IBA ARBITRATION COMMITTEE

Subcommittee on Recognition and Enforcement of Arbitral Awards

COUNTRY REPORT ON LOCAL REQUIREMENTS FOR THE EXTENSION OF AN ARBITRATION CLAUSE TO, AND ENFORCEMENT OF AN ARBITRAL AWARD AGAINST, A NON-SIGNATORY

June 2021

In completing this survey, we ask the respondents to consider the question of non-signatories in a broad manner. That is, please consider situations where (i) a party applies to a court to compel arbitration against a non-signatory, (ii) the arbitral tribunal extended the arbitration clause to a non-signatory, and the non-signatory, or another party to the arbitration, seeks to resist enforcement, or to set aside the award, on the basis that the arbitration clause should not have been extended to the non-signatory, and (iii) where the award creditor attempts to enforce the award against a non-signatory that was not a party to the arbitral proceedings and the award.

Argentina
Fernando Tupa and Juan Jorge
Curtis, Mallet-Prevost, Colt & Mosle LLP
ftupa@curtis.com

I. General		**(Yes/No /NA)**	**Comments, if any.**
I.1	**Must international arbitration agreements be in writing under the law of the country for which you are reporting?**	**Yes**	As from July 26, 2018, Argentina enacted a specific statute for international arbitration, the International Commercial Arbitration Law No. 27.449 (the 'LACI', after its Spanish acronym), which now governs international arbitrations seated in Argentina. Argentina is also a signatory to the New York Convention and the Panama Convention. In particular, Articles 14-18 of the LACI substantially reflect Article 7 (Option I) of the UNCITRAL Model Law 2006, and provide for arbitration agreements in writing. This requirement is met "if its content is recorded in any form" (including electronic communications, exchanges of statements of claim and defence, or the so-called *incorporation by reference*). Moreover, Article 106 of the LACI expressly provides that Article II, paragraph 2, of the New York Convention shall be interpreted and applied recognizing that the circumstances described therein are not exhaustive, following the recommendation adopted by UNCITRAL on July 7, 2006.
I.2	**Please describe the basic requirements for a valid international arbitration agreement in the country for**		According to Article 14 of the LACI, an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. In any case, the free consent of the parties is essential for its existence. Moreover, pursuant to Articles 14-19, 99 and 104 of the LACI

	which you are reporting and cite the relevant legislative, regulatory, or jurisprudential basis for these requirements. **[Please provide your response in the comments column and limit it to one paragraph.]**		(in addition to Article II, paragraph 1, and Article V, paragraph 1 (a) and paragraph 2 (a), of the New York Convention; and Article 1 and Article 5, paragraph 1 (a) and paragraph 2 (a), of the Panama Convention), the arbitration agreement shall meet the following requirements to be considered valid: (i) be in writing; (ii) deal with existing or future disputes, in respect of a defined legal relationship, whether contractual or not; and (iii) concern a subject matter capable of settlement by arbitration (Article 1651 of the Argentine Civil and Commercial Code excludes those referring to the marital status or capacity of persons, family matters or labor relations, among others). Furthermore, the arbitration agreement shall be made by a capable person. According to the Argentine private international law rules, in absence of any applicable treaty, capacity of human beings shall be analyzed − in principle − under the law of their domicile (Article 2616 of the Civil and Commercial Code), and capacity of private legal entities shall be analyzed by the laws of the place of incorporation (Article 118 of the Argentine Companies Law No. 19.550). Finally, the State can be a party to an arbitration agreement in private contracts (*Pagano, Gerardo v. Gobierno de la Nación*, Argentine Supreme Court of Justice, November 12, 1920; *SA Puerto del Rosario v. Gobierno Nacional*, Argentine Supreme Court of Justice, September 25, 1928; *Compañia Argentina de Navegacion Nicolas Mihanovich Ltda v. Fisco*, Argentine Supreme Court of Justice, March 18, 1931, etc.), provided that it has authorization by law passed by the Congress (*Guido Simonini v. Nación Argentina*, Argentine Supreme Court of Justice, November 4, 1942;, Julio Cesar Rivera, ARBITRAJE COMERCIAL, INTERNACIONAL Y DOMÉSTICO, Buenos Aires, Abeledo Perrot, 2014, pp. 182-184). It should be noted that, regarding domestic arbitrations, Article 1649 of the Civil and Commercial Code limits the arbitration contract to disputes relating to private law relationships, while Article 1651 *in fine* expressly excludes the application of the Civil and Commercial Code chapter on arbitration to those disputes in which national or local States are parties (although it is disputed whether this exclusion extends to State instrumentalities). Regarding international arbitrations, the LACI does not contain this exclusion and some scholars suggest that it could be applicable to "international" and "commercial" disputes in which national or local States are parties acting *iure gestionis*, according to Articles 3, 4 and 6 of the LACI (María Elsa Uzal, *La internacionalidad, la arbitrabilidad y el derecho aplicable en la nueva Ley de Arbitraje Comercial Internacional*, in REVISTA DE DERECHO COMERCIAL Y DE LAS OBLIGACIONES, No. 292, Buenos Aires, Abeledo Perrot, 2018, pp. 619-645). Others scholars, however, suggest that the LACI would *prima facie* not apply to the vast majority of contracts to which the Argentine State is a party (as relations governed preponderantly by public law, irrespective of their commercial nature) and therefore conclude that these arbitrations involving the State would only be governed by the local Procedural Codes (Julio César Rivera (h) & Martin Vainstein, , *The term 'commercial' under Argentina's International Commercial Arbitration Law and its implications for state arbitrations*, International Bar Association, 2020).
I.3	**In the country for which you are reporting, do courts/arbitral tribunals generally decide the issue of the**	**Yes**	Although there is not enough judicial or arbitral jurisprudence (at least publicly available) to establish general principles or consolidated trends regarding the *choice-of-law* method used for this purpose in the framework of international arbitrations in Argentina, some preliminary conclusions

