Arbitration procedures and practice in Argentina: Overview

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A Q&A guide to arbitration law and practice in Argentina.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts’ willingness to assist arbitration, enforcement of awards and the available remedies, both final and interim.

To compare answers across multiple jurisdictions visit the Arbitration procedures and practice Country Q&A Tool.

This Q&A is part of the global guide to arbitration. For a full list of jurisdictional Q&As visit www.practicallaw.com/arbitration-guide.

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Use of arbitration and recent trends

1. How is commercial arbitration used and what are the recent trends?

Use of commercial arbitration

There are no official public statistics available because arbitrations are either ad-hoc or conducted through the various institutions that are commonly appointed (including the ICC, the LCIA, the Buenos Aires Stock Exchange, the Business Mediation and the Arbitration Centre).

In addition, parties tend to agree on the confidentiality of arbitration proceedings.
In the authors' experience, most large business transactions that have some international element provide for arbitration as the method to resolve any disputes arising out of the transactions.

**Recent trends**

Recent trends on arbitration in Argentina include the following:

- Mergers and acquisitions and corporate-related.
- Oil and gas.
- Investment disputes.

**Advantages/disadvantages**

Arbitration has the following advantages:

**Expertise of the arbitrators.** Parties can select the arbitrators according to their technical knowledge and expertise in the field in question.

**Confidentiality.** Parties can decide to keep arbitration proceedings confidential. This avoids public proceedings, which:

- is characteristic of the judicial system;
- could affect the image of the parties;
- make public important information of companies involved in the dispute.

**Speed and flexibility of proceedings.** Arbitration proceedings tend to be faster than court proceedings. Parties can choose the applicable rules, customising the procedure according to both their needs and the legal culture of the parties and the arbitrators.

**Management of costs.** Parties can agree on how the costs of the arbitration proceedings are apportioned.

A disadvantage of arbitration in Argentina is the limited powers of arbitrators. Arbitrators can resolve the dispute and grant orders or preliminary measures. The arbitral award is enforceable as a court judgment, but arbitrators cannot compel the parties to comply with its resolutions (imperium). The parties must therefore sometimes request the local courts' assistance to compel parties or non-parties to collaborate with the proceedings.
Legislative framework

Applicable legislation

2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

National provisions

The National Civil and Commercial Code (NCCC), which entered into force in August 2015, regulates arbitration at a federal level, containing provisions on the:

- Form and type of arbitration agreements.
- Arbitrability of the matters before the arbitration tribunal.
- Appointment and removal of arbitrators.
- Preliminary measures and recourses against an arbitral award.

Argentina is a federal country. Therefore, each province can regulate its own rules of procedure, including the procedural provisions on arbitration. The National Civil and Commercial Code of Procedure (NCCCP) applies to arbitrations seated in the City of Buenos Aires. The NCCCP contains procedural provisions related to:

- Arbitration proceedings.
- The relationship between the courts and the arbitration tribunal.

International conventions

Argentina is signatory to international conventions such as the:


Argentina did not adopt the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law). However, some of its principles such as the principles of separability
and *kompetenz-kompetenz* were introduced in the NCCC.

### Mandatory legislative provisions

3. Are there any mandatory legislative provisions? What is their effect?

#### Arbitrability

Matters relating to the following cannot be submitted to arbitration (*section 1651, National Civil and Commercial Code*) (NCCC):

- Civil status or capacity of persons.
- Family.
- Consumer rights.
- Adhesion contracts (whatever their purpose) (that is, contracts where one party adhere to general and standard terms drafted by the other).
- Labour relations.

In addition, if public order is involved, the matter cannot be submitted to arbitration (*section 1649, NCCC*).

#### Challenge of the arbitral award

Parties cannot waive their right to judicially challenge an arbitral award which breaches Argentinian law (*section 1656, NCCC*).

Because the NCCC has only come into force recently, there has not been any case law on any of these matters. Therefore, it is not clear how these provisions will be interpreted by the courts.

4. Does the law prohibit any types of disputes from being resolved via arbitration?

Disputes concerning certain matters cannot be submitted to arbitration (see *Question 3, Arbitrability*).

