ARGENTINA

DELLOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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   a. Framework
   b. Adherence to international treaties
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2. Judiciary
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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.
**IN-HOUSE AND CORPORATE COUNSEL SUMMARY**

In Argentina, international commercial arbitration is exclusively governed by Law 27.449 enacted by National Congress in July 2018 and applicable nation-wide. It is substantially based on UNCITRAL Model Law.

Domestic arbitration is governed by two different regulations: (i) a chapter on the Arbitration Agreement contained in the National Civil and Commercial Code enacted by the National Congress and applicable nation-wide; and (ii) regulations of the procedural aspects of the arbitration contained in the Civil and Commercial Procedural Codes (enacted by each province) and in the National Civil and Commercial Procedural Code respectively applicable in each province and in the federal jurisdiction. These procedural codes provide for the recourses available after an award has been rendered (such as annulment and clarification requests) and the terms, grounds, and conditions for their filing.

Neither Law 27.449 nor the Civil and Commercial Code govern arbitration concerning contractual or non-contractual relationships not predominantly governed by private law.

| Key places of arbitration in the jurisdiction? | Buenos Aires. |
| Civil law / Common law environment? | Civil law jurisdiction. |
| Confidentiality of arbitrations? | Not explicitly stated but parties may agree on it. |
| Requirement to retain (local) counsel? | Not necessary. |
| Ability to present party employee witness testimony? | Not forbidden. |
| Ability to hold meetings and/or hearings outside of the seat? | Yes. |
| Availability of interest as a remedy? | This matter is regarded as a part of substantive law. |
| Ability to claim for reasonable costs incurred for the arbitration? | Law 27.449 does not regulate the allocation of costs in international commercial arbitration. In domestic arbitration, the National Civil and Commercial Procedural Code provide that arbitrators must allocate costs to the losing party unless they find that the circumstances of the case do not justify it. Parties may agree on a different cost allocation (either directly or through the adoption of institutional rules). |
| Restrictions regarding contingency fee arrangements and/or third-party funding? | Local bar rules allow lawyers to agree on contingency fees for up to 30% of the value of the awarded amount. There is no provision on third-party funding. |
| Party to the New York Convention? | Yes, with reservations with regard to reciprocity and commercial disputes. |
| Other key points to note? | Φ |
| WJP Civil Justice score (2019) | 0.58 |
Argentine arbitration law distinguishes between international and domestic arbitration. International commercial arbitration is exclusively governed by Law 27.449 enacted by National Congress in July 2018 and applicable nation-wide. It is substantially based on UNCITRAL Model Law.

Domestic arbitration is governed by two different regulations: (i) a chapter on the Arbitration Agreement contained in the National Civil and Commercial Code enacted by the National Congress and applicable nation-wide since August 2015, save to disputes to which the State or any Province is a party; (ii) regulations of the procedural aspects of the arbitration contained in the provincial Civil and Commercial Procedural Codes (enacted by each province) and in the National Civil and Commercial Procedural Code respectively applicable in each province and in the federal jurisdiction.


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<td>UNCITRAL Model Law? If so, any key changes thereto?</td>
<td>Law 27.449 applicable to international commercial arbitration is substantially based on UNCITRAL Model Law with minor changes concerning the definition of “international” and “commercial” arbitration (Articles 3-4 and 6, respectively), the form of the arbitral agreement (Article 15), the identification of certain circumstances that give rise to justifiable doubts regarding the independence and impartiality of arbitrators without any evidence to the contrary being allowed (Article 28), the lack of validity of any clause that puts a party in a privileged position as to the appointment of the arbitrators (Article 24), the power of the arbitral tribunal to apply the rules of law which it determines to be appropriate if the parties have not chosen the applicable law (Article 80), the arbitrators’ duty to issue a reasoned award without the parties being allowed to agree otherwise (Article 87).</td>
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<td>Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?</td>
<td>There are no specialized courts or judges for arbitration-related matters. However, pursuant to Article 13 of Law 27.449, the national commercial courts will be the competent tribunal to exercise the functions referred to in the law with respect to arbitrations seated in Buenos Aires. The commercial courts have in general developed a deferential approach to commercial arbitration during the last years, within the context of annulment actions.</td>
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| Availability of ex parte pre-arbitration interim measures? | Ex parte pre-arbitration interim measures have been available long before the enactment of the National Civil and Commercial Code and of the Law 27.449. In fact, the National Commercial
Court of Appeals has consistently held that, even in presence of an arbitral agreement, judicial courts retain concurrent jurisdiction over interim measures aiming to protect arbitration (See South Convention Center v. Hilton International, 2008, Esparrica v. Famiq, 2010, among others). This criterion has been included in both Article 1655 of the National Civil and Commercial Code and Article 61 of Law 27.449.

