



# Arbitration

in 49 jurisdictions worldwide

# 2014

Contributing editors: Gerhard Wegen and Stephan Wilske



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## Arbitration 2014

**Contributing editors:**  
**Gerhard Wegen and**  
**Stephan Wilske**  
**Gleiss Lutz**

*Getting the Deal Through* is delighted to publish the ninth edition of *Arbitration*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Equatorial Guinea, Mexico, Nigeria and Scotland.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editors Gerhard Wegen and Stephan Wilske of Gleiss Lutz for their continued assistance with this volume.

## Getting the Deal Through

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# Colombia

**Carolina Posada Isaacs, María Alejandra Arboleda González and Diego Romero Cruz**

Posse Herrera Ruiz

## Laws and institutions

### 1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Colombia is a party to the New York Convention. Colombia adhered to the New York Convention on 25 September 1979. The New York Convention was adopted by Congress through Law 39 of 1990. In addition to the New York Convention Colombia is party to the following arbitration-related international agreements:

- the 1889 Treaty on International Procedural Law of Montevideo (signed 11 January 1889; adopted by Congress through Law 68 of 1920);
- the Treaty on Private International Law between Colombia and Ecuador (signed 18 June 1903; adopted by Congress through Law 13 of 1905);
- the 1940 Treaty on International Procedural Law of Montevideo (signed 19 March 1940, not yet in force);
- the Inter-American Convention on International Commercial Arbitration (signed 30 January 1975, adopted by Congress through Law 44 of 1986);
- the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (signed 8 May 1979, adopted by Congress through Law 16 of 1981); and
- the Convention on the Settlement of Investment Disputes between States and Nationals of other States (adhered to 18 May 1993, adopted by Congress through Law 267 of 1996).

### 2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Colombia has signed BITs, with Chile, China, India, Peru, Spain, Switzerland, the United Kingdom, France, Japan and Singapore. The last four are not yet in force.

Colombia has concluded Free Trade Agreements (FTAs) that include investment chapters providing for investor-state arbitration with Canada, Chile, Mexico, Guatemala, El Salvador, Honduras and the United States. In addition, Colombia has signed FTAs with South Korea, Costa Rica, Israel and Panama, providing for investor-state arbitration, which have not yet entered into force.

### 3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

Domestic and international arbitration are governed by Law 1563 of 2012 (the Arbitration Statute), which entered into force on 12 October 2012. The Arbitration Statute provides completely separate frameworks for domestic and international arbitration. It also includes disciplines related to the recognition and enforcement of foreign awards.

Under the Arbitration Statute, an award is deemed 'national' if issued by a tribunal with a seat in Colombia. National awards whether issued in the course of domestic or international arbitration proceedings, have the same value and enforceability requirements of domestic court judgments.

In turn, an arbitral award is considered foreign if rendered by a tribunal sitting outside Colombian territory. An exequatur procedure is required for the recognition and enforcement of foreign awards. An application for exequatur must be filed before the Supreme Court of Justice. Exequatur will be granted unless the foreign award falls within any of the grounds for non-recognition set forth in article 111 of the Arbitration Statute, which mirrors article V of the New York Convention.

### 4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

No. The main differences between the domestic arbitration provisions of the Arbitration Statute and the UNCITRAL Model Law are:

- domestic arbitration is essentially a judicial proceeding. The rules of arbitral procedure are mandatory public law and every stage of the procedure is heavily regulated. As a result, the parties can only determine those aspects of the proceedings that the Arbitration Statute does not explicitly regulate;
- the Arbitration Statute provides for two types of domestic arbitration:
  - ad hoc arbitration: arbitration proceedings administered by the arbitrators themselves; and
  - institutional arbitration: arbitration proceedings administered by a specialised institution. Unless otherwise stated, the arbitration will be institutional. Arbitrations involving public entities are governed by the provisions on institutional arbitration of the Arbitration Statute;
- regardless of the kind of domestic arbitration, the proceeding must be conducted in Spanish, the award must be rendered in Spanish and the applicable law has to be Colombian law;

- arbitrators are subject to the same rights, duties and responsibilities as judges;
- party-appointed arbitrators are prohibited in domestic arbitration. The arbitrators must be appointed in one of three ways:
  - jointly by the parties;
  - by delegating their appointment to a third party (eg, an arbitral institution); or
  - upon failure to agree on the appointment of the arbitrators by a circuit civil court;
- domestic arbitral awards must always be reasoned; and
- have the same force and value of a judicial ruling. Domestic arbitral awards can be challenged through an application for annulment, an application for revision and, exceptionally, a constitutional application for protection of fundamental rights.

