

INTERNATIONAL DISPUTE RESOLUTION NEWSLETTER

How International Arbitration in Spain has developed since the 2003 Spanish Arbitration Act and the establishment of the Euro- American Court of Arbitration

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Arbitration in Spain has undergone significant progress in recent years. This is due, on the one hand, to the efforts made by the administering institutions to make arbitration a real alternative to the courts for the resolution of disputes and, on the other hand, to the development of legislation in this field, aimed at achieving the harmonisation and uniformity of the laws regulating arbitration and thus favouring the effectiveness of the same as a means for dispute resolution.

In this respect, although the Arbitration Act of 1988 represented a great step forward in this field, it was not until the publication of Arbitration Act 60/2003, of 23 December, that Spain witnessed a qualitative leap. The new legislation bases the Spanish legal system for arbitration on the Model Law adopted by the United Nations Commission on International Trade Law on 21 June 1985 (UNCITRAL Model law), as recommended by the General Assembly, taking into account the requirements for uniformity of arbitral procedure and the needs of international commercial arbitration. Furthermore, the Spanish legislator has taken into account the numerous efforts made by the Commission to implement technical advances and to attend to the new needs of arbitral practice.

In this manner both national and international arbitration is regulated unitarily, thus allowing economic agents to acquire greater certainty as regards the legal system of arbitration in Spain and facilitating the achievement of arbitral agreements in which Spain is designated as a centre for international arbitration, in particular in the Latin American context.

As regards the question of how international arbitration has developed since the new Act came into force, we should point out that the arbitral procedure has become more flexible. In this respect arbitration rules are of a voluntary nature, being applied only in the absence of agreement as to other rules by the parties, whether this be directly or through the acceptance of institutional arbitration or established arbitral regulations. Furthermore, any rigidity is avoided by allowing for the conduct of hearings and deliberations in locations other than the seat of arbitration, by granting freedom to the parties to choose the language or languages of arbitration, by removing requirements as

to the form and content of briefs, and by permitting that the proceedings be conducted predominantly in writing.

What is more, one of the main objectives of this new Act is to promote Spain as a centre for international arbitration. This comes in response to the need -in order to be able to compete in the area of both national and international trade- for the existence of permanent Courts and Tribunals specialised in commercial arbitration, able to guarantee the necessary resources and to propose equitable solutions to the parties in accordance with commercial practice and, as the case may be, with the law. In this respect, Article 14 of the Arbitration Act regulates institutional arbitration, allowing the parties to entrust the administration of the arbitration procedure and the designation of the arbitrators to Public Law Corporations. These corporations fulfil their arbitral functions in accordance with their rules and regulations.

By virtue of Royal decree 1094/1981 of 22 May, the High Council of the Chambers of Commerce, Industry and Navigation, as a Public Law Corporation, has been given competence to carry out arbitral functions, both in equity and in law, in the area of international commerce. This Royal Decree represented the opening of Spain's doors to international commercial arbitration, as a response to the increase in international commercial relations, in particular with the area of Latin America, and to the lack of suitable international commercial arbitration services. However, these circumstances determined that the use of the technique of arbitration by business and tradesmen of that area was to be carried out with reference to institutions from another idiomatic cultural context, with the consequent negative effects for Spain.

Nonetheless, the economic development experienced by Spain in recent years has fostered a considerable increase in investments and commercial transactions abroad and this, in conjunction with the fact that business has become more complex, the progressive increase in conflicts of all types and economic globalisation, has made it necessary to develop arbitration resources as a tool to provide solutions to possible disputes.

Conscious of the changes that have occurred in international commercial practice and in view of their experience in the out-of-court resolution of disputes, the Chambers of Commerce have created the Euro-American Court of Arbitration to attend to the greater number of arbitration procedures derived from the increase in Spanish investment in Latin America and in commercial relations between Spain and Latin American countries.

The said Court operates under the auspices of the High Council of Chambers of Commerce, Industry and Navigation, where it has established its seat, and it has jurisdiction over national and international commercial arbitrations submitted thereto by

the parties, from any part of the world and from practically all economic sectors. Even so, the Court's principal focus is on affairs between Europe and America.

The following are the special functions attributed to the Court:

- The organization and administration of arbitrations.
- Designation of arbitrators.
- The study of national and international arbitration law and the submission to the public authorities of any proposals that would benefit the practice of commercial arbitration.
- Relations with other entities that are specialised in the field, as well as the signing of conventions and cooperation agreements.
- In general, any other activity related to commercial arbitration that serves to promote its practice, study and growth.

As regards submission of a dispute to the Euro-American Court of Arbitration, this shall occur as a result of an Arbitral Agreement, thereby expressing the will of the parties to submit to arbitration all or part of the disputes that arise in respect of any given legal, contractual or non-contractual relationship, or, in the absence of an Arbitral Agreement, by mutual agreement between the parties in writing.

Finally, we should point out that this institution is regulated in both the Statute and Rules of the Euro-American Court of Arbitration, without prejudice to the possibility of requesting the intervention of the High Council of Chambers of Commerce, Industry and Navigation for any questions relating to the said Court (www.camaras.org).