Moreover, Article 1655 of the National Civil and Commercial Code expressly states that requesting such interim measures before a judicial court implies neither waiving arbitral jurisdiction nor breaching the arbitral agreement. This has been confirmed by the National Commercial Court of Appeals (See Fideicomiso Llerena Studio Aparts v. Bouwers’s, 2018).

In order for an ex-parte pre-arbitration interim measure to be admissible, the requesting party must prove the likelihood of success on the merits of the case (fumus bonis iuris) and peril in delay (periculum in mora) (See Compañía Argentina de Levaduras v. Grupo Linde Gas Argentina, 2015).

Courts’ attitude towards the competence-competence principle?

In international commercial arbitration, Article 35 of Law 27.449 provides that the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

Article 19 of Law 27.449 also acknowledges the negative effect of the Kompetenz-Kompetenz principle. It states that a court before which an action is brought in a matter which is the subject of an arbitration agreement shall refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

In domestic arbitration, unless otherwise stated in the arbitration agreement, the arbitrators have the power to decide on their own jurisdiction, which includes the power to rule on the existence or the validity of the arbitration agreement (Article 1654, Civil and Commercial Code).

Article 1656 of the Code also recognizes –more broadly than in international commercial arbitration– the negative effect of the Kompetenz-Kompetenz principle. It states that courts must refuse jurisdiction if the dispute is brought before them, unless the arbitral tribunal has not been constituted yet and the arbitration agreement is manifestly void or inapplicable. In Francisco Citibor SACI v. Walmart(2016) the Commercial Court of Appeal held that, according to this Article 1656, the courts’ intervention prior to the constitution of the arbitral tribunal is limited to cases in which the nullity of the arbitration agreement is evident and clear.

Grounds for annulment of awards additional to those based on the criteria for the recognition and
enforcement of awards under the
New York Convention?  

replicates the grounds for non-recognition provided by the New York Convention (see Article 99 of Law 27.449).

In domestic arbitration, awards issued in arbitration at law may be appealed as a First Instance Court decision unless this recourse has been waived (Article 758 of the National Civil and Commercial Procedural Code).

Unlike the appeal, the annulment recourse cannot be waived (Article 760 of the National Civil and Commercial Procedural Code).

According to Articles 760 and 761 of the National Civil and Commercial Procedural Code, an award issued in an arbitration at law may be annulled on the following grounds:

- Essential procedural errors: Courts may only annul an award based on the existence of procedural flaws that affect due process but may not review the merits of the case. It is similar to Article V.1.b) of the New York Convention.
- Award rendered after the term to do so has elapsed.
- Award decides issues not submitted to the Arbitral Tribunal. It is similar to Article V.1.c) of the New York Convention.
- Award is inconsistent or contains contradictory decisions. This ground is limited to the dispositive part of the award.

Apart from these statutory grounds, in cases where a State entity is a party to the arbitration, the Argentine Supreme Court has held that an award may also be annulled if it is contrary to public policy or it is illegal, unreasonable or unconstitutional (Cartellone. c. Hidroeléctrica Norpatagónica S.A., 2004). The 2015 reform has not affected the existence of this non-statutory ground.

However, it is to be noted the Argentine Supreme Court has expressly disregarded non-statutory grounds in the context of domestic arbitration between private parties (See Ricardo Agustín López v. Gemabitech, 2017). The same approach has been followed by the National Commercial Court of Appeals (See Amarilla Automotores v. BMW Argentina, 2016; Fainser v. Duro Felguera Argentina, 2018; among many others).