	scope rationae personae of the arbitration clause (or, in other words, the issue of who are the parties to the arbitration agreement, including the issue of extending the arbitration agreement to a non-signatory) on the basis of a specific applicable law or on the sole basis of a factual analysis of the case without reference to an applicable law?		regarding the applicable law may be drawn from the partial award of an arbitral tribunal based in Argentina in ICC Case No. 20674.
I.3a	If courts/arbitral tribunals generally decide the issue on the basis of a specific applicable law, what law do they apply to decide the issue? [For example, the applicable law could be: • The law of the seat of arbitration. • The governing law of the contract. • The law of the place where the award might ultimately be sought to be enforced. • Transnational norms/international law. • The law reached at through a conflict of laws analysis.] [Please provide your response in the comments column, provide any citation to relevant legislation or jurisprudence, and limit your response to one paragraph.]		In ICC Case No. 20674, an arbitral tribunal seated in Buenos Aires, Argentina, faced the challenge of determining the applicable law to decide the scope *rationae personae* of the arbitration agreement. On its way through, the arbitral tribunal first referred to the ICC Rules of Arbitration 2012 to legitimize its authority to decide on its own jurisdiction (Article 6.3). Then, on the basis of the same body of rules, and bearing in mind that the parties to the contract had not chosen any applicable law to the arbitration agreement, the arbitral tribunal indicated that it would apply the rules of law it deemed the most appropriate for this issue (Article 21.1). In order to establish them, the arbitral tribunal took into account the law of the seat of arbitration and the law governing the contract, which all pointed to Argentine law. In addition, the arbitral tribunal considered international jurisprudence and generally accepted principles underlying certain legal theories for a *non-signatory* to be considered a party thereto (*i.e. piercing the corporate veil*), such as good faith, abuse of rights and *venire contra factum*, which are also part of Argentine law, showing that there was a compatibility between the national and a-national legal rules or principles. In turn, the arbitral tribunal did not find any valid basis to accept the law of the place or places where recognition and enforcement of the arbitral award could be sought, as the claimant also suggested.
I.3b	Does the legislation of your jurisdiction contain any directive in this respect? [Please provide your response in the comments column and limit it to one paragraph.]	**No**	–

I.4	**Is the question of whether parties agree to arbitrate ultimately decided by arbitrators as opposed to courts in the country for which you are reporting? Please cite the relevant legislative, regulatory, or jurisprudential basis for your answer.** **[Please provide your response in the comments column and limit it to one paragraph.]**	**Yes**	In Argentina, the *competence-competence* principle – by which arbitrators can decide on their own jurisdiction, even when the validity or scope of the arbitration agreement is challenged – is recognized in the legal framework of both domestic and international arbitrations (Articles 1654 and 1656 of the Civil and Commercial Code, and Articles 19 and 35 of the LACI, respectively). Local courts have also recognized this well-known principle in various cases (*e.g.*, *De la Vega, Jose Alberto v. América In S.A.*, Commercial Court of Appeals, Division E, October 26, 2018; *SP S.A., Relevamientos Catastrales S.A. and Recovery S.A. UTE v. Municipalidad de la Ciudad de Córdoba*, Commercial Court of Appeals, Division A, September 16, 2008; *M–G. B., L. and others v. V.SA and others*, Commercial Court of Appeals, Division G, March 16, 2018) and stated that arbitral tribunals are empowered to decide on *non-signatories'* issues, while exceptionally subject to further 'review' by courts in case of requests for annulment against such decisions (*Pott, Alfredo Carlos v. Patagonia Financial Holdings LLC*, Commercial Court of Appeals, Division F, March 20, 2018).
I.5	**Is there anything in the <u>legislation</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?** **[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of relevant legal theories, jurisprudence, and examples.]**	**Yes**	Although the extension of an arbitration agreement to non-signatories remains subject to very special circumstances, Argentine law provides certain elements for it.

