit and carry out administrative procedures against public employees.

48 In England, the domestic arbitration as the first step came from a law the English parliament passed in 1698, according to which neither party could unilaterally revoke the arbitration agreement.

49 The New York Arbitration Act of 1920 followed by the United States Arbitration Act (known as the Federal Arbitration Act) of 1925 and gave validity to the binding arbitration agreement, which consolidated domestic arbitration in the United States.

50 Aimed to discuss an international convention to facilitate the enforcement of judgments in international arbitration proceedings.

51 Fourth Section of the Fifth Book, articles 1415 to 1480 of the Mexican Trade Code.

52 Article 568 of Federal Code of Civil Procedures.

53 Francisco González de Cossío, Arbitraje, Ed. Porrúa, México 2011.

54 Trade Code articles 1457.

55 Trade Code, Title 4th, chapter 7th, articles 1452 to 1456.

56 Trade Code, article 1427 mentioned the general rules for the appointment of arbitrators as follows: I. - Unless otherwise agreed by the parties, the nationality of an individual shall not be an obstacle to act as arbitrator. II. - Parties may freely agree on the procedure for the appointing of arbitrators. III. – In case that the parties do not reach an agreement the following general rules shall be followed: a) In arbitration with only one arbitrator, if the parties do not appoint the arbitrator, he or she will be appointed by the judge. b) In arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators appointed shall appoint the third.

57 The ABC of the CANACO is seeking to extend the use of arbitration to resolve commercial disputes derived from low amounts through a simple and low cost mechanism. See http://www.arbitrajecanaco.com.mx/index.php?option=com_content&task=view&id=102&Itemid=91.

58 The following states have laws regarding ADR: Yucatan, Nuevo León, Jalisco, Federal District (Mexico City), among others.

59 In accordance with the official website of UNCITRAL the organization adopted on 24 June 2002 a "Model Law on International Commercial Conciliation," providing uniform rules in respect of the conciliation process to encourage the use of conciliation and ensure greater predictability and certainty in its use. To avoid uncertainty resulting from an absence of statutory provisions, the Model Law addresses procedural aspects of conciliation, including appointment of conciliators, commencement and termination of conciliation, conduct of the conciliation, communication between the conciliator and other parties, confidentiality and admissibility of evidence in other proceedings as well as post-conciliation issues, such as the conciliator acting as arbitrator and enforceability of settlement agreements. http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2002Model_conciliation.html.

60 Report to the Nation issued by the Ministry of the Presidency of Panama in 2011.

61 See Proposal for the Expansion of the Panama Canal, Panama Canal Authority (Apr. 24, 2006), http://www.pancanal.com/eng/plan/documentos/propuesta/acp-expansion-proposal.pdf.

62 *See* Panama, Fitch Ratings, http://www.fitchca.com/noticias.php?id_pais=7&id_sector=1.

63 *See* Standard & Poor´s mejora calificación de riesgo de Panamá, Ministry of Economy and Finance, Republic of Panama (July 2, 2012), http://www.mef.gob.pa/portal/2012-Comunicados/2012-Standard%20PoorsmejoracalificacionderiesgodePanama.html.

64 Article 174 and subsequent of the Code of Civil Procedure.

65 Article 159 and subsequent of the Code of Civil Procedure.

66 Article 127 and subsequent of the Code of Civil Procedure.

67 Article 92 and subsequent of the Code of Civil Procedure.

68 Article 86 and subsequent of the Code of Civil Procedure.

69 Article 235 of the Code of Civil Procedure.

70 Article 174, section B of the Code of Civil Procedure.

71 Article 148 of the Code of Civil Procedure.

72 Article 159 of the Code of Civil Procedure.

73 Article 65 of the Code of Civil Procedure. The four Judicial Districts are formed by the following Provinces: (i) the First Judicial District: Provinces of Panama, Colon, Darien and the reserve of San Blas; (ii) the Second Judicial District: Provinces of Cocle and Veraguas; (iii) the Third Judicial District: Provinces of Chiriqui and Bocas del Toro; and (iv) the Fourth Judicial District: Provinces of Herrera and Los Santos.

74 Articles 92-93 of the Code of Civil Procedure.

75 Articles 94- 96 of the Code of Civil Procedure.

76 Article 97 of the Code of Civil Procedure.

77 Article 100 of the Code of Civil Procedure.

78 Article 124 of the Law No. 45 of October 31, 2007 on Consumer Protection and Defense of Competition ("Law No. 45 of 2007").

