

PARAGUAY

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

PABLO DEBUCHY, SIGFRIDO GROSS BROWN AND CAMILA BASILI
OF GROSS BROWN ESTUDIO JURÍDICO



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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 Paraguay, the practice of having in-house counsel is mostly reserved to large corporations (e.g., banks, telecommunication companies, etc.). Companies usually work with law firms as well as with their own in-house counsel.

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| Key places of arbitration in the jurisdiction | Asunción. |
| Civil law / Common law environment? | Civil law. |
| Confidentiality of arbitrations? | <p>The Paraguayan Arbitration and Mediation Act (the “Arbitration Act”) does not provide for the confidentiality of arbitration proceedings.</p> <p>Accordingly, parties to arbitration proceedings are not bound by any legal duty to keep the proceedings confidential. Parties have the right to enter into a confidentiality agreement, except for procedures to which the State is a party, which are public.</p> <p>It is an accepted practice that arbitrators must refrain from disclosing any information regarding cases in which they act. This obligation applies to all aspects of an arbitration, including the details of the dispute, the information disclosed by the parties during the proceedings and the deliberations. Arbitrators remain bound by this obligation after the award has been rendered.</p> |
| Requirement to retain (local) counsel? | There is no specific requirement for a party to hire local counsel to be represented in arbitral proceedings seated in Paraguay. |
| Ability to present party employee witness testimony? | Parties are entitled to produce this type of evidence based on the broad scope of the parties’ autonomy to determine the rules of procedure pursuant to Article 22 of the Arbitration Act. It falls to the arbitral tribunal to determine the admissibility, relevance and weight of a witness’s testimony, provided that the arbitral tribunal takes into account the applicable arbitration rules, and the parties’ agreement in this respect. |
| Ability to hold meetings and/or hearings outside of the seat? | <p>Under Article 23 of the Arbitration Act, parties have the right to agree upon the place of arbitration. Absent such an agreement, the arbitral tribunal has the power to determine the place of the arbitration. In doing so, it must take into account the circumstances of the case, including the options that would be most convenient for the parties.</p> <p>In addition, unless otherwise agreed by the parties, the arbitral tribunal may meet at any place it deems appropriate to hold deliberations, to hear witnesses, experts or parties, or to examine goods or documents.</p> |
| Availability of interest as a remedy? | Paraguayan law does not restrict the right of arbitrators to award interest. |

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| <p>Ability to claim for reasonable costs incurred for the arbitration?</p> | <p>Arbitrators have the power to allocate the costs that the parties have incurred for the arbitration. In general, arbitrators tend to apply the “costs follow the event” principle pursuant to which the losing party shall bear all or part of the costs which the winning party has had to incur for the arbitration. However, arbitrators may also depart from that rule, for example, in deciding that each party shall bear its own costs. Such decision must be reasoned.</p> |
| <p>Restrictions regarding contingency fee arrangements and/or third-party funding?</p> | <p>Paraguayan law does not restrict the parties’ right to agree upon contingency fee arrangements with their counsel. Nor does it prohibit third-party funding. In fact, the Paraguayan law contains no provision on third-party funding. However, as things currently stand, third-party funding is not a common practice in Paraguay.</p> |
| <p>Party to the New York Convention?</p> | <p>Paraguay is a party to the New York Convention, pursuant to Law No. 948/1996. Since 1976, it is also a party to the inter-American convention on extraterritorial validity of foreign judgments and arbitral awards (“Panama Convention”). The Panama Convention is a convention of the Organization of American States regulating the enforcement of judgements and arbitral awards in other member states. It has entered into force in Paraguay on 16 August 1985 and aims at facilitating the recognition and enforcement of arbitral awards rendered in a member-State in the other member States.</p> |
| <p>Other key points to note</p> | <p>∅</p> |
| <p>WJP Civil Justice score (2017-2018)</p> | <p>∅</p> |

ARBITRATION PRACTITIONER SUMMARY

With the enactment of the Arbitration Act in 2002, Paraguay adopted almost entirely the UNCITRAL Model Law of 1985. This allowed a significant increase in the practice of commercial arbitration.

