



SUCCESS FOR THE REPUBLIC OF COSTA RICA IN HIGH-PROFILE ARBITRATION CASE

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Firm news

A team from Herbert Smith Freehills' New York office, along with co-counsel from Costa Rica's Ministry of Foreign Trade ("COMEX"), has secured a major victory for the Republic of Costa Rica ("Costa Rica") in arbitration proceedings concerning an investment in a tourism project in Costa Rica's Central Pacific Coast.

The claim was commenced by a group of American investors against Costa Rica under the Dominican Republic-Central America Free Trade Agreement ("DR-CAFTA"), and the UNCITRAL Arbitration Rules, with ICSID acting as administering authority as agreed by the parties. On September 18, 2018, the arbitral tribunal, chaired by Eduardo Siqueiros, alongside with Mark Baker and Professor Pedro Nikken, issued unanimously an award dismissing all claimants' claims and ordered the claimants to bear all the costs of the arbitration in the amount of US\$ 1,090,905.10.

The dispute arose from an investment on parcels of land and a concession site in Costa Rica's Central Pacific Coast - the "Las Olas Project." Claimants alleged they had received all permits and approvals from Costa Rica in order to commence the development of the project, sales and marketing activities. However, after conducting inspections in the project site, the Costa Rican authorities identified wetlands and forest in the site, triggering administrative and judicial actions that led to the shut-down of the project. The claimants claimed that Costa Rica breached its obligations under the DR-CAFTA (minimum standard of treatment and expropriation and compensation) and requested damages in the amount of US\$ 95,400,000. The tribunal concluded that there were wetlands and forests in the Las Olas Project which were adversely impacted by the claimants and that the reaction that Costa Rica took was merited according to its laws, which were consistent with international law. Therefore, it found that Costa Rica's actions were not arbitrary or in breach of the obligations under the DR-CAFTA.

The Herbert Smith Freehills team representing Costa Rica was led by [Christian Leathley](#), who is Head of the Latin America Group and US Head of International Arbitration for the firm, and included partner [Amal Bouchenaki](#) and associates, [Daniela Páez](#), [Lucila Marchini](#) and [Florencia Villaggi](#).

Commenting on this result, Christian said: "*Given the significant dependency Costa Rica has for its unique environment, the protection of that is a key component of this award. We are very happy for Costa Rica in receiving a very clear and comprehensive award that helps it protect its environmental rights.*"

The New York office of Herbert Smith Freehills is the hub for the firm's Latin America Group, which includes a multi-disciplinary team of finance, infrastructure and disputes attorneys. Led by Christian, the Latin America team in New York also includes project finance partner Edward Dougherty, and projects and infrastructure partner Juan-José Zentner. Since opening the office in September 2012, the New York office has more than doubled in size to include 13 partners, 3 counsel and over 30 fee-earners, along with a full team of business services and support personnel.

About Herbert Smith Freehills' New York Office

The New York office of Herbert Smith Freehills includes a team of seasoned litigators as well as international arbitration specialists representing clients in a wide range of commercial litigation, investigations, cross-border matters and class actions throughout the United States. New York is also the hub for the firm's global Latin America practice with a focus on infrastructure and project finance matters. Additionally, New York has a cross-border M&A practice with a focus on outbound investments into Asia-Pac and EMEA.

About Herbert Smith Freehills

Operating from 27 offices across Asia Pacific, EMEA and North America, Herbert Smith Freehills is at the heart of the new global business landscape providing premium quality, full-service legal advice. The firm provides many of the world's most important organisations with access to market-leading dispute resolution, projects and transactional legal advice, combined with expertise in a number of global industry sectors, including Banks, Consumer Products, Energy, Financial Buyers, Infrastructure & Transport, Mining, Pharmaceuticals & Healthcare, Real Estate, TMT and Manufacturing & Industrials.

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