

# ARGENTINA

CHAPTER PREPARED BY

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## JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | + |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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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 any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

In Argentina, international commercial arbitration is exclusively regulated by the Law No. 27,449 on International Commercial Arbitration (“ICAL”), which is based on the UNCITRAL Model Law. Conversely, domestic arbitration is regulated by the National Civil and Commercial Code (“CCC”) – as a unique set of substantive rules applicable to all jurisdictions – and the procedural codes (for procedural matters) of each jurisdiction (*i.e.*: provinces).

Neither the ICAL nor the CCC are applicable to disputes to which the State is a party. Hence, this matter is regulated by special laws, international treaties and conventions.

Key places of arbitration in the jurisdiction?	City of Buenos Aires.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Not established by law, but the parties may freely agree on it.
Requirement to retain (local) counsel?	Not necessary for international arbitration. Local counsel (enrolled at the respective Argentine jurisdiction bar) is needed to resort to courts for any matter related to the arbitration ( <i>i.e.</i> : parallel proceedings, request for provisional measures, production of evidence with the assistance of the court, etc.).
Ability to present party employee witness testimony?	Not forbidden by law.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Yes.
Availability of interest as a remedy?	Yes.
Ability to claim for reasonable costs incurred for the arbitration?	Neither the CCC nor the ICAL establish a rule with respect to allocation of costs. The parties may agree on this matter. In absence of such agreement, the National Civil and Commercial Code of Procedure (the “NCCCP”), which applies exclusively to court proceedings, states that the losing party should bear the costs unless the circumstances of the case, in the adjudicator’s view, justify a different decision on such allocation.
Restrictions regarding contingency fee arrangements and/or third-party funding?	There are no provisions regarding third-party funding. Contingency fee arrangement is regulated by the local bar rules, which allow lawyers to agree on contingency fees for up to 30% of the value of the awarded amount.
Party to the New York Convention?	Yes.
Party to the ICSID Convention?	Yes.

Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	<p>Article 2560 of the CCC, as a general principle, provides for a 5-year time-limitation period. Such provision would be applicable to, among others, the civil action for the enforcement of a contract.</p> <p>Notwithstanding so, the NCC provides special time-limitation periods for some civil actions, such as (i) a 3-year term for claiming for damages (including contractual); (ii) a 2-year term for claims that accrue over periods of years or shorter terms; and (iii) a 1-year term for claims regarding endorsable or bearer documents.</p>
Other key points to note?	ϕ
<a href="#">World Bank, Enforcing Contracts: Doing Business</a> score for 2020, if available?	Argentina ranks 97 <sup>th</sup> out of 190 countries with a score of 57.5.
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2020, if available?	Argentina ranks 45 <sup>th</sup> out of 128 countries with a score of 0.59.

## ARBITRATION PRACTITIONER SUMMARY

Argentina is a federal republic, with both federal and provincial levels of political organization. Substantive provisions (such as civil and commercial law) enacted by the Federal Congress are applicable to the whole nation. Rules of procedure are passed by the legislative branch of each province.

Since the enactment of the Law No. 27,449 on International Commercial Arbitration (“ICAL”) in July 2018, Argentina has a dualist system: (i) international commercial arbitration is exclusively regulated by the ICAL, which is substantially based on the UNCITRAL Model Law; and (ii) domestic arbitration is regulated by the National Civil and Commercial Code (“CCC”) – as a unique set of substantive rules applicable to all jurisdictions – and the procedural codes (for procedural matters) of each jurisdiction (*i.e.*: provinces).

Neither the ICAL nor the CCC are applicable to disputes to which the State is a party. Hence, this matter is regulated by special laws, international treaties and conventions.

Finally, Argentina is a party to (i) the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”); (ii) the 1965 Washington Convention on the Settlement of Investment Disputes Between States and National of Other States (the “ICSID Convention”); (iii) the 1975 Inter-American Convention on International Commercial Arbitration; and (iv) the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

Date of arbitration law?	The ICAL was enacted on July 4, 2018 and entered into force on August 3, 2018. The CCC was enacted on October 1, 2014 and entered into force on August 1, 2015.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The ICAL is based on the 2006 UNCITRAL Model Law, with some minor differences, mostly of non-substantive nature. The main differences are: (i) the exclusion of item (c) of Article 1(3) of the UNCITRAL Model Law to define when arbitration is international (Article 3); (ii) the qualification as commercial to any relationship, contractual or not, completely or mostly governed by private law (Article 6); (iii) the lack of validity of any clause that gives a party a privileged position for the appointment of arbitrators (Article 24); (iv) the inclusion of specific examples that give rise to justifiable doubts regarding the independence and impartiality of arbitrators (Article 28); (v) the partial modification of Article 17.G of the UNCITRAL Model Law (replacing the term “granted” by “requested”) (Article 55); (vi) 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); (vii) the duty of the arbitrators to provide reasons on which the award is based and the prohibition to the parties to agree otherwise (Article 87); and (viii) the 30-day term for filing a request for setting aside the award, instead of the three-month term established in Article 34.(3) of the UNCITRAL Model Law (Article 100).
Availability of specialized courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There are no specialized courts or judges for arbitration-related matters. According to Article 13 of the ICAL, the national commercial courts are the competent tribunal to exercise the functions referred to in the law with respect to arbitrations seated in Buenos Aires.

