

# Costa Rica



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### I. LITIGATION

#### 1 Preliminaries

##### 1.1 What type of legal system has Costa Rica got? Are there any rules that govern civil procedure in Costa Rica?

Costa Rica's private law system is based on the Civil Law system. As opposed to the Common Law system, disputes are decided based on the law and not on case-law. In that sense, article 1 of the Civil Code of the Republic of Costa Rica states that the Constitution, duly approved International Treaties, the law, customs and the general principles of law are the main sources of our legal system. According with article 9 of the Civil Code, Case law is mainly to establish the rules of interpretation of the above-mentioned sources of law.

##### 1.2 How is the civil court system in Costa Rica structured? What are the various levels of appeal and are there any specialist courts?

The Costa Rican civil court system has first instance courts, which are the ones in charge of receiving the parties' pleas, gathering and producing the corresponding evidence, and issuing the first judgment on the case.

Once the first decision on the case has been issued, the parties can appeal before a Court of Appeals. Depending on the valuation of the case, the decision of the Court of Appeals might be definitive or there might a third instance, known as cassation, which is a very formal kind of appeal that is filed, only for certain reasons, before the corresponding Chamber of the Supreme Court.

##### 1.3 What are the main stages in civil proceedings in Costa Rica? What is their underlying timeframe?

Civil proceedings are divided in three main stages. The first stage starts with the filing of the plaintiff's claim, includes the servings process and the filing of the statement of defence. If a counter lawsuit is filed, the initial stage also includes the serving of the counter lawsuit to the plaintiff and the filing of the plaintiff's statement of defence. This first stage ends when all preliminary motions and incidentals have been decided. If said motions are rejected, then the case is ready to continue to the second stage.

The next stage is known as the "probatory stage" and it is when all evidence – including testimonial evidence – is produced and

gathered. Once all proofs have been received and the case is ready for the parties' conclusions, the "probatory stage" ends.

The third stage consists mainly in receiving the parties' conclusions and the assessment of the case by the Judge in charge of issuing the judgment. During this stage, if the Judge should consider it necessary or useful, the Judge may order additional evidence, which is his discretionary power. This third stage ends with the issuing of the judgment.

After the judgment comes the appeals stage; however, this stage cannot be considered ordinary as it is not mandatory for any of the parties to challenge or appeal what was decided by the lower Court.

There is no pre-set timeframe for each stage and this ends up mainly depending on several factors, such as the complexity of the case, priority and possible delaying actions by the parties.

##### 1.4 What is Costa Rica's local judiciary's approach to exclusive jurisdiction clauses?

As long as the matter that will be decided is merely pecuniary, and as long as it is not expressly prohibited by the law, exclusive jurisdiction clauses are permitted and generally admitted by Costa Rican Courts.

##### 1.5 What are the costs of civil court proceedings in Costa Rica? Who bears these costs?

The costs of civil proceedings depend on the valuation of the claim and are usually calculated as a percentage of such valuation. Each party covers its own costs during the course of the case; however, when the case is decided, the general rule is that the party who loses must bear its own costs and refund the other party for its costs – although the Judge may decide that each party should bear its own costs.

##### 1.6 Are there any particular rules about funding litigation in Costa Rica? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

In general terms, the client is the one in charge of funding litigation. Contingency fee agreements are permissible; however, under article 238 of the Costa Rican Civil Procedural Code and article 52 of the Legal Professional, Moral and Ethical Duties applicable to all attorneys, it is not possible to agree a contingency fee for more than 50% of what is awarded in the final ruling. Article 52 of the Legal Professional, Moral and Ethical Duties also provides that in the

event the case is lost, the attorney is not entitled to charge any fees. It also states that in case the attorney should resign his or her appointment, or if he or she should be removed, the attorney's fees will be *pro rata* up to the moment of resignation or separation. If the attorney is removed by the client, the attorney will be entitled to the payment of his or her fees upon the moment of his or her removal. In the event that it is the attorney who resigns, the attorney will not be entitled to any payment until the end of the case.

Concerning the security for costs, there are not express rules, only that the client has the legal obligation of paying the agreed fees.