Concerning arbitration in equity (amicable composition) in domestic arbitration, the award may not be appealed and it may be annulled only if it was rendered after the time limit or if it decides issues not submitted to the arbitral tribunal (Section 771 of the National Civil and Commercial Procedural Code). Argentine commentators consider that the existence of essential procedural errors constitutes a non-statutory ground of annulment.
<table>
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<th>Courts’ attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</th>
<th>There are no precedents from Argentine Courts interpreting the New York Convention on this issue.</th>
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| Other key points to note? | • Argentine Commercial courts, in general, do not interfere with arbitration proceedings between private parties and have consistently refused to review the merits of awards. There are some isolated precedents in which the Commercial Court reviewed the interpretation of the contract made by the arbitral tribunal (*EDF International v. Endesa Internacional*, 2009) on the ground that the award had disregarded the applicable Argentine Law. However, no similar decision has been issued since. In disputes involving the Argentine State or other State entities, the risk of unreasonable domestic court intervention is significantly higher.  
• With respect to domestic arbitration, the existence of multiple – and sometimes contradictory – sources of law (National Civil and Commercial Code and Civil and Commercial Procedural Codes in each province) hinders the existence of a modern and coherent arbitration law.  
• Argentina still lacks a regulatory framework for the arbitration of disputes not primarily governed by private law – such as disputes concerning State entities based on public law – since neither Law 27.449 nor the current Civil and Commercial Code applies to this type of dispute. It would be desirable to have a predictable legal framework for arbitration with state-owned companies or with the Argentine State. |
JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

Argentine arbitration law distinguishes between international and domestic arbitration.

Legal framework regarding international commercial arbitration

Law 27.449 governs international commercial arbitration and is substantially based on the UNCITRAL Model Law. According to article 3 of Law 27.449, an arbitration is considered as international if: (i) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or (ii) one of the following places is situated outside the State in which the parties have their places of business: (ii.1) the place of arbitration if determined in, or pursuant to, the arbitration agreement; (ii.2) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected. Unlike the Model Law, Law 27.449 does not consider an arbitration to be international when “the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.” Under Law 27.449, there must be an objective international element in the parties’ relationship.

Law 27.449’s application is also limited to commercial matters, defined as any contractual or non-contractual relationship governed (or predominantly governed) by private law (Article 6). In this regard, Law 27.449 differs from the UNCITRAL Model Law which states that “[t]he term ‘commercial’ should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not” (footnote to Article (1)1 of UNCITRAL Model Law). Unlike the UNCITRAL Model Law, Law 27.449’s definition of “commercial” is not premised on the commercial nature of the underlying transaction but on the nature of applicable law to the transaction. In fact, the reference to private law included in Law 27.449 indicates that it does not apply to relationships governed by public law notwithstanding their commercial nature. This would be the case of the vast majority of contracts to which the Argentine State is a party, even though many of these contractual relationships may reflect an archetypical commercial transaction.

Legal framework regarding domestic arbitration

Domestic arbitration is governed by two different regulations, neither of which are based on the Model Law: (i) a chapter on the Arbitration Agreement contained in the National Civil and Commercial Code enacted by the National Congress and applicable nation-wide; (ii) regulations of the procedural aspects of the arbitration contained in the provincial Civil and Commercial Procedural Codes (enacted by each province) and in the National Civil and Commercial Procedural Code respectively applicable in each province and in the federal jurisdiction.

The National Civil and Commercial Code’s chapter on the arbitration agreement was enacted by the National Congress pursuant to Section 75.12 of the Argentine Constitution, which gives Congress the power to enact the Criminal, Civil and Labour codes. In light of this provision, Congress can regulate all matters related to contract law. Against this background, the new Civil and Commercial Code in force since 2015 contains a chapter on the arbitration agreement that includes provisions on the definition, form, content, effects of the arbitration agreement, the types of disputes that may not be subject to arbitration, the issuance of interim measures the appointment and challenge of arbitrators and their duties and compensation. This regulation does not apply to controversies in which the State or any Province is a party (Article 1651).

The National Civil and Commercial Code’s chapter on the arbitration agreement does not regulate the procedural aspects of arbitration. Thus, the National Civil and Commercial Code chapter is complemented with regulations of domestic arbitration in provincial and national procedural codes, respectively applicable...
in each province and in the federal jurisdiction. These procedural codes govern the procedural aspects of domestic arbitration such as the recourses available against an award (appeal, annulment, clarification request) and the terms, grounds and conditions to file such a motion.

**Legal framework regarding the recognition and enforcement of foreign arbitral awards**

The recognition and enforcement of foreign arbitral awards is primarily governed by the treaties signed and ratified by Argentina, such as the:

- UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("New York Convention").
- OAS Inter-American Convention on International Commercial Arbitration 1975 ("Panama Convention").

