

# Client Update

## *Adelante*: Argentine Senate Approves Model Law on Arbitration as the Country Seeks to Attract Foreign Investment

On 7 September 2017, the Argentine Senate voted 43-to-1 to adopt the International Commercial Law bill, based substantially on the UNCITRAL Model Law on Commercial Arbitration. The Senate's decision clears the way for the House of Deputies to vote on the measure. The House of Deputies' vote has not yet been scheduled.

The United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration (the "Model Law") is a suggested framework to assist states in modernizing their arbitral laws, taking into account the particular characteristics of international commercial arbitration. The United Nations (the "UN") General Assembly adopted the Model Law in 1985, endorsing its "significant[] contribut[ion] to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations." In 2006, the Model Law was updated. Since 1985, 76 states incorporating 107 jurisdictions have passed legislation based on the Model Law. This includes every country in Latin America except Uruguay (which has taken steps towards its adoption) and Argentina.

The Argentine Ministry of Justice and Human Rights promoted the Model Law as part of *Justicia 2020*, a program of sweeping reforms seeking to align Argentina with the UN's Agenda for Sustainable Development. A working group established by the Ministry to examine reforms to further *Justicia 2020* held four sessions on the Model Law and invited comments from academics, lawyers, arbitrators, and other stakeholders, including the public.

The Private-Law Coordinator at the Ministry of Justice, Agustina Diaz Cordero, called the Model Law "a fundamental tool for attracting foreign investment." Noting the steps taken by Uruguayan lawmakers to adopt the Model Law, Ms. Diaz Cordero stressed that Argentina should not be the only Latin American country left behind: "the global market demands an increasingly uniform legal system." Justice Minister German Garavano applauded the Senate

vote. Adopting the Model Law would allow Argentina “to give judicial certainty and incorporate universally accepted arbitration principles.”

The International Commercial Law bill substantially mirrors the Model Law. However, the bill has opted out of certain key provisions. For example, unlike the Model Law, the requirement that arbitration agreements be “in writing” cannot be satisfied by agreements recorded “orally, by conduct, or by other means.” Additionally, all awards have to be reasoned, and, unlike the Model Law, the parties cannot waive the requirement or agree to decisions by another form. Finally, the thirty day period allotted to set aside an award is significantly shorter than the Model Law’s period of three months.

The vote on the bill is the latest in a series of pro-arbitration changes to Argentine law. In 2015, Argentina enacted the Civil and Commercial Code to replace the country’s previous Civil Code, which had been in effect since 1871. The Civil and Commercial Code governs the substantive arbitration framework at the federal level. Last year, Argentina also passed a new law (Ley no. 27.328) allowing for arbitration of disputes arising out of public-private partnership (“PPP”) contracts between the national government and private entities.

The International Commercial Law bill is one of two bills introduced into Parliament this year that could reform the country’s approach to international and domestic arbitration. The second is an amendment of the country’s Civil and Commercial Code. Together with the second arbitration bill under consideration -- amendment of the Civil and Commercial Code -- proposed changes would be significant. For example, current law leaves disputes involving the national or local governments outside the scope of arbitration; the proposed changes broaden the scope of arbitrability to include all issues “capable of being settled.” Current law gives courts broad discretion to enforce or decline to enforce arbitral tribunals’ interim or precautionary measures, as well as to nullify awards in whole or in part; the proposed changes limit this discretion.

These reforms are part of the government’s efforts to make Argentina more attractive to foreign investment, following years of comparative hostility. In this context, an affirmative vote on the International Commercial Law bill by the House of Deputies would be a welcome reform to Argentina’s civil law. It would represent a step forward in aligning Argentina’s arbitration framework with internationally accepted arbitration practice, thus improving familiarity and certainty for investors and business.

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Please do not hesitate to contact us with any questions.

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