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| Date of arbitration law? | The Arbitration Act was enacted on 24 April 2002. |
| UNCITRAL Model Law? If so, any key changes thereto? | <p>The Arbitration Act has adopted almost entirely the UNCITRAL Model Law. The few key deviations are briefly set out below:</p> <ul style="list-style-type: none"> • First, Article 11 of the Arbitration Act deviates from Article 8(2) of the Model Law. Article 11 of the Arbitration Act adds the phrase identified in red at the end of the text of Article 8(2) of the Model Law: <p style="margin-left: 40px;"><i>Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court, provided that the parties, before an award is rendered, desist from the instance.</i></p> <p>Accordingly, arbitrators cannot render an award while a dispute which may fall within the scope of the arbitration agreement is still pending before Paraguayan domestic courts.</p> • Article 19 of the Arbitration Act deviates from Article 16 of the Model Law, by adding that the arbitral tribunals may not render its award while a matter pertaining to the arbitral tribunal's jurisdiction is pending before Paraguayan domestic courts. • Article 40 subsection b) of the Arbitration Act deviates from Article 36 of the Model Law regarding the grounds for refusal of enforcement, by providing that a violation of "international public policy" (as opposed to the reference to the State's public policy in Article 36 of the Model Law) shall give rise to a denial of enforcement. <p>These differences are further developed below.</p> |
| Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters? | Pursuant to Article 9 of the Arbitration Act, the authority responsible for handling arbitration-related matters is the First Instance Court for Civil and Commercial matters. |
| Availability of <i>ex parte</i> pre-arbitration interim measures? | <p>Pursuant to Article 20 of the Arbitration Act, prior to the constitution of the Arbitral Tribunal, interim measures can only be requested from the First Instance Court for Civil and Commercial matters.</p> <p>Interim measures granted by such courts will expire seven days after the constitution of the Arbitral Tribunal.</p> |

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| | Both courts and arbitrators can grant interim measures <i>ex parte</i> . |
| Courts' attitude towards the competence-competence principle? | <p>Pursuant to Article 19 of the Arbitration Act, the arbitral tribunal has the power to rule upon its own jurisdiction, including in cases where a party has objected to its jurisdiction, based on the existence or validity of the arbitration agreement. For this purpose, arbitration clauses are considered independent from the rest of the contract. The nullity of the contract will not entail ipso jure the nullity of the arbitration clause.</p> <p>However, even though the competence-competence principle is enshrined in Article 19 of the Arbitration Act, arbitral tribunals cannot render an award while an issue of jurisdiction is pending before domestic courts. Although there are not many cases dealing with the competence-competence principle, the general trend shows that domestic courts respect this principle, and decline to exercise jurisdiction in the presence of arbitration clauses.</p> |
| Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention? | Grounds for annulment under the Arbitration Act are substantially the same as those set forth in the New York Convention. |
| Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration? | Pursuant to Article 46 of the Arbitration Act, the annulment of an award at the place of arbitration constitutes a ground for denying enforcement in Paraguay. However, there is no relevant case law where this exception has been applied. |
| Other key points to note? | Besides Article 248 of the National Constitution of the Republic of Paraguay (the " National Constitution ") -which grants a jurisdictional nature to arbitration- (developed below), all the most salient characteristics of the Paraguayan jurisdiction are detailed in the analytical framework. |

JURISDICTION DETAILED ANALYSIS

1. The Legal Framework of the Jurisdiction

1.1 Is the Arbitration Law based in the UNCITRAL Model Law?

The Arbitration Act is an almost verbatim adoption of the UNCITRAL Model Law. Some noteworthy variations which are described below:

First, the Arbitration Act applies to private, national and international arbitration, unlike the Model Law, which only applies to international commercial arbitration. Therefore, Paraguay incorporated this option to modernize its internal arbitration legislation.

Second, unlike the Model Law, which outlines the character of arbitration as commercial, the Arbitration Act applies to civil and commercial disputes, since Paraguayan private law has unified civil and commercial obligations in its current Civil and Commercial Code.

Third, Article 11 of the Arbitration Act deviates from Article 8(2) of the Model Law. Indeed, Article 8(2) of the Model Law provides that:

Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 11 of the Arbitration Act adds the following phrase at the end of that text: *"provided that the parties, before an award is rendered, desist from the instance."* Accordingly, arbitrators cannot render an award if a matter falling under the scope of the arbitration agreement is still pending before Paraguayan domestic courts.