<p>Availability of <i>ex parte</i> pre-arbitration interim measures?</p>	<p>Yes. According to Article 21 of the ICAL and Article 1655 of the CCC, the courts are entitled to grant <i>ex parte</i> interim measures in proceedings subject to arbitration (either before or after the constitution of the arbitral tribunal). A request for interim relief made by party to the arbitration does not affect the jurisdiction of the arbitral tribunal.</p>
<p>Courts' attitude towards the competence-competence principle?</p>	<p>The competence-competence principle is expressly recognized by the Argentine legislation (both the CCC and the ICAL) and has been consistently applied by the courts (see, for example, Court of Appeals on Commercial Matters, December 20, 2016, <i>Francisco Ctibor S.A.C.I. y F. v. Wall-Mart Argentina S.R.L.</i>). Articles 1654 and 1656 of the CCC enshrined the competence-competence principle establishing, respectively, that (i) unless otherwise stated in the arbitration agreement, the arbitrators have the power to decide on their own jurisdiction including the power to rule on the existence or validity of the arbitration agreement, and (ii) courts must decline 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. Articles 19 and 35 of the ICAL set forth similar provisions for international commercial arbitration.</p>
<p>May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?</p>	<p>No. Arbitral tribunals should always state the reasons on which their decisions are based.</p>
<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?</p>	<p>In international arbitration, Article 99 of the ICAL establishes the same grounds for annulment of awards as those set forth in UNCITRAL Model Law.</p> <p>In domestic arbitration, grounds for annulment of awards are established in the procedural codes of each jurisdiction. Under the NCCCP, it is necessary to distinguish between <i>de iure</i> arbitration and <i>ex aequo et bono</i> arbitration (or <i>amiable composition</i>).</p> <p>According to Articles 760 and 761 of the NCCCP, grounds for annulment of awards issued in <i>de iure</i> arbitration are (i) essential procedural errors (<i>i.e.</i>: procedural flaws that affect due process, which constitutes a similar ground as the one set forth in Article V.1.b) of the NY Convention); (ii) award rendered once the time limit to do so has been elapsed; (iii) award that decided issues not submitted by the parties (<i>i.e.</i>: similar ground as the one established in Article V.1.c) of the NY Convention); and (iv) award that contains contradictory decisions in its dispositive part.</p> <p>Article 771 of the NCCCP establishes only two grounds for annulment in case of <i>ex aequo et bono</i> arbitration: (i) award rendered once the time limit to do so has been elapsed; and (ii) award that decided issues not submitted by the parties to the tribunal.</p>

<p>Do annulment proceedings typically suspend enforcement proceedings?</p>	<p>According to Article 105 of the ICAL, the court from which recognition or enforcement is requested may suspend its decision on the basis of the existence of an annulment proceeding. It may also request security to the other party.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>Argentine courts have not yet issued decisions on this matter.</p>
<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>Under Article 1658.c) of the CCC and Articles 64 and 72 of the ICAL, the arbitral tribunal may conduct the arbitration as it considers appropriate. Notwithstanding so, according to the NCCCP and the ICAL, a court may refuse to recognize or enforce an award if the party against whom the award is invoked was unable to present its case. Thus, in principle, a decision of an arbitral tribunal ordering a hearing to be conducted remotely, despite a party's objection, would not constitute a ground to reject recognition or enforcement of the award, unless the party against whom the award is invoked proves that such circumstance has prevented it from present his case.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>In general terms, Argentine courts have adopted a more "interventionist approach" when the State is a party to the dispute, having suspended arbitration proceedings as requested by the State or State entity and accepted jurisdiction even when a valid arbitration agreement existed.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>No decision on this issue has been rendered yet.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>Not under the CCC (domestic arbitration). Probably yes under the ICAL (international commercial arbitration).</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>Not under the CCC (domestic arbitration). Probably yes under the ICAL (international commercial arbitration).</p>
<p>Other key points to note?</p>	<p>Argentina's commercial courts have a favorable, non-interventionist approach to international commercial arbitration proceedings</p>

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

In Argentina, international commercial arbitration is exclusively regulated by Law No. 27,449 on International Commercial Arbitration (“ICAL”), which is based on the 2006 UNCITRAL Model Law, with some minor differences, mostly of non-substantive nature.