#### Limitation

5. Does the law of limitation apply to arbitration proceedings?

If Argentinean law applies, the law of limitation will apply to arbitration proceedings. The limitation period will depend on the type of claim involved. Generally, the limitations period is five years (*section 2560, National Civil and Commercial Code (NCCC)*).
However, there are special terms for specific matters such as the transportation of goods where the limitation period is two years.

The limitations term starts running from the day the obligation becomes enforceable (section 2554, NCCC). The filing of the request for arbitration interrupts this period until there is a final and binding decision that ends the dispute (sections 2547 and 2548, NCCC), except if the party waives its right to claim or the procedure expires due to its inactivity.

### Arbitration organisations

6. **Which arbitration organisations are commonly used to resolve large commercial disputes?**

Large commercial disputes and international arbitrations seated in Argentina are commonly administered by the following arbitral institutions:

- International Chamber of Commerce (ICC).
- Business Mediation and Arbitration Center.

Parties doing business in Argentina usually (but not always) appoint the ICC as the arbitral institution to administer disputes that have an international component.

See box, *Main arbitration organisations*.

### Jurisdictional issues

7. **What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?**

Unless the parties have agreed otherwise, the tribunal has competence to decide on its own jurisdiction, and on any application to prevent the tribunal from analysing the merits of the dispute (section 1654, National Civil and Commercial Code). Therefore, if one party denies that the arbitral tribunal has jurisdiction to hear the dispute, then the arbitral tribunal itself can resolve the matter.

In practice, both tribunals and local courts have decided on issues of jurisdiction. For instance, in cases where one of the parties denied the tribunal jurisdiction by claiming before the local court that the courts had jurisdiction instead, the court has ruled on jurisdiction.
Arbitration agreements

Validity requirements

8. What are the requirements for an arbitration agreement to be enforceable?

Substantive/formal requirements

An arbitration agreement is enforceable under Argentinean law if it complies with the following requirements:

The parties are legally capable of entering in an arbitration agreement.

The matter submitted to arbitration is arbitrable (see Question 3, Arbitrability).

The agreement is in writing (section 1650, National Civil and Commercial Code) (NCCC).

Separate arbitration agreement

An arbitration agreement is enforceable regardless of whether it is included in a clause in a contract or in an independent agreement, statute or regulation (section 1650, NCCC).

Arbitration clauses incorporated in a contract by reference to another document are enforceable as long as they are made in writing and the reference indicates that they are part of the main contract (section 1650, NCCC).

Unilateral or optional clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

In the authors' experience, when interpreting jurisdiction clauses, arbitral tribunals and courts tend to achieve equal opportunities and rights for both sides ensuring that they both have to agree to arbitration. Therefore, in principle, unilateral or optional clauses may be considered as unenforceable in Argentina.

10. In what circumstances can a third party that did not sign the contract incorporating the arbitral clause in question be compelled to arbitrate disputes relating to the contract in question?

A third party that did not sign the contract incorporating the arbitral clause can be compelled to arbitrate disputes relating to the contract only in very exceptional situations. For example, if the corporate veil has been pierced due to an unlawful act and another party is as a result
considered to be a party to the contract.

In this sense, Argentina's National Supreme Court determined that the arbitration agreement only binds the parties involved and not third parties that did not subscribe to the arbitration agreement, such as the representative of one of the parties (Argentina's National Supreme Court, "BASF Argentina SA v Papdevielle Key y Cía. SA", 11/05/2004).

In the authors' view, depending on the circumstances, a third party may be compelled to arbitrate a dispute if it has actively intervened in the negotiations, formation, execution and/or performance of the contract in question.

11. In what circumstances is a third party that did not sign the contract incorporating the arbitral clause in question entitled to compel a party that did sign the contract to arbitrate disputes relating to the contract?

The authors are not aware of any court precedents on this subject heard in Argentina. Nonetheless, it is the authors' opinion that a non-signatory third party cannot compel a signatory party to arbitrate, except where a non-signatory compels a party to arbitrate against a third party where an arbitration clause applies between the parties and the non-signatory is subrogated to one of the party's rights under the agreement.