## 5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The Arbitration Statute allows the parties to determine only those aspects of the proceedings that have not been explicitly regulated. As outlined above, the Arbitration Statute regulates in great detail every stage of the proceedings. Salient mandatory provisions on procedure include:

- the language of the arbitration must be Spanish;
- party-appointed arbitrators are prohibited; and
- the parties cannot contract out of the grounds for review of arbitral awards provided by the Arbitration Statute.

Even under ad hoc arbitration, all the procedural rules are applicable.

## 6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The Arbitration Statute is silent on the law applicable to a domestic arbitration. However, due to its judicial nature, it can be argued that arbitral tribunals cannot apply other than Colombian law to the merits of the arbitration.

## 7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

### The Arbitration and Conciliation Centre of the Chamber of Commerce of Bogotá

Avenida El Dorado No. 68D-35 Piso 3  
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Colombia  
[www.cacccb.org.co](http://www.cacccb.org.co)

For more information, see [www.cacccb.org.co/documentos/237\\_REGLAMENTO\\_CAC.pdf](http://www.cacccb.org.co/documentos/237_REGLAMENTO_CAC.pdf) and [www.cacccb.org.co/documentos/238\\_Reglamento\\_de\\_Procedimiento.pdf](http://www.cacccb.org.co/documentos/238_Reglamento_de_Procedimiento.pdf).

### Particularities

If the parties delegate the appointment of the tribunal to the Centre, it will nominate its members through a public draw, from its own roster of arbitrators.

The physical location of the arbitration can be freely set by the parties and the tribunal.

Fees are calculated on the basis of the amount of the dispute according to the statement of claim or the counterclaim, whichever is higher.

## Arbitration agreement

### 8 Arbitrability

Are there any types of disputes that are not arbitrable?

Under the domestic arbitration provisions of the Arbitration Statute, all conflicts concerning disposable rights, or those authorised by law are considered arbitrable matter. Disposable rights are those that can be freely assigned or waived and translated into money. In addition, Colombian law explicitly authorises domestic arbitration with regard to disputes concerning legal stability contracts. However, arbitral tribunals may not decide on the legality of administrative acts or the legality of acts carried out in the exercise of *ius imperii*.

Matters not concerning disposable rights, and, thus, not subject to arbitration, include:

- fundamental rights;
- civil status;
- disputes involving public policy;
- certain labour rights; and
- antitrust.

### 9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement may be incorporated in a contract for future disputes (either as a clause or as an annex) or may be concluded ex-post facto.

Arbitration agreements are subject to the same existence, validity and enforceability requirements of contracts under Colombian law. Arbitration agreements will only be enforceable if they refer to arbitrable matters.

The arbitration agreement must be in writing and must expressly and unequivocally reflect the parties' intention to submit the dispute to arbitration. If the arbitration agreement is contained in a separate document, it must state the names of the parties and indicate in a precise way the contract it relates to.

On the other hand, an ex-post facto arbitration agreement must include the name of the parties, the matter that will be submitted to arbitration and the status of the proceedings already in progress, when applicable.

### 10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement is no longer enforceable if it is declared null and void in the course of a judicial proceeding under any of the grounds for non-existence, validity or unenforceability of contracts. In accordance with the Arbitration Statute, an arbitration agreement ceases to have effect in respect of the disputes submitted to arbitration if the parties fail to pay the administrative fees set by the arbitral tribunal. Similarly, an arbitration agreement will no longer have effect if a necessary party fails to express its consent to join the arbitration proceedings.

### 11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

Colombian law does not allow an arbitral tribunal to exercise its jurisdiction over individuals or entities that are not signatories of the arbitration agreement, unless they expressly consent to arbitration.

However, if a party alleges the existence of an arbitral agreement without producing the document in which it is contained, and the opposing party does not resist arbitration, the arbitral agreement shall be construed as existing and enforceable.



Under the Arbitration Statute, a third party that interpleads is understood to have adhered to the arbitration agreement.

## 12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The Arbitration Statute allows an individual who holds a stake in rights or goods that are in dispute to interplead the original parties to the arbitration agreement. Similarly, a party can file an impleader to join a third party into the arbitration proceedings if that third party is liable to the original defendant. However, in any of these scenarios, the third party must necessarily express its consent to arbitration.

When the third party is a party that has guaranteed the fulfilment of certain obligations arising from a contract comprising an arbitral agreement, that third party will be bound by the arbitration agreement.

## 13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

In general, arbitral tribunals do not extend the arbitration agreement to non-signatory parties. However, if participation of a third party is required for the purpose of rendering the award, the arbitral tribunal will join that third party. Nevertheless, if the third party refuses to consent to arbitration, the arbitral tribunal will decline jurisdiction and declare that the arbitration agreement has ceased to have effect.

Courts and arbitral tribunals do not follow the 'group of companies' doctrine.