The main differences between the ICAL and the 2006 UNCITRAL Model Law are the following:

- (i) The exclusion of item (c) of Article 1(3) of the UNCITRAL Model Law to define when arbitration is international, which implies that the ICAL requires an objective international element in the parties’ relationship (Article 3);
- (ii) The qualification as commercial of any relationship, contractual or not, completely or mostly governed by private law (Article 6);
- (iii) The partial modification of Article 7(2) of the UNCITRAL Model Law regarding arbitration agreement (Article 15);
- (iv) The lack of validity of any clause that gives a party a privileged position for appointing the arbitrators (Article 24);
- (v) The inclusion of specific examples that give rise to justifiable doubts regarding the independence and impartiality of arbitrators (Article 28);
- (vi) The partial modification of Article 17.G of the UNCITRAL Model Law, replacing the term “granted” (Model Law) with “requested” (Article 55);
- (vii) The arbitral tribunal is empowered to apply the rules of law which it deems appropriate in case the parties have not chosen the applicable law (Article 80);
- (viii) The duty of the arbitrators to provide reasons on which the award is based and the prohibition to the parties to agree otherwise (Article 87); and
- (ix) A 30-day term for filing a request for setting aside, instead of the three-month term established in Article 34(3) of the UNCITRAL Model Law (Article 100).

Domestic arbitration is regulated by the National Civil and Commercial Code (“CCC”), which is a unique set of substantive rules applicable to all jurisdictions, and the procedural codes (for procedural matters) of each jurisdiction (*i.e.*: provinces).

Therefore, while the legal framework regarding international commercial arbitration is based on the UNCITRAL Model Law (with some minor differences), domestic arbitration proceedings is regulated by local provisions.

Neither the ICAL nor the CCC are applicable to disputes to which the State is a party. Hence, this matter is regulated by special laws, international treaties and conventions.

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

The ICAL was enacted on July 2018 and has not been revised since then.

The CCC was enacted on October 2014 and has not been revised since then as far as the arbitration provisions are concerned.

## 2. The arbitration agreement

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

International contracts are ruled by the law chosen by the parties, provided that such selection respects the public order principles and the mandatory rules contained in Argentine law (Article 2651 of the CCC).

Although there is no relevant case law on this matter, it is reasonable to expect that Argentine courts will respect the law chosen by the parties. For the same reason, if the parties failed to choose the law governing the arbitration agreement, Argentine courts will probably apply the law of the place of execution of the main obligations of the contract or the law of the debtor's domicile in accordance with the default rules established in Article 2652 of the CCC.

### 2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

Argentine courts have not yet issued decisions on this matter. Notwithstanding so, under Article 65 of the ICAL, if there is no agreement regarding the seat the arbitration, the arbitral tribunal will determine the seat, taking into account the circumstances of the case and the parties' convenience.

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

Yes, the arbitration agreement is independent from the contract in which it is set forth (Article 35 of the ICAL and Article 1653 of the CCC).

Therefore, any inefficacy of the contract containing the arbitration agreement is without prejudice to the validity of the arbitration agreement, so even in case of nullity of the contract, the arbitrators maintain their competence to determine the respective rights of the parties and to decide on their claims and arguments.

### 2.4 What are formal requirements (if any) for an enforceable arbitration agreement?

Under the ICAL, an arbitration agreement must be "in writing". This requirement is considered fulfilled if the content of the agreement is recorded in any form (Article 15). The requirement that an arbitration agreement be in writing is met by electronic communications (Article 16) or if it is contained in an exchange of submissions (statements of claim and defense) in which the existence of the agreement is alleged by one party and not denied by the other (Article 17). Finally, the reference included 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 (Article 18).

Regarding domestic arbitration, the CCC contains similar provisions to those set forth in the ICAL. Article 1650 of the CCC establishes that the arbitration agreement must be "in writing" and that the reference made in a contract to any document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Concerning the content of an arbitration agreement, Article 1658 of the CCC states that the parties can freely agree on: (a) whether the arbitration will be *de iure* or *ex aequo et bono*; (b) whether the arbitration will be institutional or *ad hoc*; (c) the seat of the arbitration; (d) the language in which the proceedings will be conducted; (e) the number, qualifications and the procedure to appoint the arbitrators; (f) whether the arbitrators shall have (or not) the power to adopt, at the request of any of the parties, interim measures deemed to be necessary with respect to the dispute; (g) the time limit within which the arbitrators shall issue the award; (h) the confidentiality of the arbitration; (i) the way in which the costs of the arbitration should be borne or distributed; (j) the fees to be paid to the arbitrators; among other issues.



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

Neither the ICAL nor the CCC contains specific rules related to this matter. As a general rule, non-signatories are not bound by arbitration agreements under Argentine law.

