



Arbitration Guide  
IBA Arbitration Committee

# **ARGENTINA**

(Updated January 2018)

**Guido Santiago Tawil**  
**Federico Campolieti**

M. & M. Bomchil  
Suipacha 268, 12 floor  
C1008AAF, Buenos Aires  
Argentina

[guido.tawil@bomchil.com](mailto:guido.tawil@bomchil.com)  
[federico.campolieti@bomchil.com](mailto:federico.campolieti@bomchil.com)

---

**TABLE OF CONTENTS**

	<b>PAGE</b>
I. Background .....	3
II. Arbitration Laws.....	4
III. Arbitration Agreements .....	6
IV. Arbitrability and Jurisdiction .....	8
V. Selection of Arbitrators.....	9
VI. Interim Measures .....	11
VII. Disclosure/Discovery.....	12
VIII. Confidentiality.....	13
IX. Evidence and Hearings .....	14
X. Awards .....	16
XI. Costs .....	17
XII. Challenges to Awards .....	18
XIII. Recognition and Enforcement of Awards.....	20
XIV. Sovereign Immunity .....	22
XV. Investment Treaty Arbitration.....	23
XVI. Resources .....	24
XVII. Trends and Developments.....	25

## I. Background

**(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

There are no general statistics available to determine the number of arbitrations in Argentina. Nevertheless, arbitration as a dispute resolution mechanism has become more common in the last decades and has been increasingly used in recent years in both international and domestic disputes.

The time and costs of arbitration, in comparison with court proceedings, are normally seen as important advantages. The greater flexibility of arbitration proceedings and the possibility to select the arbitrators are factors considered particularly relevant by the parties.

**(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?**

As stated before, although there are no official statistics available, both institutional and ad hoc arbitrations are frequently used. Nevertheless, parties tend to prefer institutional arbitration.

In domestic arbitration, the most important arbitral institutions in Argentina that administer arbitration proceedings under their own rules are: (i) the *Tribunal de Arbitraje General de la Bolsa de Comercio de Buenos Aires* (rules in effect as of 16 April 1993, only available in Spanish); (ii) the *Centro de Mediación y Arbitraje Comercial de la Cámara Argentina de Comercio* (CEMARCA) (rules in effect as of 17 May 2017 available in both Spanish and English); and (iii) the *Cámara Arbitral de la Bolsa de Cereales de Buenos Aires* (rules in effect as of 14 August 1998, only available in Spanish).

With respect to institutional arbitrations for international disputes, the most frequently used arbitral institution and rules are those of the International Chamber of Commerce (ICC).

**(iii) What types of disputes are typically arbitrated?**

Generally speaking, commercial disputes of any kind. In particular, arbitration agreements in private and semi-private international contracts in areas as diverse as insurance, joint ventures, turnkey contracts, public works, oil and gas contracts and international sales have become frequent in recent years.

Concerning the matters that cannot be arbitrated, the National Code of Civil and Commercial Procedure (NCCCP) establishes that those matters that are unable to be subject to settlement cannot be submitted to arbitration. Further, the National

Civil and Commercial Code (NCCC) provides that the following matters are excluded from any arbitration agreement: (a) those that refer to the civil status or capacity of persons; (b) family affairs; (c) those involving the rights of users and consumers; (d) contracts of adhesion, whatever their purpose are; and (e) those derived from labor relations.

**(iv) How long do arbitral proceedings usually last in your country?**

Although there are no official statistics, the length of arbitration proceedings depends upon on the conduct of the parties and the arbitral tribunal. However, it can be reasonably asserted that arbitration proceedings (from the time of the request for arbitration to the issuance of the final award on the merits) usually last between one and two years.

**(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

Under Argentine law, arbitrators acting in domestic arbitrations must be lawyers, duly admitted to the local bar of the seat of the arbitration in compliance with Argentine law. This requirement should be considered merely as a domestic public policy requirement and, therefore, not applicable to international proceedings. Foreign arbitrators not admitted to the local bar are frequently appointed and accepted in international arbitrations seated in Buenos Aires.

In domestic arbitrations, legal counsel to the parties must be admitted to the local bar. In international arbitration cases, the latter requirement should reasonably be considered as a matter of domestic public policy and, therefore, not deemed applicable.

In both domestic and international arbitration, representation by Argentine counsel admitted to the local bar is mandatory in any Argentine court proceeding related to the arbitration (that is, interim measures, annulment petitions, etc.).

## **II. Arbitration Laws**

**(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

To date, the NCCC and the NCCCP governs both domestic and international arbitration.

This situation may change soon since there is an international arbitration draft bill already passed by the Argentine Senate on September 2017, which follows the

UNCITRAL Model Law on International Commercial Arbitration. This draft bill still needs to be passed by the House of Representatives to become a law.

