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IBA ARBITRATION COMMITTEE

Arbitration Guide

VENEZUELA

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I. Background

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

Throughout the past two decades, arbitration and other conflict resolution methods have become more attractive alternatives other than resorting to local courts due to time efficiency and transparency concerns. Across Latin America and specifically in Venezuela, arbitration has become a go-to alternative for the resolution of controversies regarding private matters.

Some of its advantages, and the reasons why we have seen its increasing use, are: (i) time efficiency, especially when compared to traditional court proceedings; (ii) the possibility to appoint the arbitrators of each case, being able to select someone with specific know-how on the conflicted matter; and (iii) flexibility to adapt to complex disputes when it comes to evidence and multi-party structures.

Arbitration has some perceivable disadvantages, in which we can find that (i) it is very costly, particularly in Venezuela since there are no court fees, and (ii) the lack of a sizeable pool of skilled arbitrators, for it being a very small community within the Venezuelan legal market.

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

Commonly, in Venezuela the most used kind of arbitration is institutional arbitration. The institutions that stand out on this matter are the Centro de Arbitraje de la Cámara de Caracas (CACC) and the Centro Empresarial de Conciliación y Arbitraje (CEDCA).

Venezuelan Commercial Arbitration Law (LAC, for its Spanish acronym) does not differentiate between domestic and international arbitration; however, from a practical standpoint of view, domestic arbitration is more commonly used within Venezuelan, but international arbitration is not scarce at all.

(iii) What types of disputes are typically arbitrated?

Usually, the typical arbitrated matters in Venezuela refer to contractual issues, particularly contract enforcement or damage claims as a result of contractual breach. In regard to specific matters, in the past few years, disputes related to construction, sale of goods and commercial leasing have been common disputes arbitrated within Venezuelan arbitration centres.

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

According to the statistics of the Venezuela arbitration centres, standard arbitration proceedings normally last between eight and eighteen months. If one of the Parties were to challenge the arbitration award, the whole process can last up to five years.

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

Venezuela's LAC does not limit the possibility for a foreign national to be an arbitrator, and this seems to be the understanding of the Venezuelan Arbitration centres, since foreign nationals are featured in their respective arbitrator lists. However, law practice in Venezuela is subjected to what is established in the Advocates Law, and all lawyers must abide by its considerations, as well as the migratory conditions that all foreigners face when coming to Venezuela.

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?

In Venezuela, the LAC is the municipal law that governs arbitration proceedings, which, as explained above in Section I (ii), does not differentiate if the arbitration is domestic or international. This law is based on UNCITRAL Model Law with minor changes and additions.

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

LAC does not discriminate between domestic and international arbitration.

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

Venezuela has adopted the following Conventions:

- The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), adopted on 29 December 1994;
- The Inter-American Convention on International Commercial Arbitration (the Panama Convention) on 22 February 1985;
- The Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (the Montevideo Convention) on 15 January 1985
- 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, arbitrators deal with this matter as a Venezuelan judge would. There are also mandatory rules of application of Venezuelan law in some matters (for instance, regarding 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 the LAC, an arbitration agreement must comply with the following requirements:

- It must be in writing.
- It may include one or more instruments.

- For adhesion contracts, consent must be express and independent. (Pursuant to Ruling No. 192 of the Constitutional Chamber of the Supreme Tribunal of Justice (TSJ for its initials in Spanish).
- In matters regarding the interests of minors, a judicial authorization is required whenever an issue is submitted to arbitration.
- It must be 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.
- When at least one of the parties is a legal entity in which the State or its Autonomous Agencies holds fifty (50) per cent 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 effectively conclude an arbitration agreement, following the requirements previously mentioned (Section III (i) above), the courts must recognize their lack of jurisdiction over any of the disputes related to the agreement, since arbitration is one of the few exceptions of the ordinary competence of courts (*see* Case Law 1.209 of the Political-Administrative Chamber of the Supreme Tribunal of Justice from 19 June 2006).

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

Multi-tier clauses are indeed very common in Venezuelan law practice. There is international jurisprudence that maintains that, until all the previous steps to the arbitration are fulfilled, there is no jurisdiction for the execution of the arbitration agreement. Certain jurisprudence establishes that there is indeed jurisdiction to hear the case, however it becomes a matter of admissibility for the arbitration tribunal. This being so, in practice and in our experience the parties tend to challenge the jurisdictional aspect of this matter, making the inadmissibility claim as a subsidiary argument, rather than the admissibility of the claim being the main cause.