### **1.7 Are there any constraints to assigning a claim or cause of action in Costa Rica? Is it permissible for a non-party to litigation proceedings to finance those proceedings?**

A claim or cause of action can be assigned as long as the rights or benefits that the assignee may obtain are patrimonial or pecuniary.

There is no prohibition for a non-party to litigation to finance any of the parties to cover the costs deriving from the proceedings; however, unless it is properly documented and the debt is duly secured, that does not necessarily bind the Judge to award payment of said costs to the financing party. In that sense, among other documents that may be executed, the party whose costs were financed may assign to the financing party its rights to be awarded a refund of costs, so said financing party can collect from the counterparty if it should lose the case and be condemned to payment of costs to the succeeding party.

## **2 Before Commencing Proceedings**

### **2.1 Is there any particular formality with which you must comply before you initiate proceedings?**

No, in general terms there are no particular formalities that have to be fulfilled before initiating proceedings.

### **2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?**

There are different statutes of limitations, which depend on the kind of case or claim. The general term of the statute of limitations is of ten years, from the moment of the event or situation originating the claim. However, there are specific types of claims that expire upon four years (i.e. collection of debts secured by means of a letter of exchange or promissory note), and others that expire upon one year (i.e. claims seeking the nullity of agreements from shareholders of a corporation or claims to collect interest, leases, or rents, among others).

Criminal claims also have statutes of limitations which are calculated according with the higher limit of the penalty, and which cannot be less than three years or more than ten years.

## **3 Commencing Proceedings**

### **3.1 How are civil proceedings commenced (issued and served) in Costa Rica? What various means of service are there? What is the deemed date of service? How is service effected outside Costa Rica? Is there a preferred method of service of foreign proceedings in Costa Rica?**

Civil proceedings are commenced by filing a lawsuit. Once the

lawsuit has been filed, the Court verifies compliance of all legal requirements and issues the initial decision in which the lawsuit is admitted and it is ordered to serve the defendant. According with article 2 of Law 8687 (Law of Judicial Notifications), all servings must be made within the following five business days from the date they are issued; however, that rarely happens.

According to article 19 of Law 8687, a civil claim is considered served on the date in which the initial decision is personally delivered to the defendant. Servings made at the domicile that was contractually chosen by the defendant, at the house of the defendant, or at the real or registered domicile are considered personally and duly made; however, copies of all documents that are part of the docket must be attached to the serving.

In the event the defendant should change the contractual or registered domicile and the change is not reported, the Court will appoint an *ad hoc* representative to serve the defendant through him or her. The term to defend the claim then starts counting from the moment the *ad hoc* representative accepts his or her appointment.

The rest of decisions made during the process do not need to be personally served or notified. Once the claim and initial decision have been served, the defendant must indicate where and how subsequent notifications must be made. Law 8687 allows notifications to be made by fax, by electronic means (mainly e-mail), by delivery in the defendant's attorney locker or in Court.

Servings may be effected in Costa Rica by a Court's officer in charge or notifying, by the officers of the corresponding Centralized Office of Notifications (if available), by an authority appointed by the Court in charge of the case when the serving must be made out of the jurisdiction of the Court, by a Notary Public authorised and appointed by the Court in charge of the case or by a duly appointed and authorised officer from the mail service.

Service is effected outside from Costa Rica by means of a formal request from the Court in charge of the case to the corresponding Costa Rican Consulate. The serving by the Costa Rican Consulate must comply with all formalities as if the serving had been made in Costa Rica.

In the event there is no Consulate in the country where the serving must be made, the Court can formally request the Consulate of a friendly nation to perform the serving, or it can be made by any other means admitted in the country in which the claim will be served.

In Costa Rica, foreign proceedings are commonly served through Letters Rogatory; however, it is also usual to use other means acceptable by the foreign Court in charge of the case.

### **3.2 Are any pre-action interim remedies available in Costa Rica? How do you apply for them? What are the main criteria for obtaining these?**

Yes, there are pre-action interim remedies available in the Costa Rican legal system. Such consist mainly in preventive measures intended to protect certain circumstance from being changed, evidence from being destroyed, or to secure assets to insure collection.