79 *Id.*

80 Article 125 of Law No. 45 of 2007.

81 For example, a class action suit against the oil importing companies was dismissed due to the absence of evidence supporting the claim (lack of validation of invoices for services rendered by the agent).

82 Enacted in Panama through Law No. 38 of June 4, 1996.

83 Article 19 of the Code of Maritime Procedure.

84 Article 1534 of the Commercial Code.

85 Article 1591 of the Commercial Code.

86 Article 1612 of the Code of Judicial Procedure.

87 Article 1613 of the Code of Judicial Procedure.

88 Law No. 52 of March 13, 1917 on Negotiable Instruments; Law Decree No. 1 of July 8, 1999 modified by Law No. 67 of September 1, 2011 ("The Security Act"); Law No. 31 of June 18, 2012 on the Horizontal Property Regime.

89 Article 1737 of the Code of Judicial Procedure.

90 Article 1162 of the Code of Judicial Procedure.

91 Article 1933 of the Code of Judicial Procedure.

92 *Id.*

93 *Id.*

94 Article 932 of the Code of Judicial Procedure.

95 Article 793 of the Code of Judicial Procedure.

96 See, e.g., Judicial decision dated March 12, 2012, writ of cassation in the case of Nani Investment, S.A. v. DEV Ramchand Khamlani.

97 Article 781 of the Code of Judicial Procedure.

98 Article 475 of the Code of Judicial Procedure.

99 Article 815 of the Code of Judicial Procedure.

100 *Id.*

101 This is the case for the special request for review of accounting books and other relevant documents. This requirement is established in article 817 of the Code of Judicial Procedure.

102 Article 783 of the Code of Judicial Procedure.

103 In ordinary proceedings, once the response to the claim is submitted, the parties to the proceedings have to observe a 15 working day mandatory stay, and then the process will move to the evidentiary offering stage. In the evidentiary offering stage the parties will have five working days to offer evidence, then three working days to offer counter evidence and finally, three working days to submit objections to the evidence and counter evidence. The special term for submission of evidence in ordinary proceedings is detailed in article 1265 of the Code of Judicial Procedure.

104 Article 833 of the Code of Judicial Procedure.

105 Article 856 of the Code of Judicial Procedure.

106 Article 877 of the Code of Judicial Procedure.

107 The Apostille Convention was enacted in Panama through Executive Decree No. 29 of February 8, 1991.

108 Article 877 of the Code of Judicial Procedure.

109 Article 1275 of the Code of Judicial Procedure.

110 Article 796 of the Code of Judicial Procedure.

111 In the case of ordinary civil proceedings (being the most common type of civil proceedings), the plaintiff will have the first five days to submit its closing argument and then the defendant will have the following five days to submit its closing arguments.

112 Article 941 of the Code of Judicial Procedure.

113 Article 917 of the Code of Judicial Procedure.

114 It is usual for judges to order the taking of the testimony of the CEO of the company who has offered the evidence. Although one could imagine that the CEO of the company would benefit the interests of its own company during the examination and cross-examine, that is not usually the case in practice.

115 Article 966 of the Code of Judicial Procedure.

116 Article 973 of the Code of Judicial Procedure.

117 Article 974 of the Code of Judicial Procedure.

118 Article 977 of the Code of Judicial Procedure.

119 *See,* e.g., judicial decision dated April 17, 2006, administrative action filed on behalf of Bahía Las Minas Corp before the Third Chamber of the Supreme Court.

120 Article 228 of the Code of Maritime Procedure.

121 Article 240 of the Code of Maritime Procedure.

122 Article 1036 of the Code of Judicial Procedure.

123 Article 1038 of the Code of Judicial Procedure.

124 Article 1710 of the Code of Judicial Procedure.

125 Article 1708 of the Code of Judicial Procedure.

126 Article 1711 of the Code of Judicial Procedure.

127 Id.

128 Article 1715 of the Code of Judicial Procedure.

129 Id.

130 Article 1723 of the Code of Judicial Procedure.

131 Article 1716 of the Code of Judicial Procedure.

132 Supreme Court of Panama Accord No. 49 of April 24, 2001, published in Official Gazette No. 24305 on May 21, 2001.

133 Article 1071 of the Code of Judicial Procedure.

134 Article 1072 of the Code of Judicial Procedure.

135 Article 1080 of the Code of Judicial Procedure.

136 Article 993 of the Civil Code.

137 Article 223 of the Code of Commerce.

138 See e.g., Judicial decision dated July 16, 2003, appeals in the case of Banco Mercantil del Istmo v. M/N Asturias; Judicial decision dated February 2, 2004 in the administrative case of Moisés Martínez and Baldomero González v. IDAAN.