Separability

12. Does the applicable law recognise the separability of arbitration agreements?

Section 1653 of the National Civil and Commercial Code recognises the separability of arbitration agreements. If the main contract containing the arbitration agreement is declared null or void, the arbitration agreement will still be valid and the arbitral tribunal will retain its jurisdiction to determine the rights of the parties and decide on the claims and allegations presented by them.

Breach of an arbitration agreement

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court proceedings in breach of an arbitration agreement

If a party starts court proceedings in breach of an arbitration agreement, then the other party can, once it has been summoned by the court, raise a preliminary defence of lack of jurisdiction, asking the judge to refer the dispute to arbitration.

Arbitration in breach of a valid jurisdiction clause
If one of the parties starts arbitration proceedings when they have previously agreed to settle their disputes through local courts, the other party can challenge the jurisdiction before the tribunal to request the arbitration tribunal to decline jurisdiction in favour of local courts.

The other party can also apply directly to the competent judicial court for a restraining order (inhibitoria) in which the court declares itself competent to hear the dispute and orders the arbitration tribunal to decline its jurisdiction.

14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

The local courts can grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement, although whether a foreign court will accept and comply with a measure granted in Argentina will be a matter for that court.

Joinder of third parties

15. In what circumstances can a third party be joined to an arbitration or otherwise be bound by an arbitration award?

Argentinian law is silent on this point. However, in the authors' experience, a third party can only be joined to arbitration if that party intervened in the negotiations, formation, execution and/or performance of the contract in question (see Question 10).

Arbitrators

Number and qualifications/characteristics

16. Are there any legal requirements relating to the number and qualifications/characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in, your jurisdiction in order to serve as an arbitrator there?

The tribunal can be composed of a sole arbitrator or more than one arbitrator, as long as there are an odd number of arbitrators (section 1659, National Civil and Commercial Code (NCCC)). If the arbitration agreement does not contain any provisions on the number of arbitrators, then the arbitral tribunal must be composed of three arbitrators.

Any person with civil capacity can serve as an arbitrator (section 1660, NCCC). However, the parties may require the arbitrators to meet certain conditions such as a specific nationality, profession, or experience (section 1660, NCCC).

Independence/impartiality
17. Are there any requirements relating to arbitrators' independence and/or impartiality?

When the arbitrator accepts his/her function and enters into a contract with the parties, he/she has the obligation to disclose any circumstance that could affect his/her independence or impartiality, whether prior to acceptance to act as an arbitrator or after (section 1662, National Civil and Commercial Code).

Appointment/removal

18. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of arbitrators

The following default rules apply if the parties fail to agree on the procedure for appointing arbitrators (section 1659, National Civil and Commercial Code (NCCC)):

- **Arbitrations involving three arbitrators.** Each party appoints one arbitrator and the party-appointed arbitrators jointly appoint the third one. The third arbitrator will be appointed, at the request of one of the parties, by the arbitral institution or the court if either:
  
  - one of the parties fails to nominate an arbitrator within 30 days of receiving the request; or
  
  - the party-appointed arbitrators fail to reach an agreement regarding the third arbitrator within 30 days of their appointment.

- **Arbitrations involving a sole arbitrator.** If the parties fail to reach an agreement on the appointment of the sole arbitrator, the arbitrator will be appointed, at the request of one of the parties, by the arbitral institution or, failing that, the court.

Removal of arbitrators

Arbitrators can be removed on the same grounds as judges in accordance with the law of the seat of the arbitration. The removal decision will be taken by the arbitral institution or, failing that, the judicial court. However, the parties can agree that the removal could be resolved by the other co-arbitrators.

If the National Civil and Commercial Code of Procedure (NCCCP) applies, arbitrators cannot be removed without cause (section 746, NCCP). However, the codes of procedure of certain provinces admit removal without cause. In addition, if the arbitrator was nominated by both parties, then the grounds for removal must refer to reasons that occurred only after the appointment.