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

Venezuelan law does not have specific requirements for a valid multi-party arbitration agreement, aside from complying with the general requisites for arbitration agreements (explained in Section III (i) above).

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

By principle, the parties are free to agree on any consideration that remains within the general requisites for arbitration agreements in Venezuela. Indeed, one of the parties may choose to opt for arbitration over regular jurisdiction if, once the ordinary court proceeding has started, the said party requests to move the conflict to arbitration if the arbitration agreement allows it (*see* CEDCA´s Arbitration Award No. 053-10 from 8 June 2011). However, Venezuelan courts would not be likely to enforce a clause which grants a party to take a unilateral decision regarding jurisdiction since it could be seen as unfair or not complying with the requirement aforementioned of an express and unequivocal agreement of the parties excluding the jurisdiction of judicial courts.

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

Generally, Venezuelan law only binds signatories of the arbitration agreement to its compliance. However, there are cases in which non-signatory third parties have been brought to the proceedings under the premise that they have implicitly consented their subjection to the arbitration agreement, for example, when it comes to a subrogatory claim for unilateral termination and indemnification for damages (*see* Case Law from the Political-Administrative Chamber of the Supreme Tribunal of Justice from 12 December 2007. Hesperia Enterprises Sucursal Venezuela VS. Corporación Hotelera Halmel).

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

We have no knowledge of cases where Venezuelan courts have interfered in the selection of the governing law for the arbitration agreement. However, if it were necessary to determine the applicable law to the contract and other elements surrounding the arbitration agreement, according to the Venezuelan Private International Law Status the court shall consider all the objective and subjective elements arising from the contract in order to determine such Law, bearing in mind also the general principles of business law accepted by international organizations, as well as the conflict-of-law rules applicable to the contract and the arbitration agreement.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

We have no knowledge of court's cases where this has been discussed. However, we are aware of some arbitral proceedings where differentiation have been made without any challenge from the parties.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

The first arbitration award under Venezuelan jurisdiction that revolves around these matters is yet to be decided, however there are no restriction to doing so.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

Yes, the consistent criteria of the Supreme Tribunal of Justice is that when the arbitration agreement does not show the unquestionable, indubitable and explicit will of the parties to be subjected to arbitration and excluding the national jurisdiction of courts, the clause is inoperable. This criterion has been criticized by some scholars as a breach of the competence-competence principle.

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?

In Venezuela, any controversy that can be privately settled between parties, with the capacity to do so, can be subject to arbitration. On the contrary, those matters that are not capable of being privately settled by parties cannot be decided in arbitration. In this regard, the LAC provides that the following disputes cannot be decided in arbitration:

- 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;
- Disputes directly concerning the sovereign attributions or functions of the State, or governmental persons or entities;

- Disputes involving the civil status or capacity of persons;
- Disputes regarding items or rights of legally disabled persons without prior judicial authorization; and
- 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.

Moreover, the Venezuelan Law of International Private Law establishes some limitations that are exclusive to the jurisdiction of Venezuelan courts, which are:

- In cases where the disputed issue relates to rights in rem on real property situated in the territory of the Republic;
- Matters that cannot be subjected to settlement; and
- Matters affecting the essential principles of Venezuelan public policy.

Additionally, the Venezuelan Constitution, in its article 151 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 a court verifies the existence of an arbitration agreement, complying with all the requisites for its effectiveness (see Section III (i) above), the court must refer the case to the arbitration tribunal, upon express challenge of jurisdiction by the defendant. However, it is possible that the defendant waives its right to arbitrate by being active in court proceedings without challenging its jurisdiction. The waiver can be explicit, when there is clear acceptance of court jurisdiction by the relevant party, or tacitly when the relevant party presents arguments in court without raising jurisdictional issues, as contemplated in article 45 of the Venezuelan Law of International Private Law. Some scholars have criticized this rule of the courts, since once the parties have concluded an arbitration agreement, it should be considered binding and the effect of the competence-competence principle established in the LAC should apply.