I.5a	If your answer to question I.5 is yes, please cite and describe the applicable rules contained in any relevant legislation or regulations. [Please provide your response in the comments column and limit it to one paragraph.]		In principle, an arbitration agreement can only bind those who have agreed to submit their controversies to arbitration, which in most cases are the parties to the contract that contains it. However, it should be noted that – as mentioned above – Articles 14-18 of the LACI regulate the arbitration agreement in a broad manner, admitting the compliance with the in-writing requirement "if its content is recorded in any form". Although the LACI did not incorporate the following words that appear in Article 7, paragraph 3, of the UNCITRAL Model Law 2016 ("whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means"), some scholars suggested that they are mere examples, so their elimination would not lead to their loss of virtuality in the practice (*e.g.*, Leandro Caputo, *Apuntes sobre la reciente Ley de Arbitraje Comercial Internacional*, LA LEY, Buenos Aires, October 4, 2018). Moreover, there are several provisions in local law linked to legal theories through which a *non-signatory* may be a party or compelled to arbitration. One clear example is given by Article 54, paragraph 3, of the Companies Law, and Article 144 of the Civil and Commercial Code, both which expressly contemplate the *piercing the corporate veil* doctrine. Furthermore, Article 7, paragraph 7, of the LACI, and Articles 9-11 and 1067 of the Civil and Commercial Code (among many others), embrace the principles of good faith and fair dealing, and condemn abuse of rights, abuse of dominant position and contradictory behavior, all of which can provide fundamental grounds to extend the arbitration agreement to non-signatories under theories such as g*roup of companies*, *estoppel*, *alter ego*, etc.
I.6	**Is there anything in the jurisprudence of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?** **[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of the relevant legal theories, jurisprudence, and examples.]**	**Yes**	–

I.6a	If your answer to question I.6 is yes, please cite and describe the applicable tests or rules applied by the courts of the country for which you are reporting. [Please provide your response in the comments column and limit it to one paragraph.]		As from the enactment of the Civil and Commercial Code in 2015 (which incorporated a specific chapter − 29 − for the 'contract of arbitration', now mainly left for domestic arbitrations) and the LACI in 2018, Argentine jurisprudence has shown a remarkable progress and, in many respects, began to align itself with the robust international jurisprudence in the field of arbitration. This kind of 'metamorphosis' can be clearly appreciated in a recent court decision, which emphasized that "doctrine and jurisprudence had repeatedly considered the arbitral jurisdiction to be exceptional and the arbitration agreements to be interpreted restrictively … however … a new analysis of the matter corresponds now" (*Telcel S.A. v. Cablevisión S.A.*, Opinion of the Commercial Court of Appeal's General Attorney, February 15, 2019; *see also Fideicomiso Llerena Studio Aparts v. Bouwers*, Commercial Court of Appeals, Division B, December 10, 2018; *Monsanto Argentina SRL v. Seal y Cia S.A.*, Commercial Court of Appeals, Division C, November 30, 2020). Abiding by the principle of *competence-competence*, and admitting the extension of arbitration agreements to *non-signatories* in cases involving guarantors, brokers, universal successors and group of companies, provided that the exceptional circumstances required to do so are met (to be described in the following questions), are just some examples of this evolution.
II. Specific Legal Theories Concerning Non-Signatories		**(Yes/No /NA)**	**Additional comments, if any.**
II.1	**Can the assignment or assumption of a contract containing an international arbitration agreement commit the non-signatory assignee to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?**	**Yes**	–
II.1.a	If your answer to question II.1 is yes, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately		Commonly, in legislations based on Roman law (such as Argentina's), the assignment of a right includes all rights ancillary thereto. However, the separability of the arbitration agreement principle raises one main question: does the assignment of the contract entail the assignment of the arbitration agreement contained therein? As Fouchard, Gaillard and Goldman emphasize, the assignment of an arbitration agreement "is generally considered to be a mechanism external to the contract to which it relates", so the rules governing it could be "determined by a method other than that employed to determine the rules applicable to the contract itself" (Fouchard, Philippe, Gaillard, Emmanuel, Goldman, Berthold, INTERNATIONAL COMMERCIAL ARBITRATION, The Hague, Kluwer Law International, 1999, p. 418). Therefore, it is worth noting that Article 1614 of the Argentine Civil and Commercial Code states – in a straightforward

	bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		manner – that an assignment exists when one of the parties transfers a right to the other. Moreover, Article 1616 stipulates that any right may be assigned, unless the contrary results from the law, from the convention that originates it, or from the nature of the right. In Argentina, there was an interesting case involving a State entity that dealt with this issue. The facts were as follows: Sargo entered into a contract with Yacimientos Petrolíferos Fiscales (YPF) for the performance of certain works in favor of the latter. The contract, which contained an arbitration agreement, was later transferred by decree of the Executive Branch to Gas del Estado (a State entity). After that, Sargo filed a lawsuit against Gas del Estado to constitute an arbitral tribunal to settle certain disputes between the parties relating to overdue payments. Gas del Estado opposed to it, considering that the arbitration clause contained in the contract (whose rights and obligations had been transferred to it) was not enforceable against it. Finally, the Argentine Supreme Court of Justice held that "the rights and obligations corresponding to the contract originally entered into between the claimant and YPF have been transferred to Gas del Estado, and there is no reason to exclude from such transfer the rights and obligations arising from the aforementioned arbitration clause when no exception or distinction was made in the decree" (*Sargo S.A. v. Gas del Estado*, Argentine Supreme Court of Justice, June 21, 1977). In addition, it is worth noting that the Argentine jurisprudence has extended the arbitration agreement in certain cases that involved voluntary successors and universal successors. With regards to voluntary successions such as mergers (governed by Articles 82-88 of the Companies Law), *Telcel S.A. v. Cablevisión S.A.* raised some interesting points about the possibility of linking the absorbing company to an arbitration agreement entered into by the absorbed one. In this case, the Commercial Court of Appeals highlighted that the absorbing company acquired all the rights and obligations of the absorbed − and dissolved − company, resulting in the transfer of all its assets and legal relations, including valid arbitration agreements (*Telcel S.A. v. Cablevisión S.A.*, Commercial Court of Appeals, Division C, March 21, 2019). With regards to universal successions (regulated under Articles 2277-2531 of the Civil and Commercial Code), the general rule is that the heirs can benefit from all the rights and actions of the deceased person, except for those not transmissible by succession (*e.g. intuitu personae* rights). In this sense, an arbitral tribunal sitting in Mar del Plata, Province of Buenos Aires, stated that certain contractual provisions − which included an arbitration agreement − were valid, concluded on the interest of all parties, and shall be respected by the heirs of the deceased (to whom the rights and obligations are transmitted), unless there is a unanimous agreement between the parties and the heirs to leave those aside (*Bidart de Olivieri v. Delgado de Gimenz, María*, arbitral tribunal of the Mar del Plata Bar Association, November 24, 1998).

II.1.b	If your answer to question II.1 is no, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.		–
II.2	**Can incorporation by reference (i.e., where a contract incorporates an arbitration clause contained in a separate document) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?**	**Yes**	–
II.2.a	If your answer to question II.2 is yes, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.		Article 18 of the LACI reproduces Article 7 (Option I), paragraph 6, of the UNCITRAL Model Law 2006 and expressly admits *incorporation by reference* in the following words: "[t]he reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract." In this regard, it was said that the incorporation of the arbitration clause into the contract will occur if only one condition is met: that "the reference is such as to make that clause part of the contract". This clarification aims to distinguish the mere "reference" to a document from "incorporation by reference". What is required is the unequivocal will of the parties entering into a contract to adopt as their own the stipulations contained in another contract or document, assuming the rights and obligations enshrined therein. (Roque J. Caivano & Natalia Ceballos Ríos, TRATADO DE ARBITRAJE COMERCIAL INTERNACIONAL ARGENTINO: COMENTARIO EXEGÉTICO Y COMPARADO DE LA LEY 27.449, Buenos Aires, La Ley, 2020). For domestic arbitrations, similar provisions can be found in Article 1650, paragraph 2, of the Civil and Commercial Code. In a recent case, the claimant, a renowned architectural firm in Argentina and Latin