Nonetheless, arbitration agreements may be exceptionally extended to a third party: (i) to avoid fraud or other illegal acts; (ii) when the non-signatory has been actively involved in the negotiation, performance or termination of the contract; or (iii) under the doctrine of agency, guarantor, direct benefit, assignment of the principal contract or debt, succession of legal persons, merge of legal entities or estoppel (see Court of Appeals on Commercial Matters, April 25, 2018, *Acerra, Nicolás Rubén v. Bapro Mandatos y Negocios S.A.*).

## **2.6 Are there restrictions to arbitrability? In the affirmative:**

Yes, under Argentine law there are both objective and subjective restrictions to arbitrability.

### **2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?**

Yes. The CCC and the National Civil and Commercial Code of Procedure (the “NCCCP”), as well as other procedural codes, contain rules establishing that certain matters cannot be submitted to arbitration.

As a general rule, Article 737 of the NCCCP states that matters that cannot be subject to compromise or settlement cannot be submitted to arbitration.

In turn, Article 1651 of the CCC determines that the following matters are not arbitrable: (a) those that refer to the civil status or capacity of persons; (b) family affairs; (c) those involving the rights of users and consumers; (d) adhesion contracts, whatever their purpose is; and (e) those derived from labor relations.

Finally, Articles 2609 and 2635 of the CCC establishes that Argentine judicial courts have exclusive jurisdiction in some specific matters, such as those related to validity of patents, trademarks and industrial designs, which implies a prohibition to include those matters in an arbitration agreement.

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

Yes. As explained above, cases concerning the rights of users, consumers or employees are not arbitrable.

Under the CCC, the general rule is that parties to an arbitration agreement must have reached the age of majority (18 years) and enjoy full exercise of their civil rights (Articles 22, 23 and 1646 of the CCC).

As far as foreign parties are concerned, Argentine law provides that the person capacity will be governed by the law of their domicile (Article 2616 of the CCC). On the other hand, the capacity of legal entities is governed by the laws of the place in which they have been incorporated (Article 147 of the CCC).

States or State entities may enter into an arbitration agreement if they are expressly authorized by law (See Federal Supreme Court, November 12, 1920, *Gerardo Pagano v. Estado Nacional*; August 16, 1937, *Cía. Ítalo Argentina de Electricidad v. La Nación*; November 4, 1942, *Guido Simonini v. La Nación*; August 8, 2007, *Techint Compañía Técnica Internacional S.A.C.E.I. v. Empresa Nuclear Argentina de Centrales Eléctricas en liquidación y Nucleoeléctrica Argentina S.A.*).

In the last years, there has been a trend favorable to use arbitration for contractual matters where the State or its entities are directly or indirectly involved. The Renewable Energy Regulation in force since 2016 (Law No. 26,190, as amended by Law No. 27,191 and Decree No. 882/2016) and the Public-Private Partnership Contracts Regulation (Law No. 27,328 and Decree No. 118/2017) are two examples of this trend. Both legal frameworks explicitly set forth arbitration under UNCITRAL Rules of Arbitration as a dispute resolution mechanism for contracts executed under their provisions.

### 3. Intervention of domestic courts

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

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

Generally, Argentine courts respect the parties' agreement to arbitrate and regularly declare their lack of jurisdiction to intervene in matters where a valid arbitration agreement is found.

Article 19 of the ICAL states that a court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than its first submission, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

Similarly, in domestic arbitration, Article 1656 of the CCC provides that if an arbitration agreement is found, the courts shall decline jurisdiction and refer the parties to arbitration, unless the arbitral tribunal has not been yet constituted and the arbitration agreement is manifestly void or inapplicable.

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

It does not make any difference if the place of the arbitration is outside of Argentina. As a general rule, Argentine courts will decline jurisdiction and refer the parties to arbitration.

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

Under Argentine law, there is no regulation on anti-suit injunctions.

In principle, anti-suit injunctions are considered inadmissible on the grounds that they are incompatible with the constitutional right of access to the courts.

Argentine courts would likely reject any injunction issued by arbitrators enjoining the parties to refrain from initiating, halting or withdrawing litigation proceedings (see Court of Appeals on Commercial Matters, August 6, 2002, *AT&T Argentina v. Siemens*). This is not contradictory with the solutions provided in Article 19 of the ICAL and Article 1656 of the CCC to the extent that parallel court proceedings which do not overlap with the dispute brought to arbitration can move forward independently. Only if the courts find that a given dispute is covered by a valid arbitration agreement, they will decline jurisdiction, referring the parties to arbitration.

#### 3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

Argentine courts are not likely to interfere with arbitrations seated outside Argentina. Exceptionally, their intervention would be limited to decide interim measures requested by a party to the arbitration agreement, to recognize and enforce interim relief or awards issued by arbitrators and, in general, provide assistance to the arbitral tribunal.