To obtain such remedies, the plaintiff must file a request before the Court and must prove that a greater or irreparable damage or loss may occur if the Court does not order the interim remedies. The claimant must also prove that the request has enough merits and that it is in accordance with the law to obtain such protection. In some cases, especially when the interim remedy implies freezing assets, the claimant may also be required to provide a security, usually consisting of a deposit of money equal to 25% of the amount for which the assets are being seized.

The claimant is also, in most cases, required to initiate the main claim within the next thirty days following the date in which the measures were ordered. If the main lawsuit is not filed within said term, the interim remedies may be cancelled and the claimant may lose the security that was provided as a requirement to obtain the injunctive relief.

### 3.3 What are the main elements of the claimant's pleadings?

According to article 290 of the Code of Civil Proceedings, the claimant's pleadings must include at least the following information:

1. The names and information of the parties that would allow their proper identification.
2. The facts in which the claim is based, explained one by one, duly numbered and specified.
3. Indication of the legal provisions in which the claim is based.
4. The list of petitions from the claimant.
5. When the claimant is seeking payment of losses and damages, an explanation of their cause and the specific valuation of each.
6. The list of evidence and witnesses.
7. The valuation of the claim.
8. Indication of the means to be notified about any decision made during the course of the proceedings.

### 3.4 Can the pleadings be amended? If so, are there any restrictions?

A claimant's pleadings can be amended without limitation and for only one time as long as it is done before the defendant files his statement of defence. After the defendant has filed his opposition, the lawsuit can be amended only in connection with the facts in which the claim is based, when the modifications are likely to influence the way the case will be ruled or when there are new facts that were not known by the plaintiff.

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

A statement of defence must make reference to each one of the facts of the plaintiff's claim. The defendant must state, in connection with each fact of the claim, if what the plaintiff is arguing is true, if it is partially true, or if it is false. Arguments regarding why a fact of a lawsuit is considered partially true or false must also be indicated.

The statement of defence must also include the different motions or incidentals promoted by the defendant. A defence of set-off may be part of the motions filed by the defendant.

Each piece of evidence offered or proposed to support the defendant's arguments or to prove anything that the defendant needs to prove, must also be mentioned and/or expressly offered or requested. Regarding the proposal of witnesses, the defendant must expressly indicate what circumstances will be proven by means of each witness' testimony.

Finally, the defendant must indicate the means of notification.

Along with the statement of defence, the defendant may also file a counterclaim; however, the counterclaim is not considered part of the statement of defence.

### 4.2 What is the time limit within which the statement of defence has to be served?

Once the claim has been served, depending on the type of lawsuit, the defendant might be given different terms to oppose. For instance, in the case of a summarised process, the term will be ten business days starting on the day after the claim was served. If it is an ordinary lawsuit, the term to oppose will be of thirty business days.

Motions that, because of their nature, must be decided previously to any other motion or argument, must be filed within the first five business days, in the case of a summarised process, or within the first ten business days, in the case of an ordinary lawsuit.

After the statement of defence has been filed, there is no time limit to serve it to the plaintiff. Once the Court has received and admitted the statement of defence, the Court must issue a decision giving certain term, which is usually of three business days, for the plaintiff to oppose to the motions and arguments indicated by the defendant. According to Law 8687, said decision should be served within the following five business days from the date it was issued.

### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

If the decision of a case should affect the rights or interests of more parties, the plaintiff has the obligation of suing all the parties who might be affected. If the plaintiff does not proceed accordingly, the defendant can include a motion in the statement of defence requesting the Court to order the plaintiff to include the rest of parties who have an interest in the case.

Also, when the plaintiff brings legal action upon a party who cannot be considered the one bound to the obligation, but upon a party that is jointly responsible, the defendant can pay the debt or obligation, subrogate the plaintiff's rights, and then collect from the party that was bound to the obligation.