## 14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Arbitration Statute is silent in respect of multiparty arbitration agreements. Therefore, multiparty arbitration agreements are governed by the general requirements for existence, validity and enforceability of arbitration agreements and contracts.

Regarding multiparty arbitration proceedings, the Arbitration Statute only provides that the arbitral tribunal has the power to decide the cost of the arbitration that each party shall bear.

Concerning consolidation of arbitral proceedings, the Arbitration Statute is silent. Some arbitration practitioners consider that consolidation is not allowed under the current rules because arbitrators are appointed for specific disputes only. Thus, it would be impossible for the arbitral tribunal appointed in one arbitration to know of the existence of a second arbitration concerning common questions of law or fact. Conversely, other practitioners take the position that consolidation is possible because it is not prohibited under the Arbitration Statute.

In our view, consolidation of domestic arbitral proceedings is possible provided the requirements of article 157 of the Civil Procedure Code (CPC) are satisfied. Pursuant to this provision, it is possible to consolidate arbitrations as long as the proceedings are being conducted under the same rules, are at the same stage and have common questions of law or fact.

## Constitution of arbitral tribunal

### 15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

In respect of domestic arbitration, the Arbitration Statute provides that the arbitrators must:

- be Colombian nationals;
- be licensed to practise law in Colombia;
- have a clean criminal record, except for political or negligent crimes; and
- not have been disqualified or removed from public office.

In institutional arbitration, the arbitrators must be part of the Centre's arbitrators roster. Retired judges may act as arbitrators.

In arbitration in law, the arbitrators must fulfil the same experience requirements as district court judges.

In international arbitration, the Arbitration Statute imposes no nationality requirements for the arbitrators. In addition, the arbitrators need not be lawyers.

### 16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

In domestic arbitration, the parties must jointly determine the number of arbitrators and appoint them, or delegate their appointment to a third party or an arbitration centre. However, the number of arbitrators must always be an odd number.

If the parties do not agree on the number of arbitrators, the tribunal shall consist of three arbitrators, except for claims of less than 400 legal monthly minimum wages (235.8 million Colombian pesos), which will be decided by a sole arbitrator. Where the parties fail to appoint the arbitrators and do not expressly delegate the appointment to a third party, the arbitrators shall be appointed by the circuit civil court.

In international arbitration, the appointment of arbitrators follows the disciplines of article 11 of the UNCITRAL Model Law.

### 17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

In domestic arbitration, arbitrators can be challenged under the same grounds for challenging judges under the CPC including:

- having a direct or indirect interest in the outcome of the arbitration;
- having bias or prejudice either against or in favour of one of the parties;
- being creditor or debtor of one of the parties; and
- having a degree of consanguinity or affinity with one of the parties.

Additionally, arbitrators can be challenged for the disabilities, prohibitions and conflicts of interest established in the Disciplinary Code and for breach of the duty of disclosure.

In international arbitration, the Arbitration Statute mimics the provisions of article 12 of the UNCITRAL Model Law.

**18 Relationship between parties and arbitrators**

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

Although the parties must pay arbitrators fees, there is no contractual relationship between them.

Arbitrators must remain impartial and independent. Under the Arbitration Statute, party-appointed arbitrators are not permitted in domestic arbitration.

In international arbitration, in tune with the UNCITRAL Model Law, party-appointed arbitrators are allowed.

**19 Immunity of arbitrators from liability**

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

In domestic arbitration, arbitrators are subject to the same rights, duties and responsibilities as judges. Therefore, arbitrators are immune to liability except for gross negligence or wilful misconduct.

The Arbitration Statute is silent in respect of the liability of arbitrators in international arbitration.

**Jurisdiction and competence of arbitral tribunal****20 Court proceedings contrary to arbitration agreements**

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

If one party files a lawsuit before any competent court despite the existence of an arbitration agreement, the court will exercise its jurisdiction unless the defendant moves to compel arbitration. Failure to file such a motion will be construed as a waiver of the arbitration agreement.

Jurisdictional objections (including the existence of an arbitration agreement) must be filed no later than the expiration of the time fixed for the filing of the answer.

If the respondent files a motion to compel arbitration, the court will direct the plaintiff to file the claim before the arbitral tribunal without any consideration of the merits of the case, unless the court finds the arbitration agreement to be unenforceable.

**21 Jurisdiction of arbitral tribunal**

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

According to the Arbitration Statute, the arbitral tribunal shall decide on the issue of jurisdiction at the first hearing. In addition, the highest courts in Colombia have consistently held that according to the Kompetenz-Kompetenz principle, the arbitrators' decision on jurisdiction must be given substantial deference and, therefore, it prevails over any other decision rendered to the contrary by a civil or administrative judge.

