

DOMINICAN REPUBLIC

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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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

The Dominican Republic occupies the eastern two-thirds of the Caribbean island of Hispaniola, which it shares with Haiti. With a population of about 10.41 million, the Dominican Republic is a middle-income country, with the largest economy of Central America and the Caribbean.

The laws of the Dominican Republic are essentially based on the Roman law tradition, as transmitted through French and Spanish law. Although arbitration was contemplated in the French Code of Civil Procedure of 1807 which was adopted by the Dominican Republic in 1884, the use and acceptability of this alternative dispute resolution mechanism amongst business people and amongst local courts began to take form in the early 1990s, and it is still evolving. The Centers for Alternative Dispute Resolution of the Chamber of Commerce and Production of Santo Domingo and Santiago are the most prominent arbitral institutions in the country.

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| Key places of arbitration in the jurisdiction | Santo Domingo, the capital, and Santiago, the second most important city in terms of economy. |
| Civil law / Common law environment? | Civil law jurisdiction. |
| Confidentiality of arbitrations? | Arbitration proceedings, both <i>ad hoc</i> and institutional, are confidential. |
| Requirement to retain (local) counsel? | There is no express legal provision on whether a foreign lawyer may assist a client before an arbitral tribunal, when such assistance is the result of a particular case and not aimed at establishing a practice in the Dominican Republic. Our view is that a foreign lawyer may assist a client in an international arbitration taking place in the Dominican Republic. |
| Ability to present party employee witness testimony? | Not forbidden. |
| Ability to hold meetings and/or hearings outside of the seat? | Permitted, unless the parties agreed otherwise. |
| Availability of interest as a remedy? | Interest is available as an additional remedy under the legal system of the Dominican Republic. Law No. 183-02 dated 1 November 2002, repealed the order that established legal interest; however, the Civil Chamber of the Supreme Court of Justice decided that Law 183-02 does not govern nor limit the authority of judges to award interest as additional indemnity in damages claims. The Supreme Court of Justice further stated that in matters of civil liability, the victim has a right to receive full compensation for the damages suffered, appraised at the time of a definite decision. Awarding interest complies with this rule, given that it is a mechanism for indexation of the indemnity (SCJ, 17 September 2012). Indirect and punitive damages are not allowed under Dominican law. |
| Ability to claim for reasonable costs incurred for the arbitration? | Parties may claim reimbursement of costs incurred in arbitration proceedings. Upon the request of the parties, the arbitral |

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| | tribunal may fix the costs of the arbitration in the award; these costs include the fees and expenses of the arbitrators, the costs for legal representation of the parties, fees and expenses of the arbitral institution and any such costs incurred in connection with the proceedings. |
| Restrictions regarding contingency fee arrangements and/or third-party funding? | There is no express provision in the law prohibiting contingency fee arrangements or third-party funding for international arbitration claims. |
| Party to the New York Convention? | Yes. |
| Other key points to note | ϕ |
| WJP Civil Justice score (2017-2018) | 0.47 |

ARBITRATION PRACTITIONER SUMMARY

Law 489-08 on Commercial Arbitration governs arbitration proceedings, and the enforcement of commercial arbitration awards in the Dominican Republic. The Dominican Republic is a monistic legal system, whereby the same set of rules applies to both domestic and international arbitration proceedings seated in the Dominican Republic.

Pursuant to article 1 of Law 489-09, an arbitration is international if: (i) the parties to an arbitration agreement have their places of business in different states at the time of conclusion of that agreement; or (ii) the parties are domiciled outside the Dominican Republic; or (iii) a substantial part of the obligations of the commercial relationship is to be performed outside the state where the parties' places of business are located.