	[Please provide your response in the comments column and limit it to one paragraph.]		America, filed a lawsuit before the Commercial Courts of the City of Buenos Aires for the collection of fees in connection with a large real estate project in Argentina. The respondents filed a motion for lack of jurisdiction, by virtue of an arbitration clause included in certain trust agreements in relation to this project. These contracts expressly referred to the claimant as the one in charge of the project, the documentation and the management of the work, even stipulating the percentage corresponding to its professional fees. In turn, the claimant argued that, although they had been in charge of the project referred to in such contracts, they were not a party to the relationship therein, nor had they adhered to its contractual clauses. The Court finally upheld its jurisdiction. Although in those contracts it was expressly provided that the claimant would be in charge of the project, the documentation and the direction of the work (even stipulating the percentage corresponding to its professional fees), it agreed that the claimant was not a party to those agreements, nor was it proven that it had adhered to the clauses inserted therein. Likewise, it noted that the arbitration clauses of these contracts provided for arbitration in respect of any controversy arising between the parties, without even including the issues related to the claimant's work. In addition, it specified that a trust agreement usually involves a "plurilateral" contractual relationship in which there are "indissolubly intertwined" commitments, although this does not justify extending the scope of an arbitration clause to third parties. Finally, the Court pointed out that the contract entered into by the claimant in relation to this project provided for the commercial courts' jurisdiction, and not for arbitration (*Arq. M. R. Á. and Asociados SRL v. F. S.A.*, Commercial Court of Appeals, Division G, April 22, 2019).
II.2.b	If your answer to question II.2 is no, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		–
II.3	**Can an arbitration clause commit a non-signatory third-party beneficiary of a contract**	**Yes**	

	to international arbitration in the country in which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?		
II.3.a	If your answer to question II.3 is yes, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		Articles 1025-1030 of the Civil and Commercial Code contemplate the incorporation of third parties to the contract and, particularly, the stipulation in favor of a third party. In this sense, Article 1027 states that "[i]f the contract contains a stipulation in favor of a third party beneficiary, determined or determinable, the promisor confers the rights or powers resulting from what he has agreed with the promisee… The third party acceptor obtains directly the rights and powers resulting from the stipulation in his favor". As Born remarks, "[i]n determining whether a third party is benefitted by an arbitration agreement, the decisive issue is whether the signatories intended to confer that benefit on the third party (*i.e.*, the right to invoke the arbitration agreement) … however, a third party may be bound by an arbitration agreement if it asserts rights that it enjoys by virtue of its status as a third party beneficiary to a contract containing an arbitration agreement; in these instances, the relevant intentions of the signatories will focus on the underlying contractual rights" (Gary Born, INTERNATIONAL COMMERCIAL ARBITRATION, The Hague, Kluwer Law International, 2014, p. 1457). Accordingly, even though there is no relevant jurisprudence found regarding this subject in the field of international arbitration in Argentina, both courts and arbitral tribunals could resort to these provisions (in addition to those regarding the general principles of law, such as good faith) to extend the arbitration agreement to a *non-signatory* third-party beneficiary of a contract.
II.3.b	If your answer to question II.3 is no, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		–

II.4	**Can a theory of agency (i.e., where an agreement containing an arbitration clause has been entered into by a person who expressly or impliedly did so as a representative of a non-signatory) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?**	**Yes**	–
II.4.a	If your answer to question II.4 is yes, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		Agency is regulated under Articles 1479-1501 of the Civil and Commercial Code. In general, a person may intervene in the celebration of a contract as a broker or an agent (Article 1023 of the Civil and Commercial Code), although the 'real parties' are those represented by them. In a well-known case which involved a broker under certain grain purchases agreements, the Argentine Supreme Court of Justice concluded that the arbitration agreement "[o]nly compels the contracting parties, and cannot be extended to the particular legal relationship between the seller and the broker", although the latter acted on behalf of the seller and was actively involved in the execution of the contracts (*Basf Argentina S.A. c/ Capdevielle Kay y Cía. S.A.*, Argentine Supreme Court of Justice General Attorney, March 9, 2004). However, the 'key' to reach this conclusion was the same text of the arbitration agreement, which established the arbitral jurisdiction for disputes arising between the seller and buyer, but not the broker. Following this decision, the grain and brokerage sectors took the lead and modified some internal regulations to bind the brokers to arbitration. For example, the Federal Grain Exchange Chambers approved its rules and commercial uses, contemplating that the broker's signature and/or participation in the contract shall imply its acceptance of the arbitral jurisdiction (Article 9, Intersectoral Act, Federal Grain Exchange Chambers, March 3, 2016). Naturally, this may now lead to its incorporation to arbitration even though it remains as a *non-signatory* party.