(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?

Arbitral tribunals are indeed able to decide over their own jurisdiction, including matters regarding the validity of an arbitration agreement, according to the principle of competence-competence enshrined in LAC. Venezuelan jurisprudence recognizes the competence-competence principle across several Supreme Tribunal decisions (the most recent one that we are aware of being from the Constitutional Chamber of the Supreme Tribunal of Justice No. 962, from 1 August 2014).

The sole legal remedy for the review of arbitration procedure is the annulment of the award. Notwithstanding the fact that the unique legal control the courts can exercise over the award in the annulment procedure, the Constitutional Chamber of the Supreme Tribunal of Justice ruled that in special circumstances in which the Venezuelan Constitution is breached by the arbitral tribunal, the Constitutional jurisdiction may intervene in the proceeding requesting the file to decide it.

V. Selection of Arbitrators

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

Within institutional arbitration, LAC provides that arbitration centres shall have a list of at least twenty arbitrators. Initially, parties are bound to select the arbitrators from such lists of arbitrators, according to the rules of the arbitration centre chosen to the effects of the proceeding in question. However, parties are free to agree to any other manner of appointing arbitrators.

In ad-hoc arbitration, in accordance with the LAC, the parties can appoint any number arbitrators, as long as the arbitral tribunal is formed by an odd number of arbitrators. If the parties are not able to agree on the number, the number of the arbitrators shall be three arbitrators. The appointment of the arbitrator shall be made jointly by the parties. However, they can delegate the appointment to an appointing authority.

If the parties were unable to agree on the arbitrators, each party shall appoint one and the two arbitrators appointed shall choose a third, whom shall act as presiding arbitrator. If any party refuses to appoint its arbitrator or if the two arbitrators fail to agree on the third, they may apply to the competent court or to the appointing authority to select the arbitrator.

If the parties were unable to appoint a sole arbitrator, a competent court or the appointing authority shall make the appointment at the request of one of the parties. Arbitrators shall accept the position in writing within the ten days following the notification of their appointment. 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 or she 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?

In ad-hoc arbitration, arbitrators can be challenged or must refrain from participation in a proceeding when one of the grounds established in the Venezuelan Civil Procedural Code is present (*see* articles 35 and 36 of the LAC). When it comes to institutional arbitration, both the CACC and CEDCA have dispositions that impose upon arbitrators a duty to remain impartial and independent from the parties when carrying out an arbitration proceeding (article 49 of CACC's Rules of Procedure and article 23 of CEDCA's Rules of Procedure).

(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 Venezuela, the usual practice in ad-hoc arbitration is to select practicing lawyers as arbitrators at-law for the case, even though national legislation does not impose any limitations regarding this matter. Arbitration centres, on the other hand, have their own arbitrators lists and establish their own requirements to become arbitrators according to their own guidelines. These lists include lawyers and non-lawyers and the parties are free to choose whomever they prefer.

In this regard, the arbitration centres in Venezuela have a set of ethical rules which the arbitrators of the lists of each centre must comply with whenever they are appointed to serve as arbitrators to an arbitral tribunal.

(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?

Each arbitration centre has their own ethical code, and the LAC refers to the Venezuelan Civil Procedural Code, setting a minimum standard regarding codes of conduct and ethics when practicing in arbitration. In practice, arbitrators in Venezuela try to comply with the IBA's and the Guides of Good Practices of the Spanish and Iberoamerican Club of International Arbitration requirements regarding this matter.

VI. Interim Measures and Emergency Arbitration

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

Arbitral tribunals may order all interim measures that are deemed necessary, when requested by the parties and with no specificities regarding formalities, to guarantee the effectiveness of the award. They may ask for the support of ordinary courts for their assistance in the enforcement of these interim measures. This is provided by article 26 of the LAC and is a criterion that has been maintained by the Venezuelan Supreme Court of Justice, as seen in the Supreme Tribunal of Justice Political-Administrative Chamber's Case Law No. 2.161 from 10 October 2001.

(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 the constitution of the arbitral tribunal?