**(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

The NCCC and NCCCP govern both domestic and international arbitration without distinguishing between each other. NCCCP provisions on *prorogatio fori* and recognition and enforcement of foreign awards stand out as rules particularly related to international arbitration.

**(iii) What international treaties relating to arbitration have been adopted (e.g. New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Argentina has ratified: (i) the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; (ii) the 1975 Panama Inter-American Convention on International Commercial Arbitration; (iii) the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards; (iv) The 1889 and 1940 Montevideo Treaties; (v) the Protocol on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labour and Administrative Matters within the Mercosur; and (vi) the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, among others.

**(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

In domestic arbitration, in which Argentine law shall be applicable, the parties may choose between *de iure* arbitration and *amiable composition*. In case the parties remain silent on this issue in the arbitration agreement or if the arbitrators are not expressly authorized to decide the dispute on the basis of equity, it is understood that the parties have chosen *de iure* arbitration.

In international arbitration, the arbitral tribunal shall apply the law selected by the parties. If the parties have not agreed on the issue, the arbitral tribunal must select the applicable law pursuant to its own criteria considering the nature of the dispute and its particular features. In such cases, it could be expected that the arbitral tribunal takes into account, although not necessarily abide by, Argentine conflict of law rules.

Argentine private international law accepts the freedom of the parties to select the applicable law, with the following exceptions: (a) *fraude à la loi*, (b) cases of international mandatory rules of immediate application, or (c) when such

application would lead to outcomes that could be incompatible with fundamental principles of public order.

### III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

The NCCCP distinguishes between Under Argentine law, there is an arbitration agreement when the parties decide to submit to arbitration all or some of the disputes that have arisen or could arise between them with respect to a specific legal relationship (contractual or non-contractual) of private law which does not affect the public order.

Arbitration agreements should be in writing, and can take the form of a clause included into a contract, an independent agreement, or a statute or bylaw. Under Argentine law, written expression can take place through two different means: (i) public legal instruments, that is, self-authenticating documents recorded, certified, authenticated or issued by a notary public; or (ii) private legal instruments. In addition, the “writing requirement” can also be fulfilled by an exchange of letters respectively executed by each party. Finally, the NCCC expressly states that any reference made in a contract to a document containing an arbitration agreement constitutes itself an arbitration agreement provided that said contract is in writing and the reference made clearly implies that said arbitration agreement is part of the contract.

Argentine law authorizes the parties to freely set out the contents of the arbitration agreement, within the limits imposed by law and public order. Therefore, the parties to an arbitration agreement can freely agree on: (a) the seat of the arbitration; (b) the language in which the proceedings will be conducted; (c) the proceedings which the arbitrators should follow; (d) the time limit within which the arbitrators shall issue the award; (e) the confidentiality of the arbitration; (f) the way in which the costs of the arbitration should be borne or distributed; and (g) the number of arbitrators that shall constitute the arbitral tribunal –which must always be composed by one or more arbitrators in an uneven number–, the procedure to appoint arbitrators, the qualities that the arbitrators must have (including conditions on nationality, profession and experience), and the fees to be paid to the arbitrators.

The parties can also regulate in the arbitration agreement whether the arbitration will be a *de iure* arbitration or an *ex aequo et bono* arbitration; whether the arbitration will be an institutional arbitration or an *ad-hoc* arbitration; whether the arbitrators shall have (or not) the power to adopt, at the request of any of the parties, interim measures deemed to be necessary with respect to the dispute; and

the scope and content of the arbitral tribunal's post-award competence regarding explanatory or complementary awards.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

In general, Argentine courts respect the parties' agreement to arbitrate and declare their lack of jurisdiction to intervene in such matters when a valid arbitration agreement is found.

- (iii) **Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are common in arbitration agreements and are enforceable in Argentina. The consequences of commencing an arbitration without fulfilling the requirements contained in the multi-tier clause will depend upon which of the specific steps have not been met.

- (iv) **What are the requirements for a valid multi-party arbitration agreement?**

There are no specific requirements for a multi-party arbitration agreement.

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

There is no relevant provision or case law on this issue. However, these types of clauses could be deemed abusive or not applicable by Argentine courts.

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

Under Argentine law, the general rule is that arbitration agreements cannot be extended to non-signatories or third parties. Prior consent is essential to validly submit a dispute to arbitration.

However, arbitration agreements can be exceptionally extended to third parties, in cases of fraud or when the theory of the disregard of legal entity is considered applicable (in order to arbitrate the dispute with the controlling company, instead of a subsidiary).

#### IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Under Argentine law, matters that cannot be subject to compromise or settlement (those concerning goods or property considered not to be in commerce and rights which cannot constitute the subject matter of a contract), together with those that refer to the civil status or capacity of persons, family affairs, those involving the rights of users and consumers, contracts of adhesion and those derived from labour relations, cannot be submitted to arbitration (*See*: response to question I (iii) above).

