



Arbitration Guide  
IBA Arbitration Committee

# **VENEZUELA**

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**TABLE OF CONTENTS**

	<b>PAGE</b>
I. Background .....	3
II. Arbitration Laws.....	4
III. Arbitration Agreements .....	5
IV. Arbitrability and Jurisdiction .....	7
V. Selection of Arbitrators.....	9
VI. Interim Measures .....	10
VII. Disclosure/Discovery.....	11
VIII. Confidentiality.....	11
IX. Evidence and Hearings .....	12
X. Awards .....	14
XI. Costs .....	15
XII. Challenges to Awards .....	16
XIII. Recognition and Enforcement of Awards.....	18
XIV. Sovereign Immunity .....	19
XV. Investment Treaty Arbitration.....	20
XVI. Resources .....	21
XVII. Trends and Developments.....	22



## I. Background

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

Over the past 19 years, the use of arbitration as a conflict resolution method has become increasingly common. According to an article published by GAR (Global Arbitration Review) White List: Latin America & the Caribbean dated 02 November 2016: “Domestic arbitration in Latin America, as in other parts of the world, has become the *de facto* conflict-solving mechanism instead of local courts, those being either too slow or not trusted.” Particularly, in Venezuela, arbitration is the best method to put on the hands of a third person the solution of a disputes. Among the advantages of arbitration, there are basically three:

- ✓ Timing – especially if compared with court proceedings;
- ✓ Ability to appoint the arbitrators – that explains why arbitration is mostly used for complex disputes which may require specific know-how
- ✓ Flexibility – especially to adapt the procedure to complex disputes in terms of evidence and multi-party structures;

The perceived principal disadvantages of arbitration are:

- ✓ Cost – mostly because in Venezuela there are no court fees, and
- ✓ A relatively small community of skilled arbitrators.

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

Most of the arbitration proceedings in Venezuela are institutional and domestic. The most active institutions are the Centro de Arbitraje de la Cámara de Caracas (CACC, which is the local chapter of the ICC) and the Centro Empresarial de Conciliación y Arbitraje (CEDCA). International arbitration has been prominent and visible, but the actual number of cases that are filed each year are probably less than a dozen.

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

The disputes typically arbitrated in Venezuela are contractual issues as opposed to tort issues. Most of the disputes submitted to arbitration are related to contract enforcement or damages claims as a result of breach of contract.



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

The arbitral proceedings in Venezuela normally last between eight and ten months. If one of the parties decides to challenge the award, the court's decision could take up to five years.

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

There are no written restrictions for arbitration generally on the subject of foreign nationals. However, we would distinguish between arbitrators and counsel. To act as arbitrators, there is no issue with foreign nationals. However, to act as counsel, as with any form of practice of Venezuelan law, a lawyer must be admitted in Venezuela. Therefore, and also in case the award or the interim measures imposed by the arbitral tribunal are challenged and one of the parties is represented by a foreign national, such party must certainly hire a local lawyer to act before the local courts.

## 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?**

The basic tenet is the parties' freedom to agree on the applicable law. In the case of institutional arbitration, also the rules of the chosen arbitration center will apply.

In ad-hoc arbitration, if the parties fail to choose the applicable law, such law is the Venezuelan Commercial Arbitration Law (*Ley de Arbitraje Comercial*), for both national and international proceedings. This law is based on the UNCITRAL Model Law.

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

No, Venezuelan arbitration law does not distinguish between domestic and international arbitration. The same rules apply for both domestic and international arbitration.

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

Venezuela has adopted the following Conventions:



1. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), adopted on December 29, 1994<sup>1</sup>;
  2. The American Convention on International Commercial Arbitration (the Panama Convention) on February 22, 1985<sup>2</sup>;
  3. The Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (the Montevideo Convention) on January 15, 1985<sup>3</sup>;
  4. In January 2012, Venezuela denounced the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention or the Washington Convention), becoming the third country – after Bolivia and Ecuador – to do so.
- (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?**

No there is not. Arbitrators deal with this issue in the same way as Venezuelan judges do and there are also mandatory rules of application of Venezuelan law (for instance, if the dispute involves real estate).

### 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?**

According to Venezuelan law, any dispute that can be the subject of a settlement, which arises between persons with authority to settle, may be submitted to arbitration.