II.4.b	If your answer to question II.4 is no, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		–
II.5	**Can a theory of estoppel, good faith, or abuse of right (i.e., where a party benefitting from, and acting in accordance with, a contract containing an arbitration clause is estopped from claiming that it is not bound by certain provisions of the contract) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?**	**Yes**	–
II.5.a	If your answer to question II.5 is yes, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which		As mentioned above, Articles 9-11 and 1067 of the Civil and Commercial Code (among many others) embrace the principles of good faith and fair dealing, and condemn abuse of rights and contradictory behavior. Moreover, Article 7, paragraph 7, of the LACI states that the observance of good faith shall be specially taken into account in the interpretation and integration of such law. The importance of these principles in resolving the extension of an arbitration agreement to *non-signatories* can be seen in the decision in *Camaedu S.A. c. Envases EP S.A*. In this case, the Commercial Court of Appeals upheld the lack of jurisdiction defence filed by the guarantor and confirmed the arbitral tribunal's jurisdiction, mainly based of the principle of good faith and the legitimate expectations of the parties (*Camaedu S.A. v. Envases EP S.A.*, Commercial Court of Appeals, Division

	parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		C, October 19, 2010). In addition, the Court appreciated the broad language of the arbitration agreement, as well as the fact that the *non-signatory* guaranteed the entire share purchase agreement without making any objections or exclusions to the arbitration agreement. Furthermore, the Court highlighted that, under Argentine law (in particular, Article 1587 of the Civil and Commercial Code), the guarantor may raise all defences of the principal debtor – who in this case was bound by the arbitration agreement –, regardless of whether they were waived or not by the latter.
II.5.b	If your answer to question II.5 is no, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		–

II.6	**Can "implied consent" (i.e., where a party's active participation in the negotiation, execution, performance and/or termination of a contract containing an arbitration clause provides evidence for its intent to consent to arbitration) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?**	**Yes**	–
II.6.a	If your answer to question II.6 is yes, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		As taught by Hanotiau, "conduct as an expression of implied consent … is still the basis on which most courts and arbitral tribunals reason to decide on the 'extension' [of the arbitration agreement]". Moreover, "consent to arbitrate may sometimes be implied from the conduct of a company of the group – although it did not sign the relevant arbitration agreement – by reason of its 'implication' in the negotiation and/or the performance and/or the termination of the agreement containing the arbitration clause and to which one or more members of its group are a party; on the other hand, the sole fact that a non-signatory company is part of a group of companies, one or more other members of which have signed the agreement containing the arbitration clause, is not *per se* a circumstance sufficient to permit the 'extension' of the clause to the non-signatory" (Bernard Hanotiau, *Non-signatories in International Arbitration: Lessons from Thirty Years of Case Law*, in Albert Jan van den Berg (ed), INTERNATIONAL ARBITRATION 2006: BACK TO BASICS?, The Hague, Kluwer Law International, 2007, pp. 342-344). In Argentina there is no specific provision regulating the *group of companies'* doctrine (as in most jurisdictions). However, the local jurisprudence has 'built' its framework and reached a similar reasoning to the above in *Acerra Nicolás Rubén v. Bapro Mandatos y Negocios S.A.* In this case, although the Commercial Court of Appeals finally set aside the arbitral award rendered by an arbitral tribunal of the Buenos Aires Stock Exchange that extended the arbitration agreement to a holding company (*non-signatory*) based on the fact that it shared authorities, registered office and consolidated balance sheets with the signatory party, it is important to remark that it did not reject the possibility of applying this doctrine under Argentine law. In fact, the Court held in its *obiter dictum* that "[e]ven though the legal personality of each individual company is an intensively protected principle under Argentine law system, this does not mean that the 'group of companies' doctrine has no place in Argentine arbitration", provided that there is an active participation of the *non-signatory* in the celebration, conclusion and/or execution of the contract (*Acerra Nicolás Ruben v. Bapro Mandatos y Negocios S.A.*, Commercial Court of Appeals, Division F, April 25, 2018), as was early recognized by the *Cour d'appel de Paris* in the famous *Dow Chemical* case (1983).

II.6.b	If your answer to question II.6 is no, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		–
II.7	**Can piercing the corporate veil or the alter ego doctrine (i.e., where, typically due to misuse or abuse of rights or fraud, the separate legal form of a non-signatory that uses its dominating authority over a signatory is disregarded so that both are treated as a single entity) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?**	**Yes**	–
II.7.a	If your answer to question II.7 is yes, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence		In Argentina, Article 54, paragraph 3, of the Companies Law, and Article 144 of the Civil and Commercial Code, address the *piercing of the corporate veil* doctrine. In essence, both provisions require fraud, abuse of rights or a misuse of the company, tending to violate the law, public order or good faith, or to frustrate third party rights. In these cases, generally the partners and controllers that participate in the aforementioned actions must respond directly, jointly and unlimitedly for the damages caused. However, it should be noted that with regards to commercial matters the local courts have generally adopted a restrictive approach in order to disregard the separate legal personality of the company under question. In the already mentioned ICC Case No. 20674, an arbitral tribunal based in Buenos Aires,

	highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		Argentina held that "according to Article 54 of the Companies Law ... the effects of a contract … including [those effects related to] the arbitration agreement … may be imputed to those individuals who, in their capacity as controllers of a company, executed a fraudulent maneuver resorting to the creation and/or use of various companies with the purpose of violating the contractual obligations of one of the contracting parties." Likewise, the arbitral tribunal specified that "the alleged controllers of a company may be the same controllers of other companies involved and/or beneficiaries of the alleged illegal acts". Finally, the arbitral tribunal pointed out that "the consent of the partners or controllers is not required for the application of Article 54", as said provision "is the exception to the requirement of consent for the extension of an arbitration agreement to *non-signatories*." After rendering the partial award that extended the arbitration agreement to several *non-signatories*, the latter went before the commercial courts to set it aside, as they claim there was no valid arbitration agreement biding on them, nor evidence of control and fraud to extend the arbitration agreement. However, on July 18, 2019, the Commercial Court of Appeals rejected the set aside petitions raised by the defendants and confirmed the award (*Pott, Alfredo Carlos v. Patagonia Financial Holdings LLC*, Commercial Court of Appeals, Division F, July 18, 2019). Furthermore, on October 17, 2019, the Commercial Court of Appeals finally rejected an appeal filed against such decision (*Pott, Alfredo Carlos v. Patagonia Financial Holdings LLC and others*, Commercial Court of Appeals, Division F, October 17, 2019). It is worth noting that a similar approach was recognized in another case involving the *group of companies* doctrine, where in its *obiter dictum* the tribunal also emphasized in the need of "some kind of important legal pathology – *i.e.* fraud – or a misuse of legal forms and instruments" to extend the arbitration agreement to *non-signatories* (*Acerra Nicolás Ruben v. Bapro Mandatos y Negocios S.A.*, Commercial Court of Appeals, Division F, April 25, 2018).
II.7.b	If your answer to question II.7 is no, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		–

II.8	**In the country for which you are reporting, are there any other legal theories that can be used to commit a non-signatory to international arbitration?**	**Yes**	–
II.8.a	If your answer to question II.8 is yes, please: • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. [Please provide your response in the comments column and limit it to one paragraph.]		In addition, some local courts dealt with the particular case of the guarantors (substantially regulated under Articles 1574-1598 of the Civil and Commercial Code). As Hanotiau comments in his review of the *Compania Espanola de Petroleos, S.A. v. Nereus Shipping, S.A.* ruling, "the determination of the issue whether a guarantor is bound by an arbitration clause contained in the original contract necessarily turns on the language chosen by the parties in the guarantee" (Bernard Hanotiau, COMPLEX ARBITRATIONS: MULTIPARTY, MULTICONTRACT, MULTI-ISSUE AND CLASS ACTIONS, The Hague, Kluwer Law International, 2006, pp. 30-31). Similarly, in *Camaedu v. Envases EP*, the Commercial Court of Appeals appreciated the fact that the *non-signatory* guaranteed the entire share purchase agreement without making any objections or exclusions to the arbitration agreement, as well as the broad language of the latter.
III. Enforcement of an Arbitral Award against a Non-Signatory		**(Yes/No /NA)**	**Additional comments, if any.**
III.1	**Have there been court cases in the country for which you are reporting where a party has objected to the enforcement of an award, on the basis that the arbitral tribunal extended the arbitration clause to one or more non-signatories?**	**Yes**	In Argentina, Articles 102-105 of the LACI (which are almost identical to Articles 35-36 of the UNCITRAL Model Law 2006) now govern the recognition and enforcement of an award rendered in an international arbitration, except when some treaty is applicable (according to Article 75, paragraph 22, of the Argentine Constitution, as well as Article 1 of the LACI), such as the New York Convention or the Panama Convention.
III.1.a	If your answer to III.1 is yes, please explain which provision(s) of the New York Convention, or any other bilateral or multilateral convention on the enforcement of arbitral awards, was (were) relied		In *Armada Holland Bv Schiedam Denmark v. Inter Fruit S.A.*, the Civil and Commercial Federal Court of Appeals took into account Article II, paragraphs 1 and 2, and Article IV, paragraph 1(b) of the New York Convention, to establish that the arbitration agreement was not in-writing, and that it was included in a charter party to which both the claimant and the respondent were *non-signatories*.

