



Doing Business in Dominican Republic

## Arbitration in Dominican Republic

### Commercial Arbitration

In Dominican Republic (DR), arbitration procedures are governed under the Commercial Arbitration Law 489-08, dated December 19<sup>th</sup> of 2008. Law 489-08 is the implementation of DR-CAFTA in the Dominican Republic, which brought with it an increase of commercial trade relationships that required at the time an appropriate legislation.

Commercial Arbitration Law 489-09 is applicable to any arbitration process that may be carried out within the DR, without affecting international treaties provisions ratified by the DR or when a special legislation establishes other provisions for arbitration.

For Arbitration procedures purposes arbitration in accordance to Law 489-08 may be:

- a. **Ad-hoc:** where the parties agree among themselves the procedural rules applicable to resolve their conflict;
- b. **Institutional:** where the parties introduce their conflict into a procedure established by an arbitration center.

In relation to nature, an arbitration can be based on:

- a. **Law:** In this case Arbitrators take their decisions based on the current legislation provisions;
- b. **Equity:** In this cases arbitrators take their decisions based on common sense and fairness.

Pursuant Law 489-09, an international arbitration process is considered as such if: the parties at the time of the arbitration agreement, have their establishments in different countries; the parties have their domicile out of the Dominican Republic; and the place of execution or partial performance of an obligation in a commercial relation is different from the one in which they have domicile.

According to Dominican Arbitration Law, the matters subject to arbitration are:

- Conflicts regarding the free will and transaction in accordance to civil and commercial provisions applicable, including those in which the government is part;
- When the arbitration is international and one of the parties is the Dominican government or a foreign government, or an association, organization or a company controlled by a government, such part may not invoke their rights or sovereignty principles in order to evade the obligations derived from an arbitration agreement.

### Excluded matters under the Arbitration Law 489-08

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It is established by Law 489-08 that the conflicts in relation to the **(i)** civil status of persons, shelter and clothing, divorces, parental guardianship, minors, persons subject to legal incapacity or absence; **(ii)** public order issues; and **(iii)** any other conflict that it is not subject of transactions do not qualify for arbitration under provisions of commercial arbitration Law 489-08.

On matters not excluded, Law 489-08 provides that the common courts shall respect the decisions taken by the parties in the case of agreements, process or arbitral decisions reached. In doing so, they co-operate in such way that they recognize the arbitrators' capacity and the principles of agility and efficiency of the arbitration process.

### Arbitration Agreement

Pursuant the Commercial Arbitration Law 489-08, an Arbitration Agreement is the agreement by where the parties decide to submit to the arbitration process some of or all of the conflicts that arise or may arise among them regarding a legal, contractual or non-contractual relation. In this sense, the Arbitration agreement may consist of an arbitration clause included within a contract or in an independent agreement.

It is established by Law 489-08, that the arbitration agreement shall be in writing where the signatures of the parties shall be placed. Also, it is considered that the arbitration agreement has been made in writing if there is an exchange of letters, faxes, telegrams, emails or any other telecommunication means that provides evidence of the, and will be considered as such pursuant the Electronic Commerce, Documents and Digital Signatures Law 126-02.

### Composition of the Arbitration Panel

According to Law 489-08, the parties can decide freely the number of arbitrators, with the only limitation that the panel shall consist of an odd number of arbitrators. If regarding the number of arbitrators there is not an agreement, one arbitrator shall be appointed.

Pursuant the provisions established under Law 489-08, the parties may appoint the arbitrators directly and by mutual agreement or delegate to a third party the partial or total appointment of arbitrators.

In the case of an ad-hoc arbitration with three or more arbitrators, each party should nominate the arbitrators that proportionally correspond to them and the remaining arbitrator shall be appointed by the already selected arbitrators, who will be the president of the arbitration panel.

In the case of Institutional arbitration, the arbitrators will be appointed by the regulation established by the arbitration center selected.

### Arbitration Award

The arbitration award is the decision adopted by the arbitration panel, which in accordance to Law 489-08 may be decided in equitable manner or based on Law depending when the parties have authorized the way in which the panel shall make the decision. If the parties have not indicated the way in which the panel should take the decision, the decision issued by the panel will be under Law. According to Law 489-08, in all cases, the panel will take a decision based on the provisions established in the contracts executed by the parties.

**Acknowledgment and execution of Foreign Arbitration Awards**

The decision adopted by foreign arbitration panels can be recognized and enforced within Dominican Republic as established by Law 489-08 and international treaties, accords or conventions on the matter.

Therefore, in order to execute a foreign arbitration award in the DR, it is necessary to submit a request of recognition (Exequatur) before the corresponding judicial courts, attaching a copy of the arbitration award, the arbitration agreement or the contract containing the arbitration provision, among others.

In relation to the above mentioned, the court will decide whether acknowledges or not the arbitration awards and will take a decision within the term established by international conventions in the matter, particularly the New York Convention on the Recognition and Enforcement of Arbitral Awards, signed on April 11<sup>th</sup> of 2002 and ratified by the Dominican Republic on July 10<sup>th</sup> of 2002.

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