However, in cases where the State or a State entity is a party, the risk of interference exists even when the seat of the arbitration is outside Argentina. Indeed, while Argentine courts do not normally interfere with arbitrations between private parties, they have a more "interventionist approach" when the State is a party to the dispute. In fact, there are some examples where the courts (i) have suspended arbitration proceedings, as requested by the State or State entity, on the grounds that the arbitral tribunal was not properly constituted, or (ii) have accepted jurisdiction even when a valid arbitration agreement existed (see Court of Appeals on Contentious-Administrative Matters, September 27, 2004, *Entidad Binacional Yacyreta v. Eriday*; *id.*, *Procuración del Tesoro v. Cámara de Comercio Internacional*; *id.*, October 7, 2014, *YPF S.A. v AES Uruguaiana Emprendimientos S.A.*; among others).

#### 4. The conduct of the proceedings

Generally, under Argentine law, arbitration proceedings (either international or domestic) can be freely determined by the parties, as far as such agreement respects the principle of equality and grants both parties the full opportunity to assert their rights (Article 62 of the ICAL and Article 1662 of the CCC).

##### 4.1 Can parties retain foreign counsel or be self-represented?

In international arbitration, the parties can retain foreign counsel or be self-represented.

Local counsel (enrolled at the respective Argentine jurisdiction bar) is required to resort to local courts for any matter related to the arbitration, such as representation in parallel court proceedings, request for provisional measures before the courts, production of evidence with the assistance of the court, etc.

##### 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?

Argentine courts are strict, in practice, when controlling arbitrators' independence and impartiality (see Court of Appeals on Commercial Matters, May 14, 2010, *American Restaurant Inc. v. Outbank Steakhouse Int.*). Courts normally review whether all requirements for an arbitrator's appointment are met and, more importantly, whether the arbitrator is impartial and independent.

Under Argentine law, a person contacted for a possible appointment as an arbitrator, or appointed as arbitrator and throughout the whole arbitration proceedings, shall disclose without delay any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence (Articles 27 and 28 of the ICAL and Article 1662 of the CCC). Although there is no case law on lack of disclosure by an arbitrator, it is expected that Argentine courts will adopt a cautious approach in reviewing whether the lack of disclosure *per se* justifies a disqualification.

In domestic arbitration, arbitrators may be challenged on the same grounds as local judges (Article 1663 of the CCC). These grounds include: (i) having a close family relationship with one of the parties or its lawyer; (ii) having an interest in the dispute or participating in a business enterprise with one of the parties or any of its lawyers, unless the enterprise is a limited liability company; (iii) if they are a creditor or debtor of either party; (iv) if they are engaged, in whatever manner, in a court action involving either party; (v) having acted as attorney for or against any of the parties, or having defended or pleaded against any of them or given an opinion or issued recommendations on the dispute submitted to arbitration before or after it has arisen; (vi) having received any important benefits from any of the parties; (vii) having a friendly relationship with any of the parties denoting great familiarity or frequent contact; and (viii) when the challenged arbitrator feels enmity, hatred or resentment against a party as evidenced through known facts, but not if such enmity, hatred or resentment is based on attacks against the arbitrator after arbitral proceedings have commenced.

##### 4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

With respect to international arbitration, Article 24 of the ICAL states that the courts shall appoint arbitrators (i) in an arbitration with three arbitrators; 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; and (ii) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator.

In addition, according to Article 25 of the ICAL, where the appointment procedure is agreed by the parties, the court may appoint the arbitrators if (i) a party fails to act as required under such procedure, or (ii) the parties, or the two arbitrators, are unable to reach an agreement under such procedure, or (iii) a third party, including an institution, fails to perform its functions under such procedure.

Regarding domestic arbitration, Article 1659 of the CCC provides that the parties may agree on the procedure for the appointment of arbitrators and, failing such agreement, the competent court shall appoint the arbitrators: (i) in an arbitration with three arbitrators, 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, or the institution in charge of the administration of the arbitration fails to do it; and (ii) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator and the institution in charge of the administration of the arbitration fails to do so. Article 1659 of the CCC also states that, if a dispute involves more than two parties and they cannot reach an agreement as to the constitution of the arbitral tribunal, the institution in charge of the administration of the arbitration or the competent domestic court (in case of an *ad hoc* arbitration) shall appoint the arbitrators.

**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?**

Yes, the parties may request provisional or interim measures to the Argentine courts, either before or after the constitution of the arbitral tribunal, which are not incompatible with an arbitration agreement and do not affect the jurisdiction of the arbitral tribunal (Article 21 of the ICAL and Article 1655 of the CCC).

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

In international arbitration, the ICAL provides that arbitrators shall (i) be impartial and independent from the parties (Article 27); (ii) disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence without delay (Article 28); (iii) treat the parties with equality and give them the full opportunity to assert their rights (Article 62); and (iv) render a reasoned award (Article 90).

In domestic arbitration, in addition to the obligation to treat the parties with equality and give them the full opportunity to assert their rights, arbitrators shall (i) disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence; (ii) be available to carry out his/her tasks as arbitrator; (iii) be present at the hearings; (v) participate in the deliberation with the co-arbitrators; and (v) render a reasoned award within the agreed term (Article 1662 of the CCC).