### 4.4 What happens if the defendant does not defend the claim?

According to article 310 of the Civil Procedural Code, if the defendant does not defend the claim, the defendant will be considered a "rebellious defendant" and the facts of the claim will be deemed answered affirmatively. The claim will continue its course without the intervention of the defendant, who can appear in the process at any moment, but would undertake it at its current state. In practical terms, not opposing to a claim considerably reduces the chances of winning the case; however, it must be taken into consideration that the case would be decided according to its merits.

### 4.5 Can the defendant dispute the court's jurisdiction?

Yes, the defendant can dispute the court's jurisdiction in the statement of defence. The Court can also decide *ex officio* on its own jurisdiction to handle and resolve a case.

## 5 Joinder & Consolidation

### 5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party who is not part of the conflict may file a joinder request in order to become part of ongoing proceedings. Said joinder request may be based: (i) in a preferential right that the joinder claims having over those of the other litigants; (ii) when the joinder claims being the actual owner of the assets in dispute; or (iii) when the joinder intends to obtain certain benefit from the result of the lawsuit (i.e. when he or she claims to have a credit in his or her favour).

Also, as indicated in question 4.3 above, if the decision of an ongoing case should affect the rights or interests of more parties, the Court can order serving such parties for them to become part of the proceedings and defend their rights.

### 5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Yes, the Costa Rican Code of Civil Proceedings allows the accumulation of two or more sets of proceedings when there are common elements (i.e. same parties, same object), and when there is a connection between what is demanded in the different claims. It is also required for the Court handling both cases to be competent, and cases cannot be accumulated if one of them is already ready to be decided.

### 5.3 Do you have split trials/bifurcation of proceedings?

The Costa Rican civil law system does not provide for split trials or bifurcation of proceedings.

## 6 Duties & Powers of the Courts

### 6.1 Is there any particular case allocation system before the civil courts in Costa Rica? How are cases allocated?

In Costa Rica, cases are allocated by reason of the subject matter of the case, the territorial jurisdiction and the amount or valuation of the claim.

### 6.2 Do the courts in Costa Rica have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Although the plaintiff is obliged to make sure the proceedings move forward and must file a request promoting progress at least every three months, Civil Courts are responsible for making sure that the proceedings are duly conducted and that none of the parties' rights are affected. In that sense, Courts are responsible for scheduling hearings, ordering evidence upon the parties' request, and for conducting the case through the different stages.

The parties are allowed to make any interim applications or requests, as long as such are pertinent, reasonable and directly related with the main subject of the case. In some cases, said interim applications may not have any cost consequences for the parties; however, in the specific case of incidental motions, the

party who promoted them may be condemned to pay the other party's costs in the event the incidental motion should be rejected.

### 6.3 What sanctions are the courts in Costa Rica empowered to impose on a party that disobeys the court's orders or directions?

A party who disobeys the court's orders may be held in contempt and processed criminally. In that case, the Civil Court must denounce the situation before the Prosecutor's Office for said authority to conduct the corresponding criminal investigation.

Also, Civil Courts have enough authority to enforce any orders or directions given to a party that has decided to disobey. The Court can even use the police as a means to enforce its orders or directions, or to force the disobeying party to comply accordingly.

### 6.4 Do the courts in Costa Rica have the power to strike out part of a statement of case? If so, in what circumstances?

In principle, Costa Rican Courts have the power to reject part of a claim, but only based on a lack of evidence and upon the moment of issuing the judgment. Further, parts of a claim that are filed after expiration of the statute of limitations can also be rejected, even from the very beginning of the case.

### 6.5 Can the civil courts in Costa Rica enter summary judgment?

In general terms, only if the Court should detect a situation that does not allow the continuation of the case, it may decide to enter summary judgment and discontinue proceedings. However, in administrative cases initiated against government entities, the Judge is allowed to assess the merits of the case and decide whether or not a trial hearing is necessary or if the case can be decided with the documentary evidence that is already available.

### 6.6 Do the courts in Costa Rica have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Yes, Costa Rican courts may stay proceedings: (i) when a case pending judicial decision requires another pending case to be decided first; (ii) when both parties should jointly request it; and (iii) when consolidation of two or more cases should be requested, case in which the case or cases that show more progress will be suspended.