139 See, e.g., judicial decision dated December 27, 1999, in the case of Carlos Garin Montero and Jaime Garin Montero v. Banco Exterior, S.A.

140 Article 1939 of the Code of Judicial Procedure.

141 *Id.*

142 Article 1047 of the Code of Judicial Procedure.

143 Article 1048 of the Code of Judicial Procedure.

144 Article 10 of the Code of Criminal Procedure.

145 Article 1019 of the Code of Judicial Procedure.

146 Article 201 of the Panamanian Constitution.

147 Article 531 of the Code of Judicial Procedure.

148 Article 418 of the Commercial Code.

149 Article 203 of the Panamanian Constitution.

150 *See*, e.g., judicial decision dated October 24, 2005 in the criminal complaint of Sociedad Administración y Reformas, S.A. v. The Seventh Criminal Circuit Judge of the First Judicial Circuit of Panama.

151 *See* http://www.elsiglo.com/mensual/2012/07/24/contenido/539324.asp; http://www.laestrella.com.pa/online/impreso/2011/05/03/mora-judicial-darienita-alcanza-niveles-criticos.asp

152 Article 804 of the Code of Judicial Procedure.

153 *Id.*

154 In no case the extraordinary extension shall exceed a term of two months.

155 Article 1419 of the Code of Judicial Procedure.

156 Article 17 of the Panamanian Constitution.

157 Article 248 of the Code of Judicial Procedure.

158 Article 800 of the Code of Judicial Procedure.

159 Law Decree No. 5 of July 8, 1999 whereby the Regime of Arbitration, Conciliation and Mediation is established published in Official Gazette No. 23837 of July 10, 1999 ("Law Decree No. 5 of 1999).

160 In the year 2006, both Article 202 of the National Constitution and Law Decree No. 5 of 1999 where amended to favor arbitration as an alternative dispute resolution mechanism. The Law Decree No. 5 of 1999 was amended through Law No. 5 of May 22, 2006.

161 Preamble of the Law Decree No. 5 of 1999 submitted before the General Assembly of Panama on March 15, 1999. González Arrocha, Katherine and Sánchez Ortega, Liliana, Arbitraje Comercial Internacional en Panamá: Marco Legal y Jurisprudencial, published in "El Arbitraje Comercial Internacional en Iberoamérica: Marco Legal y Jurisprudencial"

162 Article 3 of the Law Decree No. 5 of 1999.

163 Article 4 of the Law Decree No. 5 of 1999.

164 Article 5 of the Law Decree No. 5 of 1999.

165 Article 7 of the Law Decree No. 5 of 1999.

166 Article 12 and subsequent of the Law Decree No. 5 of 1999.

167 Article 25 and subsequent of the Law Decree No. 5 of 1999.

168 Article 38 and subsequent of the Law Decree No. 5 of 1999.

169 Article 5 of the Law Decree No. 5 of 1999.

170 Article 18 of the Law of Arbitration, Conciliation and Mediation.

171 Article 1421 of the Code of Judicial Procedure.

172 Article 41 of the Law of Arbitration, Conciliation and Mediation.

173 Law No. 13 of January 3, 1996.

174 Law No. 11 of October 23, 1975.

175 See Judicial decision dated June 1, 2005, appeals in the case of Agrowest, S.A., Dos Valles, S.A. and Comexa, S.A. v. Maersk Sealand.

176 Article 114 of Law No. 45 of 2007.

177 Article 1791 of the Code of Judicial Procedure.

178 Articles 1581-1582 of the Commercial Code.

179 González Arrocha, Katherine and Sánchez Ortega, Liliana, Arbitraje Comercial Internacional en Panamá: Marco Legal y Jurisprudencial, published in "El Arbitraje Comercial Internacional en Iberoamérica: Marco Legal y Jurisprudencial".

180 *See,* e.g., judicial decision dated February 8, 1994, published in the Court Record dated February, 1994, page 44.

