

to complete the project on time. According to LDI, the delay was due to the fact that it was denied full access to the site for the first nine months of the sixteen-month-long project.

Turkish power company files ICSID claim against Pakistan.

Turkish power company Karadeniz Holding AS (“Karadeniz”) has initiated a claim against Pakistan with the International Center for Settlement of Investment Disputes for seizing two of its electricity-generating ships. Karadeniz sent two ships with 330 megawatts-generating capacity to Pakistan in 2009 to supply electricity for up to five million people, and both sides signed a \$564 million, five-year contract. After fuel prices rose, however, Pakistan did not supply fuel to the ships to fire generators, nor did it make rental payments to Karadeniz. Karadeniz terminated the contract, but Pakistan kept the ships. Pakistan alleges that it was Karadeniz who breached the contract and has commenced court proceedings in Pakistan against it.

South America – Northern Cone

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Colombia adopts arbitration statute based on the UNCITRAL Model Law.

Last October, Law 1563/2012, regulating domestic and international arbitration in Colombia, entered into force. The new statute replaces a rather disorganized and confusing set of rules spread among different legal instruments; particularly Law 315/96 which dealt with international arbitration in an inefficient manner. Generally, the most welcome feature of the new statute is the adoption of the 1985 UNCITRAL Model Arbitration Law with its 2006 amendments (the “Model Law”). Many positive changes are brought by

Law 1563/2012. For example, the new statute: (1) recognizes both institutional and ad hoc arbitration; (2) acknowledges the power of arbitrators to issue interim or conservatory measures; (3) provides clear definitions of what constitutes an arbitration agreement, the principle of separability of the arbitration agreement and the power of the arbitrators to decide on their own competence (*kompetenz-kompetenz*), including the negative effect of such authority. Thus, a court seized with a dispute subject to an arbitration agreement must immediately refer the matter to arbitration upon a party’s request.

More specifically to international arbitration, Law 1563/2012:

- adopts an economic criterion of when arbitration is “international,” by including any dispute affecting the interests of international trade. Therefore, arbitration proceedings with seat in Colombia between Colombian entities could be deemed international if the dispute affects cross-border trade. Even in those cases, however, the arbitral award shall be deemed domestic and thus exempted from recognition proceedings and subject to direct execution in Colombia.
- adopts the principle of international arbitration wherein a sovereign State or an entity owned or controlled by a State, cannot invoke its own legislation to challenge its capacity to enter into an arbitration agreement. Colombia joins countries like Switzerland, France and Spain in accepting this valuable precept.
- adopts the most modern trends in electronic commerce and technology with respect to what represents an arbitration agreement in writing.
- admits electronic communications as a valid method of service and notification when contained in the main contract.
- authorizes the objecting party, in the case of denial of preliminary objections to the arbitral tribunal’s jurisdiction, to challenge the decision only at the time of seeking annulment of the final arbitral award.
- clarifies the effects of a successful chal-

lenge under each instance of annulment provided for in Article V of the New York Convention.

Although Colombia’s adoption of the Model Law is praiseworthy, a few negative observations could be made. First, Law 1563/2012 has no provisions regarding non-signatories to the arbitration agreement. Other countries, like Peru, have adopted rules allowing the possibility under certain circumstances of adding non-signatories to an arbitration proceeding. Second, the new legislation could have been clearer in defining a domestic court’s role in reviewing an arbitration agreement. Further, Law 1563/2012 fails to follow suit with respect to similar modern legislations like those of Spain and Peru that have adopted the conflict rule *in favorem validatis*. According to this rule, the arbitration agreement shall be deemed enforceable if its validity is supported by either (i) the law applicable to the arbitration agreement, or (ii) the law applicable to the substance of the dispute, or (iii) domestic law.

South America – Southern Cone

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Argentina is censured by IMF for economic data.

On 1 February 2013, the International Monetary Fund’s Executive Board censured Argentina for not providing accurate data on inflation and economic growth. The declaration of censure was based on the managing director’s report on Argentina’s progress in implementing remedial measures to address the quality of the official data reported to the Fund for the Consumer Price Index for Greater Buenos Aires (“CPI-GBA”) and Gross Domestic Product (“GDP”). *Bloomberg* reports that Argentina is the first nation censured by IMF for economic data.

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World Roundup

According to IMF press release 13/33, the Executive Board found that Argentina's progress in implementing the remedial measures since the 17 September 2012 Board meeting has not been sufficient. The Board called on Argentina to adopt the remedial measures "to address the inaccuracy of CPI-GBA and GDP data without further delay, and in any event, no later than September 29, 2013." The measures applicable to the CPI-GBA and GDP aim at aligning these indicators with international statistical understandings and guidelines that ensure accurate measurement.

Although the decision has no immediate effects, it takes Argentina a step closer to sanctions that include being barred from access to IMF loans and having its voting rights suspended. Further, if no remedial measures are taken, Argentina can be ousted from the IMF. *Bloomberg* reported that the United States Treasury voiced support for the IMF's decision and urged "Argentina to work closely with the IMF in the months ahead to rectify these matters."

Argentina has been blocked from borrowing from international markets since its 2001 default on \$95 billion of debt and has recently been ordered by the United States District Court for the Southern District of New York to pay \$1.2 billion to the bondholders that did not agree to its 2005 and 2010 debt restructuring.

Uruguay and Canada sign a tax information exchange agreement.

On 5 February 2013, Canada and Uruguay signed a tax information exchange agreement that shall enter into force "on the date of the later notice by which each party has notified the other of the completion of its necessary internal procedures for entry into force." The agreement was signed by Uruguay's Foreign Minister Luis Almagro and Ambassador of Canada Claire Poulin. Almagro said that the goal is to attract investment and facilitate financial flows between the two countries

and also highlighted the commitment of Uruguay to fight tax evasion and reach tax transparency in international matters. The Canadian ambassador commented on the excellent bilateral relationship between the countries and noted that Uruguay and Canada are united in the international commitment to fight corruption.

USA

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Arrests made in Florida in connection with the illegal export of motor vehicles.

U.S. Customs and Border Protection ("CBP") has investigated and arrested numerous Florida individuals for the alleged illegal export of motor vehicles. Buyers from dealerships allegedly made false statements that the vehicles were not going to be resold internationally when in fact they attempted to export the vehicles. Moreover, one exporter allegedly made false statements to CBP that the vehicles were used when in fact they were brand-new vehicles.

False declarations on the rise regarding country of origin for imported merchandise.

With the numerous new free-trade agreements, especially the U.S.-Colombia Free Trade Agreement that went into effect on 15 May 2012, many U.S. importers are attempting to import merchandise with false declarations to the CBP that the imported merchandise originated in a country with a free-trade agreement with the United States. For example, clothing from Colombia that was allegedly made in Colombia was, in actuality, made in China, transported to Colombia and then on to the United States. CBP pursues fraud penalties against the U.S. importer for such false statements. The same is true for violations of the NAFTA or DR-CAFTA.

Check-cashing stores allegedly used for money laundering in Florida.

Homeland Security Investigations has executed numerous search warrants and made several arrests in Florida for persons allegedly engaged in money laundering through the use of check-cashing stores. In one unique case in Miami, the specified unlawful activity resulting in the money-laundering charge involved U.S. dollars imported from Mexico being used to pay illegal immigrants in Florida.

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