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| Date of arbitration law? | 19 December 2008 |
| UNCITRAL Model Law? If so, any key changes thereto? | Yes, Law 489-08 is based on the UNCITRAL Model Law with a few variations. Among these variations: <ul style="list-style-type: none"> • a specific procedure is set out for the notification of the request for arbitration when the Dominican state acts as defendant in commercial and investment arbitrations; • the number of arbitrators must be an odd number; • there is a time limit to initiate arbitration proceedings when an interim measure is granted by a local court. |
| Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters? | No, there are no specialized courts or judges in the Dominican Republic for arbitration-related matters, except for the Civil and Commercial Chamber of the First Instance Court of the National District, which has exclusive jurisdiction to rule on requests for recognition and enforcement of foreign arbitral awards. |
| Availability of <i>ex parte</i> pre-arbitration interim measures? | Yes, parties can request <i>ex parte</i> interim measures before or during the arbitration proceedings. Such a request is not incompatible with and cannot be construed as a waiver to the arbitration agreement. |
| Courts' attitude towards the competence-competence principle? | Courts tend to abide by the <i>kompetenz-kompetenz</i> principle, holding that they do not have jurisdiction when there is an arbitration agreement referring the parties to arbitration. |
| Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention? | The Commercial Arbitration Law 489-08 follows the provisions of the UNCITRAL Model Law and of the New York Convention regarding the grounds for challenging an arbitral award. There are no additional grounds to those based on the criteria established in these texts. |
| Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration? | The attitude of courts towards requests for recognition and enforcement of foreign arbitral awards has been positive, and they have abided by the principles and procedures stated in the law. The courts make no distinction between international arbitral awards rendered in the Dominican Republic and those rendered abroad. |

Other key points to note?

Law 489-08 does not contain any provision establishing the capacity of arbitrators to issue orders or subpoenas. However, article 32 of Law 489-08 allows the arbitrators to request the assistance of a court to obtain evidence and the court will have the obligation to issue the corresponding order.

JURISDICTION DETAILED ANALYSIS

1. Legal framework of the Dominican Republic

The primary source of law relating to the recognition and enforcement of commercial arbitral awards, arbitration agreements, and arbitration proceedings in the Dominican Republic is Law 489-09 on Commercial Arbitration, dated 19 December 2008 and published in the Official Gazette No. 10502 on 30 December 2008. This law governs domestic and international arbitration proceedings that take place in the Dominican Republic, as well as the enforcement of domestic and international awards.

Prior to Law 489-08, domestic arbitration was initially governed by articles 1003 to 1028 of the Code of Civil Procedure. The use of international commercial arbitration was not contemplated by any law, and this legal framework remained virtually intact for almost a century. The first important step towards change was the enactment of Law 845 on 15 July 1978, which modified certain provisions of the Code of Civil Procedure and of the Commercial Code, including the enforceability of pre-dispute clauses or separate agreements to resolve domestic commercial disputes through arbitration. Previously, the arbitration agreement was only valid when executed in the form of a post-dispute agreement.

The second important step towards change was the enactment of Law 50-87 on Chambers of Commerce and Production, dated 4 June 1987. Articles 15 to 16 of Law 50-87 instituted administered arbitration by allowing the Chambers of Commerce and Production to establish in their respective jurisdiction a Conciliation and Arbitration Council. This law partially revoked article 1004 of the Code of Civil Procedure, as it allowed members of the Chambers of Commerce and Production to summon the Dominican state or its related entities to appear as a party before the Conciliation and Arbitration Council for the resolution of a dispute. However, it was partially revoked since article 1004, which expressly excluded from arbitration subject matters regarding the Dominican state or its related entities, remained in force for *ad hoc* arbitrations governed by the Code of Civil Procedure.

Law 489-08 is the first legal regime on international arbitration. It is based on the UNCITRAL Model Law, with a few small variations, such as:

- the definition of international arbitration is narrower, as it does not contain the opt-in option according to which the parties may expressly agree that the subject matter of the arbitration agreement relates to more than one country;¹
- the participation of the State as a party to arbitration is addressed by the law, in which a specific procedure is set out for the notification of the request for arbitration when the Dominican state acts as defendant in commercial and investment arbitrations;²
- it incorporates the set of rules that should be taken into account by the arbitral tribunal in an international procedure to determine the validity of the arbitration agreement and of the arbitrability of the dispute;³
- following the general principles of arbitration, the parties are free to determine the number of arbitrators called upon to resolve the dispute, but to reduce the risk of the decision process being frustrated, the law requires that there be an odd number of arbitrators. Failing such determination, the law provides that a sole arbitrator shall be appointed instead of three;⁴

¹ Article 1 of Law 489-08.

