

# PARAGUAY

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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

Paraguay is an arbitration-friendly jurisdiction. Paraguay enacted the Paraguayan Arbitration and Mediation Act (the “**Arbitration Act**”) in 2002, applicable to domestic and international arbitrations taking place in Paraguay. The Arbitration Act is an almost verbatim adoption of the 1985 UNCITRAL Model Law, which led to the increase in the practice of domestic and international arbitration. Also, Paraguay enacted Law No. 5393/2015 which sets forth the general rule of recognition and enforceability of the parties’ choice of law, positioning Paraguay as a friendly jurisdiction for the settlement of disputes related to international contracts. Arbitral proceedings in Paraguay distinguish themselves by their efficiency.

Key places of arbitration in the jurisdiction?	Asunción.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	The Arbitration Act does not provide for the confidentiality of arbitration proceedings.  Parties may enter into confidentiality agreements, except for arbitration proceedings to which the State is a party, which are public.
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. It falls to the arbitral tribunal to determine the admissibility, relevance and weight of a witness’s testimony, provided that the arbitral tribunal considers the applicable arbitration rules, and the parties’ agreement in this respect.
Ability to hold meetings and/or hearings outside of the seat and/or remotely??	Yes. 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.  As a result of the Covid-19 pandemic, the use of telematic means has been fully incorporated to conduct all stages of arbitral proceedings.
Availability of interest as a remedy?	Paraguayan law does not restrict the power of arbitrators to award interest.
Ability to claim for reasonable costs incurred for the arbitration?	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 this rule, for example, in deciding that each party shall bear its own costs. Such decision must be reasoned.

Restrictions regarding contingency fee arrangements and/or third-party funding?	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.
Party to the New York Convention?	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 (" <b>Panama Convention</b> "). 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 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.
Party to the ICSID Convention?	Yes.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period is 10 years. However, some civil actions have a different and specific time-limitation period.
Other key points to note?	Agency, representation and distribution agreements in Paraguay can only be governed by Paraguayan Law. Parties can agree on arbitration proceedings seated in Paraguay. However, they cannot agree on a different choice of law. As a consequence, the failure of a tribunal to apply Paraguayan law would render any ensuing award subject to annulment.
<a href="#">World Bank, Enforcing Contracts: Doing Business</a> score for 2020?	61.6
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score 2020?	Not available.

## ARBITRATION PRACTITIONER SUMMARY

With the enactment of the Arbitration Act in 2002,<sup>1</sup> Paraguay adopted almost entirely the 1985 UNCITRAL Model Law. This allowed a significant increase in the practice of commercial arbitration.

Date of arbitration law?	The Arbitration Act was enacted on 24 April 2002.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The Arbitration Act has adopted almost entirely the 1985 UNCITRAL Model Law with minor deviations. These differences are further developed below.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	The authority responsible for handling arbitration-related matters is the judge of the First Instance Court for Civil and Commercial matters where the arbitration proceeding is seated.
Availability of <i>ex parte</i> pre-arbitration interim measures?	<p>Prior to the constitution of the arbitral tribunal, interim measures can only be requested from the judge of the First Instance Court for Civil and Commercial matters. The law does not contemplate the possibility of granting interim measures by the arbitral institution before the constitution of the arbitral tribunal, such as measures ordered by emergency arbitrators.</p> <p>Article 20 of the Arbitration Act established that interim measures granted by courts will expire seven days after the constitution of the arbitral tribunal.</p> <p>Both courts and arbitrators can grant <i>ex parte</i> interim measures (article 20 Arbitration Act).</p>
Courts' attitude towards the competence-competence principle?	<p>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 <i>ipso jure</i> 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>
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	The Paraguayan Arbitration Law establishes that awards must include the reasoning of the ruling, unless the agree otherwise.

<sup>1</sup> Available in Spanish original and unofficial English translation, by Gross Brown, at <https://delosdr.org/wp-content/uploads/2019/11/Paraguay-Arbitration-and-Mediation-Act-2002-unofficial-translation.pdf>.