Only State courts can intervene in these cases and the non arbitrability can be decided either by the arbitral tribunal or by the courts upon the request of any of the parties.

Under Argentine law, it is not settled whether the question of arbitrability should be dealt as an issue of jurisdiction or admissibility.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If any of the parties to a court proceeding proves that the dispute brought by the other party is covered by a valid arbitration agreement, the court will declare its lack of jurisdiction and refer the matter to arbitration, provided that Argentine rules on *prorrogatio fori* are observed (that is, the arbitration agreement must be valid under Argentine law, it must cover a dispute that can be arbitrated, etc.) and it does not have any discretionary power to act otherwise.

Prior to making such decision, the court will perform a full scrutiny of the arbitration agreement and verify whether the objection was filed within the time limit set forth in the NCCCP. Failure to raise an objection against the court's jurisdiction within the time limit is generally regarded as a party's consent to such jurisdiction.



- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

Under Argentine law, the arbitration agreement confers on the arbitrators the power to decide on their own competence (*kompetenz-kompetenz* principle). This includes the competence to decide on any objections related to the existence or the validity of the arbitration agreement or on any other objections whose appraisal impedes the arbitrators from entering into the merits of the dispute.

## V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

Under Argentine law, the parties may freely agree on the procedure for the appointment of arbitrators. Absent an agreement on the matter, the following *default* appointment procedure is applicable: (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator. If one party does not appoint its arbitrator within thirty days from the receipt of the request by the other party to do so, or if both arbitrators fail to reach an agreement on the third arbitrator within thirty days counted from their appointment, the appointment shall be made pursuant to a request by one of the parties by the institution administering the arbitration, or, in the absence thereof, by a judicial court; (b) in an arbitration with a sole arbitrator, if the parties fail to agree on the appointment of the arbitrator, the arbitrator shall be appointed pursuant to a request by any of the parties by the institution administering the arbitration, or, in the absence thereof, by a judicial court.

Further, when the dispute concerns more than two parties and these fail to agree on the way the arbitral tribunal will be constituted, the institution administering the arbitration, or, in its absence, a judicial court, shall appoint the arbitrators.

- (ii) **What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?**

Arbitrators falling under any of the grounds for challenge provided in the NCCCP are obliged to decline their appointment and disclose the reasons for doing so. This is an ongoing obligation.

Arbitrators may be challenged for the same reasons for which national court judges may be recused including: (i) having a close family relationship with one of the parties or its lawyer; (ii) having an interest in the dispute or participation in a business enterprise with one of the parties or any of its lawyers, unless the

enterprise is a limited liability company; (iii) if they are a creditor or debtor of either party; (iv) if they are engaged, in whatever manner, in a court action involving either party; (v) having acted as attorney for or against any of the parties, or having defended or pleaded against any of them or given an opinion or issued recommendations on the dispute submitted to arbitration before or after its commencement; (vi) having received any important benefits from any of the parties; (vii) having a friendly relationship with any of the parties denoting great familiarity or frequent intercourse; and (viii) when the challenged arbitrator feels enmity, hatred or resentment against a party as evidenced through known facts, but not if such enmity, hatred or resentment is based on attacks against or offenses aimed at the arbitrator after arbitral proceedings have commenced.

Any challenge shall be submitted to the arbitral tribunal within five working days either of the arbitrator's appointment or of the circumstances giving rise to the challenge becoming known to the challenging party.

The challenge shall be decided by the institution that administers the arbitration or, in the absence thereof, by a judicial court. The parties are free to agree that the challenge shall be decided by the remaining unchallenged arbitrators. While the challenge is pending, arbitral proceedings shall remain suspended.

**(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?**

Any person possessing full legal capacity can act as an arbitrator. The parties are allowed to stipulate specific conditions with respect to the arbitrators' nationality, profession and experience. As to the nationality of arbitrators, the 1975 Inter-American Convention on International Commercial Arbitration, which Argentina has ratified, provides that arbitrators may be nationals or foreigners.

Under Argentine law, *de iure* arbitrators acting in domestic arbitrations must be lawyers, duly admitted to the local bar of the seat of the arbitration in compliance with Argentine law. This requirement should be considered merely as a domestic public policy requirement and, therefore, not applicable to international proceedings. In *amiable composition* proceedings, *amiabiles compositeurs* are not required to be lawyers.

Under Argentine law, there are no specific codes of ethics for arbitration. Unless the parties have agreed otherwise, arbitral tribunals normally seek guidance from the general code of ethics (for instance, in *de iure* arbitration, in which arbitrators must be lawyers, they may take into account the code of ethics of the local Bar) or other applicable sources, for instance the IBA Guidelines on Conflicts of Interest.