Venezuelan courts can grant interim measures even when the dispute is subject to an arbitration agreement, provided that the applicable rules of the corresponding arbitration centre do not contemplate a special mechanism to request provisional relief. However, the arbitration tribunal is the one that maintains complete jurisdiction over the case, which entails the power to issue provisional reliefs and entails that such measures cannot be ordered by the court once the arbitration tribunal is fully constituted.

Upon constitution of the arbitral tribunal, all issues regarding the controversy must be submitted to the arbitration tribunal. Moreover, there may exist constitutional remedies for which the arbitration tribunal may order special decisions regarding the arbitral proceedings.

(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?

In accordance with Venezuelan law, the arbitration tribunal, or the parties either jointly or separately, may request assistance of a competent ordinary court in the filing of the necessary evidence or enforcing a provisional relief. In general, ordinary courts may assist arbitration tribunals in all extents needed.

(iv) Are decisions by emergency arbitrators enforceable in your country?

Yes. The decisions of the emergency arbitrators are considered interim awards, and thus enforceable by competent courts.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

In principle, there are no anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings, but some scholars argue that there could be constitutional remedies for these ends.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

Yes, as established in this section, (Section VI (iii)), ordinary courts may assist arbitration tribunals in any matters necessary for the proceedings, including the disclosure of documents. Its incompatibility with the traditional evidential procedure does not make this impossible if it is in the benefit of attaining justice.

VII. Disclosure/Discovery

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

Venezuelan procedural laws do not contemplate disclosure or discovery as seen in the common law system. However, the parties can agree on this matter when it comes to their arbitration proceedings and the arbitration tribunal can order the disclosure or discovery of documents if deemed necessary.

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

Venezuelan law does not expressly limit the possibility of an arbitrator to order the disclosure of documents. Applicable limitations will depend on each and every case, and they would be those which apply to natural judges. Additionally, article 7 of the Asociación Venezolana de Arbitraje's Rules for Evidence contemplates a procedure for the exhibition of documents.

(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 must 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. Likewise, arbitrators and arbitration centres must maintain confidentiality in all the proceedings they participate in, unless agreed otherwise by the parties (*see* article 42 of the Commercial Arbitration Law, article 10 of the CACC Rules of Procedure and article 42.3 of CEDCA Rules of Procedure)

(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? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

It is not very common, however, we have observed an increasing use of the IBA Rules on the Taking of Evidence in International Arbitration over the past decade in arbitration in Venezuela. Additionally, the Asociación Venezolana de Arbitraje's Rules for Evidence are inspired by the IBA Rules on the Taking of Evidence in International Arbitration, which shows that this is an instrument held in high regard in the country.

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

Venezuelan law gives arbitral tribunals ample freedom to govern their hearings, so do the rules of procedure of each of the arbitration centres in the country.

(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. Generally speaking, evidence gathering is carried out based on the principles established for it in the Venezuelan Civil Procedural Code. In practice, witnesses are examined in a direct oral form and both parties and arbitrators are able to interrogate the witnesses. Moreover, as mentioned in this Section (Section IX (i)) above, we have seen an increasing use of the IBA Rules on the Taking of Evidence in International Arbitration for the production of evidence in arbitration proceedings.

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

The LAC does not set forth any rules regarding witnesses. However, the Venezuelan Civil Procedural Code sets forth several rules in this regard that may be used as important guidelines for arbitration proceedings conducted in Venezuela.

The general rule in the Code of Civil Procedure is the following: any person especially connected with one of the parties cannot appear as a witness in favour of such party. Usually, regarding this matter, in absence of any applicable soft law rules chosen by the parties, arbitrators usually closely observe the arbitration's general principles and the rules established for witness selection in the Civil Procedural Code.

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

Yes, depending on the appraisal of the presented evidence there could be a difference, even though there is no specific rule in arbitration that determines this appraisal. However, the Venezuelan Civil Procedural Code does establish a set of rules and prohibitions regarding the testimony of unrelated witnesses, which would be applicable depending on the view of the parties and/or the arbitral tribunal.

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

The LAC 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.

(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?

In our experience, it is uncommon that an arbitration tribunal appoints experts besides the ones appointed by the parties. However, we are aware of some cases in which the tribunal has decided to appoint experts to inform the arbitral tribunal on specific issues.

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

There have been cases that we are aware of, however, it is uncommon.