Arbitration agreements must comply, essentially, with the following requirements:

1. The agreement must be in writing;
2. It may include one or more instruments;

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<sup>1</sup> Official Gazette N° 4.832

<sup>2</sup> Official Gazette N° 33.170

<sup>3</sup> Official Gazette No. 33.144



3. For adhesion contracts, consent must be express and independent. Pursuant to Ruling No. 192 of the Constitutional Chamber of the Supreme Tribunal of Justice (“STJ”), the independence of the consent means that the parties shall sign “...*a separate document from the one containing the contractual stipulations*” (February 28, 2008).
4. In matters regarding the interests of minors, a judicial authorization is required whenever an issue is submitted to arbitration.

Additionally, case law states that an arbitration clause is valid only if it is made expressly and unequivocally with the intention of excluding the jurisdiction of judicial courts. In this regard, an arbitration agreement may only be executed by empowered officers or officers with the express capacity to enter into arbitration agreements. Otherwise such arbitration agreements may be deemed void.

Finally, when at least one of the parties is a legal entity in which the State or its Autonomous Agencies holds fifty percent (50%) or more of its equity, the corporate approval and authorization of the minister of the portfolio are required; and the agreement must specify the type of arbitration and the number of arbitrators, which in no case shall be less than three (3).

- (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?**

If the parties have executed an arbitration agreement in writing, the courts have to recognize their lack of jurisdiction over any disputes covered by such agreement. Hence, the courts have to refer the parties to arbitration. The courts determine the validity of an arbitration agreement on a prima facie basis. Therefore, only if the parties have not agreed in writing to arbitration or if the arbitration agreement refers to a dispute that cannot be settled, should the courts fail to enforce such arbitration agreement.

- (iii) **Are multi-tier clauses (e.g., 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 Venezuelan legal practice. Parties are free to agree to any kind of mechanism for the amicable resolution of their disputes as a requirement prior to arbitration. If the parties have agreed to such prior proceeding, a claimant may not initiate arbitration without first attempting to comply with the prior proceeding. If one of the parties attempts to initiate arbitration in disregard of such agreement, a matter of admissibility arises and the

arbitration tribunal shall refer the parties to fulfilling the prior requirement set forth in the multi-tier clauses.

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

Venezuelan Law does not set forth any specific requirement for a valid multi-party arbitration agreement.

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

This is a matter of interpretation since Venezuelan Law keeps silence on this subject. In principle, parties are free to agree in this regard. However, such agreement must fulfil the requirements of a regular arbitration agreement and therefore Venezuelan courts would not be likely to enforce a clause which grants only one party the right to resort to arbitration since it could be considered unfair.

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

According to Venezuelan Law, only signatory parties are bound by an arbitration agreement. However, there may be a strong argument that the assignee of a contract that contains an arbitration clause can also benefit from such clause.

#### 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?**

According to Venezuelan law, any dispute that can be the subject of a settlement, arising between persons with authority to settle, may be submitted to arbitration. Hence, the following may not be settled by arbitration: 1) disputes contrary to public policy or involving crimes or offences, except with respect to quantification of civil liability, insofar as it has not been set by a final binding judgment; 2) disputes directly concerning the sovereign attributions or functions of the State, or governmental persons or entities; 3) disputes involving the civil status or capacity of persons; 4) disputes regarding items or rights of legally disabled persons without prior judicial authorisation; and 5) disputes on which a final binding judgment has been issued, except with respect to the monetary consequences arising from its enforcement, insofar as they exclusively concern the parties to the proceedings and have not been determined by a final binding judgment.

Additionally, the Venezuelan Law of Private International Law refers to matters subject to the Venezuelan courts' exclusive jurisdiction, which are as follows:

1. Disputes concerning real property rights over non-moveable assets located within Venezuelan territory;
2. Matters that cannot be subjected to settlement; and
3. Matters affecting the essential principles of Venezuelan public policy.

Moreover, Article 151 of the Venezuelan Constitution provides that only a competent Venezuelan court shall decide on any controversy over non-commercial contracts of public interest.

If a matter relating to any of the above issues is brought before an arbitral tribunal, arbitrators are bound to recognize their lack of jurisdiction.