Fourth, the most significant deviation from the Model Law is found at Article 19 of the Arbitration Act. While Article 16 of the Model Law authorizes arbitral tribunals to render an award while a jurisdictional matter is pending before ordinary courts, Article 19 of the Arbitration Act expressly limits that power. Pursuant to that provision, and in line with Article 11 referred above, arbitral tribunals may continue the arbitral proceedings, but may not render an award while a matter pertaining to the arbitral tribunal's jurisdiction is pending before domestic courts.

Fifth, the time limit to challenge an arbitrator under Paraguayan law is shorter than that under the Model Law. Although the procedure for disqualification under the Arbitration Act is based on the Model Law, the time limit to challenge an arbitrator before the Paraguayan judge has been reduced from 30 to 15 days. Unlike under the Model Law, arbitrators have to stay the arbitral proceedings for such time as the challenge is pending.

The Arbitration Act also contains a certain number of innovations.

For example, an important innovation compared with the Model Law is that Article 40 of the Arbitration Act provides that an award may be set aside if "according to Paraguayan law, the subject of the dispute is not capable of settlement by arbitration or that the award is contrary to *international public policy* or that of the Paraguayan State ". By contrast, the Model Law only refers to "public policy".

The Arbitration Act expressly refers to the costs of arbitration. Not only does the Arbitration Act define what qualifies as the costs of the arbitration, but also allows the parties to choose the rules governing their allocation, including by reference to a set of arbitration rules. In the absence of an agreement, the provisions of the Arbitration Act shall control. (See Chapter IX of the Arbitration Act).

Very much like the Model Law, the Arbitration Act provides that the nationality of the person shall not preclude anyone from acting as arbitrator. In practice, foreign arbitrators sitting in Paraguay will be admitted

in the country as non-resident foreigners, for a period of six months, which may be extended for similar periods. Arbitrators will receive compensation for the work performed. (See Article 13(a) of the Arbitration Act).

Also, while the Model Law does not consider rules referring to the computation of deadlines, the Arbitration Act provides that, the deadlines set forth therein, shall start running on the day following that on which a notification, note, communication or proposal has been received. If the last day of that period is a holiday in the place where the recipient resides or where its business is established, the time limit shall expire on the next business day. Official holidays and non-business days are included in the calculation of the period of time.

The Arbitration Act requires the arbitration agreement to be in writing. However, this requirement is construed more narrowly than under the Model Law. Indeed, the Arbitration Act provides that an arbitration agreement is "in writing" only when it is "*consigned in a document signed by the parties or in an exchange of letters or telegrams collated, in which said agreement is recorded*".

1.2 When was the Arbitration Law last revised?

There have been no revisions or amendments to the Arbitration Act since its enactment in 2002.

2. The Arbitration Agreement

2.1 How do the Courts in the Jurisdiction determine the law governing the arbitration agreement?

In accordance with Article 32 of the Arbitration Act, the arbitral tribunal has an obligation to apply the rules of law on which the parties have agreed. Under Paraguayan law, the parties' reference (in their contract) to a specific law to govern their contract is deemed to refer to the substantive law of that State, to the exclusion of its conflict of laws rules. This is of course subject to any express provision to the contrary in the parties' agreement.

The parties' agreement in respect of the applicable law carries significant weight in Paraguay, not least because Paraguay has recently enacted Law 5393/2015 on the law applicable to international contracts, which sets forth the general rule of recognition and enforceability of the parties' choice of law.

By contrast, if the parties have not agreed upon the law governing their agreement, the arbitral tribunal shall determine the same pursuant to a conflict of laws analysis.

Although Article 32 of the Arbitration Law relates to the determination of the law governing the merits of the dispute, the same principles should apply to determine the law governing the arbitration agreement.

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

Article 19 of the Arbitration Act provides for the separability of the arbitration agreement from the main contract in which it is set forth. Accordingly, a decision by the Arbitral Tribunal that the contract is void will not entail *ipso jure* the nullity of the arbitration clause and will therefore not affect its jurisdiction. However, to date, no judicial decision applying this principle has been rendered.