An arbitrator can be removed if he or she has (sections 17 and 747, NCCCP):
Or is a blood relation or otherwise connected to any of the parties, representatives or counsellors.

An interest in the current case or in a similar case.

A company or business with any of the parties, its representatives or lawyers, unless the company is a limited liability company.

A pending case with the challenging party.

A creditor, debtor or guarantor relationship with any of the parties, with the exception of public banks.

Filed a complaint against the challenging party or is or has been denounced by the challenging party before the initiation of the case.

Been the attorney of any of the parties or has expressed opinion or given advice concerning the case, before or after its commencement.

Received considerable benefits from any of the parties.

Bonds of friendship with any of the parties (expressed by great familiarity or frequency of acquaintance).

Negative sentiments for the challenging party. The burden of proof is on the challenging party to prove any such allegations.

### Procedure

#### Commencement of arbitral proceedings

19. Does the law provide default rules governing the commencement of arbitral proceedings?

Argentinean law does not provide any default rules that govern the commencement of arbitral proceedings, except for the ones related to the appointment of arbitrators and constitution of the arbitral tribunal (see Question 18).

#### Applicable rules

20. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing
Applicable procedural rules

The parties can agree on the rules of procedure that the arbitrator or arbitration tribunal must follow during the proceedings (section 1658 (c), National Civil and Commercial Code (NCCC)). If the parties fail to agree on the applicable procedural rules, the tribunal will conduct the proceedings the way it considers appropriate.

If the parties do not agree on the type of procedure applicable to the arbitration, and the seat of the arbitration is the City of Buenos Aires, the rules contained in the NCCCP regarding ordinary judicial procedures will apply to the arbitration proceedings (section 751, National Civil and Commercial Code of Procedure (NCCCP)).

Default rules

Both the NCCC and the NCCCP provide certain default rules on conducting arbitration proceedings if the parties fail to reach an agreement. The following are examples of these:

Appointment of arbitrators. Section 1659 of the NCCC contains provisions for the appointment of arbitrators in case parties fail to reach an agreement or fail to include any express provision in the arbitration agreement (see Question 18).

Time limit for rendering the award. If parties did not agree on the time limit that the tribunal will have to render the award, then the term will be either of the following:

the one established in the rules of the arbitral institution; or

failing such option, the term established by the law of the seat.

Fees of the arbitrators. If parties fail to indicate the fees of the arbitrators or the way in which these will be calculated, then the fees will be fixed by judicial courts in accordance with the local rules applicable to the extra-judicial activity of attorneys.

Arbitrator's powers

21. What procedural powers does the arbitrator have under the applicable law? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

Arbitrators can resolve the disputes that the parties have submitted to them as long as those are arbitrable (see Question 3, Arbitrability). Arbitrators can decide on their own jurisdiction and grant all the necessary measures relating to the dispute.

However, arbitrators do not have the legal authority to grant any enforcement or compulsory measures (section 753, National Civil and Commercial Code of Procedure). Therefore, where it is necessary to compel the parties or a non-party to co-operate with the proceedings, the
Evidence

22. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

Scope of disclosure

The scope of disclosure of documents will depend on the agreement between the parties. If there is no express agreement, then the scope of disclosure will be determined by the provisions of the applicable procedural rules.

If no such rules apply, the law of the seat of the arbitration will determine the scope of disclosure. If the arbitration is seated in the City of Buenos Aires then, the scope of disclosure admitted in arbitration will be the same as the one permitted in domestic court litigation, that is, parties must disclose all documents that may contribute to the resolution of the dispute (section 387, National Civil and Commercial Code of Procedure).

Parties' choice

Parties are free to agree on the disclosure rules.

Confidentiality

23. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Parties can agree on the confidentiality of the arbitration (section 1658(e), National Civil and Commercial Code (NCCC)).

If the arbitration is confidential, then parties, arbitrators, experts and the arbitral institution must respect that confidentiality.

Arbitrators have an obligation to the parties to respect the confidentiality of the proceedings (section 1662, NCCC).