² Article 5 of Law 489-08.

³ According to article 10.5 of Law 489-08, in international arbitration cases, the arbitration agreement shall be enforceable if it complies with the rules agreed by the parties, or the substantive rules, or Dominican law.

⁴ Article 14 of Law 489-08.

- when interim measures are adopted by a local court, the requesting party is bound to initiate arbitration proceedings within 60 days after said order is issued;⁵
- the arbitrators, the parties and the arbitral institutions shall maintain the confidentiality of the proceedings;⁶
- to the extent that the parties have not agreed otherwise, along with the arbitration claim, a claimant shall notify the name of the proposed or appointed arbitrators, and within the specified time limit, the respondent shall notify the claimant of its statement of defense and propose an arbitrator or appoint an arbitrator.⁷ This differs from the UNCITRAL Model Law, according to which a request for arbitration is first submitted by the claimant and subsequently the statements of claim and defense are submitted within the time limits agreed by the parties or set by the arbitral tribunal;
- Given that the request for arbitration initiates the proceedings, the claimant cannot default on this basis but can do so for not appearing before the tribunal. If under these circumstances, the arbitrators continue with the proceedings and render an award, both the proceedings and the award shall be considered contradictory and no violation of the right of due process may be invoked;⁸ and
- the law states in a detailed manner the procedure to be followed by the parties in the taking and presentation of evidence before the tribunal, even addressing the situation in which the evidence has to be taken in a foreign country.⁹

In addition, Law 489-08 does not follow the exact same provisions regarding interim measures as the UNICTRAL Model Law, revised on 2006. However, it grants to the arbitral tribunal the right of amending or leaving without effect any interim measures adopted by the local courts.

Law 50-87 on Chambers of Commerce and Production was amended by Law 181-09 dated 6 July 2009, to adapt its provisions to those of Law 489-08 on Commercial Arbitration. This law, as amended, allows for international arbitration cases to be administered by the Centers for Alternative Dispute Resolution of the respective chambers.

in 2010, an express provision was included in the Constitution, in support of arbitration as a dispute resolution mechanism in contracts entered into by the Dominican State.

2. Arbitration agreements

Formal requirements. The general rule for an arbitration agreement to be enforceable is that it has to be in writing, a requirement that is met when the agreement's content is recorded in any form that is accessible for subsequent reference, such as an exchange of letters, faxes, electronic communications or any other data message format. An arbitration agreement is validly formed if it is contained in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by the other, or when reference is made in a contract to any document containing an arbitration clause. Despite this express provision, it is important to note that based on the principle *solus consensus obligat* (all that should count is consent), which is embodied in the Civil Code, and on the provisions of article 10(4) of Law 489-08, scholars hold that non-compliance with this requirement does not automatically render the agreement unenforceable. This requirement is considered to be *ad probationem*, with the purpose of serving as evidence of the act or compromise entered into between the parties.

⁵ Article 13 of Law 489-08.

⁶ Article 22 of Law 489-08.

⁷ Article 27 of Law 489-08.

⁸ Article 29 of Law 489-08.

⁹ Article 30 of Law 489-08.

In the case of domestic arbitration, the agreement must comply with the general principles on the formation of contracts, set out in article 1108 of the Civil Code (the most important of these principles being that the parties have the legal capacity to enter into agreements). In the case of international arbitration, The requirements for an arbitration agreement to be enforceable in an international arbitration are determined by the set of rules chosen by the parties to govern the arbitration agreement, or by the substantive law that applies to the merits of the dispute, or by Dominican law.

Autonomy of the arbitration agreement. The arbitration agreement included as part of the contract is independent from the other terms of the contract.¹⁰ Thus, the invalidity or unenforceability of the underlying agreement does not necessarily affect the arbitration agreement.