	upon as the basis for the application/objection. [Please provide your response in the comments column and limit it to one paragraph.]		
III.1.b	If your answer to III.1 is yes, please explain whether set-aside/enforcement was finally granted or refused, and the court's reasons for reaching this result. [Please provide your response in the comments column and limit it to one paragraph.]		As commented by professors Caivano and Noodt Tauqela, in the above-mentioned case, Armada Holland Bv Schiedam Denmark entered into a charter party − which included an arbitration agreement − with Inter Fruit S.A., to transport certain fruits in a vessel named Ice Sea. However, a short time after that, Armada sent a new communication to Inter Fruit indicating that the Ice Sea vessel should be replaced by another named MV Ice Fern or a substitute, "maintaining all the conditions of the charter party". Once a conflict arose between the parties, and then an arbitral tribunal based in London, England, condemned Inter Fruit to pay a certain amount of money, the award came to be executed in Argentina. When faced to decide on this issue, the Court of Appeals held that the arbitration agreement included in the charter party was not applicable, since "it is unacceptable to claim that [it] has effects on an alleged agreement on a different vessel … of which no evidence was provided by the respondent in order to demonstrate its acceptance." The Court also held that the New York Convention requires the judge to verify the legal relationship between the parties and the in-writing requirement, noting that this examination is not merely a formality, but rather a necessary step to determine the real existence of an arbitration agreement (*Armada Holland Bv Schiedam Denmark v. Inter Fruit S.A.*, Civil and Commercial Federal Court of Appeals, Division II, May 8, 2007; Roque Caivano, *Control Judicial en el Arbitraje*¸ Buenos Aires, Abeledo Perrot, 2011, pp. 339-340). However, it should be noted that "the Court of Appeals' interpretation of the form requirements under the Convention is not universally accepted in Argentina. Other courts had a more flexible understanding of the 'agreement in writing' required by Article II(1) of the Convention" (María Blanca Noodt Taquela, *Interpretation and Application of the New York Convention in Argentina*, in George A. Bermann (ed.), RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS - THE INTERPRETATION AND APPLICATION OF THE NEW YORK CONVENTION BY NATIONAL COURTS, Cham, International Academy of Comparative Law & Springer, 2017, p. 86).
III.2	**Have there been court cases in the country for which you are reporting in which the enforcement of an award was requested against a non-signatory third party (a company/individual/state that was a non-signatory to the arbitration agreement and not a**	**No**	–

	party to the arbitral proceedings/award)? **[Please provide your response in the comments column and limit it to one paragraph.]**		
III.2a	If the answer to III.2 is yes, please explain on what legal basis the enforcement was requested. [Please provide your response in the comments column and limit it to one paragraph.]		–
III.2b	If the answer to III.2 is yes, please explain whether the enforcement was finally granted/refused and the court's reasons for reaching this result. [Please provide your response in the comments column and limit it to one paragraph.]		–
IV. Miscellanea		**(Yes/No /NA)**	**Additional comments, if any.**
IV.1	**Is there anything else that a party considering the issue of the extension of an arbitration clause to a non-signatory should take into account with respect to the country for which you are reporting?** **[Please provide your response in the comments column and limit it to one paragraph.]**	**Yes**	Some of the cases mentioned before also faced the issue of deciding the extension of an arbitration agreement when included in a contract entered into by adhesion. According to the Argentine law, a contract by adhesion – "regardless of its purpose" – is excluded from arbitration (Article 1651 (d) of the Civil and Commercial Code). However, recent jurisprudence has 'relativized' this prohibition, and considered that the incorporation of an arbitration agreement in a contract of adhesion was not invalid *per se* (*Servicios Santamaria S.A. v. Energía de Argentina S.A.*, Commercial Court of Appeals, Division C, May 24, 2018; *Telcel S.A. v. Cablevisión S.A.*, Commercial Court of Appeals, Division C, March 21, 2019; *Abre S.R.L. v. Telecom Personal S.A.*, Commercial Court of Appeals, Division A, August 30, 2019). Despite the latter, some local courts have still rejected arbitral jurisdiction based on the lack of parity of the contract among the parties (*Travel CBA S.R.L. v. Samsonite Argentina S.A.*, Commercial Court of Appeals, Division E, August 27, 2019), and others have even said that Article 1651 (d) constitutes a principle of public policy (*Yasa S.R.L. v. Telecom Personal S.A.*, Commercial Court of Appeals, Division F, August 30, 2016).
IV.2	**Is there anything else that a party considering trying to**	**Yes**	Following the above, it should be noted that this jurisprudential trend involving contracts of adhesion is of paramount importance and has tight

	enforce a foreign arbitral award against a non-signatory should take into account with respect to the country for which you are reporting? **[Please provide your response in the comments column and limit it to one paragraph.]**		contact with the recognition and enforcement of foreign awards in Argentina, as may prevent (or not) their recognition according to Article V, paragraph 2 (a), of the New York Convention; Article 5, paragraph 2 (a), of the Panama Convention; and Articles 99 (b.I) and 104 (b.I) of the LACI, all of which provide for the lack of *objective arbitrability* or arbitrability *ratione materiae* – according to Argentine law – for setting aside an award or denying its recognition and/or enforcement.

* * *