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

Yes, CACC's and CEDCA's Rules of Procedure consider this in articles 59 and 27, respectively. While CACC does not specify, CEDCA does require that the arbitral secretary is a lawyer. While it is perfectly possible and the role of the arbitral secretary is considered in the arbitration centres' Rules of Procedure, we are not aware of their use under such rules. However, in institutional arbitrations the functions of the secretary are fulfilled by the personnel of the arbitration centre. In ad hoc arbitrations, the tribunal, with the agreement of the parties, may decide who shall oversee such duties.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

There are no ethical codes or specific professional standards applicable specifically to arbitration, other than those rules published by the arbitration centres. However, since most arbitrators and counsel are Venezuelan lawyers, they are subject to the ethical standards applicable to their profession and must abide by the regulations contained in other Venezuelan legal instruments regarding the ethics of their profession.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

No, they have not.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

In Venezuela, there are no hard laws regarding remote arbitration hearings. However, arbitration centres have developed some rules regarding this aspect. CACC has the Regulations for the Management of Procedures Through Electronic Means, that establishes the corresponding steps to start an online procedure with the selected arbitration centre; as well as CEDCA, which has the Guide for the Conduction of Cases Through Electronic Means, which allows users to conduct proceedings remotely.

X. Awards

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

The LAC, in articles 29, 30 and 31 establishes the following formal requirements for an arbitral award:

- The award must be in writing;
- It must be signed by the arbitrator or arbitrators. Whenever there is more than one arbitrator, the signatures of the majority will suffice, if the lack of one or more signatures and dissenting opinions are on record;
- The decision must be reasoned unless the parties have agreed to the contrary;
- The written decision must include the date on which it was passed and the place where the arbitration took place;
- 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 compliance with the contract and/or in agreement with the applicable law.

(iii) Are interim or partial awards enforceable?

As established in Section VI, 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?

Although the LAC does not set forth any formalities regarding their form and content, arbitrators can issue dissenting opinions to an arbitration award. The CACC requires the dissenting opinion to be filed in a separate document and with the dissenting arbitrator's signature, while CEDCA's Rules of Procedure allows it but does not provide for specific formalities.

(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 precisely considered in Venezuelan law, in practice, if the parties reach an agreement during the arbitration procedure, they can request the arbitral tribunal to issue an award by consent.

Other termination causes of an arbitration procedure different to an award, as established in article 33 of the LAC, are:

- When parties fail to make a timely deposit of the tribunal's costs and fees;
- By the will of the parties;
- 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?

Arbitrators must correct and/or interpret the award if one of the parties does a timely request for it (*see* article 32 of the LAC). CACC's Rules of Procedure in its article 75 grants 15 business days after the notification of the award for the parties to request correction or interpretation of the award. CEDCA's Rules of Procedure, on the other hand, establishes that the correction or interpretation request must be made within ten business days. In any given case, arbitrators are required to review the award if one of the parties requests so.

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 all or part of the costs of the proceedings, if any, as established in article 20 of the LAC, and in both arbitration centres rules of procedure.

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

All the costs and expenses reasonable and incurred by the party to whom they are granted. Usually, these costs include legal fees, the arbitration's administrative payments, arbitrator's fees, witnesses and experts' expenses if any, and any other costs and expenses related directly with the arbitration proceedings.

(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 centre (*see* articles 29, 73 and 80 of CACC's Rules of Procedure; and Title IV of CEDCA's Rules of Procedure). In ad-hoc arbitration, the decision is made by the arbitral tribunal (*see* article 20 of the LAC).

(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. Generally, 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 LAC 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 LAC sets forth the right of the parties to challenge the award. Venezuelan legislation has copied article 34 of the UNCITRAL Model Law almost identically. In fact, the LAC sets forth the following grounds for setting aside an arbitral award in its article 44:

- When the party against whom the award is being enforced demonstrates that one of the parties lacks legal capacity at the time of the arbitration agreement;
- 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;
- When the composition of the arbitral tribunal or the arbitration procedure has not complied with the law;
- When the award refers to a controversy not envisaged in the arbitration agreement, or when it contains decisions exceeding the agreement itself;
- When the party against whom the award is being enforced demonstrates that such award is not binding upon the parties, or that is 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;
- When the court called to decide on the challenge verifies that the subject matter of the dispute cannot be settled by arbitration, or that it is contrary to public policy.