Third parties. Law 489-08 does not contain any provisions with respect to third-party participation in arbitration, and there is no record of decisions from the courts specifically referring to this issue or the situations in which consent to arbitrate may be inferred or presumed, thus extending the arbitration agreement to non-signatories. However, the Supreme Court of Justice implicitly admitted that the arbitration agreement in a main contract may extend or cover disputes from ancillary or supplementary contracts.¹¹

Arbitrability and Public Policy. The general rule is that only matters that can be submitted to compromise and settlement shall be referred to arbitration. The restrictions imposed by law to arbitrability relate mostly to specific domains: matters relating to the civil status of a person, separations between husband and wife, criminal cases and cases that concern public policy cannot be resolved through arbitration.¹²

Law 489-08 does not contain a definition of 'public policy'. In the legal framework of the Dominican Republic, this is a constantly evolving concept with a social, moral and political component. Although International Private Law 544-14 dated 18 December 2014 attempted to define the terms "*domestic public policy*" and "*international public policy*" of the Dominican Republic,¹³ these terms remain vague because of the very nature of the concept.

Despite the general trend to reduce public policy limits to arbitration and expand the scope of arbitrable matters, the Dominican Republic has shown little progress in this regard. Still today, especially in domestic proceedings, inarbitrability is a matter of continuous discussions. Local courts and practitioners tend to confuse *causes that concern public policy* with the application of mandatory or public laws. Courts and practitioners must understand that mandatory rules are not necessarily identical to public policy rules: the mere fact that a law is mandatory does not automatically mean that it is part of and reaches the level of public policy. They must also understand that arbitrators are bound to apply relevant public policy rules.

An area of law that has shown progress, and is of great concern to international arbitration, is agency agreements and the validity of arbitral clauses despite the 'public policy' nature of Law 173 for the Protection of Agents, Importers of Merchandise or Products dated 6 April 1966, which governs all forms of sales representation or agency relationships involving foreign principals and local parties in case such relationships are duly registered and protected by this law. According to article 7 of Law 173, Dominican civil procedure must be applied to claims under said law and as a result, the former view was that Dominican courts had exclusive jurisdiction to solve any such conflict resulting from registered agency agreements, and any contractual provision to the contrary was considered to be void.

In interpreting this provision, the Supreme Court of Justice had stated that the 'public policy' nature of this law precluded parties from agreeing to arbitrate disputes arising out of these contracts, and local courts would retain jurisdiction and decide disputes despite the existence of an arbitration agreement. However,

¹⁰ Article 11 of Law 489-08.

¹¹ First Hall of the Supreme Court of Justice, 13 December 2006, Judgment No. 13.

¹² Article 3 of Law 489-08.

¹³ Article 7 of Law 544-14.

first instance courts,¹⁴ courts of appeals,¹⁵ and even the Supreme Court of Justice¹⁶ have admitted the validity of arbitration agreements, acknowledged their lack of jurisdiction for these cases, supporting their decision in the different notions of ‘public policy’, the relevance of the autonomy of the parties’ will and contractual freedom, and the submission to general law contained in Law 173 for procedural matters. The enactment of the DR-CAFTA also supports the view adopted by the courts, since it allows the use of arbitration for agency agreements irrespective of whether the same are registered under Law 173.

3. Intervention of domestic courts

According to article 12 of Law 489-08, if a local court is seized of a dispute governed by an arbitration agreement, it must decline jurisdiction at the request of the defendant. This rule applies in any case, regardless of whether the place of arbitration is inside or outside of the Dominican Republic.

Unlike the UNCITRAL Model Law and most national laws, Dominican law makes no exception for local courts to retain jurisdiction when the defendant has raised a defense on jurisdiction and proves the existence of an arbitration agreement. Local courts are forced to submit the parties to arbitration and are not expressly allowed to evaluate *prima facie* if the agreement is null and void, inoperative or incapable of being performed.¹⁷

An important feature of Law 489-08 is that the decision rendered by the court declining jurisdiction is not subject to appeal. The purpose of this provision is to allow the arbitral tribunal to rule on its own jurisdiction, and to postpone the control of the courts to after the award has been rendered.