- (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?**

When the court verifies that an arbitration agreement has been executed in a written form, the court shall immediately refer the case to the arbitral tribunal. However, it is possible for the defendant party to waive their right to arbitrate by participating in court proceedings and failing to challenge the jurisdiction of the court. The waiver could be expressed in an explicit or tacit form. The explicit waiver consists of a clear acceptance of court jurisdiction by the relevant party. The defendant party tacitly waives their right to arbitration by presenting to the court arguments in its defence without raising jurisdictional issues. Objections to the court jurisdiction must be made when filing the initial answer as a preliminary matter and thus there is a time limit to raise the objection.

- (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?**

Yes, they can. arbitral tribunals are empowered to decide over their own jurisdiction, including objections related to the validity of an arbitration agreement.

Yes, Venezuelan Law recognizes the *competence-competence* and severability doctrines. According to the Venezuelan Commercial Arbitration Law, the decision of the arbitral tribunal on its own competence may be reviewed only by an annulment action (motion to set aside) at the end of the arbitral proceeding. Notwithstanding the fact that the control of the courts over the tribunal's jurisdiction is exercised once the award is issued, the court may annul all of the



proceedings, including the award. Hence, arbitral tribunals are cautious about their decision on this matter.

## V. Selection of Arbitrators

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

Within the framework of institutional arbitration, the Venezuelan Commercial Arbitration Law sets forth that arbitration centers shall have a list of at least twenty arbitrators. In principle, parties are bound to select the arbitrators from such lists of arbitrators, according to the rules of the relevant arbitration center. However, parties are free to agree to any other manner of appointing arbitrators.

In *ad-hoc* arbitration, pursuant to the Venezuelan Commercial Arbitration Law, the parties shall appoint the number of arbitrators, which shall always be an odd number. Failing agreement, the arbitrators shall be three. The appointment of the arbitrator shall be made jointly by the parties. However, they can delegate the appointment to a third party.

According to the Venezuelan Commercial Arbitration Law, in the event of lack of agreement between the parties in the selection of arbitrators, each party shall appoint one and the two arbitrators appointed shall choose a third, whom shall act as presiding arbitrator.

If any party is reluctant to appoint its arbitrator or if the two arbitrators fail to agree on the third, they may apply to the competent court to appoint the third arbitrator.

Moreover, if parties fail to appoint a sole arbitrator, a competent court shall make the appointment at the request of one of the parties.

Arbitrators shall report in writing within ten working days of notification of the appointment whether they accept the position. Silence is deemed as a rejection of the appointment.

If any of the arbitrators fails to accept, resigns, dies, becomes disabled, or is successfully challenged by the other party, he shall be replaced in the same manner prescribed for the appointment.

### (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?

Venezuelan Law does not expressly establish requirements concerning an arbitrator's independence, neutrality and/or impartiality. This aspect of the proceedings is governed by the Rules of each arbitration center. In practice, the arbitrator shall sign a statement of independence and communicate in writing any



fact or circumstance occurring prior to or during the arbitration that might compromise his impartiality and independence.

- (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?**

In domestic arbitration proceedings, parties normally choose practising attorneys when designating arbitrators at-law. However, the Venezuelan Commercial Arbitration Law does not establish any limitation in this regard. Each arbitration center has to have a list of arbitrators, but requirements for being a member of such lists are established by each arbitration center. In practice, not only lawyers are in those lists. Furthermore, parties are free to appoint whomever they wish as arbitrator. There are no specific ethical duties customized to arbitrators.

- (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?**

In Venezuela each arbitration center has its own Code of Ethics. To date, the IBA Guidelines on Conflicts of Interest in International Arbitration are not commonly followed.

## VI. Interim Measures

- (i) **Can arbitrators enter 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?**

According to Venezuelan Law, the arbitration tribunal may order any interim measures it deems necessary, when requested, to guarantee the effectiveness of the award. The decision of the arbitral tribunal concerning those measures has neither a particular formality nor a special denomination. In addition, the term Award is normally reserved for the final decision of the arbitral tribunal. Once the arbitral tribunal orders the relevant interim measures, the requesting party may petition the competent court for the enforcement of the decision.

