

Inter-American Convention on International Commercial Arbitration, 1975

Done at Panama City, January 30, 1975 O.A.S.T.S. No. 42, 14 I.L.M. 336 (1975)

The Governments of the Member States of the Organization of American States, desirous of concluding a convention on international commercial arbitration, have agreed as follows:

Article 1

An agreement in which the parties undertake to submit to arbitral decision any differences that may arise or have arisen between them with respect to a commercial transaction is valid. The agreement shall be set forth in an instrument signed by the parties, or in the form of an exchange of letters, telegrams, or telex communications.

Article 2

Arbitrators shall be appointed in the manner agreed upon by the parties. Their appointment may be delegated to a third party, whether a natural or juridical person. Arbitrators may be nationals or foreigners.

Article 3

In the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission.

Article 4

An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.

Article 5

1. The recognition and execution of the decision may be refused, at the request of the party against which it is made, only if such party is able to prove to the competent authority of the State in which recognition and execution are requested:

- (a) That the parties to the agreement were subject to some incapacity under the applicable law or that the agreement is not valid under the law to which the parties have submitted it, or, if such law is not specified, under the law of the State in which the decision was made;
- (b) That the party against which the arbitral decision has been made was not duly notified of the appointment of the arbitrator or of the arbitration procedure to be followed, or was unable, for any other reason, to present his defense; or
- (c) That the decision concerns a dispute not envisaged in the agreement between the parties to submit to arbitration; nevertheless, if the provisions of the decision that refer to issues submitted to arbitration can be separated from those not submitted to arbitration, the former may be recognized and executed; or
- (d) That the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the terms of the agreement signed by the parties or, in the absence of such agreement, that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the law of the State where the arbitration took place; or
- (e) That the decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which, or according to the law of which, the decision has been made.

2. The recognition and execution of an arbitral decision may also be refused if the competent authority of the State in which the recognition and execution is requested finds:

- (a) That the subject of the dispute cannot be settled by arbitration under the law of that State; or
- (b) That the recognition or execution of the decision would be contrary to the public policy (“order public”) of that State.

Article 6

If the competent authority mentioned in Article 5.1(e) has been requested to annul or suspend the arbitral decision, the authority before which such decision is invoked may, if it deems it appropriate, postpone a decision on the execution of the arbitral decision and, at the request of the party requesting execution, may also instruct the other party to provide appropriate guaranties.

Article 7

This Convention shall be open for signature by the Member States of the Organization of American States.

Article 8

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 9

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 10

This Convention shall enter into force on the 30th day following the date of deposit of the second instrument of ratification. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the 30th day after deposit by such State of its instrument of ratification or accession.

Article 11

If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them. Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective 30 days after the date of their receipt.

Article 12

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

Article 13

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States. The Secretariat shall notify the Member States of the Organization of American States and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation as well as of reservations, if any. It shall also transmit the declarations referred to in Article 11 of this Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT PANAMA CITY, Republic of Panama, this thirtieth day of January one thousand nine hundred and seventy-five.

Ratification of the Inter-American Arbitration Convention

The Inter-American Convention on international commercial arbitration, 1975 (also known as the Panama Convention) entered into force on June 16, 1976. Subsequent deposits are effective on the 30th day after deposit with the Organization of American States. The Convention is open for signature by all 35 members of the OAS. States from outside the Americas may also accede to the Convention but none has done so to date.

As of June 1, 1997, the following sixteen countries have deposited their instrument of ratification with the OAS. (The date in parentheses is the date of deposit.)

Argentina (5 Jan 1995)
Brazil (27 Nov 1995)
Chile (17 May 1976)
Colombia (29 Dec 1986)
Costa Rica (20 Jan 1978)
Ecuador (23 Oct 1991)
El Salvador (11 Aug 1980)
Guatemala (20 Aug 1986)
Honduras (22 Mar 1979)
Mexico (27 Mar 1978)
Panama (17 Dec 1975)
Paraguay (15 Dec 1976)
Peru (22 May 1989)
USA (27 Sep 1990)

Uruguay (25 Apr 1977)
Venezuela (16 May 1985)

The following three countries are signatories to the Convention, but have not yet ratified their signature. (The date in parentheses is the date of signature.)

Bolivia (2 Aug 1983)
Dominican Rep. (18 Apr 1977)
Nicaragua (30 Jan 1975)

Source: Organization of American States.

The following analysis examines the status of the Panama Convention and the 1958 New York Convention in the 35 OAS states as of June 22, 1996.

1. Twelve states have accepted both the New York and Panama Conventions: Argentina, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Panama, Peru, USA, Uruguay, and Venezuela.

2. Twelve states have accepted one or the other, but not both conventions:

New York: Antigua & Barbuda, Barbados, Bolivia, Canada, Cuba, Dominica, Haiti, and Trinidad & Tobago. (Bolivia has signed, but not ratified, the Panama Convention.)

Panama: Brazil, El Salvador, Honduras, and Paraguay. (El Salvador has signed, but not ratified, the New York Convention.)

3. Eleven states have not accepted either convention: Bahamas, Belize, Dominican Republic, Grenada, Guyana, Jamaica, Nicaragua, St. Christopher & Nevis, St. Lucia, St. Vincent & the Grenadines, and Suriname.

4. Two of these eleven states have signed the Panama Convention: Dominican Republic and Nicaragua.