Likewise, 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 (*see* article 43 of the LAC).

Formally, the challenging procedure should not be longer than one year. However, practice has shown us that the average duration of the challenge proceedings could be around five years, depending on each case.

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, article 45 of the LAC requires a bond 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? If yes, what are the requirements for such an agreement to be valid?

The parties are free to waive away their right to challenge an arbitration award. We are not aware of any cases where this has been done, however, there is a section of the doctrine that deems it impossible to waive away the right to challenge an arbitration award since this 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. CACC's Rules of Procedure contemplate the optional appeal of arbitration awards in its article 77, when this option is contained in the arbitration agreement. As far as we are aware, there has only been one case in this regard in Venezuela which was later decided within the Supreme Tribunal of Justice's Civil Cassation Chamber's Case Law No. RC726 from 21 November 2014.

(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.

(v) Is there a specialist arbitration court in your jurisdiction?

Venezuela does not have a specialist arbitration court. Venezuelan courts have been supportive of the increasing use of arbitration as a conflict resolution alternative, and have encouraged it and given arbitration some ranking within the Venezuelan judiciary system *(see* Supreme Tribunal of Justice Constitutional Chamber's Case Law No. 1.541 from 2008).

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

The arbitration tribunal, in principle, retains full jurisdiction over the matter. Given this, the tribunal can apply the law as a whole, considering that the tribunal may not award different reliefs or grant something different than what was requested by the parties.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

There are no legal immunities for arbitrators, however, both arbitration centres in Venezuela (CACC on its Rules of Procedure in article 7, and CEDCA on its Rules of Procedure in article 58.2) wave away the responsibility of its arbitrators regarding the form or substance of their criteria when elaborating the arbitration award or how they carry out the proceeding. Arbitrators are only held accountable for gross negligence or wilful intent.

(ii) Does this immunity, if any, extend to criminal liability?

No, Venezuela does not allow waiver of criminal liability, even with the consent of the parties.

XIV. 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 (see article 31 LAC). The LAC 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 LAC, as well as the New York Convention, 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 must 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, as provided in article 48 of the LAC. All arbitration awards, from any country, are deemed equivalent to 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?

Yes, when the execution of the arbitration award is requested, conservatory measures (aimed at executing the award) are granted under article 527 of the Civil Procedural Code. This entails that the assets will be seized as follows:

- If the decision has been imposed over liquid assets, the judge will order the seizure of the assets owned by the debtor that do not exceed double the amount and costs for which follow execution. If the debt were not liquidated, the Judge will order what is convenient for it to be carry out the liquidation of the debt in accordance with the provisions of article 249 of the Civil Procedural Code. Once the liquidation is verified, the embargo referred to in this article will be carried out.

- The Court may commission for the execution acts, issuing for this purpose an order of execution in general terms to any competent judge of any place where they can find the debtor's assets.
- The execution order will order:
  - That assets belonging to the debtor be seized in an amount that does not exceed twice the amount and costs for which execution is continued;
  - That the seized assets be deposited following the provisions of articles 539 and following of this Civil Procedural Code;
  - That in the absence of other assets of the debtor, any salary, wages or remuneration enjoyed by the debtor will be seized, following the scale indicated in article 598.

(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, since most of the awards are either voluntarily executed, or enforced internationally. The LAC 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 is 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.

We have no knowledge of cases in Venezuela where annulled awards are reviewed and enforced. In Venezuela, courts usually enforce the award, provided that there is a valid and enforceable award under the premises of the LAC. In this regard, the tribunal's enforcement must comply with the conditions established in the award to enforce it *(see* article 49 of the Commercial Arbitration Law).

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

Formally, the enforcement of an arbitration award should last up to six months. However, in practice, it can take up to three years, depending on each case.

XV. Sovereign Immunity

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

No, in arbitration State parties do not enjoy special immunities of jurisdiction. However, there is in fact immunity from execution (immunity from enforcement). To enforce an award against State parties, it is necessary to follow special formalities set forth in several rules, depending on the applicable law for the enforcement.

(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 Organic Law, published in the Official Gazette No. 6.013 from 23 December 2010, 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.