181 Judicial decision dated August 24, 2010, action for protection of constitutional guarantees against a resolution issued by the arbitral tribunal in the case of Palliser Holdings, Inc. v. Las Brisas de Amador, S.A. See also Judicial Decision dated April 27, 2009, action for protection of constitutional guarantees against a resolution issued by the arbitral tribunal in the case of Panama Ports Company v. Gabriel Jesus Alvarado Carrillo.

182 Article 34 of the Law of Arbitration, Conciliation and Mediation.

183 Article 35 of the Law of Arbitration, Conciliation and Mediation.

184 Article 202 of the Panamanian Constitution.

185 Law No. 5 of May 22, 2006.

186 For CeCAP, see http://cecap.com.pa/index.php?option=com_content&view=article&id=108&Itemid=127; for CESCON, see http://www.cescon.org/tarifas.php.

187 Article 31 of the Regulations of the CeCAP.

188 Article 46 of CESCON´s Regulations.

189 Information available at the website of the Instituto Brasileiro de Geografia e Estatística – IBGE. http://www.ibge.gov.br/home/. Visited on July 30, 2012.

190 Such as taxes, labor relationships, environmental, and criminal issues.

191 The Constitutional Judiciary Reform of 2004 introduced the concept of "binding repertoire" or "sumula vinculante" under which the Brazilian Supreme Court has been given jurisdiction, under special circumstances and subject to the general repercussion of the precedent and the vote of at least 2/3 of the Court, to enacted binding precedents, which must be followed by all branches of government.

192 Federal Law 5.869 of January 11, 1973 as amended.

193 As provided under section 356 et seq of the Brazilian code of civil procedure, where plaintiff must meet the burden of pin-pointing the documents it intends to have access to and give the grounds for its request for delivery of the documents under control of the opposing party or any other third party.

194 Revision of attorney's fees by the STJ amount extremely low or excessively high, precedents: STJ - RESP 209687-MS (RDR 15/382), RESP 450163-MT,RESP 404113-SP (LEXSTJ 182/152, RSTJ 183/362),RESP 660071-SC, AGRG NO AG 350671-MG

195 Brazilian Civil Procedure Code, article 17 numbers I to VII.

196 Law No. 10.406 of January 10, 2002.

197 Law 3.071 of January 1, 1916.

198 Law No. 9.307 of September 23, 1996.

199 Law No. 36 of December 5, 1988.

200 Law No. 60 of December 23, 2003.

201 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.

202 Panama Inter-American Convention on International Commercial Arbitration of January 30, 1975.

203 For a discussion of recent trends in Brazil regarding arbitration, particularly the Brazilian courts' position towards arbitration, see "Arbitration Q&A: Brazil," Practical Law Company (June 2012), available at http://www.acc.com/search.cfm?term=brazil%20arbitration&resultsfor=plc.

204 Brazilian Civil Procedure Code, article 267, number VII.

205 Brazilian Civil Procedure Code, article 467, number VII.

206 Brazilian Federal Constitution of October 5, 1988, article 144, first paragraph.

207 Law No. Law no. 7.783/89 of June 28, 1989.

208 *See* CARMONA, Carlos Alberto, Arbitragem e Processo: Um Comentário à Lei 9.307/96, São Paulo, Atlas, 2009, 3º ed., p.39.

209 TRT 4ª Região - 0131200-95.2009.5.04.0029 RO.

210 See, for example, LEMES, Selma Ferreira. O Uso da Arbitragem nas Relações de Consumo. Available at http://www.mundojuridico.adv.br. Visited on August 27th, 2012.

211 TJRJ - 0019648-38.2008.8.19.0209.

212 Law n. 6.404, of December 15th, 1976

213 Law n°. 11.079 of December 12, 2004.

214 *See* CÂMARA, Alexandre Freitas, Arbitragem: Lei nº 9.307/96, Rio de Janeiro, 2009, 5ª ed. Lumen Juris, p. 142.

215 Law n. 11.101, of February 9, 2005.

216 Law-Decree 7.661, of June 21, 1945.

217 Law 9.307, of September 23, 1996, article 4.

218 Law 9.307, of September 23, 1996, article 9.

219 Law 9.307, of September 23, 1996, article 6.

220 Law 9.307, of September 23, 1996, article 10.

221 Resolution No. 9 of the Presidency of the STJ, of May 4, 2005.