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Chile

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A. Legislation and rules

A.1 Legislation

Arbitration in Chile continues to be primarily governed by the Organic Code of Courts (OCC), the Code of Civil Procedure (CCP) and Act No. 19,971 on International Commercial Arbitration (“ICA Law”), which is mostly a replica of the UNCITRAL Model Law on International Commercial Arbitration.

Chile is also a signatory to the New York Convention, the Inter-American Convention for Letters Rogatory, the Panama Convention and the ICSID Convention. Additionally, most of the free trade agreements (FTAs), as well as the bilateral investment treaties (BITs) that Chile has entered into, provide for specific arbitration mechanisms to settle disputes arising from their application.

No recent legal changes had been introduced nor proposed for Chilean arbitration law.

Chile has a longstanding tradition in arbitration. Case law demonstrates the strong and sound support of Chilean courts for due autonomy and independence of arbitration tribunals. This judicial

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support, alongside the well-recognized quality of arbitrators and national arbitral institutions, good infrastructure, and low rates of corruption has positioned Chile as a reliable seat for arbitration in Latin America.

A.2 Institutions, rules and infrastructure

There are two main arbitration institutions in Chile: the Arbitration and Mediation Centre of the Santiago Chamber of Commerce (CAM) and the National Centre of Arbitration of Chile (CNA). Other minor arbitration institutions are located throughout the country.

A.2.1 CAM

The CAM is a nonprofit institution founded in 1992 by the Chamber of Commerce of Santiago with the support of the Bar Association of Chile. Throughout its 25 years of service, the CAM has handled around 3100 arbitrations. During the first semester of 2017, 158 new cases were filed before the Centre.

The CAM has its own procedural rules both for international and domestic disputes, unless both parties agree to establish different rules. The CAM has also recently developed a Dispute Boards service, an alternative system of early resolution of disputes, under which a panel of independent experts helps the parties resolve their disputes through informal assistance. The CAM has also developed *E-CAM*, an online system, that makes procedural tracing easier.

CAM headquarters are located in the city center of Santiago,⁴ and its facilities are new, modern and comfortable.

A.2.2 CNA

The CNA was created in 2007 by independent professionals to constitute an alternative to institutional arbitration in Chile. The CNA Santiago handles arbitration and mediation for solving domestic

⁴ CAM Santiago is located in Monjitas 392, Floor 11, borough of Santiago, city of Santiago de Chile. Its website is: www.camsantiago.cl



disputes, and since its creation, it has handled more than 100 cases. The CNA is located in the financial district of Santiago.⁵

A.2.3 Regional institutions of arbitration

There are also other regional arbitration institutions, such as the Centre for Arbitration and Mediation of the Region of Valparaíso, located in the port of Valparaíso,⁶ while Biobío Arbitration and Mediation Centre is located in the city of Concepción,⁷ and the Centre of Conciliation and Arbitration has its venue in the southern city of Puerto Montt.⁸

B. Cases

In accordance with the general provisions of the UNCITRAL Model Law, the Chilean ICA Law made clear that the only resource available to challenge an arbitral award is a request for annulment (*recurso de nulidad*), which must be submitted before a Court of Appeal. In this regard, the Chilean superior courts (Supreme Court and Courts of Appeal) have consistently (i) rejected actions other than the request for annulment over arbitral rulings; and (ii) ruled against all requests for annulment of international commercial arbitral awards in the last 10 years. As a matter of fact, to this date, Chilean superior courts have never granted an annulment of an arbitral award based on the ICA Law. Therefore, the criterion held by the Supreme Court to challenge an arbitral award is still narrow and restrictive, thus protecting the value of the arbitral award.

Some of the very significant rulings of Chilean superior courts in regard to international commercial arbitration are the following:

⁵ CNA is located in Apoquindo 3600, Floor 5, borough of Las Condes, city of Santiago de Chile. Its website is <http://www.cna.cl/>

⁶ Its address is Plaza Justicia (without number), Floor 1, city of Valparaíso. Its website is <http://www.abogados-valparaiso.cl/>

⁷ Its address is Caupolicán 567, Office 201, city of Concepción. Its website is <http://www.cpcc.cl/centro-de-arbitraje-y-mediacion/>

⁸ Its address is O'Higgins 144, city of Puerto Montt. Its website is <http://www.colegioabogados.info/centro-conciliacin-y-arbitrajes>

B.1 *Huber / Coderch Mitjans Jorge - Sociedad Río Bonito S.A. - Sociedad Queltehue S.A.*⁹

The company Río Bonito S.A. (“Río Bonito”) appeared before the Court of Appeal of Santiago to request the annulment of an arbitral award. The Court of Appeal found that the arbitral award was duly pronounced since all legal requirements were met. Therefore, the request was denied by the court.

Subsequently, Río Bonito presented a complaint against the judges of the Fifth Chamber of the Court of Appeal of Santiago, arguing that these judges had exerted their functions in a “wrongful or abusive” manner.