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

In line with the New York Convention, Article 10 of the Arbitration Act provides that the arbitration agreement must be in written form, meaning that it must be contained in a document signed by the parties, in an exchange of letters or certified telegrams; or in an exchange of writs of claim and answer in which the existence of an agreement and its terms is affirmed by one party, without being denied by another. The reference made in a contract to a document containing an arbitration clause is a valid arbitration agreement provided that the contract is in writing and the reference implies that this clause forms part of the contract.

Accordingly, Article 10 is more restrictive than Article 7 of the Model Law in that it does not adopt Article 7.3 and 7.4 which respectively provide:

“An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means”.

“The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference”.

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?

There is no legislative provision or case-law in Paraguay addressing whether an arbitration agreement may bind third parties.

2.5 Are there restrictions to arbitrability? In the affirmative:

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

Pursuant to Article 2 of the Arbitration Act, all rights over which parties are entitled to conclude settlement agreements (*i.e.*, over which the parties can negotiate), and those which are of patrimonial nature may be submitted to arbitration, provided that a final and enforceable judgment on the matter has not already been rendered.

Agency, representation or distribution contracts can be arbitrated, provided that the arbitration is seated in Paraguay.

Conversely, public policy issues that require the intervention of the Public Ministry are non-arbitrable.

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

Although the Arbitration Act recognizes the ability of the State to submit its disputes to arbitration, such right is subject to certain exceptions. In particular, in accordance with Article 2 of the Arbitration Act, the State, its decentralized entities, its autocratic entities, its public companies, and its municipalities, can submit their disputes with private entities (corporations and individuals) to domestic or international arbitration, whenever they arise from legal acts or contracts governed by private law.

Paraguayan law does not contain provisions on class-action arbitration, nor is there case law on the topic.

Further, Law 1334/98 forbids clauses providing for arbitration in contracts between professionals and consumers. Such clauses are deemed null and void.

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 arbitration is inside of the jurisdiction?

In accordance with Article 11 of the Arbitration Act, a local judge faced with a claim that is covered by an arbitration agreement will enforce the arbitration agreement if and when a party raises the invokes this agreement, and unless it can be shown that the arbitration agreement is null, void or unenforceable. However, if a party presents its case on the merits and fails to invoke the arbitration agreement before the court, it will be deemed to have waived the arbitration agreement.

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

Since the law does not make any reference to the place of the arbitration, but only to the agreement itself, the above also applies to arbitrations seated outside Paraguay.

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

In order to answer this question, we have to refer to Articles 11 and 19 of the Arbitration Act.

First, Article 11 provides that if a party that has been dragged into court proceedings objects to the jurisdiction of the Paraguayan court on the basis of the arbitration agreement (as previously mentioned in point 3.a.), the arbitration may proceed until an award, provided that the parties desist from the procedure pending before the court, prior to the rendering of any award.

Article 19 also recognizes the competence-competence principle, by empowering the Arbitral Tribunal to decide on its jurisdiction, including with respect to the validity of said agreement. However, Article 19 of the Arbitration Act provides that, pending a jurisdictional challenge brought before Paraguayan domestic courts, the Arbitral Tribunal may continue its proceedings, but has no power to render an award.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Related to anti-suit injunction but not only)

The Arbitration Act does not allow for courts to intervene in arbitrations seated outside of the jurisdiction.

As a general rule, Article 8 of the Arbitration Act excludes judicial intervention from any matter regulated by said law.

Article 9 further states that only for certain assistance and supervision tasks, and when required, would ordinary courts be entitled to intervene in arbitration proceedings. No *numerus clausus* list is provided in that regard.

4. The conduct of the proceedings

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

The Arbitration Act does not contain any limitation in this regard.

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?

Pursuant to Article 14 of the Arbitration Act, arbitrators must disclose all circumstances that may raise justifiable doubts as to their independence and impartiality. This obligation equally applies throughout the arbitration proceedings. An arbitrator who would lack such characteristics may be challenge. The arbitral tribunal is competent to rule on that challenge.

Pursuant to Article 15 of the Arbitration Act, if the tribunal rejects a challenge, the challenging party may ask (within 15 days following the rejection of the challenge), that the challenge be resolved by the local court within seven days, through a decision which shall not be subject to appeal.