<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>Grounds for annulment under the Arbitration Act are substantially the same as those set forth in the New York Convention.</p>
<p>Do annulment proceedings typically suspend enforcement proceedings?</p>	<p>Annulment proceedings must be initiated before the appellate court, where the award has been issued.</p> <p>The suspension of enforcement is not expressly provided as an effect of annulment proceedings. However, in Paraguay, parties can request precautionary measures not expressly included in the law. Thus, the petitioner has the right to request the appellate court the suspension of the enforcement, as a precautionary measure during the proceedings.</p> <p>At their discretion, the Appellate Court may require the petitioner to post a bond after granting the precautionary measure.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>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 issue has been raised.</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>The Arbitration Act has a verbatim adoption of the article 18 equal treatment of the parties of the UNCITRAL Model Law.</p> <p>If a party can demonstrate that the order to conduct hearings remotely affects its rights or goes against the agreement between the parties, then it may be a ground for annulment of the award.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Public bodies are governed by the same laws applicable to private parties regarding the enforcement of awards.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>It is not expressly recognised. However, under the principle of freedom of evidence applicable to Paraguayan law, blockchain-based evidence should be recognised as valid.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>They are not expressly recognized as valid. However, arbitration agreement or awards recorded on a blockchain may be recognised as valid, as long as they comply with the requirements set forth under Paraguayan Law.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>Arbitration agreement or awards recorded on a blockchain can be recognised as valid, as long as it complies with the requirements set forth in the applicable law for arbitration agreements and awards.</p>

Other key points to note?

The National Constitution of the Republic of Paraguay (the "**National Constitution**") grants a jurisdictional nature to arbitration (developed below). All the most salient characteristics of the Paraguayan jurisdiction are detailed in the analytical framework (below).

## JURISDICTION DETAILED ANALYSIS

### 1. The Legal Framework of the jurisdiction

#### 1.1 Is the Arbitration Law based in the UNCITRAL Model Law? 1985 or 2006 version?

The Arbitration Act<sup>2</sup> is an almost verbatim adoption of the 1985 UNCITRAL Model Law. Some noteworthy variations are described below:

*First*, the Arbitration Act applies to private, national and international arbitration, unlike the 1985 UNCITRAL Model Law, which only applies to international commercial arbitration. Paraguay incorporated this option to modernize its domestic arbitration legislation.

*Second*, unlike the 1985 UNCITRAL 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 10 of the Arbitration Act is a verbatim adoption of Article 7 of the 1985 UNCITRAL Model Law. As the writing requirement of Article 10 of the Arbitration Act is construed more narrowly than the requirement expressed under the UNCITRAL Model Law with the amendments of 2006.

*Fourth*, Article 11 of the Arbitration Act deviates from Article 8(2) of the 1985 UNCITRAL Model Law. Indeed, article 8(2) of the 1985 UNCITRAL 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.

*Fifth*, the most significant deviation from the 1985 UNCITRAL Model Law is found at Article 19 of the Arbitration Act. While Article 16 of the 1985 UNCITRAL Model Law authorizes arbitral tribunals to render an award while a jurisdictional matter is pending before domestic 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.

*Sixth*, the time limit to challenge an arbitrator under Paraguayan law is shorter than that under the 1985 UNCITRAL Model Law. Although the procedure for disqualification under the Arbitration Act is based on the 1985 UNCITRAL Model Law, the time limit to challenge an arbitrator before the Paraguayan judge has been reduced from 30 to 15 days. Unlike under the 1985 UNCITRAL Model Law, arbitrators must stay the arbitral proceedings while the challenge is pending.

The Arbitration Act also contains a certain number of innovations.

For example, an important innovation compared with the 1985 UNCITRAL 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 1985 UNCITRAL Model Law only refers to "public policy".