The constitutionality of this provision has been challenged before the courts without success. In a case decided by the Second Hall of the Civil and Commercial Chamber of the Court of Appeals of the National District, the plaintiff asked the court to declare article 12 contrary to the Constitution, for violating the right to challenge judgments. The Court rejected the motion, stating that the “*double degree of jurisdiction*” principle is not part of the constitutional order, and that the Constitution allows lawmakers to restrict or suppress the exercise of appeals against judgments.¹⁸

In a recent decision, the Constitutional Court reaffirmed the importance and validity of the negative effect of the *kompetenz-kompetenz* principle, as contained in Law 489-08, stating that “*when the appellant files the appeal before the ordinary jurisdiction, it is clearly a procedural error, not translating this into a violation of the fundamental guarantee of effective judicial protection with respect to due process, specifically the right of defense as said party alleges; rather, what would constitute an error would be not to recognize the principle of autonomy of the will that should prevail between the contracting parties (...). Certainly, as established by the Plenary of the Supreme Court of Justice, contractual stipulations are binding both for the parties and for the courts, when they have been agreed upon and accepted by the parties, as a consequence of the freedom to contract and on equal terms, since according to the terms of the contract and by application of the rules in force, in the case the decision given by the arbitrators was not susceptible to be challenged before the ordinary courts*”¹⁹.

Regarding anti-suit injunctions, Law 489-08 does not specifically provide for anti-suit injunctions issued by local courts to prevent an arbitral tribunal from hearing a claim or, at the end of the arbitral process, to

¹⁴ First Hall of the Civil and Commercial Chamber of the First Instance Court of the National District, 4 October 2010, Judgment 82; First Hall of the Civil and Commercial Chamber of the First Instance Court of the National District, 9 March 2016, Judgment 034-2016-SCON-00212.

¹⁵ Second Hall of the Civil and Commercial Chamber of the Court of Appeals of the National District, 8 October 2010, Judgment 633-2010.

¹⁶ First Hall of the Supreme Court of Justice, Judgment dated 4 April 2012, B.J. 1217.

¹⁷ Article 12 of Law 489-08.

¹⁸ Second Hall of the Civil and Commercial Chamber of the Court of Appeals of the National District, 5 August 2011, Judgment No. 587-2011.

¹⁹ Constitutional Court, Judgment TC/0543/17 dated 24 October 2017. Available at: <https://www.tribunalconstitucional.gob.do/sites/default/files/documentos/TC%200543%2017.pdf>.

obstruct the enforcement of the arbitral award. However, since courts are only allowed to intervene in limited circumstances and for specific purposes, it is presumed that they cannot issue anti-suit injunctions against arbitration. Nor does Law 489-08 provide for anti-suit injunctions issued by arbitrators enjoining parties to stay litigation proceedings, and there is no reported case that refers to this matter. However, it is unlikely that a court would comply with such a decision since it is not within the powers of arbitrators to give orders to domestic courts, except to request assistance in obtaining evidence.

4. The conduct of the proceedings

Legal representation. In all cases the parties must be represented by a lawyer.²⁰ However, there is no provision in Law 489-08 that refers to the nationality or any other requirement that shall be met by attorneys appearing as counsel in arbitration proceedings seated in the Dominican Republic, except in the case of the representation of the Dominican State. Under article 5 of Law 489-08, the Legal Counsel of the Executive Branch and the Attorney General's Office must ensure that the legal counsel for the State has the necessary experience and knowledge in the subject matter of the dispute and in arbitration proceedings.

Pursuant to the United States/Dominican Republic/Central American Free Trade Agreement (DR-CAFTA), a foreign lawyer who is not a member of the Dominican Bar Association can provide consulting services on foreign law, provided that the foreign lawyer has a license to exercise law in a jurisdiction that allows Dominicans to provide consulting services on foreign law. Although there is no express provision allowing a foreign lawyer to assist a client before an arbitral tribunal, when such assistance is the result of a particular case and not aimed at establishing a practice in the Dominican Republic, it is our view that a foreign lawyer may assist a client in an international arbitration taking place in the Dominican Republic.

Domestic courts' intervention in the constitution of the arbitral tribunal. In *ad hoc* proceedings, when the tribunal is composed of three or more arbitrators, each party shall appoint the arbitrators which proportionately correspond to each side, and the remaining arbitrator, who will act as chairman of the tribunal, will be appointed by the arbitrators previously selected.²¹ This rule intends to give parties equal right to participate in the constitution of the arbitral tribunal.