Law 27.449 also contains a chapter on the recognition and enforcement of foreign arbitral awards that replicates the non-recognition grounds set forth in the New York Convention.

1.2 **When was the arbitration law last revised?**

Concerning domestic arbitration, in 2015, with the enactment of the new National Civil and Commercial Code. With respect to international commercial arbitration, in 2018, with the enactment of Law 27.449.

2. **The arbitration agreement**

2.1 **How do the courts in the jurisdiction determine the law governing the arbitration agreement?**

There are no precedents concerning this issue, but Argentine courts will likely base their decision on Article V.1.a) of the New York Convention ("the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made").

2.2 **Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?**

Article 35 of Law 27.449 –applicable to international commercial arbitration– establishes that: "The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause".

Article 1653 of the Civil and Commercial Code –applicable to domestic arbitration– provides that the arbitration agreement is independent from the main contract to which it is related. Article 1653 also states that the validity of the arbitration agreement is not affected even if the main contract is declared null and void. Therefore, arbitrators maintain their jurisdiction to decide on each party’s claims even if the main contract is not valid.

2.3 **What are the formal requirements (if any) for an enforceable arbitration agreement?**

Article 15 of Law 27.449 –applicable to international commercial arbitration– provides that the arbitration agreement shall be in writing. According to said article, an agreement is deemed to be in writing if its content is recorded in any form. However, unlike the Model Law, Article 15 does not expressly state that the arbitration agreement may be recorded “orally, by conduct or by other means”.

The “in writing” requirement is also fulfilled: (i) with an electronic communication if the information contained therein may be later accessed for further consultation (Article 16) or (ii) if it is contained in an exchange of
statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other (Article 17).

Article 18 of Law 27,449 adds that the 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.

With respect to domestic arbitration, Article 1650 of the Civil and Commercial Code provides that the agreement must be in writing. However, since it does not provide any definition of this requirement, the general rules of contract law apply so that private documents (signed or not) suffice (Article 28). Like for contracts in general, consent to the arbitration agreement may be proven by any conduct that shows its acceptance (Article 979).

Article 1651 of the Civil and Commercial Code establishes that an arbitration agreement may be included in a contract, in an independent agreement, in the by-laws of a company or in a certain set of rules (reglamentos in Spanish). It can also arise from a reference made within a contract to another document, as long as the contract is in writing and if the reference is sufficiently clear as to the fact that the arbitration clause is part of it.

2.4 To what extent if at all can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

Although there are no specific rules on this issue, it is possible – based on article 54 of the Argentine Companies Act – to extend the arbitration clause to a corporation that has used the corporate form to produce fraud or other illegal acts (See Acerra v. BAPRO, 2018).

Additionally, since consent to the arbitration agreement may also be proved by any conduct that shows its acceptance, it would be possible to extend it to a non-signatory that has been actively involved in the negotiation, performance and termination of the main contract containing the arbitration agreement (depending on the specific circumstances of the case). This possibility has been confirmed, although in obiter dictum, by a judgment of the Commercial Court of Appeals (See Acerra v. BAPRO, 2018). Moreover, in its decision, the Court held that the arbitration agreement might be extended exceptionally if one of the following doctrines applies: agency, guarantor, direct benefit, assignment of the principal contract or debt, the succession of legal persons, the merge of legal persons and estoppel.

2.5 Are there restrictions to arbitrability?

The general principle is that matters that cannot be subject to compromise or settlement cannot be submitted to arbitration (Article 737, National Civil and Commercial Procedural Code), i.e., a criminal matter arising from an unlawful act. It applies to both international and domestic arbitration.

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law etc.)?

Article 1651 of the Civil and Commercial Code adds that disputes related to the civil status or capacity of a person, family matters, adhesion contracts, consumer disputes and labour disputes may not be subject to arbitration. The parties may not agree to arbitrate disputes that put the public order at stake (Article 1649).

These provisions are also applicable to international commercial arbitrations since Article 5 of Law 27,499 provides that it does not affect any other rule of Argentine law that establishes that certain disputes may not be submitted to arbitration.

