



## Arbitration - Argentina

### Stay Ordered after Challenge to Arbitrators

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#### Facts Decision

A federal lower administrative court has granted a preliminary measure requested by Entidad Binacional Yacyretá (EBY) against an international arbitral tribunal constituted under the International Chamber of Commerce Arbitration Rules to obtain a stay of the arbitration proceedings until a challenge against the arbitrators is decided and the terms of reference are approved by the judicial court.

#### Facts

EBY explained in its judicial claim that in November 2002 the joint venture consisting of Empresas Reunidas Impregillo, Dumez and Asociadas para Yacyretá filed a request for arbitration under the International Chamber of Commerce Arbitration Rules against EBY for approximately \$800 million. EBY also stated that as a respondent it answered the request for arbitration in due time, seeking dismissal of the claim in full.

The arbitral tribunal was subsequently appointed and the parties were asked by the tribunal to comment on the draft of the terms of reference.

EBY alleged that the tribunal decided not to include certain allegations and requests made by the respondent in the draft of the terms of reference. The parties were subsequently summoned by the arbitral tribunal to sign the terms of reference, which would otherwise be sent for final approval to the International Chamber of Commerce, without EBY's signature if necessary.

Consequently, EBY challenged the three members of the tribunal, arguing that they had anticipated their judgment on the matter submitted to arbitration. However, as EBY argued in the judicial claim, this first challenge has already been rejected by the International Court of Arbitration without any justification, and on the following day the tribunal would have approved the terms of reference and transmitted them to the court of the International Chamber of Commerce.

In response, EBY filed a new challenge against the arbitral tribunal before the federal lower court on the basis of the anticipation of the arbitration award and the alleged loss of independence of all three arbitrators.

#### Decision





The local judge held that the plaintiff had proven that the right it invoked was admissible, since the decisions of the arbitral tribunal apparently excluded the petitions and motions of EBY. Furthermore, the judge considered that the conduct of the tribunal infringed the defendant's constitutional right to defence and due process of law. Additionally, the judge found that even if the arbitral jurisdiction to decide the matter was valid, it would not prevent parties from judicially contesting the arbitral decision on the grounds that it was unconstitutional, unlawful or unreasonable.

Finally, the judge acknowledged that there is a danger of delay where one party disagrees with the terms of reference, because of the costs implied were the arbitration to continue.

Therefore, the judge ordered that the arbitration proceedings be suspended until the local court has rendered its final judgment on the challenge to the arbitrators and to the terms of reference. The court ordered that this decision be notified to the arbitral tribunal and to the claimant.

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