If a party fails to appoint the arbitrator in due time, the appointment shall be made by the first instance court of the place of arbitration, at the request of the opposing party, who is not in default²². If the parties have not agreed to a place of arbitration, the request for appointment shall be filed with the first instance court of the domicile of any of the defendants; if their domicile is located abroad, the competent court will be the first instance court of the domicile of the plaintiff, or if such domicile is abroad, the competent court will be the first instance court elected by the plaintiff.²³

Law 489-08 relies on the cooperation of local courts to prevent unjustified delays in the proceedings by a recalcitrant party.

Regarding *ad hoc* proceedings, if the parties have not agreed on the procedure to appoint arbitrators, the appointment shall be made by the competent court.²⁴ The court may only deny a request for appointment of arbitrators when the requesting party has not provided evidence of the existence of an arbitration agreement.²⁵ The court required to appoint the arbitrators shall have due regard to any qualification requirements established by the parties in their agreement, and to the subject matter in dispute.

²⁰ Article 28(2) of Law 489-08.

²¹ Article 15(2) of Law 489-08.

²² Article 15(2) of Law 489-08.

²³ Article 9(1) of Law 489-08.

²⁴ Article 15(3)(b) of Law 489-08.

²⁵ Article 15(4) of Law 489-08.

Except when the court denies the request to appoint arbitrators, any decision issued in connection with the appointment of arbitrators is not subject to appeal.²⁶

Independence and impartiality of arbitrators. Arbitrators must be independent and impartial in accordance with article 16 of Law 489-08. Each arbitrator has the obligation to disclose any grounds that may give rise to justifiable doubts as to his impartiality or independence, when appointed or during the proceedings. Following the provisions of the UNCITRAL Model Law, an arbitrator may be challenged when circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or when the arbitrator does not possess the qualifications agreed to by the parties.²⁷

Although there have not been many cases reported, courts have been strict in the control of arbitrators' independence and impartiality. In a judgment rendered in connection with a claim for annulment of an award, the Third Hall of the Civil and Commercial Chamber of the Court of Appeals of the National District admitted the claim and annulled the award due to one arbitrator's failure to disclose certain information, and the alleged lack of independence of another arbitrator who disclosed a relationship with an employee of one of the parties. In its decision, which received several criticisms, the Court failed to consider whether the circumstances that were not disclosed by the arbitrator or the relationship between the other arbitrator and a party employee were sufficient to determine that their independence or impartiality had been compromised.²⁸

Interim measures. Article 13 of Law 489-09 allows the parties to request a court to order an interim measure before or during the arbitration proceedings. If the court orders such relief, it shall request the petitioner to submit its statement of claim for arbitration within 60 days as of the date the order is issued. The court may also require the party requesting an interim measure to provide appropriate security, if necessary.²⁹ The request for adoption of an interim measure filed before the court is *ex parte*.

Once the arbitral tribunal is constituted, if it orders the suspension or termination of the interim measures adopted by the court, the decision of the arbitrators prevails.³⁰

The arbitral tribunal may, at the request of a party, grant interim measures, and require the requesting party to provide appropriate security in connection with the measure. The decision on interim relief will be subject to the rules on challenges and enforcement applicable to arbitral awards, except those relating to the suspension of enforcement of the award.³¹

In neither case does the law set the conditions for the interim measure to be ordered. Judges and arbitrators usually take into account whether the purpose is to preserve the *status quo*, or to ensure the effectiveness of the award.

Conduct of the proceedings. Law 489-08 provides a legal framework for the conduct of the arbitration proceedings. However, subject to mandatory requirements established in the law, parties are free to agree on the procedure for their arbitration.³² One of the few mandatory requirements for the conduct of the proceedings is to ensure that the parties are treated equally and that each party is given a full opportunity to present its case.³³

²⁶ Article 15(6) of Law 489-08.

²⁷ Article 16(2) of Law 489-08.

²⁸ Third Hall of the Civil and Commercial Chamber of the Court of Appeals of the National District, 29 August 2016, Judgment No. 1303-2016-SSEN-00422.

²⁹ Article 13 of Law 489-08.

³⁰ Article 13 of Law 489-08.

³¹ Article 21 of Law 489-08.

³² Article 23 of Law 489-08.

³³ Article 22(1) of Law 489-08.