The Supreme Court declared that, in conformity with the ICA Law, the action for annulment is the only legal remedy available to challenge an arbitral award. Therefore, the Supreme Court found the complaint to be inadmissible because it meant asking the Supreme Court to determine a matter that had already been met and resolved by an arbitral court.

On the other hand, the Supreme Court noted that article 63 of the OCC established that the Court of Appeal is the only court capable of delivering a decision in cases of extraordinary resources directed against arbitrators and their sentences.

The Supreme Court declared the request filed by Río Bonito to be inadmissible.

B.2 *Ingeniería Proyersa Ltda. v. Arbitrator Mr. Figueroa*¹⁰

In 2016, Ingeniería Proyersa Ltda. filed a request for the annulment of an international commercial arbitration award before the Court of Appeal of Santiago. It was alleged that the arbitral award was contrary

⁹ Court of Appeal of Santiago, Docket No. 1739-2015; Supreme Court, Docket No. 30967-2015.

¹⁰ Court of Appeal of Santiago, Docket No. 2685-2016; Supreme Court, Docket No. 62114-2016.



to due process since the award was made in violation of the Chilean rules of civil procedure. Therefore, this award was argued by Proyersa to be contrary to the Chilean public order (*Orden Público*).

The Court of Appeal of Santiago stated that rules of civil procedure were not part of the legal provisions of the Chilean public order. Furthermore, the court defined “public order” as a set of basic norms of justice and morality of the legal system, including the principles of minimal judicial intervention, exceptionality in the revision of the award and restrictive interpretation of the causes for annulment. Therefore, the court dismissed the annulment request.

Proyersa submitted a complaint to the Supreme Court about the judges of the Court of Santiago on the grounds of “wrongful or abusive” exertion of their jurisdictional power. Once again, the Supreme Court stated that according to the ICA Law, the only mechanism suitable to challenge an international commercial arbitral award was a request for annulment. Therefore, the Supreme Court found the complaint as inadmissible.

B.3 *D’Arcy Masius Benton & Bowles Inc. v. Arbitrator Mr. Jorquiera*¹¹

In 2005, the president of CAM named an arbitrator and established the ICA Law as the applicable rule for arbitral proceedings arising from an arbitral clause from 1996. Nevertheless, one of the parties, D’Arcy Masius Benton & Bowles Inc., stated that the ICA Law was not applicable, as the relevant contract was signed 10 years ago, before the entry in force of this legal framework. D’Arcy filed a request for reconsideration (*recurso de reposición*) before the arbitrator, jointly with an appeal. The arbitrator dismissed the request for reconsideration and did not allow D’Arcy to lodge an appeal with the Court of Santiago. In particular, the arbitrator found that according to the ICA Law, the only mechanism available to parties that enabled

¹¹ Court of Appeal of Santiago, Docket No. 865-2006.

local courts to intervene in the arbitration was the request for annulment.

D'Arcy submitted a request for reconsideration of the appeal refusal before the Court of Santiago. However, the court found that the ICA Law was fully suitable to govern the arbitration.

Given that the Act of Retroactive Effect of Law of 1861 established that the laws concerning judgments prevail once they come into force, and they do not affect the contract but the procedural rules of the arbitration, the court found that the arbitrator was entitled to determine the ICA Law as the law applicable to the arbitral proceedings. Thereupon, the Court of Santiago dismissed the request for annulment.

B.4 *Publicis Groupe Holdings B.V. v. Arbitrator Mr. Vial*¹²

Publicis Groupe Holdings B.V. challenged an arbitral award by filing a request for annulment before the Court of Appeal of Santiago. Publicis alleged that the award was issued in contravention of the Chilean public order, in both substantive and procedural aspects. In particular, Publicis held that both the existence and the determination of damages in the arbitral award were not based on legally rendered evidence, instead consisting of mere speculation that lacked any supporting antecedent. Besides, Publicis alleged that the lack of legally rendered evidence was mandatorily regulated by the Code of Civil Procedure.

However, the court found that no breach was made in the arbitral ruling, given that all evidence in the arbitration procedure was rendered according to the rules of procedure that governed such arbitration procedure. Therefore, the court dismissed the request for annulment.

¹² Court of Appeal of Santiago, Docket No. 9134-2007.



B.5 *Administradora Río Claro S.A. v. Arbitrator Mr. Jana*¹³

In April 2017, the Court of Appeals of Santiago dismissed a complaint filed by Administradora Río Claro against the arbitrator Mr. Andrés Jana. Among other issues, Río Claro argued that the arbitrator gave value to depositions made by dependents of the counterparty, and that allowed said counterparty to submit allegations even after the discussion phase of the arbitration was closed.

As expected, the Court of Santiago dismissed the complaint, on the basis that pursuant to the ICA Law, the only way available to challenge an arbitral award is the request for annulment. Therefore, the Supreme Court found the complaint to be inadmissible, thus consolidating a longstanding precedent on this matter.

¹³ Court of Appeal of Santiago, Docket No. 3390-2017.