- (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?**

The Venezuelan legal system allows the parties to request provisional relief. Hence, Venezuelan courts may grant interim measures, even in the presence of an arbitral clause, provided that the rules of the arbitration center – if applicable – do not provide a special mechanism to request provisional relief. Provisional relief

measures shall not affect the jurisdiction of an arbitral tribunal. However, such measures cannot be ordered by the court once the arbitral tribunal is constituted. Upon the constitution of the arbitral tribunal, all the issues related to the controversy, including the provisional relief, shall be sent to the arbitral tribunal. Nevertheless, the constitution of the arbitral tribunal does not affect the measures ordered by the court; they remain in force.

- (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?**

According to Venezuelan law, the arbitral tribunal, or any of the parties with the approval of the arbitral tribunal, may request assistance from the competent court in the filing of the necessary evidence and/or to enforce the provisional relief requested. The court will consider such request within the scope of its competence and in accordance with the rules applicable to it.

## **VII. Disclosure/Discovery**

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

Venezuelan law does not contemplate disclosure or discovery as the Common-Law system does.

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

There is no rule in Venezuelan law that expressly limits the powers of an arbitrator to order the disclosure of documents. Applicable limitations will depend on each particular case, and they would be those which apply to natural judges.

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

No, there are not.

## **VIII. Confidentiality**

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

According to Venezuelan Law, arbitrators are bound to protect the confidentiality of the acts of the parties, of the evidence, and of all substantive material related to the arbitration procedure, unless the parties agree to the contrary. A breach of this duty could be qualified even as a crime, according to the Venezuelan Criminal Code.

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

No, there are not. Only the general rule mentioned above.

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

No, there are not.

## 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? Is so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

No. It is not common.

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

Venezuelan Law allows ample freedom for arbitrators 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?**

Venezuelan legislation allows the parties to select the rules of arbitration. Normally, evidence gathering is carried out pursuant to the rules contained in the Venezuelan Code of Civil Procedure. In practice, witnesses are examined in a direct oral form and both parties and arbitrators are able to interrogate the witnesses.

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

The Venezuelan Arbitration Law does not set forth any rules regarding witnesses. However, the Venezuelan Code of Civil Procedure, which sets forth several rules in this regard, normally applies to arbitration proceedings conducted in Venezuela. The general rule could be the following: any person especially connected with one of the parties cannot appear as a witness.

- (v) **Are there any differences between the testimony of a witness especially connected with one of the parties (e.g., legal representative) and the testimony of unrelated witnesses?**

Yes. As a general rule, persons specially connected with one of the parties are not allowed to stand as witnesses.

Moreover, according to the Venezuela Code of Civil Procedure, people who are under 12 years of age, people prevented by reason of insanity and those who make a profession of testifying in court cannot stand as witnesses.

Persons who act as lawyers or attorneys in the case, the seller in cases of eviction, partners in matters pertaining to the company cannot testify before the judge (arbitrator) acting in the case, nor can the potential heirs, the donee, any person with an interest albeit indirectly in the result of a lawsuit, or a close friend. An enemy cannot testify against his/her enemy.

Moreover, no one can be a witness either against or in favour of his/her ancestors or descendants, or spouse. The domestic servant cannot testify either in favour of or against whoever has her/him at his/her service.

Venezuelan Law also forbids the following persons to testify in favour of the submitting party; relatives by blood between the first through the fourth grade or relatives by marriage until the second degree, inclusive.

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

The Venezuelan Commercial Arbitration Law does not set forth any rule regarding expert testimony.

In practice, it is a written report followed by an oral presentation and questions from both parties and/or arbitrators. Regarding the requirements about independence and/or impartiality of the expert, there is no special requirement under Venezuelan Law. However, experts especially connected with one of the parties would lack credibility.

**(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?**

No. It is not common that arbitral tribunals appoint experts beside those that may have been appointed by the parties.

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

No. “Hot-tubbing” is not used in arbitration proceedings conducted in Venezuela.

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

No, there are no rules regarding the use of arbitral secretaries. However, in institutional arbitrations the functions of the secretariat are fulfilled by the personnel of the arbitration center. In *ad hoc* arbitrations, the tribunal, with the agreement of the parties, may decide who shall be in charge of such duties.

**X. Awards**

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

Venezuelan law sets forth the following formal requirements for an arbitral award:

1. The award must be in writing.
2. It must be signed by the arbitrator or arbitrators. Whenever there is more than one arbitrator, the signatures of the majority will suffice, as long as the lack of one or more signatures and dissenting opinions are on record.
3. The decision must be reasoned, unless the parties have agreed to the contrary.
4. The written decision must include the date on which it was passed and the place where the arbitration took place.
5. Finally, the decision must assign the costs, and decide who is to pay for such costs, and in what proportion.