Courts and arbitration

24. Will the local courts intervene to assist arbitration proceedings seated in its
jurisdiction?

Local courts can intervene to assist arbitration proceedings in the following situations:

**Preliminary measures.** Local courts can assist arbitration proceedings by (section 1655, National Civil and Commercial Code (NCCC)):

- granting preliminary measures at the request of the parties or;
- enforcing such measures when granted by the tribunal.

The fact that local courts can grant preliminary measures does not mean the arbitration agreement is breached, the arbitral jurisdiction waived or the powers of the arbitrators excluded.

**Prior to the constitution of the arbitral tribunal.** Local courts have no jurisdiction to intervene on the matters subjected to arbitration (section 1656, NCCC). However, if the tribunal is not yet constituted and the arbitration agreement appears to be manifestly void or inapplicable, then local courts will have jurisdiction to intervene in the matter.

**Appointment of arbitrators.** Local courts can assist on the appointment of arbitrators if parties or arbitrators fail to nominate and there is no arbitral institution to nominate the arbitrator(s) (section 1659, NCCC) (see Question 18, Appointment of arbitrators).

**Removal of arbitrators.** The decision concerning the removal of an arbitrator will be resolved by the local courts if there is no arbitral institution to perform this and no agreement of the parties to the contrary (section 1663, NCCC) (see Question 18, Removal of arbitrators).

**Arbitrators’ fees.** If neither the parties nor the arbitrators fixed the arbitrators' fees or the way in which they will be determined, then the local courts will determine the arbitrators' fees (section 1664, NCCC).

**Compulsory and enforcement measures.** Arbitrators cannot grant enforcement or compulsory measures (section 753, National Civil and Commercial Code of Procedure). Therefore, local courts assist arbitrators in the enforcement of such measures (see Question 21).

The court that has jurisdiction over arbitration-related applications is the competent court that would have resolved the dispute if the parties had not subjected it to arbitration. The competent court is determined according to both the nature of the claim and the geographical area of the dispute.

**25. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?**
Risk of court intervention

As the National Civil and Commercial Code (NCCC) was only enacted in August 2015 (see Question 2, National legislation), whether or not the local courts are likely to intervene will depend on how they construe and apply the new regulation. No case law has been developed in this respect yet.

Delaying proceedings

A party can attempt to delay proceedings by frequent court applications. Before the enactment of the new NCCC, the courts avoided intervening in arbitral procedures, especially before the award is rendered. However, in some exceptional cases arbitral proceedings were delayed or even suspended because a party made applications to the court.

Remedies

26. What interim remedies are available from the tribunal?

Interim measures

Unless the parties have agreed otherwise, arbitrators can grant, at the request of any of the parties, any interim remedies they consider necessary in connection with the purpose of the dispute (section 1655, National Civil and Commercial Code (NCCC)).

Ex parte

Arbitrators can grant interim relief on an ex parte basis. The arbitration tribunal can grant any interim measure it considers necessary in connection with the purpose of the dispute (section 1655, NCCC). The tribunal can grant interim measures without the intervention of the respondent.

Security

There is no express provision that allows arbitrators to award security. However, in practice, arbitrators can order security (for example, for the experts’ fees).

27. What final remedies are available from the tribunal?

Arbitrators can award the same final remedies as local courts, including damages, injunctions, declarations, costs and interest.

Appeals

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can parties waive any rights of
appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of appeal/challenge

Under Argentinean law, arbitral awards can be challenged before local courts on the following grounds (National Civil and Commercial Code of Procedure (NCCCP)):

- **Annulment.** Parties can request the annulment of the award (sections 760 and 761).

- **Appeal.** Parties can appeal an arbitral award the same way they can appeal a court judgment (section 758).

These applications are also available in most of the provinces where the NCCCP does not apply.

Grounds and procedure

**Annulment.** The grounds for annulment of the arbitral award are:

- Lack of due procedure.

- The arbitrators rendered the award after the deadline.

- The arbitrators ruled on matters outside the scope of the agreement of the parties.

- The award contains incompatible decisions in its substantive part.