A Court can also discontinue proceedings. As long as the first decision of the case has not been issued, and when the plaintiff has not expressly requested the continuation of proceedings for more than three months, the Court can declare the proceedings abandoned and discontinue the case.

## 7 Disclosure

### 7.1 What are the basic rules of disclosure in civil proceedings in Costa Rica? Are there any classes of documents that do not require disclosure?

The Costa Rican legal system does not include discovery proceedings, nor does it oblige any of the parties to disclose any documents related to the case. In that sense, the parties disclose documents and information according with each party's needs and



convenience, and also according with what each party intends to prove. However, if a party should learn that its counterparty is in possession of certain documents or information, said party may request them, or may request the Court to order their disclosure. Once a document has been disclosed and included as part of the evidence of a case, it is considered common evidence that can be used and invoked by all parties involved at their convenience.

## 7.2 What are the rules on privilege in civil proceedings in Costa Rica?

All information received by the attorneys involved in a case or provided by clients, and identified as confidential, as well as all information received during meetings with counterparties, is considered privileged information and must be held as confidential by the attorneys. With respect to said confidential information, attorneys have confidentiality privilege and cannot be forced to disclose any such information.

In accordance with the law, besides the parties and their attorneys, civil cases can also be accessed by law students duly authorised by their professors, legal assistants duly authorised by the attorneys involved in the case, and law students with a bachelor's degree (duly identified as such by means of an authenticated note from the corresponding university or college).

## 7.3 What are the rules in Costa Rica with respect to disclosure by third parties?

The Costa Rican Constitutional Court has recognised the right of self-determination of information as part of the individual's civil rights, along with the right of privacy and confidentiality. Said rights include the possibility of controlling and being involved in the processing and use of all of the individual's information and personal data, as well as in restricting the use of certain information that the individual may consider harmful if disclosed. In that sense, third parties are required, not only to be careful, but also to obtain the individual's express authorisation for the disclosure of sensitive information; otherwise, important damages may be caused, and the disclosing party may be forced to indemnify the affected party.

## 7.4 What is the court's role in disclosure in civil proceedings in Costa Rica?

Courts must make sure that all legal provisions are complied with and must denounce any criminal behaviour on that respect.

## 7.5 Are there any restrictions on the use of documents obtained by disclosure in Costa Rica?

See answer to question 7.3 above.

# 8 Evidence

## 8.1 What are the basic rules of evidence in Costa Rica?

In general terms, all legal evidence is admissible. The following are admissible means of proof:

- 1) **Statement of the parties:** Either party can be ordered by the Judge or by request of its counter party to appear in Court to answer questions from the other party under oath. In this kind of diligence, only the party who proposed the statement of the other party can ask questions.

- 2) **Witness' testimony:** The plaintiff must propose its witnesses upon filing of the claim, and the defendant upon filing of its defence statement. For the witnesses to be admitted, the parties must indicate what circumstances or facts the witnesses will testify about.
- 3) **Documents and reports:** As long as the authenticity of the documents is not questioned, such can be filed and used as evidence.
- 4) **Experts' reports:** Experts' reports may be ordered when proving that certain circumstances require special knowledge. The party who requested the appointment of the expert must cover the cost of the associated fees. Only reports from an expert appointed by the Court are admissible.
- 5) **Judicial inspection:** When it should be required to identify and describe a person, place or object, the Judge may order to conduct an inspection, of which a minute will be produced indicating the circumstances in which the parties were interested.
- 6) **Scientific means:** When it should be necessary, the Judge may order scientific analysis or evidence, such as x-rays, blood tests, etc. Also, if necessary, for the proper interpretation of such means of proof, an expert may be appointed.
- 7) **Presumptions or circumstantial evidence:** Presumptions and circumstantial evidence relieve the parties from the burden of having to prove the corresponding fact of their claim.

## 8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

As indicated in question 8.1 above, experts' reports may be ordered when proving that certain circumstances require special knowledge. The party who requested the appointment of the expert must cover the cost of the associated fees. Only reports from experts appointed by the Court are admissible.

## 8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Also as indicated in question 8.1 above, the plaintiff must propose its witnesses upon filing of the claim, and the defendant upon filing of its statement of defence. For the witnesses to be admitted, the parties must indicate what circumstances or facts the witnesses will testify about.