Argentine courts have, however, minimised the practical impact of these provisions. On one hand, they have held that arbitral clauses contained in adhesion contracts are allowed unless an asymmetrical power relationship between the parties to the contract is proven (See Servicios Santamaria v. Energia de Argentina, 2018; Vanger v. Minera Don Nicolas, 2019). On the other hand, Argentine courts have also considered that a
dispute governed by public policy rules can be submitted to arbitration if it only concerns the parties’ monetary rights (See Francisco Cibor v Wall-Mart Argentina, 2016).

2.5.2 Do these restrictions relate to specific persons (i.e. State entities, consumers etc.)?

Article 1651 of the Civil and Commercial Code provides that consumer disputes may not be decided by arbitration and arbitration clauses in these circumstances would be declared null. However, the National System of Consumer Arbitration created by Decree 276/98 and recently updated by Resolution 65/2018 of the Secretary of Commerce is still in place, which indicates that consumer disputes may indeed be arbitrated, but under those rules specifically tailored to consumer disputes. The essential features of the system are:

a) pre-dispute arbitration agreements are not valid;

b) after a specific dispute has arisen, a consumer may voluntarily decide to submit it to arbitration against a supplier of goods and services that have voluntarily joined the National System of Consumer Arbitration.

The State or an instrumentality of the State may enter into an arbitration agreement if they are authorized by statute (See e.g., Techint Compañía Técnica Internacional S.A.C.E. e I. v. Empresa Nuclear Argentina de Centrales Eléctricas en liquidación S.A. e I. y Nucleoelectrica Argentina S.A., Supreme Court, 2007). For example, Article 25 of Law 27.328 (Public-Private Partnership or PPP) authorize to include arbitration clauses in PPP Contracts.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

3.1.1 If the place of the arbitration is inside of the jurisdiction?

Yes, courts regularly stay litigation if there is a valid arbitration agreement and any of the parties objects to the Court's jurisdiction pursuant to Article 347.1 of the National Civil and Commercial Procedural Code.

The general rule is that arbitral tribunals may rule on their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement (see article 35 of Law 27.449 and Article 1654 of the Civil and Commercial Code).

3.1.2 If the place of the arbitration is outside of the jurisdiction?

Yes, the place of the arbitration is irrelevant.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Courts would likely reject any injunction issued by an arbitral tribunal because anti-suit injunctions are not in principle admissible under Argentine law (See, e.g., AT&T Argentina v. Siemens, National Commercial Court of Appeals, 2002).

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction?

In principle, Argentine courts may not intervene in arbitrations seated outside their jurisdiction.

This type of infrequent interventions generally occurred within the context of State-related arbitration. For instance, Argentine courts once issued an anti-arbitration injunction against an arbitral tribunal seated in Washington DC. (Procuración del Tesoro v. Cámara de Comercio Internacional, 2007). A similar decision was rendered in other two cases (See Entidad Binacional Yacyretá v. Eriday, 2004; and AABE v. Cencosud, 2019).

Concerning arbitration between private parties, an Argentine tribunal also requested that an arbitral tribunal seated in Dallas decline its jurisdiction (See Compañía General de Combustibles, 1999). However, the arbitral tribunal did not follow suit and the award was later enforced in Argentina.
4. **The conduct of the proceedings**

4.1 **Can parties retain outside counsel or be self-represented?**

Yes, parties may retain outside counsel and they do not need to be a member of the Bar in Argentina (at least for international cases).

4.2 **How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?**

With respect to international commercial arbitration, Article 28 of Law 27.499 states that “an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties.” Additionally, Article 28 departs from the Model Law by stating that certain circumstances shall be considered as giving rise to lack of impartiality or independence, without any evidence to the contrary being admitted: (i) if an arbitrator or a member of his firm acts as counsel to one of the parties or (ii) if they act as counsel to a third party in a dispute with the same cause of action or with the same object. The scope of Article 28 appears to be limited to conflicts of interest arising out of current and not past relationships. In this regard, Argentine commentators have highlighted that the circumstances described in Article 28 are also contemplated in the IBA Guidelines on Conflict of Interest, which even have a broader scope given the fact that they also encompass past relationships.

Concerning the procedure, Article 29 of Law 27.449 provides that the parties are free to agree on a procedure for challenging an arbitrator. If there is no such agreement, Article 30 of Law 27.499 states that the challenge must be filed within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 28 and it will be decided by the arbitral tribunal. If the challenge is rejected, Article 29 provides that the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the competent court (the Commercial Court of Appeal) to decide on the challenge.