(iii) Are there any requirements for arbitrations involving sovereign entities?

Yes, as provided by article 4 of the LAC, when one of the parties of the arbitration agreement is a company where the Republic, the States, the Municipalities and the Autonomous Institutes of Venezuela have a participation equal to or greater than fifty per cent of the share capital or a company in which the aforementioned entities have participation equal to or greater than fifty per cent of the share capital, said agreement will require the approval of the competent statutory body and the written authorization of the Minister that oversees the company for its validity. The agreement will specify the type of arbitration and the number of arbitrators, which in no case will be less than three.

XVI. 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 1 June 1995. The relevant law was published in Official Gazette N° 35.685 of 3 April 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-nine BITs with thirty countries (Argentina, Barbados, Belarus, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, the Czech Republic, Denmark, Ecuador, France, Germany, Iran, Lithuania, Luxembourg, the Netherlands, Paraguay, Peru, Portugal, Russia, Spain, Sweden, Switzerland, Turkey, 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 30 April 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 1 November 2008, although its protection will survive for already-made investments for an additional 15 years, ie until

31 October 2023. However, investments made after 1 November 2008, will not be protected by the aforementioned BIT. Additionally, Venezuela entered into a BIT with Colombia on 3 February 2023, that is yet to be ratified.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

No, there have not been.

XVII. Resources

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

- Valera, Irene de, ed. Arbitraje comercial interno e internacional. Reflexiones teóricas y experiencias prácticas. Serie Eventos 18. Caracas, Venezuela: Academia de Ciencias Políticas y Sociales, 2005.
- Henríquez La Roche, Ricardo. El arbitraje comercial en venezuela. Caracas, Venezuela: Centro de Arbitraje de la Cámara de Caracas, 2000.
- Hung Vaillant, Francisco. Reflexiones sobre el arbitraje en el sistema venezolano. Colección Estudios Jurídicos 74. Caracas: Editorial Jurídica Venezolana, 2001.
- Brewer-Carías, Allan R., ed. Seminario sobre la Ley de Arbitraje Comercial. Serie Eventos 13. Caracas, Venezuela: Academia de Ciencias Políticas y Sociales, 1999.
- Bonnemaison, José Luis. Aspectos fundamentales del arbitraje comercial. Colección Estudios Jurídicos 16. Caracas, Venezuela: Tribunal Supremo de Justicia, 2006.
- Badell Madrid, Rafael, Álvaro Badell Madrid, Carmelo De Grazia Suárez, David Quiroz Rendón, José Ignacio Hernández G., y Renato De Sousa Pardo. Comentarios a la Ley de Arbitraje Comercial. Cuadernos Jurídicos 1. Caracas: Badell & Grau, 1998.
- García Soto, Carlos, ed. Derecho y Sociedad No. 09. Caracas, Venezuela: Universidad Monteávila, 2010.
- Alvins Santi, Ramón J., Elisabeth Eljuri, y Pedro Saghy. "Venezuela. Law business research". The International Arbitration Review, 2011.
- Saghy, Pedro. El arbitraje institucional en Venezuela. Análisis comparado de los Reglamentos del Centro Empresarial de Conciliación y Arbitraje (CEDCA) y del Centro de Arbitraje de la Cámara de Caracas. Colección Estudios Jurídicos 117. Caracas: Editorial Jurídica Venezolana, 2017.
- Sanquirico Pittevil, Fernando, y Caterina Jordan Procopio, eds. Comentarios a la Ley de Arbitraje Comercial venezolana. II vols. Caracas, Venezuela: Centro de Investigación y Estudios para la Resolución de Controversias, 2023.

(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 centres but there are no fixed dates for such events. In addition, the arbitration centre 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 centre taking into consideration updated issues of arbitration both in the Venezuelan and international community. Additionally, the Asociación Venezolana de Arbitraje organizes Arbitration Week each year around the month of July.

XVIII. 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 3 November 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.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

Not to our knowledge.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

No, there are not.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Venezuela has not implemented sanctions, however, different States (the United States amongst them) have implemented sanctions regimes against Venezuela, which has impacted significantly the Venezuelan economic market. However, recent political developments have achieved the ease of the economic sanctions imposed on Venezuela that have opened the interest of traditional markets to Venezuela.