<sup>2</sup> Available in Spanish original and unofficial English translation, by Gross Brown, at <https://delosdr.org/wp-content/uploads/2019/11/Paraguay-Arbitration-and-Mediation-Act-2002-unofficial-translation.pdf>.

The Arbitration Act expressly refers to the costs of the arbitration. Not only does the Arbitration Act define what qualifies as the costs of the arbitration, but it 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 apply (see Chapter IX of the Arbitration Act).

Very much like the 1985 UNCITRAL Model Law, the Arbitration Act provides that nationality shall not preclude anyone from acting as arbitrator. In practice, if foreign arbitrators require to be present for the entire arbitral proceeding, then they may 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 1985 UNCITRAL 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.

## **1.2 When was the Arbitration Law last revised?**

There have been no revisions or amendments to, nor plans to revise, the Arbitration Act since its enactment in 2002. Therefore, no adaptation has been made to adapt the Arbitration Act to the amendments of 2006 of the UNCITRAL Model Law.

## **2. The arbitration agreement**

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

The parties' agreement in respect of the applicable law carries significant weight in Paraguay, not least because Paraguay has recently enacted Law No. 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. In the absence of an agreement by the Parties, it will be more common to apply the law applicable to the contract than the law of the seat of the arbitration.

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.

Although Article 32 of the Arbitration Act 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 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?**

Pursuant to the Arbitration Act, the arbitral tribunal has the power to determine the place of the arbitration, taking into consideration the circumstances of the case and the parties' convenience.

There is no case law that deals with this issue in Paraguayan jurisdiction.



### **2.3 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.

### **2.4 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 are 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 UNCITRAL Model Law with the amendments of 2006 in that it does not adopt Articles 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".*

### **2.5 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. There is no case law in Paraguay that has ordered a third party to be part of an arbitral proceeding.

However, it would be difficult to add a non-signatory to the proceedings without any type of written instrument that proves the existence of consent. There is no case law analyzing the issue of implicit consent.

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

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

Pursuant to Article 2 of the Arbitration Act, all rights over which parties are entitled to reach a settlement agreement (*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.

Conversely, public policy issues that require the intervention of the Public Ministry are non-arbitrable, such as cases related to criminal law and family law. Additionally, standard form agreements entered by consumers, which provide for arbitration shall be considered void.

Finally, while not strictly an issue of arbitrability, it should be noted that Paraguayan law is of mandatory application to agency, representation and distribution contracts, irrespective of any agreement of the parties to the contrary. As a consequence, regarding disputes arising from these types of contracts, the failure of a tribunal to apply Paraguayan law would render any ensuing award subject to annulment.

### **2.6.2 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 autarkic 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 No. 1334/98 forbids clauses providing for arbitration in standard 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 refer the parties to arbitration, if a party so requests not later than when submitting its first statement on the substance of the dispute, 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?**

There is no case law regarding this issue.

The treatment of the injunctions will depend on which proceeding has been initiated first.

If no litigation proceedings have been initiated before the arbitration proceedings, the court must comply with the injunction issued by the arbitral tribunal. As, the Arbitration Act recognizes the *kompetenz-kompetenz* principle.

Notwithstanding, if litigation proceedings have been initiated prior to the arbitration proceedings, the judge must refer the parties to arbitration, unless the judge considers that the arbitration clause is null and void, inoperative or incapable of being performed. In that case, the judge may dismiss the arbitral tribunal injunction.

### **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 adopts the same standards of the 1985 UNCITRAL Model Law, and on that basis, it authorizes local courts to provide assistance to arbitrations (including those seated outside of Paraguay) on limited grounds, such as in obtaining evidence or granting interim measures.

In line with the above, as a general rule, Article 8 of the Arbitration Act excludes judicial intervention from any matter regulated by said law. Further, Article 9 states that only for certain assistance and supervision tasks, and when required, would domestic 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 foreign 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 be of gravity such as to 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 challenged. The arbitral tribunal shall rule on that challenge, unless the parties agree on a different procedure.