With respect to domestic arbitration, Article 1663 of the Civil and Commercial Code provides that arbitrators may be challenged on the same grounds as judges. Article 1662 of the Civil and Commercial Code sets forth the arbitrators’ ongoing duty to disclose any circumstance that may affect their independence or impartiality.

In practice, Courts rarely control arbitrators’ independence and impartiality during the arbitration proceedings.

In institutional arbitration, Article 1663 of the National Civil and Commercial Code provides that the challenge may be decided according to the institutional rules and the courts would not give right to any request to disqualify an arbitrator before the award is rendered.

There are some isolated precedents, in which domestic courts considered they had the power to review the decision taken by an arbitral institution concerning a challenge during the arbitration proceedings (see *Entidad Binacional Yacyretá v. Eríday*, 2004 and *Procuración del Tesoro v. Cámara de Comercio Internacional*, 2007). With the enactment of the new Civil and Commercial Court, this doctrine cannot be applied to arbitrations in which the new Code applies. If the institution does not have any rules in this regard, the challenge shall be decided by domestic courts (Article 1663 of the Civil and Commercial Code). In ad hoc arbitration, the parties may agree that the challenge be decided by the other arbitrators (Article 1663 of the Civil and Commercial Code). Otherwise, the courts should not, in principle, give right to any request to disqualify an arbitrator before the award is rendered. It is only if nothing has been agreed by the parties that the challenge shall be decided by domestic courts according to the procedure set forth in Article 747 of the National Civil and Commercial Procedural Code.
4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?

In international commercial arbitration, Article 24 states that the competent court may appoint the arbitrators in the following cases:

(i) Arbitration with three arbitrators and no agreement as to the procedure of appointing them: if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment;

(ii) Arbitration with one arbitrator and no agreement as to the procedure of appointing him/her: if the parties are unable to agree on the arbitrator;

If there is an agreement as to the procedure of appointing the arbitrators, Article 25 provides that the competent court may appoint the arbitrators if (i) a party fails to act as required under such procedure, or (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, unless the agreement on the appointment procedure provides other means for securing the appointment.

In domestic arbitration, Article 1659 of the Civil and Commercial Code provides the arbitral tribunal must be composed of one or more arbitrators (always an odd number) and the parties can agree on the appointment procedure.

If the parties have not agreed on the number of arbitrators, the default number is three. Each party appoints one of them and the third arbitrator is appointed by the other two arbitrators. If one of the parties does not appoint its arbitrator or if the other two arbitrators cannot agree on a third arbitrator, the appointment will be made by the entity administering the arbitration or by the competent domestic court in the case of ad hoc arbitrations.

In case of a sole arbitrator, if the parties do not reach an agreement, the arbitrator will be appointed by the entity administering the arbitration or by the competent domestic court in the case of ad hoc arbitrations.

If a dispute involves more than two parties and they cannot reach an agreement as to the constitution of the arbitral tribunal, the entity administering the arbitration or the competent domestic court will appoint the arbitrators in the case of ad hoc arbitrations.

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

In international commercial arbitration, Article 61 of Law 27.499 provides that a “court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts”.

With respect to domestic arbitration, Article 1655 of the National Civil and Commercial Code authorizes courts to adopt interim measures in connection with arbitrations. A party's request does not entail a violation of the arbitral agreement nor a waiver of the arbitrators' jurisdiction.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Law 27.449 does not contain any provision concerning the confidentiality of the arbitration proceedings.

With respect to domestic arbitration, Article 1658 of the Civil and Commercial Code provides that parties may agree on the confidentiality of the arbitration. This agreement may be express (by inserting a confidentiality clause in the arbitration agreement) or implicit (by selecting certain institutional rules that provide for the confidentiality of arbitration proceedings under those rules).
When confidentiality is agreed by the parties, pursuant to Article 1662 (c) of the Civil and Commercial Code, arbitrators have a duty to respect the confidentiality of the arbitration proceedings.

### 4.5.2 Does it regulate the length of arbitration proceedings?

In international commercial arbitration, Law 27.449 does not regulate the length of the arbitration proceedings.

In domestic arbitration, Article 1658 of the National Civil and Commercial Code provides that the parties may agree on the term in which the award must be issued. If there is no agreement by the parties concerning the term in which the award must be issued, the rules of the administering institution shall apply.

