

Insurance & Reinsurance - Chile

New obligation to disclose arbitrated judgments causes concern

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New laws Comment

For insurers, confidentiality is one of the main benefits of arbitration. Unlike in litigation, insurers that settle disputes through arbitration can avoid the creation of harmful precedents and ensure that settlements remain private. Until recently, insurers in Chile were assured of confidentiality by the country's two leading arbitration centres. Both provide full confidentiality regarding their institutional arbitrations: the former implicitly and the latter explicitly in its regulations. However, this seems likely to change.

New laws

On August 20 2007 a far-reaching new law entered into force – the Law on Access to Public Information (20.285). This new legislation not only created a new paradigm for all public institutions, but also set most of Chile's legal and political systems on a path towards modernisation, in terms of both access and transparency of information. In many ways, this process is still ongoing. As expected, this project has created tension among the various institutions that value confidentiality, such as the courts or arbitrators.

The law forces each branch of the state to disclose the information that is created within that branch. In the case of the judiciary, this is achieved by modifying its organic law (ie, the type of law that creates and regulates a branch of government) to add, among other things, an obligation to create and maintain an online database of all information, including all judicial decisions. Arbitrators were not considered part of the judiciary and this provision was therefore not applicable to them.

However, among the changes that will transform insurance contracts under the amended Code of Commerce, which entered into force on December 1 2013, a provision has been added that obliges insurers to send the regulator an authorised copy of decisions that relate to insurance contracts, including those for arbitration (Article 543). This contradicts the principles of confidentiality that have historically been protected in institutional arbitration.

Comment

Both Law 20.285 and the modernisation of the Code of Commerce may change the way in which insurance controversies develop. In the past, arbitration was confidential and undisclosed settlements were common. Arbitration will now be public and judgment resolutions will be published by the regulatory body. This practice will provide transparency, but also raises questions as to whether it unfairly and specifically targets the insurance industry.

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