- (iv) **Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

Under Argentine law, there are no specific rules or codes of conduct concerning conflicts of interest for arbitrators.

While the IBA Guidelines on Conflicts of Interest in International Arbitration are scarcely applied in domestic arbitrations, they are usually followed in international arbitrations seated in Buenos Aires.

## **VI. Interim Measures**

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Unless the parties have agreed otherwise, the arbitration agreement empowers the arbitrators to adopt, at the request of any of the parties, any interim measures deemed to be necessary with respect to the subject matter of the dispute. The arbitrators may also require security for costs from the requesting party.

Enforcement of interim measures can be requested to State courts. The parties may also request interim measures directly to State courts. This request shall not be considered as a waiver of the arbitral jurisdiction or a breach of the arbitration agreement. Interim measures adopted by the arbitrators may be challenged before State courts when they violate constitutional rights or are unreasonable.

There is no requirement as to the form of the tribunal's decision and, therefore, it could be expressed either through an order or an award. Nevertheless, the decision must be rendered in writing and provide reasons.

Enforcement of such preliminary or interim measures must be sought exclusively through State courts. Arbitral tribunals lack *imperium* to execute their orders by force. In cases such as actual attachment of assets ordered by the arbitral tribunal, the parties or the arbitral tribunal shall request enforcement from the courts.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following constitution of the arbitral tribunal?**

Despite the arbitral tribunal's powers to issue interim measures of protection, State courts maintain the power to order interim measures alongside the arbitral

tribunal's own authority, and can exercise this power if so requested by any party to the arbitration.

A court may order preliminary or interim relief in proceedings subject to arbitration if the request meets the basic judicial requirements set by local legislation: (i) there is an urgency to take the measure requested; (ii) there is a *prima facie* positive view on the right of the requesting party; and, (iii) a bond is posted to cover potential damage. The relief should not match the requested outcome of the dispute, but merely guarantee the prospective enforcement of the award.

Although it is uncommon for State courts to order an interim measure after the constitution of the arbitral tribunal, they are allowed to do so.

- (iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

State courts may grant evidentiary assistance by ordering a party to provide evidence, even if the arbitral tribunal has previously decided otherwise. There are no limitations to the court's powers in this respect.

## **VII. Disclosure/Discovery**

- (i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

Argentine law contains no particular provision dealing with the production of evidence in arbitration proceedings, including documentary evidence. If the parties have not agreed otherwise, the rules governing ordinary court proceedings will be applicable (NCCCP).

In this respect, the NCCCP provides no US-style discovery procedures and establishes very limited duties of disclosure. However, the NCCCP requires the parties to the dispute to produce or reveal the location of any documents deemed essential to the resolution of a dispute.

If a party refuses to produce a document that is known to be in its possession, the tribunal, in weighing the evidence, is entitled to make a negative inference against that party or consider what it deems appropriate.

**(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?**

Documents in the possession of an entity that is not a party to the dispute may also be requested. However, the requested entity may object to such production if the document belongs to it and its production could cause harm to it. The arbitral tribunal shall decide on the objection and, if found to be ungrounded, it may order that the document be produced. Eventually, it may further request State courts' assistance to obtain the document.

**(iii) Are there special rules for handling electronically stored information?**

Argentine law provides no specific regulation for disclosure of electronic documents. However, nothing prevents a party from requesting electronic documents in possession of other parties.

## **VIII. Confidentiality**

**(i) Are arbitrations confidential? What are the rules regarding confidentiality?**

Argentine law does not generally provide for the confidentiality of arbitration proceedings. Confidentiality should be agreed upon by the parties. Nevertheless, almost all institutional arbitration rules establish the confidentiality of the arbitration proceedings.

**(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

Argentina has not yet passed an arbitration law. The few provisions contained in the NCCCP that rule on arbitration proceedings do not regulate confidential information. However, Argentine general law has some isolated provisions that, to some extent, protect bank secrecy and trade secrets.

**(iii) Are there any provisions in your arbitration law as to rules of privilege?**

Argentina lacks a general regulation addressing privilege such as that which exists in the United States. The only similar concept that is partially regulated in Argentina is *professional secrecy*, which implies that factual information which a lawyer learns from a client is, in principle, protected and cannot be revealed upon court orders unless waiver has been given by the client. In this regard, almost every law and code of ethics ruling practice of law in Argentina establishes the professional secrecy obligation. In addition, laws on information and data protection limit the kind of documents and information which may be subject to disclosure.

## IX. Evidence and Hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

Argentine procedural law does not contain provisions specifically addressing the production of evidence in arbitral proceedings. If the parties have not agreed on the issue, arbitrators must observe the provisions concerning ordinary court proceedings.