The law does not regulate the length of the proceedings; there is no term for the arbitrators to render an award once appointed, unless such term is imposed by the parties.

Parties are free to decide whether to hold hearings or have an arbitration based solely on documents.³⁴ Regardless of the place of arbitration, the arbitrators may decide to hold meetings or hearings elsewhere, after prior consultation with the parties.³⁵

The admissibility, relevance, materiality and weight of any evidence are subject to the discretion of the arbitral tribunal.³⁶ There are no legal restrictions on the presentation of testimony by party employees or any other person; there are no mandatory rules on oaths or affirmations for witnesses testifying in arbitration in the Dominican Republic.

Law 489-08 contains a detailed procedure allowing a foreign party to take and present evidence before the arbitral tribunal. According to articles 9(2) and 32, an arbitral tribunal or any of the parties as authorized by the arbitral tribunal may request the local court to assist with obtaining evidence. The competent court is the Civil and Commercial Chamber of the First Instance Court of the place of arbitration or of the place where the taking of evidence has to take place.

The court may either directly order the production of evidence, or order appropriate measures to facilitate the taking of evidence before the arbitral tribunal. Law 489-08 does not limit the scope of assistance to certain types of evidence. However, for civil and commercial matters, a court cannot issue an order with the effect of forcefully compelling a person to appear or provide evidence unless it is a public institution. The only sanction in case of disobedience is a small fine.

According to article 22 of Law 489-08, arbitrators, parties and arbitration centers are required to maintain the confidentiality of any information disclosed in the course of the arbitration proceedings.³⁷

Subject to the agreement of the parties, the arbitral tribunal shall fix the costs of arbitration in the award; these costs may include the fees and expenses of the arbitrators, the costs for legal representation of the parties, fees and expenses of the arbitral institution and any such costs incurred in connection with the arbitration proceedings. However, Law 489-08 does not contain an express provision regarding the allocation of these costs. In local courts, following the provisions set forth in article 130 of the Code of Civil Procedure, the party against whom the decision is rendered shall bear the costs of the proceedings.

Liability. Law 489-08 does not refer to potential liability for any participant in arbitration proceedings and does not afford to arbitrators immunity for civil liability or for any error made during the proceedings.

There is no concern arising from potential criminal liability for arbitrators, experts, witnesses or any other participant in arbitration proceedings (unless any of the participants commit an act already punishable by criminal laws).

5. The award

The award must be reasoned unless the parties agree otherwise or unless the award is the result of a settlement between the parties.³⁸

Challenge against awards. Under Law 489-08 the action for annulment is the only way to set aside an arbitral award. According to article 40 of this Law, parties may waive their right to challenge an award rendered in this jurisdiction.

³⁴ Article 28 of Law 489-08.

³⁵ Article 24 of Law 489-08.

³⁶ Article 30(1) of Law 489-08.

³⁷ Article 22(2) of Law 489-08.

³⁸ Article 36(4) of Law 489-08.

This waiver has raised many discussions among the local legal community, because the Constitution considers as a fundamental right the right to challenge a judgement, and because of the implications of waiving future rights. As scholars have stated, the waiver of the annulment action implies the abdication of the fundamental right of effective judicial protection and corollaries of access to justice, right of defense and due process;³⁹ and such waiver cannot be absolute.⁴⁰

The challenge against awards is not an appeal *per se* or challenge in the terms of the Constitution, since the Court of Appeals cannot review the merits of the case, it can only rule on whether or not the award should be set aside. The Court of Appeals is not a superior instance with regards to the arbitral tribunal, and the parties agreed that it was for the arbitral tribunal or sole arbitrator to solve the dispute, and such power cannot be transferred to local courts by way of a challenge.

In any case, the waiver will not forbid a challenge of the award if such challenge is based on a conflict with public policy rules of the Dominican Republic, or the violation of the rules of due process, in particular the right of defense. According to articles 111 of the Constitution and 6 of the Civil Code, parties cannot modify or waive in their agreements any public policy provision. Law 489-08 even affords judges the faculty to vacate or refuse enforcement of an award *sua sponte* based on these grounds.