## 8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in Court? Does the expert owe his/her duties to the client or to the Court?

There are no rules in connection with the possibility of contacting the expert and advising what is expected, or providing evidence to the expert for considering when preparing the report; however, the party cannot prepare the report for the expert, as the expert must be objective. The expert owes his/her duties to the Court, not to any of the parties.

## 8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Costa Rica?

In Costa Rica, courts are empowered to decide in connection with the legality and admissibility of the evidence, to make sure it is duly produced and gathered, and to determine the value of each piece of evidence at the moment of ruling the case.

## 9 Judgments & Orders

### 9.1 What different types of judgments and orders are the civil courts in Costa Rica empowered to issue and in what circumstances?

Civil Courts are empowered to issue decisions related with ancillary matters, procedural decisions to continue with the normal course of proceedings and final judgments. During the course of proceedings, Courts can also issue injunctive relief measures. Once proceedings are over and a final and definitive decision has been made, Courts are also in charge of issuing all necessary decisions to enforce what has been ruled.

### 9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Costa Rican Courts are fully empowered to decide on any such matter.

### 9.3 How can a domestic/foreign judgment be enforced?

Domestic judgments can be enforced by following the proceedings contained in Title III of the Code of Civil Proceedings. Said proceedings consist in a request by the party in favour of whom the case was decided for the enforcement of any obligations and the collection of any debts to which the defendant was condemned.

In the case of foreign judgments, such can be recognised and enforced through our Courts by means of a special kind of proceedings known as *exequatur*. Said proceedings must be initiated before the First Chamber of the Supreme Court, which will verify the compliance of all requirements established in the Code of Civil Proceedings. Once all requisites have been verified, the First Chamber of the Supreme Court appoints a Civil Court for the enforcement of the foreign judgment.

### 9.4 What are the rules of appeal against a judgment of a civil court of Costa Rica?

Appeals against interlocutory, procedural decisions and the judgment of lower Courts must be filed within three business days from the date in which the decision was notified.

Extraordinary Appeals (cassation) against the judgment of the Court of Appeals, must be filed within fifteen business days from the date in which the decision of the Court of Appeals is notified.

In general terms, while an appeal is pending, the ruling or judgment that originated it remains unenforceable.

## II. ALTERNATIVE DISPUTE RESOLUTION

### 1 Preliminaries

#### 1.1 What methods of alternative dispute resolution are available and frequently used in Costa Rica? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Costa Rican law allows disputes to be resolved by means of alternative methods. Law 7727 (“Law for the Alternative

Resolution of Conflicts and Promotion of Social Peace”) provides three methods: arbitration; conciliation; and mediation.

Ombudsman is not an alternative dispute resolution method. Citizens may turn to it seeking for protection against irregular actions incurred by government institutions in the provision of public services.

#### 1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The existence of alternative dispute resolution methods is based on article 43 of the Constitution, which guarantees the right that all citizens have to resolve disputes or conflicts by means of alternative methods, even if a judicial case is pending. The specific methods of alternative dispute resolution are governed mainly by Law 7727, by the Code of Civil Proceedings and by the internal By-Laws of each one of the alternative dispute resolution institutions.

#### 1.3 Are there any areas of law in Costa Rica that cannot use Arbitration/Mediation/ Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Alternative dispute resolution methods cannot be used to resolve criminal cases related with crimes against public order in which the Prosecutor’s Office is not willing to negotiate and settle; for instance, in cases related with crimes against human life, sexual abuse or crimes against the interests or rights of a minor.

#### 1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court - pre or post the constitution of an arbitral tribunal - issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Costa Rica in this context?

Courts can provide assistance to arbitrators or to the parties involved in a dispute being resolved by means of an alternative method upon request by any of them. For instance, by request of the parties or the arbitrators, a Court can issue protection measures. Further, Courts can also conduct the production or procurement of evidence or information and are the authorities in charge of enforcing the agreements reached by the parties when a dispute is settled through conciliation or mediation proceedings, as well as the awards resulting from arbitration.