In international arbitrations seated in Buenos Aires, it is frequent to observe that either the arbitral tribunal or the parties decide to be guided by the IBA Rules on the Taking of Evidence. This trend is not so common in domestic arbitration.

- (ii) **Are there any limits to arbitral tribunals' discretion to govern the hearings?**

Arbitrators enjoy reasonable discretion to rule on the admissibility, relevance, materiality and weight of the evidence submitted by the parties. The arbitral tribunals generally enjoy ample discretion to govern the hearings.

- (iii) **How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

In international arbitrations seated in Buenos Aires, depending on what the parties have agreed, the witnesses usually provide their testimonies in the form of written statements before the hearing. Oral direct, cross and redirect examinations are normally allowed if so agreed by the parties. It is also frequent that arbitrators interrogate the witnesses at any time during the hearing.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

Argentina procedural rules only forbid the appearance of witnesses which are relatives of the parties. Witnesses shall be sworn in and informed of the criminal consequences that could arise from false statements. Neither parties nor arbitrators have the authority to compel witnesses to appear. For this purpose, they must request the assistance of the State courts.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

While there are no substantial differences between the testimony of a witness specially connected with one of the parties and the testimony of an unrelated witness, it is normal that the arbitral tribunal takes such distinction into account in weighing the evidence.

**(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Under Argentine procedural rules, arbitral tribunals may, at their own discretion or at the request of any of the parties, appoint experts whose opinions or reports shall be delivered in writing. The expert reports shall be communicated to the parties who may comment on them and require further explanations or clarifications.

Each party may also appoint an expert consultant (*consultor técnico*) who may submit his own report. While no formal requirements regarding independence or impartiality are established in Argentine law, experts can be challenged on the same grounds that are applicable to State court judges.

**(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

If a technical opinion is needed to decide the case, it is common for an arbitral tribunal to appoint a court expert to provide testimony. This evidence, although not binding, tends to be crucial in determining the issue under discussion.

If an expert appointed by the arbitral tribunal provides testimony, the relevance of the evidence provided by party-appointed experts is reduced.

State courts have their own lists of experts grouped according to their field of expertise.

**(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing is scarcely used in arbitration proceedings in Argentina.

**(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

According to the Argentine procedural rules, arbitral proceedings must be conducted by the arbitral tribunal assisted by a secretary appointed by the parties

or, in case of disagreement on this issue, by the court, unless the parties had authorized the arbitrators to appoint the secretary.

## **X. Awards**

### **(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

Under Argentine law, arbitral tribunals must render their awards in writing and must provide reasons for their decisions. Indeed, in accepting an appointment as arbitrator, the arbitrator assumes the obligation to render a reasoned award within the established time limit.

The final award must adequately address all issues submitted to arbitration, including ancillary matters, and must be issued within the established term. Awards shall mention the date and place of the arbitration.

When the tribunal consists of more than one arbitrator, the majority of the arbitrators must sign the award. If an arbitrator refuses to sign or is unable to sign the award, it must be signed by a majority of the arbitrators. If no majority can be reached, another arbitrator must be appointed, either by the parties or by the courts if the parties could not come to an agreement on the appointment.

Failure to sign the award constitutes an omission that affects the award's validity as a written instrument under Argentine law.

### **(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Punitive or exemplary damages are not allowed under Argentine law, except with respect to consumer relationships under the Consumer Protection Act.

The arbitral tribunal can award simple interest, but compound interest can only be awarded if the parties have so agreed.

### **(iii) Are interim or partial awards enforceable?**

Interim or partial awards are enforceable before State courts at the request of any of the parties.

### **(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

Dissenting opinions are allowed under Argentine procedural rules. They must be signed by the dissenting arbitrator and served to the parties annexed to the award.



- (v) **Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

The parties may reach any settlement during the arbitral proceedings, and arbitral tribunals normally incorporate the settlement into the form of an award at the request of the parties. The award on agreed terms is enforceable as a regular award, provided that it does not violate any public policy principle or rule.

The parties could also reach an agreement to discontinue the arbitration proceedings that are ongoing.

- (vi) **What powers, if any, do arbitrators have to correct or interpret an award?**

An arbitral tribunal can correct typographical, clerical or mathematical errors made in the award. For instance, corrections may be requested if the date or the place of arbitration has been omitted in the award. However, correction is not available where the award is not signed as, in this instance, there would be no award because signature constitutes a *sine qua non* requirement for the award's existence.

Argentine law expressly grants the arbitrators the competence to issue explanatory or complementary decisions at the request of a party in order to clarify any confusing aspects of the award or decide on issues duly submitted but not addressed in the award. A party shall submit this kind of request within five days of being served with the award. These remedies apply even if the parties have waived all means of recourse against the award. The tribunal's decision takes the form of an additional award, which is deemed to constitute part of the tribunal's final award.