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

Yes. Arbitrators can award a sort of punitive damages (*clausula penal*), interest and compound interest, when requested and always in agreement with the contract and/or the applicable law.

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

Yes, interim and/or partial awards are enforceable

**(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?**



Yes, arbitrators are allowed to issue dissenting opinions to the award. However, the Venezuelan Commercial Arbitration Law does not set forth any formality regarding the form and content of dissenting opinions.

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

Yes. Even if "awards by consent" are not specifically set forth in Venezuelan law, in practice, if the parties reach a settlement they can ask the arbitral tribunal to acknowledge the agreement of the parties. Such acknowledgement lends the settlement the same force as an award.

According to the Venezuelan Commercial Arbitration Law, other than an award the proceedings can be terminated in the followings scenarios:

1. When parties fail to make a timely deposit of the tribunal costs and fees.
2. By the will of the parties.
3. By the issuance of the award or the ruling that corrects or completes it.
4. Upon expiry of the term set for the procedure or its extension.

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

According to Venezuelan Law, arbitrators have the duty to correct and/or interpret the award at the request of one of the parties. Such request shall be made timely. If the parties do not request corrections or interpretations in a timely fashion, the award becomes final and irreversible.

## **XI. Costs**

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

Unless otherwise agreed to by the parties, arbitrators' fees and administrative charges are borne by the parties equally at the beginning of the proceedings. Indeed, the payment of such costs is a condition for commencing the proceedings.

As part of the award, arbitrators shall determine who bears the other costs of the proceedings, if any, and the parties' contributions to such costs.

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



By the time the arbitration tribunal renders its decision, the costs are already covered. Exceptionally there may be additional costs, but that will depend on each particular case.

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

In institutional arbitration, costs and expenses are matters of the arbitration center. In *ad hoc* arbitration, the decision is made by the arbitral tribunal.

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

Yes, the tribunal has discretion unless the contract is specific on this point. As a general rule, unless otherwise agreed to by the parties, costs and expenses are borne by the parties equally.

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

No, they do not. However, there is a potential exception to this general rule in the Venezuelan Commercial Arbitration Law which establishes several grounds for setting aside the award.

## **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?**

The Venezuelan Commercial Arbitration Law sets forth the right of the parties to challenge the award.

Venezuelan legislation has copied Article 34 of the UNCITRAL Model almost identically. In fact, the Commercial Arbitration Law sets forth the following grounds for setting aside an arbitral award:

1. When the party against whom the award is being enforced demonstrates that one of the parties was not legally able at the time of the arbitration agreement.
2. When the party against whom the award is being enforced demonstrates that she/he was not given proper notice of the appointment of an arbitrator, or of the arbitral proceedings, or was otherwise unable to present her/his case.



3. When the composition of the arbitral tribunal or the arbitration procedure has not complied with the law.
4. When the award refers to a controversy not envisaged in the arbitration agreement, or when it contains decisions exceeding the agreement itself.
5. When the party against whom the award is being enforced demonstrates that such award is not binding upon the parties, or that it has been set aside, or that its effects have been suspended, in compliance with the terms of the arbitration procedure agreed upon by the parties.
6. When the court called to decide on the challenge verifies that the subject-matter of the dispute cannot be settled by arbitration under the Law, or that it is contrary to public policy.

On the other hand, the Venezuelan Code of Civil Procedure sets forth three additional cases for setting aside an arbitral award:

1. When the award refers to an arbitration agreement that is null and void, no longer valid or when it contains decisions exceeding the agreement itself.
2. When the award has not decided on all the matters submitted to arbitration, or when the award contains contradictory decisions that are impossible to enforce.
3. When the arbitration procedure has not complied with substantial formalities, provided that the parties have not waived them.

Finally, the Constitutional Chamber of the Venezuelan Supreme Tribunal of Justice has been handing down decisions where constitutional injunctions against arbitral awards are being admitted only when there exists a grotesque error in the interpretation of the constitution or the arbitral tribunal has acted in disregard of constitutional norms.

