

Cross-Border Civil Litigation in Peru: a New Draft

A Bill for International Litigation was presented to the Congress of Peru in November 2011. Based on the Latin American Model Bill for International Litigation of 2004, it is an apparently simple draft – just ten articles-, which nevertheless covers some of the most important topics in cross-border litigation: service of process; evidence; damages (compensation); appeals; settlements; *lis pendens*; actionability; and mass claims.

The Peruvian project aims to provide a practical tool for Peruvians plaintiffs in Peruvian cross-border conflicts. Article 1 makes this task easier by accepting summons in any form admitted in the country where the documents are to be served, therefore allowing an enormous saving of time and money.

Article 2 declares the admissibility of evidence already used in a foreign proceeding; such materials will nevertheless be considered again by the Peruvian judge “according to the principles of sound criticism.” Only the relevant part of the foreign documents needs translation: again, a measure to save time and money.

Article 3 deals with damages, which will be awarded (calculated) following the parameters of the relevant foreign law. Though the conflict rule is adequate, it could still be improved through a *favor laesi*.

Appeal as a delaying tactic is prevented by Article 4. Appeal will normally deploy only suspensive effect, thus allowing the international procedure to be carried out speedily.

Article 5 prevents defendant and plaintiff from reaching an agreement without the latter’s counsel being informed. The purpose of the rule is to protect both the lawyer who has invested time and money in the process and the actor who, pressed by necessity, accepts an inconvenient settlement.

Article 6 recalls an already existing rule: in cases of concurrent international proceedings the court where the lawsuit was filed first keeps jurisdiction, just as it happens in domestic cases.

Article 7 of the Bill provides with a separate action against all unjustifiable harm committed abroad. The rule tends to the protection of Peruvians interests when no other remedy is available.

The project includes a ten-year statute of limitations that can be extended to fifteen years in case of debtor's bad faith. Prescription is interrupted under several circumstances: for instance, when the creditor did not know about the damage or its source; the fact of filing overseas also suspends the limitation period. This is reasonable and should be welcomed in view of the technical development that has led, for example, to diseases with a long period of latency, as it happens with exposure to chemicals products.

Consolidation of claims in cases involving a large number of actors or defendants is provided for in Article 9. It is for the judge to take "practical steps for the case to develop rapidly within the limits of due process." It seems that this Article contains the seeds of mass action or class actions.

The overall conclusion is that the Bill, if approved, will certainly help cross-border litigation to be easier and more efficient in Peru.

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