**Appeal.** Parties can appeal on both:

- Errors of fact.

- Errors of law.

The parties must file an annulment or appeal request before the arbitral tribunal within five days of when the parties were notified of the award (section 758, NCCCP). The competent court to hear the appeal or annulment is the hierarchically superior court that would have been competent to solve the matter if the dispute had not been submitted to arbitration, unless the arbitration agreement gives jurisdiction to other arbitrators to intervene in the matter (section 763, NCCCP).

If the tribunal rejects the request, the applicant can appeal the decision before the competent local court.

Excluding rights of appeal

Parties cannot waive their right to:
Judicially challenge an arbitral award that is contrary to the legal system (section 1656, National Civil and Commercial Code).

File a request of annulment against the arbitral award, or their right to file a petition for interpretation or correction of the award (section 760, NCCCP).

29. What is the limitations period applicable to actions to vacate or challenge an international arbitration award rendered?

The limitation period applicable to actions to vacate or challenge an international arbitration award rendered in Argentina is five days from when the parties are notified of the award (section 759, National Civil and Commercial Code of Procedure).

If the MERCOSUR's Agreement on International Commercial Arbitration applies, then the limitation period applicable to vacate or challenge the award rendered in Argentina is 90 calendar days from the notification of the award.

Costs

30. What legal fee structures can be used? Are fees fixed by law?

The parties are free to agree on the legal fee structures. However, legal fees are also fixed by law. Legal fees for extra-judicial activities must be at least 50% of the ones fixed for judicial activities (section 57, Law No. 21,839 (as amended by Law No. 24,432)).

The legal costs of the procedure must not exceed 25% of the amount of the award (section 730, National Civil and Commercial Code).

31. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost allocation

In the absence of an agreement between the parties, the unsuccessful party must pay all the costs of the successful party (including legal fees), even if the successful party had not requested it (section 68, National Civil and Commercial Code of Procedure(NCCCP)). This is a general principle recognised by the procedural rules of the different provinces.

Cost calculation

Arbitral institutions usually provide a costs table that allocates the costs of the proceedings depending, among other factors, on the amount claimed in the dispute.
However, the percentages fixed by national laws regarding, for instance, professional fees also serve as guidelines for the tribunal to calculate the costs of the award.

Factors considered
Local courts also allocate costs depending on principles fixed by law, including the:

- Percentages established for:
  - professionals’ fees as well as the difficulty of the task performed;
  - court fees depending on the amount claimed.

- Duration of the proceedings.

- Outcome of the proceedings.

Enforcement of an award

Domestic awards

32. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

Domestic arbitral awards are enforceable under the same rules as local judgments (section 499, National Civil and Commercial Code of Procedure). This means that the procedure for the enforcement of a domestic arbitral judgment will be the same as the one for a court judgment. Once both parties consent to the award and the term for compliance with the award expires, either party can request its enforcement before local courts.

Enforcement proceedings must be brought before the competent local court, the identity of which will depend on the geographical area and nature of the dispute (see Question 24).

Foreign awards

33. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Argentina is party to the following international treaties relating to the recognition and enforcement of foreign arbitration awards:

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). The applicability of the Convention is subject to following two reservations:
Argentina will only recognise and enforce arbitral awards made in the territory of another contracting state;

Argentina will apply the Convention only to disputes arising out of legal relationships, whether contractual or not, that are considered commercial under the national law.


Inter-American Convention on Extraterritorial Validity of Foreign Judgements and Arbitral Awards (Montevideo 1979).

34. To what extent is a foreign arbitration award enforceable?

Foreign arbitral awards are enforceable in Argentina as long as they comply with certain requirements. Since Argentina is a federal country, each province regulates the procedure of enforcement of foreign judgements.

As for the National Civil and Commercial Code of Procedure (NCCCP), which applies when a party is seeking to enforce an award in the City of Buenos Aires, Sections 517 to 519 establish special *exequatur* proceedings to enforce foreign judgments, whether they are judicial or arbitral. The *exequatur* is a declaration by which the foreign judgment or arbitral award is given the same status as a national judgment. This only applies if there is no international treaty applicable to the particular case. If an international treaty applies, then the provisions of the convention will prevail over the requirements of the NCCCP.