The challenge against the award shall be filed during the five days following the publication of the award. The average duration of the challenge proceedings could be around five years. The challenge proceedings do not stay the enforcement proceedings unless at the request of the party the court suspends the effects of the award. For such suspension, a bond is required from the requesting party. If the suspension of the effects of the award were not to be granted, its enforcement is not banned.



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

This is a matter of interpretation. In principle, parties are free to waive the right to challenge an arbitration award. Any formal requirement is especially considered by Venezuelan Law. The waiver agreement should fulfil the same requirements set forth regarding the validity of the arbitration agreement. However, there is neither special provision with respect to this matter nor case law. Furthermore, some scholars affirm that the right to challenge an arbitration award is a matter of public order.

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

Venezuelan law does not provide for appeals of arbitral awards. However, parties are free to agree to the constitution of another arbitral tribunal to hear the appeal and to establish the grounds for appeal. As far as we are aware, there has only been one practical experience in this regard in Venezuela.

- (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?**

Venezuelan law does not provide any rule regarding this matter.

### **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?**

All arbitration awards, from any country, are considered in Venezuela as enforceable as well as final and binding. Because of the novelty of arbitration as a means of dispute resolution in our country, there has not been very much experience in the matter of enforcement of arbitral awards in Venezuela. The Venezuelan Commercial Arbitration Law provides that the party requesting enforcement of an award shall submit a formal request to the trial court with a certified and, if necessary, translated copy of the arbitral award.

The same law establishes that an arbitral award may be set aside if the subject matter of the dispute or the cause of action is contrary to public policy. Public policy is a vague notion under Venezuelan law that has to be analysed on a case-by-case basis.

- (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?**

*Exequatur* is not necessary in Venezuela. All arbitration awards, from any country, are considered to be a local arbitral decision. Hence, the concerned party may request the competent court to enforce the award as if it were a local decision.

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

No. In Venezuela conservatory measures exist in order to ensure the enforcement of a potentially favourable final decision. Hence, once the final decision has been issued, conservatory measures shall not be granted.

- (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?**

There has been little experience in the matter of enforcement of arbitral awards in Venezuela.

The Venezuelan Commercial Arbitration Law provides that a foreign award that is set aside by the courts of the place of the arbitration is not enforceable in Venezuela.

An award is also unenforceable when the party against whom the award is being enforced demonstrates that such award is not binding upon the parties, or that it has been set aside, or that its effects have been suspended in compliance with the terms of the arbitration procedure agreed upon by the parties.

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

It depends in each case, but it could be around three years. The enforcement of an award may be sought at any time. However, it is important to bear in mind the statute of limitations of the right granted by the award.

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

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



No, State parties do not enjoy special immunities of jurisdiction. However, there is an *in fact* immunity from execution or immunity from enforcement. To enforce an award against State parties, it is necessary to follow special formalities set forth in several rules as Constitución, Ley Orgánica de la Hacienda Pública Nacional, Decreto con fuerza de Ley Orgánica de la Procuraduría General de la República and Ley Orgánica de Régimen Presupuestario.

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

Yes, according to the Attorney General's Law, enforcement against a State company requires notice to the Attorney General and the case is suspended for 90 days during this process. Then, it will be necessary to create a plan to ensure the continuity of functionality of the State entity.

**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?**

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, the Washington Convention or the ICSID Convention entered into force and effect with respect to Venezuela on June 1, 1995. The relevant law was published in Official Gazette N° 35.685 of April 3, 1995. However, Venezuela denounced the ICSID Convention in January 2012.

**(ii) Has your country entered into Bilateral Investment Treaties with other countries?**

Venezuela has signed and ratified twenty-seven BITs with twenty-eight countries (Argentina, Barbados, Belarus, Belgium, Brazil, Canada, Chile, Costa Rica, Cuba, the Czech Republic, Denmark, Ecuador, France, Germany, Iran, Lithuania, Luxembourg, the Netherlands, Paraguay, Peru, Portugal, Russia, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Vietnam). However, only twenty-four of them are in force and effect. More specifically, the BITs entered into with Brazil, Peru and the Belgium-Luxemburg Union are not in force and effect. With the exception of the Belarus-Venezuela, Cuba-Venezuela, Russia-Venezuela and Vietnam-Venezuela BITs, the rest of them provide for ICSID arbitration.