Pursuant to Article 15 of the Arbitration Act, if the arbitral 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 7 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 an appointment procedure, the courts may also intervene at the request of a party, provided that the other party or the arbitrators in place fails to abide by this process, or, if the parties and/or the arbitrators fail to agree in the context of this agreed process.

It should nonetheless be noted that there is no reported case law dealing with the procedure upon which local courts make such appointment.

##### 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?

Courts have the power to issue interim measures in connection with arbitrations only prior to the constitution of the arbitral tribunal. The measures granted by the court will expire seven days after the constitution of the arbitral tribunal (article 20 of the Arbitration Act). Notwithstanding, the tribunal can uphold the measures.

The granting of interim measures by a court is governed by the Paraguayan Civil Code of Procedure, and not by the Arbitration Act.

The interim measures requests are considered by the courts *ex parte*, by default, without the need to comply with any special requirement. Courts can order interim measures without the participation of the other party. The affected party can appeal the interim measure.

If necessary, the arbitral tribunal can ask the judge of the First Instance Court for Civil and Commercial matters of the seat of the arbitration proceedings to enforce interim measures issued by the arbitral tribunal. The law does not establish a specific procedure for the request.

#### **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. Accordingly, parties to arbitration proceedings are not bound by any legal duty to keep the proceedings confidential. However, parties have the right to enter into a confidentiality agreement.

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.

When the State is a party to an arbitration, there is no confidentiality and the awards must be public.

For example, under Law No. 5102/13, which relates to public-private partnerships in Paraguay, even though arbitration is an option for the parties, Regulatory Decree No. 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?**

There is no provision dealing with the duration of arbitration proceedings nor a remedy against excessively lengthy proceedings.

##### **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?**

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 documents.

##### **4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what 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 law does not contemplate the possibility of granting interim measures by the arbitral institution or by an emergency arbitrator before the constitution of the arbitral tribunal.

The condition for granting interim measures remains the same as in the 1985 version of the UNCITRAL 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.

If the interim relief granted by the arbitral tribunal is not complied with by the party, the arbitral tribunal can request an order from the judge of the First Instance Court for Civil and Commercial, who is obliged to order the compliance of the order within three days of the request made by the arbitral tribunal.

In a recent interim decision issued in an institutional arbitration, a public entity admitted the enforcement of an interim relief (i.e., the suspension of an administrative investigation) issued by an arbitral tribunal without

the need for the issuance of an order by an ordinary court. This is an important advance in the consolidation of arbitration as an autonomous jurisdiction vis-à-vis ordinary courts.

**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 tribunal 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 it 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?**

Arbitral tribunal are allowed to award interests, under the same rules applicable to judges. Interests can be awarded up to the limits set by the Paraguayan Central Bank monthly. Any interest awarded over the limit shall be annulled.

**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 from 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?

Yes, pursuant to Article 36 of the Arbitration Act, the award must include the reasoning upon which it is based, unless the parties have agreed otherwise. Arbitrators can act as an amiable compositor, only if the parties have expressly agreed on that.

(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 is 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 to 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, albeit please note the position in regard of agency, representation and distribution contracts discussed at Question 2.5.1 above.

### 5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for an appeal?

No, 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?

If one party requests the recognition and enforcement of an award, the judge shall serve a copy to the defendant, who must answer within five days from the filing of the application pursuant to the requirement of "judicial notice".

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; or
- (e) the award has not yet become binding on 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 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 the judge considers that none of the grounds mentioned above are met, then he shall, within five days, order the defendant to comply with the award and may order the seizure of assets.

In case the judge considers that there are in fact potential grounds to object to the enforcement of the award, then the procedure for incidents provided for in the Code of Civil Procedure shall apply. According to this procedure, the judge, if it considers it necessary, may order the opening of the evidentiary proceeding for ten days. Under this procedure, only a maximum of four witnesses per party are allowed and the depositions can only be held in the office of the judge. After the evidentiary proceeding, the judge shall decide on whether the award is enforceable or not.