**4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

Argentine law does not establish rules on confidentiality of arbitration proceedings. Nevertheless, the parties may freely agree on the confidentiality of the arbitration proceedings (Article 63 of the ICAL and Article 1658 of the CCC).

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

Argentine law does not regulate the length of the arbitration proceedings. This is a matter upon which the parties may agree.

In international arbitration, failing such agreement, the rules of the institution in charge of the administration of the arbitration shall apply or, in its absence, the law of the seat of the arbitration.

In domestic arbitration, the parties may agree on the term in which the award should be issued (Article 1658 of the CCC).

**4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

In international arbitration, unless the parties had agreed otherwise, the arbitral tribunal may gather in the place the arbitrators deem convenient in order to deliberate, hear the parties, their witnesses or experts (Article 66 of the ICAL).

In domestic arbitration, although the CCC remains silent, the parties may agree on the place where hearings or meetings will be held.

Neither the ICAL nor the CCC contains an express provision regulating remote hearings. In addition, both in international and domestic arbitration, a right to a physical hearing cannot be inferred from the Argentine *lex arbitri* and, in case that a party has requested a hearing, the arbitral tribunal has discretion to decide whether such hearing should take place physically or remotely. Actually, according to Article 1658.c) of the CCC and Articles 64 and 72 of the ICAL, the arbitral tribunal may conduct the arbitration as it considers appropriate.

Nevertheless, Argentine law recognizes the principle of party autonomy in the framework of arbitration agreements. Both the ICAL and the CCC establish that the parties to an arbitration agreement can freely agree on the proceedings which the arbitral tribunal should follow. This comprises the right to decide how hearings should be conducted. Only if the parties have not reached an agreement, the arbitrators are entitled to conduct the arbitration in the way they consider appropriate.

Therefore, if the arbitration agreement requires a physical hearing or the parties agreed on holding a physical hearing during the course of the arbitration proceedings, the arbitral tribunal is bound by such agreement. In that case, if restrictions to personal mobility or to hold meetings in person are in force, the arbitral tribunal has no option but to postpone the hearing until such restrictions are lifted and the hearing can be held physically.

On the contrary, if only one of the parties objects to hold the hearing remotely, absent an agreement on the matter, the arbitral tribunal may decide to reject such objection and proceed with the remote hearing if the other party has requested so or provided its consent to proceed in that way. Even though there is no case law on this matter so far, Article 72 of the ICAL (for international arbitration) and Article 1658 of the CCC (for domestic arbitration) provide a basis for applying this criterion.

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

Yes, arbitrators are allowed to issue interim measures. This applies to both international and domestic arbitration.

In international arbitration, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures (Articles 38 and 39 of the ICAL). For instance, the arbitral tribunal may order a party to: (i) maintain or restore the *status quo* pending determination of the dispute; (ii) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice; (iii) preserve assets to secure payment of the future award to be rendered; or (iv) preserve evidence that may be relevant and material for the adjudication of the dispute; among others.

In domestic arbitration, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures which must be executed exclusively by the competent judicial court. Interim measures adopted by the arbitrators may be challenged before courts if they violate constitutional rights or are unreasonable (Article 1655 of the CCC).

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

Argentine law does not regulate the arbitrators' right to admit or exclude evidence. Rules of evidence can be freely agreed by the parties.

In international arbitrations seated in Buenos Aires, it is frequent to observe that either the arbitral tribunal or the parties decide to be guided by the IBA Rules on the Taking of Evidence in International Arbitration for the production of evidence. This trend is not so common in domestic arbitration.

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

No. In international arbitration, except otherwise agreed, the tribunal will decide whether a hearing may be held or whether the dispute may be decided on the basis of other evidence than oral testimonies (Article 72 of the ICAL). The tribunal must also hold a hearing in case one of the parties has requested so, except otherwise agreed.

In domestic arbitration, it is not mandatory to hold a hearing and the parties may agree on the evidence to be produced (Article 1658 of the CCC). However, if no agreement is reached by the parties, the arbitral tribunal may conduct the proceedings as it deems appropriate.

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

Under Argentine law, interest is a matter regulated by the substantive law (*i.e.*: the law applicable to the merits).

Under the CCC, compensatory, default and punitive interest are available.

Compensatory interest can be agreed between the debtor and the creditor, as well as the rate fixed for its liquidation. If it was not agreed by the parties, interest may be fixed by law, by usage and customs or by the court (Article 767 of the CCC). Default interest should be paid by the debtor from the breach of the obligation and the rate can be agreed by the parties. Absent such agreement, provisions of special laws or regulations of the Central Bank of Argentina will be applicable (Article 768 of the CCC). Lastly, punitive interest is only available if the parties have expressly agreed so.