## **XI. Costs**

- (i) **Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

Under Argentine procedural rules, the "losing party pays" principle applies with respect to the allocation of costs.

The arbitral tribunal can however, depart from such a rule and decide on a different cost allocation if the circumstances justify it to do so. Departure from the general principle that the losing party pays must be duly justified in the award.

**(ii) What are the elements of costs that are typically awarded?**

It is generally understood that the arbitration costs that shall be awarded include the arbitrators' fees and expenses, institutional fees (if applicable), the tribunals' expert fees, the parties' expert fees and the parties' legal fees.

**(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

Provided that the parties do not agree otherwise, the arbitrators shall decide on the arbitration costs.

In *ad hoc* arbitrations, the parties generally agree the fees in advance with the appointed arbitrators. In cases where the parties have reached no agreement with the arbitrators on their fees, State courts shall decide on the matter in accordance with local regulations.

**(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

The arbitral tribunal has discretion to apportion the costs between the parties. In many cases, costs are proportionally divided where parties have prevailed in some claims and lost in others.

**(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

If the appeal to State courts has not been waived by the parties, State courts can modify the arbitral tribunal's decision on costs.

## **XII. Challenges to Awards**

**(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

Under Argentine law, there are two different remedies against arbitral awards: appeal and annulment.

While the right of appeal is normally waived by the parties in the arbitration clause, the right to seek annulment of an arbitral award before State courts cannot be validly waived under Argentine law.

The grounds for annulment are: (i) essential procedural errors; (ii) the award was rendered after the term for making the award has elapsed; (iii) the award includes decisions on issues that were not submitted to the arbitrators; (iv) the award was inconsistent and/or contains contradictory decisions; and (v) the award was contrary to public policy principles and mandatory provisions of Argentine law.

The request for annulment must be brought before the arbitral tribunal within five working days of being served with the award. If the arbitral tribunal considers that the annulment petition has been correctly filed under the applicable procedural rules, it shall declare the petition admissible and deliver it with the arbitration record to the Court of Appeals. If the arbitral tribunal declares the annulment petition inadmissible, the interested party has the right to file a complaint against such denial directly to the Court of Appeals within five working days of being served with such denial. In that case, the Court can overrule the arbitral tribunal's decision and decide on the annulment request.

An award annulled by a State court is regarded as never having been rendered, the dispute remains unsolved and the arbitration agreement is again effective except as otherwise provided by the parties.

Regarding the average duration of annulment proceedings, it would be reasonable to expect that such proceedings before State courts last between six months and one year.

While Argentine law does not contain special provisions on the stay of enforcement of an award once a request for annulment has been submitted, most courts favour a continued stay of enforcement of the award until a decision regarding annulment has been made.

**(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

Under Argentine law, the annulment remedy cannot be waived and, accordingly, the parties cannot waive, before or after the dispute has arisen, either any or all of the grounds for annulment.

Further, the NCCC states that the parties, through the arbitration agreement, cannot waive their right to challenge the final award when it contradicts the applicable law. While this provision seems to be inconsistent with the general regime, some recent jurisprudence has clarified that it only refers to “annulment remedies” and not “appeals”, which may still be validly waived by the parties.

**(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

An arbitral award may be appealed (on the merits) to the Court of Appeals. A previous agreement by the parties on such appeals is not required. However, appeals on the merits against the award may be waived by the parties if so agreed.

Appeals are only available against final awards. Every appeal together with its supporting grounds must be raised before the arbitral tribunal within five working days of the date of notification of the award. If the arbitral tribunal considers that the appeal has been correctly filed under the applicable procedural rules, it will notify the other party of the appeal and provide it with the opportunity to answer within five working days. Immediately thereafter, it will send the file to the Court of Appeals that will decide on the merits of the appeal. If the arbitral tribunal declares the appeal inadmissible, the interested party has the right to file a complaint against such denial directly to the Court of Appeals within five working days as of being served with such denial. In this instance, the Court of Appeals can overrule the arbitral tribunal's decision denying the appeal and decide on its merits.

Court judgments on appeal may only be subject to an extraordinary appeal before the Argentine Supreme Court if the requirements for such an appeal are met. The Supreme Court's exercise of jurisdiction in these cases is exceptional.

**(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

*See:* responses to questions XII (i) and XII (iii) above.

### **XIII. Recognition and Enforcement of Awards**

**(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

Once rendered, domestic awards immediately become executory. No leave for enforcement is required. However, compulsory enforcement can only be obtained through executory proceedings before State courts.

When the award provides for a monetary payment, the enforcement procedure starts with the request and attachment of the debtor's property to cover such amount –plus estimated interest and judicial costs– through the State court. The debtor can only raise limited defenses against enforcement within five working days of being requested by the court to pay the pending amount plus accrued costs and interest, namely: (i) falsehood of the award; (ii) the statute of limitation (ten

years) has elapsed; (iii) full payment of the award before initiation of executory proceedings; (iv) total or partial release of the debt by the creditor; and (v) a grace period for payment granted by the creditor is still pending.