We would note that on April 30, 2008, the Venezuelan Government sent a notice of non-renewal of the Venezuelan-Netherlands BIT to the relevant Dutch authorities. Consequently, the Venezuela-Netherlands BIT was only in force until November 1, 2008, although its protection will survive for already-made investments for an additional 15 years, i.e. until October 31, 2023. However, investments made after November 1, 2008 will not be protected by the aforementioned BIT.

## XVI. Resources

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

- DE VALERA, IRENE. Arbitraje Comercial Interno e Internacional. Reflexiones teóricas y experiencias prácticas. Academia de Ciencias Políticas y Sociales. Serie Eventos, 18. Caracas, 2005.
- HENRIQUEZ LA ROCHE, RICARDO. El arbitraje comercial en Venezuela. Cámara de Comercio de Caracas. Centro de Arbitraje. Caracas, 2000.
- HUNG VAILLANT, FRANCISCO. Reflexiones sobre el arbitraje en el sistema venezolano. Editorial Jurídica Venezolana. Colección Estudios Jurídicos, 74. Caracas, 2001.
- BREWER-CARÍAS, ALLAN R. Seminario sobre la ley de arbitraje comercial. Biblioteca de la Academia de Ciencias Políticas y Sociales. Serie Eventos. Caracas, 1999.
- BONNEMAISON W., JOSÉ LUIS. Aspectos fundamentales del arbitraje comercial. Tribunal Supremo de Justicia. Colección Estudios Jurídicos, 16. Caracas, 2006.
- BADELL & GRAU, DESPACHO DE ABOGADOS. Comentarios a la ley de arbitraje comercial. Badell & Grau. Cuadernos Jurídicos, 1. Caracas, 1998.
- VARIOUS AUTHORS. Derecho y sociedad. Negociación, Mediación y Arbitraje. Revista de la Facultad de Ciencias Jurídicas y Políticas de la Universidad Monteávila, 9, Noviembre 2010. Caracas.
- ALVINS, ELJURI and SAGHY. The International Arbitration Review - Second Edition - Venezuela. Law Business Research. London, 2011.
- SAGHY, PEDRO. El Arbitraje Institucional en Venezuela, Caracas 2017.

(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?**

Yes, there are conferences held by both major arbitration centers but there are not fixed dates for such events. In addition, the arbitration center of the Venezuelan Chamber of Commerce organizes a yearly contest where students and practitioners have the opportunity for several days to exchange ideas and techniques concerning arbitration. The purpose of the event is to try to resolve a

practical case prepared by the arbitration center taking into consideration updated issues of arbitration both in the Venezuelan and international community.

## **XVII. Trends and Developments**

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

Absolutely. Arbitration has constantly grown since 1998. From that year on, practitioners, courts and universities have developed, both in theory and practice, the grounds for the construction of a solid and respected institution for legal as well as professional parties. Though much work remains, arbitration has now become a real alternative to court proceedings in Venezuela.

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

Arbitration is the first alternative to court proceedings. However, the use of Alternative Dispute Resolutions such as conciliation and mediation are in general growing as alternatives for settling conflicts. However, perhaps as a consequence of the confidentiality of these kinds of proceedings and the lack of controversy before courts when parties agree to use mediation or conciliation, it is not possible to know how common these proceedings in fact are in Venezuela.

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

On November 3, 2010, the Constitutional Chamber of the Supreme Tribunal of Justice handed down an important decision. On the one hand, the Constitutional Chamber established that arbitration is a fundamental right that forms part of the right to the effective protection of the law regarding the principle of competence-competence. On the other hand, the Chamber established that if the parties have executed an arbitration agreement, the courts have to immediately recognize their lack of jurisdiction over any disputes covered by such agreement if, *prima facie*, the arbitration agreement is valid. Hence, the courts are bound to hear the case and to refer the parties to arbitration. Finally, the Chamber also established that an implicit waiver of arbitration shall be admitted depending on the activity performed by the parties in the proceedings. In this sense, the Chamber sustained that there is no waiver of arbitration when the defendant challenges the interim measures ordered against it, nor when the defensive conduct of the defendant is understood to be a need to defend its own interests when faced with a void action of the jurisdictional bodies. Nonetheless, such analysis must be carried out on a case-by-case basis.