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

The ICAL and the CCC do not provide rules on the allocation of arbitration costs. The parties may agree on this matter, either through the arbitration agreement or subsequently.

Article 68 of the NCCCP, applicable to court proceedings, sets forth the general rule according to which the losing party should bear the costs unless the circumstances of the case, in the adjudicator's view, justify a different decision on such allocation (similar provisions are contained in the procedural codes of the provinces).

### **4.6 Liability**

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

In international arbitration, the ICAL does not contain provisions on arbitrators' immunity. The scope and extent of such immunity can be agreed between the parties and the arbitrators, although it is not frequent in practice.

In domestic arbitration, once the arbitrators have accepted their appointment, they are liable for any breach of their duties that causes damages to the parties (Article 1662 of the CCC and Article 745 of the NCCCP).

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

There is no real concern arising from potential criminal liability for any of the participants in arbitrations conducted in Argentina. Actually, there have been no cases so far on criminal liability concerning any participants in arbitration proceedings.

## 5. The award

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

No. In international arbitration, Article 87 of the ICAL (departing from the 2006 UNCITRAL Model Law in this particular issue) states that the parties cannot validly waive the requirement for an award to provide reasons. Therefore, arbitral tribunals must provide the reasons upon which the award is based.

Similarly, in domestic arbitration, awards rendered in both *de iure* or *ex aequo et bono* arbitrations should provide reasons (Article 1662 of the CCC).

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

No, the parties cannot validly waive their right to seek the annulment of the award (Article 98 of the ICAL and Article 760 of the NCCCP). Conversely, the parties may validly waive the right to submit an appeal against the award.

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

Argentine law does not set forth any atypical mandatory requirement for rendering a valid award.

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

In international arbitration, the appeal is not established by the ICAL. Application for setting aside is the only remedy against an arbitral award (Article 98 of the ICAL), which does not allow a revision on the merits.

In domestic arbitration, the parties can appeal an award on the merits unless they have waived such remedy (Article 758 of the NCCCP).

Notwithstanding so, the Federal Supreme Court has decided –in an isolated precedent where a State entity was a party to the arbitration– that an award can be annulled if it is contrary to public policy or it is illegal, unreasonable or unconstitutional (see Federal Supreme Court, June 1, 2004, *José Cartellone Construcciones Civiles S.A. v. Hidroeléctrica Norpatagónica S.A.*).

However, in the recent years, the Federal Supreme Court has adopted a more restrictive interpretation on the grounds for annulment (more respectful of the finality of awards), even in arbitrations where the State or an State entity was a party to the proceedings (see Federal Supreme Court, September 5, 2017, *Ricardo Agustín López v. Gemabiotech S.A.* and November 6, 2018, *EN – Procuración del Tesoro Nacional s. nulidad del laudo del 20-III-09*).

### 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?

The recognition and enforcement of an award rendered in an international arbitration is regulated by the ICAL, which contains similar provisions to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“NY Convention”).

By ratifying the New York Convention, Argentina has “federalized” and therefore rendered uniform throughout the country the system governing recognition and enforcement of foreign awards. By doing so, within the sphere of application of the New York Convention, the provisions of the Argentine provincial codes that are not fully in compliance with such treaty should no longer be considered applicable (Articles 31 and 75(22) of the Argentine Constitution).

While the court proceedings for enforcing international awards follows the provisions of the NY Convention, the statute of limitations for requesting enforcement is 5 (five) years.



The enforcement of awards rendered in a domestic arbitration is governed by the procedural codes of each province. In general terms, the procedural codes establish that domestic awards may be enforced in the same way as any domestic court's decision (*i.e.* through a summary enforcement proceeding).

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

Yes. In principle, the introduction of annulment or appeal proceedings will automatically suspend the enforcement. Nevertheless, on the application of the party claiming recognition or enforcement of an award subject to a request for annulment, Argentine courts may order that the other party provides appropriate security in accordance with Article 105 of the ICAL.

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

Although there is no case law in Argentina interpreting the NY Convention on this issue, it is reasonable to expect that the courts will follow the criterion according to which an award cannot be enforced when it has been annulled at the seat of the arbitration.

**5.8 Are foreign awards readily enforceable in practice?**

Yes. Argentine courts normally recognize and enforce foreign arbitral awards.

Besides the NY Convention and the Inter-American Convention, the ICAL also contains a detailed regulation on recognition and enforcement of arbitral awards. Pursuant to Articles 102 and 103 of the ICAL, the party relying on an award or applying for its enforcement shall provide an original of the award. If the award is not made in Spanish, the court shall request the party to provide a certified translation.