If the above exceptions are not raised or, if raised, are rejected, the court will render a decision ordering both the debtor to pay and, simultaneously, the execution of the attached property. Sale by public auction of the attached property shall move forward. Court decisions ordering enforcement are subject to appeal only when: (i) the debtor's objections to enforcement have been rejected; or (ii) enforcement requested by claimant has been denied.

Regarding the recognition and enforcement of foreign arbitral awards, Argentina has ratified (and State courts regularly apply) the New York and Panamá Conventions.

If no treaty or convention applies, the NCCCP establishes specific provisions concerning the conditions required for recognizing and enforcing foreign arbitral awards. The conditions are essentially that: (i) *prorrogatio fori* in favour of arbitral tribunals having their seat outside of the country be valid; (ii) during arbitral proceedings, personal notice was served upon the person against whom enforcement of the arbitral award is sought, and that their right to due process has been adequately guaranteed during the proceedings; (iii) the arbitral award has acquired the status of *res judicata* in the country where it was rendered; (iv) the arbitral award is not contrary to the public policy principles of Argentine law; (v) the arbitral award is not contrary to a previous or simultaneous decision issued by an arbitral tribunal or State court in Argentina on the same issue; and (vi) the matters submitted to arbitration are arbitrable.

Court decisions on recognition and enforcement of foreign arbitral awards in Argentina are subject to appeal.

- (ii) **If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

See: response to question XIII (i) above.

- (iii) **Are conservatory measures available pending enforcement of the award?**

State courts can issue conservatory measures (such as, attachment of assets) at the request of the party who is seeking the enforcement of the award while such proceedings are pending.

- (iv) **What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

Argentine State courts tend to adopt a cautious approach toward the enforcement of awards.

If a foreign award was set aside by the courts at the place of the arbitration, Argentine State courts will normally reject enforcement.

In addition, recognition and enforcement of foreign arbitral awards violating Argentine *ordre public international*, Argentine public order rules or policies or fraud may be refused by Argentine courts.

**(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

Although there are no official statistics, it is reasonable to expect that enforcement proceedings before State courts take approximately six months.

There are no time limits for seeking the enforcement of an award, besides the general statute of limitations.

#### **XIV. Sovereign Immunity**

**(i) Do State parties enjoy immunities in your jurisdiction? Under what conditions?**

Argentina has adopted the doctrine of restrictive immunity from jurisdiction. As a general rule, States enjoy immunity from jurisdiction in Argentine courts.

However, such immunity is subject to certain exceptions, including, *inter alia*: (i) the cases in which the State provides its explicit consent through an international treaty, a contract or a statement in a particular case, to be subject to the Argentine courts; or (ii) the claim relates to a commercial or industrial activity carried out by the foreign State and the jurisdiction of the Argentine courts arises out of the relevant contract or applicable law.

**(ii) Are there any special rules that apply to the enforcement of an award against a State or State entity?**

There are no special rules applicable to the enforcement of an award against a foreign State or State entity. If the award is international, Argentine procedural rules for recognition and enforcement of foreign arbitral awards are applicable unless an international treaty (such as the New York Convention) is applicable. In other words, local regulations are only applicable by default, in the case that no international treaty may be deemed applicable.

Particularly, with respect to the enforcement of awards against a foreign State, Argentina has no domestic legislation on immunity from execution. However, based on international rules and principles, the Argentine Supreme Court has ruled that foreign States' assets within the territory of Argentina cannot be seized or subject to execution unless: (i) the foreign State has explicitly waived its immunity from execution; or (ii) the relevant asset is used in a *iure gestionis* activity.

## **XV. Investment Treaty Arbitration**

### **(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Argentina has ratified the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States on 19 October 1994, entering into force in Argentina on 18 November 1994.

Within the Mercosur, Argentina has signed the Colonia Protocol for the Promotion and Protection of Investments and has ratified the Buenos Aires Protocol for the Promotion and Protection of Investments from Non-Mercosur State Parties.

### **(ii) Has your country entered into bilateral investment treaties with other countries?**

Argentina is also a party to more than fifty Bilateral Investment Treaties (BITs), including treaties with Algeria, Armenia, Australia, Austria, Belgium-Luxembourg, Bolivia, Bulgaria, Canada, Chile, China, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Greece, Guatemala, Hungary, India, Indonesia, Israel, Italy, Jamaica, Korea, Lithuania, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Panama, Peru, Philippines, Poland, Portugal, Romania, Russia, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States, Venezuela, and Vietnam.