The annulment action does not suspend the enforcement of the award. For such purposes, parties must file a request before the President of the Court of Appeal. During the time between the request and the first hearing, enforcement is automatically stayed. If the request for suspension is admitted, the requesting party will have to present a guarantee.⁴¹ This decision is not subject to appeal before the Supreme Court of Justice.⁴²

Recognition and enforcement of awards. Awards issued in the Dominican Republic by *ad hoc* tribunals or institutions other than the Centers for Alternative Dispute Resolution of the Chamber of Commerce and Production, shall file a request before the First Instance Court of the district where the award was issued for recognition and enforcement. It is necessary to include the original award and the arbitration agreement or contract containing the agreement. The decision on the recognition and enforcement may be challenged before the Court of Appeals.⁴³

If the First Instance Court determines that the award falls under any of the causes stated in article 39 of Law 489-08, it shall remit the award to the competent Court of Appeals to determine whether the award should be annulled *sua sponte*. The enforcement of the award is stayed until the Court of Appeals renders a final judgment. If necessary, the First Instance Court could order interim measures to preserve assets for enforcement of the award, while the process is instructed before the Court of Appeals⁴⁴.

According to Law 50-87, as amended by Law 181-09 dated 6 July 2009, awards rendered by the Centers for Alternative Dispute Resolution of the Chambers of Commerce and Production do not require court authorization for enforcement.⁴⁵

Foreign awards may become enforceable in the Dominican Republic pursuant to Law 489-08, the Convention for the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), ratified on 8 November 2001, and the Inter-American Convention on International Commercial Arbitration, ratified on 24 December 2007. The request for recognition and enforcement of foreign awards is filed before the

³⁹ Alarcón, Edynson. "Comentarios a la Ley de Arbitraje Comercial de la República Dominicana", Librería Jurídica Internacional, S.R.L., (2012), p. 287.

⁴⁰ Hernández, Guillermo. "Arbitraje. Perspectiva Comparada", Librería Jurídica Internacional, S.R.L., (2015), p. 215.

⁴¹ Articles 40(2) and 40(3) of Law 489-08.

⁴² Article 40(4) of Law 489-08.

⁴³ Article 44 of Law 489-08.

⁴⁴ Article 41(2) of Law 489-08.

⁴⁵ Article 17 of Law 50-87, as amended.

Civil and Commercial Chamber of First Instance of the National District. The request must also include the original award and the arbitration agreement or the contract containing the agreement. It is a non-adversarial procedure, where the Court may only deny recognition and enforcement under the limitative causes established by law.

The decision on the recognition and enforcement may be challenged before the Court of Appeals, which shall render a final and binding decision in accordance with the applicable international convention.⁴⁶

When a foreign award has been annulled at its seat, such annulment precludes the award from being enforced in the Dominican Republic. One of the grounds for refusing recognition and enforcement of an award is if it has not yet become binding on the parties, or if it has been set aside or stayed by a competent authority of the country in which, or under the law of which, that award was made.⁴⁷

There is no time limit for the courts to decide on the recognition and enforcement of awards. However, the courts may take up to three months as of the date the request is filed.

6. Funding arrangements

There is no express provision in Law 489-08 prohibiting third party funding for international arbitration claims.

According to article 35 of the Code of Ethics for Dominican Attorneys, counsel shall not gain monetary interest from a case they are handling other than the legal fees agreed upon with the client. However, there is no specific sanction provided in the Code for counsel who funds claims. In fact, in certain matters, such as labour claims, the worker's counsel tends to advance the expenses on behalf of their client.

Contingency fees are allowed and occasionally agreed upon between clients and lawyers.

7. Possibility of reform of the arbitration law in the near future

A bill to amend the Code of Civil Procedure has been proposed to Congress several times. This bill contains a new section on Commercial Arbitration that would repeal Law 489-08 in its entirety.

A parallel effort is being promoted by the same jurists who worked on the draft arbitration law of 2008 to amend certain provisions of Law 489-08 that have shown to be confusing or contrary to the current global trends in practice. Part of such proposed amendments relate to matters that could be subject to arbitration, limited intervention of the courts and finality of the decisions issued in support of arbitration, and the waiver to challenges against arbitral awards.

⁴⁶ Article 44 of Law 489-08.

⁴⁷ Article 45(1)(e) of Law 489-08.