The exequatur proceedings shall be carried out in the same manner as incidental plea proceedings under Argentine law, and enforcement, if authorized, shall be ordered and carried out under the same rules established for decisions of Argentine courts (Article 518 NCCCP). In the course of exequatur proceedings, the court shall hear the respondent against whom exequatur is required. If objections to the enforcement are raised, the claimant shall also be heard. Thereafter, the court shall decide, denying or admitting recognition and ordering enforcement. In exceptional cases, the court can order the production of evidence (Articles 180 to 185 NCCCP). The decision granting or rejecting recognition is subject to appeal before the Court of Appeals.

**6. Funding arrangements**

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

Parties may agree on contingency fees with their counsel. According to the local bar rules, lawyers may agree on contingency fees for up to 30% of the value of the awarded amount (see, for instance, Article 6 of Law No. 27,423).

Third-party funding is not regulated in Argentina. Although not banned, third-party funding is quite infrequent in Argentina.

**7. Arbitration and blockchain**

**7.1 Is the validity of blockchain-based evidence recognised?**

There is no legal regulation on blockchain-based evidence. In addition, Argentine courts have not decided on this issue yet.



## **7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?**

In accordance with Article 1650 of the CCC, the arbitration agreement shall be in writing. Therefore, an arbitration agreement recorded on a blockchain would not be recognized as valid.

Under Articles 14 to 16 of the ICAL, although the arbitration agreement shall also be in writing, such requirement would be considered satisfied if its content is recorded in any form, including electronic communications. Therefore, if the information contained therein is accessible so as to be useable for subsequent reference, the arbitration agreement would be valid. Therefore, under the ICAL, an arbitration agreement recorded on a blockchain may be recognized as valid. Argentine courts have not decided on this issue yet.

Regarding the recognition and enforcement of foreign arbitral awards, Articles 102 and 103 of the ICAL provides that, irrespective of the country in which it was made, any arbitral award shall be recognized as binding upon its application in writing to the competent court, and that the party relying on such award shall supply the original award or a certified copy thereof. Thus, since there is no provision stating the contrary, an award recorded on a blockchain may be recognized as valid. So far, Argentine courts have not decided on this issue yet.

## **7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

As explained before, since there is no provision stating the contrary, under the ICAL, a blockchain arbitration agreement and/or award may be considered as original for the purposes of recognition and enforcement, but to date Argentine courts have not decided on these issues.

## **7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement? (Please consider both hypotheses separately.)**

Even though there is no provision under the ICAL on this issue, an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) may be considered as original for the purposes of recognition and enforcement. There is not case law on this issue yet, but the fact that Argentine courts are executing all type of decisions electronically and the court proceedings have become entirely digital, it is reasonable to assume that awards –either electronically signed or digitally signed– will be accepted for the purposes of recognition and enforcement in the near future.

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

Both the ICAL and the CCC entered into force recently, so no reform is expected in the near future.

## **9. Compatibility of the Delos Rules with local arbitration law**

Both the ICAL and the CCC are compatible with Delos Rules, since both expressly admit that the parties to an arbitration agreement may agree on the rules of an institution that will be in charge of the administration of the arbitration, such as Delos, and recognize as valid and binding the agreement of the parties on such matter.

## **10. Further reading**

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## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	Permanent Court of Arbitration - Buenos Aires Office <a href="https://pca-cpa.org/en/home/">https://pca-cpa.org/en/home/</a>
Main arbitration hearing facilities for in-person hearings?	Permanent Court of Arbitration - Buenos Aires Office <a href="https://pca-cpa.org/en/about/buenosaires-office">https://pca-cpa.org/en/about/buenosaires-office</a> Centro Empresarial de Mediación y Arbitraje (CEMA) <a href="http://www.medyar.org.ar/index.php">http://www.medyar.org.ar/index.php</a> Centro de Mediación y Arbitraje Comercial de la Cámara Argentina de Comercio (CEMARC) <a href="mailto:cemarc@cac.com.ar">cemarc@cac.com.ar</a>
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	Printing services are available at the hearing centres.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	DR Esteno <a href="http://www.dresteno.com.ar/index.html">http://www.dresteno.com.ar/index.html</a>
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Asociación Argentina de Traductores e Intérpretes <a href="http://www.aati.org.ar/">http://www.aati.org.ar/</a>
Other leading arbitral bodies with offices in the jurisdiction?	Tribunal de Arbitraje de la Bolsa de Comercio de Buenos Aires <a href="https://www.bcba.sba.com.ar/institucional/tribunal/">https://www.bcba.sba.com.ar/institucional/tribunal/</a> Centro Empresarial de Mediación y Arbitraje (CEMA) <a href="http://www.medyar.org.ar/index.php">http://www.medyar.org.ar/index.php</a> Centro de Mediación y Arbitraje Comercial de la Cámara Argentina de Comercio y Servicios (CEMARC) <a href="mailto:cemarc@cac.com.ar">cemarc@cac.com.ar</a> Cámara Arbitral de la Bolsa de Cereales <a href="http://www.cabcbue.com.ar/#/">http://www.cabcbue.com.ar/#/</a>