4.3 On what grounds do courts intervene to assist in the constitution of the Arbitral Tribunal (in case of ad hoc arbitration)?

Pursuant to Article 13 of the Arbitration Act, the parties may request the intervention of domestic courts in cases of failure to appoint arbitrators, and in cases where there is no agreement upon the appointment process.

If the parties have agreed upon such appointment procedure, the courts may also intervene at the request of a party, provided that the other party or the arbitrators in place fail to abide by this process, or, if the parties and/or the arbitrators fail to agree in the context of this agreed process.

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

Pursuant to Article 20 of the Arbitration Act, unless otherwise agreed by the parties, the arbitral tribunal may, a party's request, order the interim measures it deems necessary with respect to the subject matter of the dispute. The Arbitral Tribunal shall require from the applicant an appropriate security in relation to those measures.

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?

The Arbitration Act does not expressly provide that arbitration proceedings are confidential. When the State is a party to an arbitration, there is no confidentiality and this arbitration is public.

For example, under Law N° 5102/13, which relates to public-private partnerships in Paraguay, even though arbitration is an option for the parties, Regulatory Decree N° 1350 explicitly states that the procurement documents and the contract must provide (and that the parties therefore consent) that the arbitration shall be public, irrespective of the arbitration rules on which the parties have agreed.

4.5.2 Does it regulate the length of arbitration proceedings?

It does not.

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

Pursuant to Article 23 of the Arbitration Act, the parties may freely determine the place of arbitration. Absent such agreement, the arbitral tribunal will determine the same, taking into account the circumstances of the case, including the convenience of the parties.

Notwithstanding the foregoing, unless the parties agree otherwise, the Arbitral Tribunal may, meet at any place it deems appropriate to hold deliberations among its members, to hear the witnesses, the experts or the parties, or to examine goods or other goods or documents.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, in which conditions?

Article 20 of the Arbitration Act allows arbitrators to issue interim measures. However, they can only do so at the request of a party.

The condition for granting interim measures remains the same as in the 1985 version of the Model Law. Under Article 20 of the Arbitration Act, arbitrators may order any interim measure deemed necessary in respect of the subject-matter of the dispute. In turn, the Arbitral Tribunal shall require from the petitioner an appropriate security in relation to those measures, which in practice must be sufficient to cover possible damages to the other party arising from the granting of such interim measures.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

Article 22 of the Arbitration Act grants broad powers to arbitrators for conducting the arbitration, only subject to the principle of party autonomy and the Arbitration Act. Unless otherwise agreed by the parties, the arbitral has the power to determine the admissibility, relevance and value of the evidence. No further specification is made in this regard.

4.5.6 Does it make mandatory to hold a hearing?

Article 27 of the Arbitration Act provides that, unless otherwise agreed by the parties, the arbitral tribunal will decide if hearings will be held for the presentation of evidence or pleadings, or if the award will be based solely on documents and other evidence.

4.5.7 Does it prescribe principles governing the awarding of interest?

It does not.

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

Chapter IX of the Arbitration Act sets forth a few principles regarding the costs of the arbitration which are summarized below:

- The parties may agree on costs allocation. Absent any such agreement, the Arbitration Act shall apply.
- The Arbitral Tribunal's costs must be reasonable, taking into account the amount of the dispute, the complexity of the matter, the time spent resolving the dispute, and other circumstances which it may deem relevant.
- The Arbitral Tribunal's costs will be fixed in the final award.
- The Arbitral Tribunal will request a deposit to cover the arbitrators' costs, travel expenses and other expenses. Each party shall bear the deposit in equal shares. In practice the costs are awarded to the winning party, although arbitrators also have the power to order parties to cover their respective costs, on justified grounds.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

There is no explicit legislation or relevant case-law regarding this topic.

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

There is no explicit legislation or relevant case-law regarding this topic.

5. The Award.

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

Pursuant to Article 36 of the Arbitration Act, the award should state the reasons upon which it is based, unless the parties have agreed that no reasons shall be given.

Otherwise, the parties may ask for an award by consent, which is provided for under article 34 of the Arbitration Act.