### 4.5.3 Does it regulate the place where hearings and/or meetings may be held?

Articles 66 of Law 27.449 provides that, irrespective of the seat of the arbitration, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

### 4.5.4 Does it allow for arbitrators to issue interim measures?

In international commercial arbitration, Article 38 of Law 27.449 states that the arbitral tribunal may, at the request of a party, grant interim measures, unless otherwise agreed by the parties. Article 39 of Law 27.449 sets forth the conditions for granting an interim measure: a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

With respect to domestic arbitration, Articles 1665 of the Civil and Commercial Code provides arbitral tribunals with the power to grant interim measures, unless otherwise stated in the arbitration agreement. The enforcement of interim measures depends on domestic courts, which have the power to refuse the enforcement if the measure is unreasonable or entails a violation of constitutional rights (Article 1655 of the National Civil and Commercial Code).

The scope of the relief granted by the arbitral tribunals in domestic cases will depend on the facts of the case. The general standards applicable to interim and preliminary measures in domestic litigation are applicable to arbitration proceedings to the extent that the parties did not agree otherwise (either directly or indirectly through the agreement to arbitrate under specific institutional rules which may set forth different standards). With respect to interim measures, an applicant will have to show a likelihood of irreparable harm unless the measure is granted (periculum in mora) and a substantial likelihood of success on the merits (fumus boni juris). In the case of preliminary measures, an applicant needs to show that, if the measure is not granted by the arbitral tribunal, the production of the evidence the applicant requests would be impossible or very difficult at a later stage in the arbitration proceedings.

### 4.5.5 Does it regulate the arbitrators’ right to admit/exclude evidence?

In international commercial arbitration, Article 64 of Law 27.449 states that if the parties did not agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate and it has the power to determine the admissibility, relevance and weight of any evidence.

Similarly, in domestic arbitration, Article 1658 of the National Civil and Commercial Code provides that if the parties did not agree on the applicable rules of procedure, the arbitrators have discretionary powers regarding the conduct of the arbitration proceedings.
However, the Civil and Commercial Procedural Code provides that the arbitrators must apply the procedural rules of domestic proceedings if there is no agreement between the parties and no institutional rules apply. It is our view that the solution of the Civil and Commercial Code should now prevail since it is a basic principle of statutory interpretation that a later law repeals an earlier law. However, there is no case law on this issue yet.

*For example, are there any restrictions to the presentation of testimony by a party employee?*

Not in arbitration proceedings.

4.5.6 **Does it make it mandatory to hold a hearing?**

In international commercial arbitration, Article 72 of Law 27.449 provides that “subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials”. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

In domestic arbitration, there is no specific provision concerning mandatory hearing requirement. The parties have the power to determine the procedural rules of the arbitration and if the parties did not agree on the applicable rules of procedure, the arbitrators may conduct the arbitration in the way they consider appropriate (Article 1658, Civil and Commercial Code).

4.5.7 **Does it prescribe principles governing the awarding of interest?**

The answer depends on the law applicable to the merits. Under Argentine law, a Court (or an arbitral tribunal) has the power to award interest but it cannot award punitive damages, which are expressly limited to consumer actions (Article 52bis of Law 24.240).

4.5.8 **Does it prescribe principles governing the allocation of arbitration costs?**

In international commercial arbitration, there no specific rule concerning allocation of costs with the exception of Article 55 of Law 27.449, which provides that the party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.

In domestic arbitration, article 772 of the National Civil and Commercial Procedural Code provides that arbitrators must allocate costs to the losing party unless they find that the circumstances of the case do not justify it. Parties may agree on a different cost allocation (either directly or through the adoption of institutional rules) (see article 1658 of the National Civil and Commercial Code).

4.6 **Liability**

4.6.1 **Do arbitrators benefit from immunity to civil liability?**

No, Argentine law does not have any specific provision concerning arbitrators' immunities. On the contrary, Article 1662 of the Civil and Commercial Code and Article 745 of the National Civil and Commercial Procedural Code on the duties of arbitrators provides that arbitrators are liable for any breach of their duties that causes damages to the parties.

4.6.2 **Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?**

No, unless parties or arbitrators disobey a court's order (Article 239 of the National Criminal Code).
5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

In international commercial arbitration, Article 87 of Law 27.449 provides that the award shall state the reasons upon which it is based, unless it is an award on agreed terms under Articles 84-85 (settlement). Unlike the Model Law, Article 87 does not allow the parties to simply agree that no reasons shall be given outside the context of settlement.