Argentina does not employ a model BIT. However, most BITs to which Argentina is a party include standard clauses on: (i) national treatment; (ii) most-favored nation treatment; (iii) fair and equitable treatment; (iv) non-discrimination; (v) protection against unlawful expropriation; (vi) free remittance of funds abroad; and (vii) investor state dispute settlement mechanisms, which include international arbitration.

## XVI. Resources

(i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

The following publications deal with arbitration in Argentina:

- Caivano, Roque J., *Control judicial en el arbitraje* (Abeledo Perrot, Buenos Aires, 2011)
- Caivano, Roque J., *Arbitraje* (Ad-Hoc, Buenos Aires 2000)
- Caivano, Roque J. – Sandler Obregón, Verónica, “El contrato entre las partes y los árbitros en el Código Civil y Comercial”, *RCCyC* 2015, p. 143, Buenos Aires.
- Fargosi, Alejandro E., “Commercial arbitration in Argentina”, *The University of Miami Inter-American Law Review* 1988-89, Vol. 20, pp. 687-695.
- Feldstein de Cárdenas, Sara and Scotti, Luciana B., “Inversiones extranjeras y arbitraje: alternativas y desafíos para la república Argentina”, *Revista de Derecho* 2007, Issue 24, pp. 305-321.
- Grigera Naón, Horacio A., “La ley modelo sobre arbitraje comercial internacional y el derecho argentino”, *Revista La Ley* 1989-A, 1021.
- Leonardi de Herbón, Hebe M. and Feldstein de Cárdenas, Sara, *Arbitraje interno e internacional: una mirada al futuro* (Abeledo-Perrot, Buenos Aires 1994).
- Le Pera, Sergio, “International Commercial Arbitration in Argentina” in *International Commercial Arbitration in Latin America*, ICC Ct. Bull.: Special Supplement, Vol. 1996, pp. 6-10.
- Morello, Augusto M., *El arbitraje: sus desafíos* (Lajouane, Buenos Aires 2005).
- Noodt Taquela, María B., “Avances del Proyecto de Ley argentina de arbitraje respecto de la ley modelo de UNCITRAL”, in Kleinheisterkamp, Jan and Samtleben, Jürgen (eds.), *Avances del derecho internacional privado en América Latina: liber amicorum Jürgen Samtleben* (Fundación de Cultura Universitaria, Montevideo 2002) pp. 719-741
- Piaggi, Ana I., “La historia detrás del moderno arbitraje”, 5 *Revista Jurídica de la Universidad de Ciencias Empresariales y Sociales* (UCES, Buenos Aires, 13 August 1992) pp. 84-98



- Rivera, Julio C., *Arbitraje comercial, internacional y doméstico*, 2<sup>a</sup> ed. (AbeledoPerrot, Buenos Aires, 2014).

- Tawil, Guido S., “Advocacy in International Commercial Arbitration: Argentina” in Bishop, R. Doak (ed.), *The Art of Advocacy in International Arbitration* (Juris Publishing, New York 2004) pp. 355-398

- Tawil, Guido S. and Minorini Lima, Ignacio J., “El Estado y el arbitraje: primera aproximación” *Año 29 RAP: Revista Argentina del Régimen de la Administración Pública* (2006, no. 337) pp. 9-52

- Tawil, Guido S. and Zuleta, Eduardo (eds.), *El arbitraje comercial internacional* (Abeledo-Perrot, Buenos Aires 2008).

**(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

In Argentina, some postgraduate programs on arbitration are offered by the University of Buenos Aires and the Austral University.

Additionally, many prestigious and well-known institutions, such as the ICC or the International Centre for Dispute Resolution (ICDR), frequently hold conferences in Argentina.

## **XVII. Trends and Developments**

**(i) Do you think that arbitration has become a real alternative to court proceedings in your country?**

Yes. Arbitration has become, in our view, a real alternative to court proceedings in Argentina. Arbitration has been increasingly used in recent years and this trend is growing.

**(ii) What are the trends in relation to other ADR procedures, such as mediation?**

Argentina has not yet passed a modern international conciliation law based on the Model Law on International Commercial Conciliation.

Parties in Argentina usually attempt to reach a settlement before resorting to arbitration. However, these attempts are generally pursued through direct negotiations between the parties. It is not a well-established practice that parties resort to mediation in order to explore settlement alternatives prior to instituting arbitration proceedings.

Conversely, mediation is a mandatory step prior to commencing judicial court proceedings at the federal and national levels. Mediation proceedings are confidential.

**(iii) Are there any noteworthy recent developments in arbitration or ADR?**

As mentioned before (*See*: response to question II (i) above), there is an international arbitration draft bill already passed by the Argentine Senate on September 2017, which follows the UNCITRAL Model Law on International Commercial Arbitration. If this draft bill is passed by the House of Representatives, it will become a law. If so, this will be a major development in Argentina concerning international arbitration.