5.2 Can the parties waive the right to seek the annulment of the award? If yes, under which conditions?

They cannot, since this would go against public policy rules. Judicial review is ultimately in the hands of the Supreme Court of Justice, since it entrusted with the review of the constitutionality of decisions from any kind of jurisdictional authority, pursuant to Article 256 of the National Constitution. Accordingly, since arbitral awards are granted equivalent jurisdictional authority as judicial decisions, they are always subject to review by the judicial authorities, notwithstanding the existence of a parties' agreement to the contrary.

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)? If yes, what are the grounds for an appeal?

Pursuant to Article 40 of the Arbitration Act, it is only possible to seek the annulment of an award.

5.5 What procedure 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?

Once the request for recognition and enforcement of an award has been filed, the judge shall serve a copy to the defendant, within five days from the registration of the application pursuant to the requirement of "judicial notification". The defendant is required to present its defense against the application in full, together with all relevant evidence in support of its case, including in particular all documentary evidence. If it does not have certain documents which are relevant to its defense, it may request an order from the judge that they be produced by the applicant or a third party, provided that the defendant indicates to the judge the content of the missing documents, their place, file, public office or person in whose power they are. The affected party may only resist enforcement on the grounds set forth in Article 46 of the Arbitration Act, which are set out below:

- (a) a party to the arbitration agreement 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 the law of the country where the award was made; or
- (b) the party against whom the award is invoked 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
- (c) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (d) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
- (e) the award has not yet become binding to the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (f) If the judge finds that, under the Paraguayan Law, the subject-matter of the dispute is not capable of settlement by arbitration, or the recognition or enforcement of the award would be contrary to international public policy or that of the Paraguayan State.

If none of these grounds is satisfied, the judge will decide on whether the award is enforceable within five days from the response by the defendant (or lack thereof). The judge may order the defendant to comply with the award and the seizure of assets. In case of an objection to the recognition or enforcement, the procedure for incidents provided for in the Code of Civil Procedure shall apply. The judgment on recognition and enforcement of the award shall not be subject to any appeal. If the enforcement of the requested award is ordered, such enforcement will proceed in accordance with the legal provisions on enforcement of national judgments provided for in the CPC.

The enforcement process, which is filed before the same judge who decided on the recognition of the award, may be initiated once all the parties have been duly notified and no actions for annulment have been filed or, had there been any actions for annulment filed, once they have been rejected.

The enforcement process is based on the principle of equality and adequate defense. Payment can be obtained through a direct payment from the affected party, or the seizure and the auction of assets.

Arbitral awards issued by foreign Arbitral Tribunals shall be enforceable and effective in Paraguay, as per the treaties concluded with the State from which they come. In the absence of treaties, awards will be enforceable if, they have the same authority as judgments of judicial courts in their country of origin.

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

No. While the courts have discretion to order suspension stay of enforcement, it is not mandatory for them to do so.

In this regard, Article 47 of the Arbitration Act provides that if a request for setting aside or for a stay of the enforcement of an award has been made before a court of the country in which, or under the law of which, that award was issued, the court where recognition or enforcement of the award is sought may adjourn its decision until the jurisdiction at the place of arbitration have decided on the application, and may also order the other party to provide appropriate security.

Additionally, pursuant to Article 43 of the Arbitration Act, in the presence of a request for annulment of an award, the Court of Appeals may suspend the annulment proceedings, at a party's request and provided that it finds this appropriate.

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

Pursuant to Article 46 of the Arbitration Act, annulment of an award at the seat of arbitration is one of the ground under which enforcement may be refused in Paraguay.

5.8 Are foreign awards readily enforceable in practice?

Foreign arbitral awards are indeed readily enforceable in practice, in light of the fact that the law provides sufficient tools to enforce the awards. National courts have generally enforced foreign arbitral awards without additional requirements other than those applicable to the enforcement of domestic awards.

6. Funding Arrangements.

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding in the jurisdiction? If so, what is the practical and/or legal impact of such restrictions

There are no restrictions regarding funding arrangements in the Paraguayan legislation. Such arrangements, however, are not common market practice.

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

There are no ongoing efforts or projects to replace, amend or otherwise update the Arbitration Act in the near future.