In domestic arbitration, awards rendered in both arbitration at law and in equity shall provide reasons. Awards rendered in an arbitration in equity are not required to apply the law but must; nonetheless, provide reasons (Article 1662 regarding arbitrators’ duties).

5.2 Can parties waive the right to seek the annulment of the award?

Parties cannot waive either the option to seek annulment or the option to request clarification.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requirements.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

In international commercial arbitration, an application for setting aside is the exclusive recourse against an arbitral award (Article 98, law 27.499). According to Article 99, an arbitral award may be set aside only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 14 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Argentine law; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that: (i) the subject-matter of the dispute is not capable of settlement by arbitration under Argentine; or (ii) the award is in conflict with the Argentine public policy.

In domestic Arbitration, arbitral awards issued in arbitration in law can be appealed as first instance court final decisions (Section 758 of the National Civil and Commercial Procedural Code ("NCCPC")). If parties have waived the right to appeal, they can only file for annulment against the award or a request for clarification under section 760 of the NCCPC.

In case of an appeal, there are no specific grounds since it allows for a full review of the merits of the case.
With respect to annulment, Articles 760 and 761 of the NCCPC provide that an award can be annulled on one or more of the following grounds:

- Essential procedural errors: courts can only annul an award based on the existence of formal flaws that affect the due process but cannot review the merits of the case.
- If the award is rendered after the term for making the award has elapsed.
- If the award decides issues not submitted to the arbitral tribunal.
- If the award is inconsistent or contains contradictory decisions. It is limited to the dispositive part of the award.

Apart from these statutory grounds, the Argentine Supreme Court has held that an award may also be annulled if it is contrary to public policy or if it is illegal, unreasonable or unconstitutional (Cartellone. c. Hidroeléctrica Norpatagónica S.A., 2004). The notion that public policy is a non-statutory ground of annulment in domestic arbitration survives the 2015 reform since the Civil and Commercial Code does not regulate the procedural aspects of the arbitration (such as the grounds of annulment).

However, it is to be noted the Argentine Supreme Court has expressly disregarded non-statutory grounds in the context of domestic arbitration between private parties (See Ricardo Agustín López v. Gemabiotech, 2017). The same approach has been followed by the National Commercial Court of Appeals (See Amarilla Automotores v. BMW Argentina, 2016; Fainsen v. Duro Felguera Argentina, 2018; among many others).

Concerning arbitration in equity (amicable composition) in domestic arbitration, the award is not subject to appeal and it may be annulled if it was rendered after the time limit or if it decides issues not submitted to the arbitral tribunal (Article 771 of the National Civil and Commercial Procedural Code). Argentine commentators consider that the existence of essential procedural errors also constitutes a non-statutory ground of annulment. The request for annulment must be filed before the First Instance Court within five working days since the party receives formal notice of the award.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

A domestic award may be enforced in the same way as any domestic court's final decision (in summary enforcement proceedings).

The recognition and enforcement of foreign arbitral awards is primarily governed by the following treaties signed and ratified by Argentina:

- New York Convention. Argentina declared that it will apply the Convention only to:
  - the recognition and enforcement of foreign arbitral awards made in the territory of another Contracting State.
  - differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national laws.
- Panama Convention.

Law 27.449 contains a chapter on the recognition and enforcement of foreign arbitral awards that replicates the non-recognition grounds set forth in the New York Convention.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

Yes.
5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

There are no precedents from Argentine Courts interpreting the New York Convention on this issue.

5.8 Are foreign awards readily enforceable in practice?

In principle, Argentine Courts enforce foreign arbitral awards without any review of the merits of the case (Armada Holland BV Schiedman Denmark c/ Inter Fruit S.A., Supreme Court, 2011). In some exceptional cases against state entities, the enforcement has been rejected on public policy grounds (Milantic v. Astillero Santiago, Supreme Court of the Province of Buenos Aires, 2016).

6. Funding arrangements: Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

Local bar rules allow lawyers to agree on contingency fees for up to 30% of the value of the awarded amount (article 6(b) of Law 27.423).

Argentine law does not contain any specific legal or ethical rule regarding third party funding.

7. Is there likely to be any significant reform of the arbitration law in the near future?

No.