#### 1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Costa Rica in this context?

As long as the parties have agreed to submit any differences to conciliation, mediation or arbitration, said methods are binding and mandatory, and our ordinary Courts are obliged to reject any claims related with the matters that the parties have agreed to resolve by means of alternative methods.

Once the dispute has been resolved, the decision or settlement is mandatory and immediately enforceable. There is no need for settlement agreements, decisions or awards to be sanctioned by a Court.

Nevertheless, the parties do have the possibility of filing an appeal based on procedural violations, when matters decided or resolved were not matters that the parties agreed to submit to an alternative dispute resolution method or when the settlement or award violates a legal provision or public order.

## 2 Alternative Dispute Resolution Institutions

### 2.1 What are the major alternative dispute resolution institutions in Costa Rica?

The major alternative dispute resolution institutions in Costa Rica are: *Centro de Conciliación y Arbitraje (Cámara de Comercio de Costa Rica)*; *Centro Internacional de Conciliación y Arbitraje (Costa Rican American Chamber of Commerce)*; and *Centro de Resolución Alterna de Conflictos Laborales (Ministerio de Trabajo y Seguridad Social)*.

### 2.2 Do any of the mentioned alternative dispute resolution mechanisms provide binding and enforceable solutions?

According with articles 9 and 58 of Law 7727, settlements reached and approved in Court, and out-of-court settlements executed before an alternative dispute resolution institution by means of conciliation or mediation, as well as awards resulting from arbitration proceedings, are mandatory and immediately enforceable.

## 3 Trends & Developments

### 3.1 Are there any trends in the use of the different alternative dispute resolution methods?

Conciliation and Arbitration are the alternative dispute resolution methods more commonly used in Costa Rica. Every day, people choose more and more to use these methods; however, alternative justice is expensive, so one has to be careful when choosing to submit conflicts to an alternative dispute resolution method.

### 3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those alternative dispute resolution methods in Costa Rica?

There are currently no legal issues or proceedings affecting the use of alternative dispute resolution methods in Costa Rica. However, from a practical point of view, before agreeing to submit differences or conflicts to conciliation, mediation or arbitration proceedings, the parties must take into consideration that alternative justice is much more expensive than ordinary justice, especially when speaking about arbitration. For that reason, the parties must make an assessment of the possible conflicts that may arise and determine if alternative dispute resolution methods are suitable for them.

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Rogelio Navas is a Costa Rican attorney and partner at Lang & Asociados. He has more than 15 years of litigation experience, which includes practice in Criminal Law, Civil Law, Intellectual Property and Real Estate Law. In addition to obtaining his JD degree from the University of Costa Rica, Mr. Navas is also a Notary Public and has extensive experience in providing counseling to local and foreign corporations in litigation, dispute resolution, labour law and contractual matters. He is fluent in Spanish and English.



Lang & Asociados specialises in providing services to multinational companies and foreign individuals doing business in Costa Rica with a direct monitoring and follow-up of our clients' business under the highest standards of service and skill.

All members of our team have strongly committed to a set of values that includes loyalty, efficiency, promptness, cost-efficiency and building a long-term relationship with the client. Our service is multilingual, including attorneys fluent in Spanish, English, French and Italian.

The scope of our activities ranges from areas as varied as structuring the corporate machinery and hiring personnel, banking support, securing real estate facilities, structuring and advising in government contracting activities, managing labour relationships with employees, protecting industrial and intellectual property, and obtaining residency for foreign staff.

Our firm and our attorneys have been top ranked for many consecutive years by prestigious publications, such as The Legal 500 and Chambers and Partners, on which we also were shortlisted for the 2011 Latin America Awards for Excellence as one of the best law firms in Costa Rica.

We provide legal counsel in a large scope of fields. Our practice is concentrated on: Foreign Investment; Litigation; Corporate Law; Distribution Law; Contracts; Administrative Contracting Law; Real Estate; Copyright; Intellectual Property; Securities; Mining, Hydrocarbon and Natural Resources Law; International Business Transactions; Acquisitions; Litigation; Labour Law; Antitrust; Competition Law; and Immigration Law.