The judgment on recognition and enforcement of the award cannot be subject to any appeal. If enforcement of the award is ordered, such enforcement will proceed in accordance with the legal provisions on enforcement of national judgments provided for in the Code of Civil Procedure.

The enforcement process is filed before the same judge who decided on the recognition of the award and can be initiated once all the parties have been duly notified of the resolution of recognition and if no actions for annulment have been filed or, if any actions for annulment were 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 or 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 has decided on the application, and it 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 grounds 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.

**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 in the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions**

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

**7. Arbitration and technology.**

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

Blockchain-based evidence is not specifically regulated under Paraguayan law. However, in Paraguay all kinds of evidence are allowed, unless they are (i) expressly prohibited by a law, (ii) immoral, or (iii) otherwise affect the liberties and rights of the parties or third parties. Therefore, blockchain-based evidence may be admitted in proceedings at the discretion of the courts or the arbitral tribunals, provided that they met the requirements previously mentioned.

**7.1 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognized as valid?**

An arbitration agreement recorded on a blockchain should be recognized as valid and enforceable, as the concept of arbitration agreement under Paraguayan Arbitration Law does not preclude this possibility.

Awards issued in other countries require certain formal requirements to be met: (i) prior to submitting them to any Paraguayan court, they must be translated into Spanish by duly authorized sworn translators in Paraguay (pursuant to Article 105 of the Paraguayan Procedural Civil Code), and (ii) legalized before the Ministry of Foreign Affairs (*Ministerio de Relaciones Exteriores*) (pursuant to Article 1.a) of Law No. 4.033/2010) or (iii) certified and apostilled by the competent authority appointed by the government of a state which is a party to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. Therefore, the blockchain-based award may be recognized, provided that it meets these formal requirements.

Given that article 4(a) and 22 of the Paraguayan Arbitration Law gives the parties and arbitral tribunal broad discretion to tailor the arbitration proceedings as they seem fit, it is possible to issue a valid award recorded on a blockchain.

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

There is no precedent dealing with this matter. However, under the Paraguayan Arbitration Law, the arbitration agreement does not require specific requisites that would preclude a blockchain arbitration agreement to be valid, as there is no definition as to what is considered an original counterparty. The admissibility into evidence of any documentation is at the arbitral tribunal's discretion, in accordance with article 22 of the Arbitration Act.



Blockchain awards issued internationally may be deemed originals, if they comply with the formal requirements imposed to any judgement or award.

**7.3 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?**

Paraguay has enacted a law that recognizes the validity of digital signatures as originals if the certification company is recognized by the Paraguayan Ministry of Industry and Commerce, thus any signature created by a company that is not recognized by them shall not be considered as original.

Electronic signatures are not per se considered originals for the purposes of evidence under Paraguayan law, the party who intends to enforce a document with an electronic signature has the burden to prove that the signature was created by the alleged signor.

**8. 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.

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

Delos Rules are compatible with the Arbitration Paraguayan Law.

**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?	Centro de Arbitraje y Mediación del Paraguay (CAMP) <a href="https://www.camparaguay.com/">https://www.camparaguay.com/</a>
Main arbitration hearing facilities for in-person hearings?	Cámara Nacional de Comercio y Servicios del Paraguay (CNCSP) <a href="https://www.ccp Paraguay.com.py/">https://www.ccp Paraguay.com.py/</a>
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	CNCSP premises are located in downtown Asunción, at walking distance from many reprographics facilities.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Not applicable (reporting services are generally not outsourced)
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	List of licensed translators and interpreters generally engaged for proceedings before local courts and arbitration is available at: <a href="#">Portal CSJ</a>
Other leading arbitral bodies with offices in the jurisdiction?	International Chamber of Commerce