On the other hand, if the provisions of the NCCCP apply, then, for a foreign arbitral award to be enforceable, the following requirements must be satisfied (*section 517, NCCCP*):

- The arbitral award must have been issued by a competent tribunal according to Argentinean law, and must be the result of a personal claim or property claim of a moveable asset which is located in Argentina.

- The defendant must have been personally summoned and its right to defence guaranteed.

- The arbitral award must comply with both the:
  - necessary requirements to be considered as such;
  - conditions of authenticity established by the jurisdiction in which the award was issued.

- The judicial judgment or arbitral award must not be contrary to Argentina’s public policy or to
another Argentinean judgment.

The arbitral jurisdiction must be valid under the terms of section 1 of the NCCCP.

The issues subjected to arbitration must be arbitrable under the terms of section 737 of the NCCCP.

The *exequatur* proceeding must be brought before the competent local court in respect of the purpose of the dispute and the geographical area.

Awards rendered both in the US and UK are enforceable in Argentina. Since the US, the UK, and Argentina are all part of the New York Convention, the awards rendered in the US and UK will be enforced in Argentina according to the provisions established by the New York Convention.

35. What is the limitations period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

The limitation period to actions to enforce foreign arbitral awards in Argentina is not specifically regulated by law. Therefore, the general limitation period of five years applies (*section 2560, National Civil and Commercial Code*).

Length of enforcement proceedings

36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

If the losing party raises defences to stop or impede the enforcement of the arbitral award, the authors consider that the procedure may last approximately two to three years (including first instance and any appellate procedure/action for annulment). It is possible to expedite enforcement by requesting preventive measures (that is, injunctions) to support the enforcement request jointly with filing the request for enforcement. This will be subject to evidencing the necessity of the preventive measure, together with posting a bond to compensate the other party for any loss suffered as a result of the preventive measure.

Reform

37. Are any changes to the law currently under consideration or being proposed?

There are no changes to Argentinean law currently being considered or proposed.
Main arbitration organisations

General Arbitration Tribunal of the Buenos Aires Stock Exchange

Main activities. The Tribunal of the Buenos Aires Stock Exchange resolves all types of arbitral disputes. It has settled disputes involving the state of Argentina as well as certain Argentinean provinces. It deals with both domestic and international disputes.

W www.bcba.sba.com.ar/institucional/tribunal-de-arbitraje/

Business Mediation and Arbitration Center

Main activities. The Business Mediation and Arbitration Center offers both mediation and arbitration services, specialising in business matters. It provides a list of arbitrators who have significant expertise in both the business and arbitration field. It deals with both domestic and international arbitrations.

W www.medyar.org.ar/

Center of Mediation and Arbitration of the Chamber of Commerce of Argentina

Main activities. The Center of Mediation and Arbitration of the Chamber of Commerce of Argentina offers both mediation and arbitration services, specialising in commercial matters. It provides a list of arbitrators who have significant expertise in both the business and arbitration field. It deals with both domestic and international arbitrations.

W www.cac.com.ar/institucional/mediacion_y_Arbitraje__Mediation_and_Arbitration_1668

Arbitral Chamber of the Grain Exchange of Buenos Aires

Main activities. The Arbitral Chamber of the Grain Exchange of Buenos Aires provides conciliation, mediation and arbitration services to resolve disputes concerning the trade of grain and other agricultural products. The Chamber exercises the role of an independent arbitration tribunal.


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Professional associations/memberships. Buenos Aires Bar Association, Member; Spanish Club of Arbitration and CEA – 40, Member; Rioplatense Chapter of the CEA, Member; Young International Arbitration Group of the LCIA, Member; Business Center of Mediation and Arbitration, Member.

Publications.


- "El control Jurisdiccional en Iberoamérica: ¿Es la Etapa que sigue al Recurso de..."
Anulación de un laudo en un proceso Arbitral?" (Lima, 2007).


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