**Arbitral proceedings****22 Place and language of arbitration**

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

In domestic arbitration, in the absence of an agreement on the place of arbitration, the tribunal shall determine it. The language must always be Spanish and the parties are not allowed to agree otherwise.

In international arbitration, the Arbitration Statute mirrors the disciplines of article 22 of the UNCITRAL Model Law.

**23 Commencement of arbitration**

How are arbitral proceedings initiated?

In domestic arbitration, arbitral proceedings commence on the date on which a statement of claim is received by the arbitration centre agreed by the parties, or failing such agreement, any arbitration centre of the domicile of the respondent.

Once the statement of claim has been filed, the arbitration centre will summon the parties to a hearing to appoint the arbitrators. Once the arbitral tribunal is formed, it will decide whether the statement of claim meets the formal requirements set forth in article 75 of the CPC and order the claimant to serve notice of the claim.

In international arbitration, arbitration proceedings are initiated in the same manner described in article 21 of the UNCITRAL Model Law.

**24 Hearing**

Is a hearing required and what rules apply?

In domestic arbitration, arbitral proceedings are conducted through hearings. However, arbitral tribunals may render interlocutory decisions outside hearings, as long as proper notice is given. According to the Arbitration Statute, the arbitral tribunal must hold the following hearings:

- settlement hearing, in which the arbitral tribunal encourages the parties to settle the dispute; and
- a first hearing, in which the arbitral tribunal issues a decision concerning its own jurisdiction, interim measures and production of evidence.

In international arbitration, the provisions of the Arbitration Statute concerning hearings do not depart from those of article 24 of the UNCITRAL Model Law.

**25 Evidence**

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

In domestic arbitration, the arbitral tribunal is subject to the rules of evidence of the CPC.

In Colombia, the following evidence is admissible:

- party admissions;
- witness statements;
- arbitral tribunal-appointed expert reports;
- party-appointed expert reports;
- inspection of goods or other property; and
- documents.

In respect of international arbitration, the Arbitration Statute follows the provisions of article 19 of the UNCITRAL Model Law.

**26 Court involvement**

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

In domestic arbitration, the arbitral tribunal can request assistance from civil and administrative courts to carry out the enforcement of interim measures and preliminary orders.

Concerning international arbitration, the provisions of the Arbitration Statute concerning court assistance are entirely based on article 27 of the UNCITRAL Model Law.



**27 Confidentiality**

Is confidentiality ensured?

The Arbitration Statute is silent on this respect. Arguably, arbitrations involving private parties can be confidential, as long as it was explicitly agreed in the arbitration agreement.

In respect of international arbitration, the Arbitration Statute is silent in this regard, which suggests that parties can agree to make their arbitration proceedings confidential.

**Interim measures and sanctioning powers****28 Interim measures by the courts**

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Under the domestic arbitration disciplines of the Arbitration Statute, the arbitral tribunal has exclusive authority to order interim measures. Courts do not have any power to grant interim measures regarding an arbitration proceeding.

In respect of international arbitration, the Arbitration Statute provides that prior to the institution or during the course of arbitration proceedings, the parties may make a request to a court to issue interim measures.

**29 Interim measures by an emergency arbitrator**

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The Arbitration Statute does not provide for an emergency arbitrator.

**30 Interim measures by the arbitral tribunal**

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The domestic arbitration provisions of the Arbitration Statute allow arbitral tribunals to order interim measures. Such orders will be executed by civil or administrative courts.

With regard to international arbitration, the Arbitration Statute grants the arbitral tribunal discretionary power to order interim measures provided the party requesting the measure satisfies the arbitral tribunal that the request is useful, reasonable and made in a timely manner.

In addition, article 82 of the Arbitration Statute, provides that any party may request a precautionary measure and a preliminary order, by which the arbitral tribunal orders the other party not to frustrate the purpose of a precautionary measure.

**31 Sanctioning powers of the arbitral tribunal**

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

Due to the judicial nature of domestic arbitral proceedings in Colombia, arbitrators are vested with contempt power. As a result, a domestic arbitral tribunal has the authority to take appropriate measures to prevent conduct that endangers the integrity of the arbitration.

The international arbitration disciplines of the Arbitration Statute do not afford sanctioning powers to the arbitral tribunal.

**Awards****32 Decisions by the arbitral tribunal**

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

According to the domestic arbitration disciplines of the Arbitration Statute, any decision of the arbitral tribunal shall be made by the majority of its members. The parties may not agree otherwise. The dissenting arbitrator must issue a separate opinion providing the rationale for his or her dissent.

In respect of international arbitration, the Arbitration Statute mirrors the provisions of article 29 of the UNCITRAL Model Law.

**33 Dissenting opinions**

How does your domestic arbitration law deal with dissenting opinions?

See question 32.

**34 Form and content requirements**

What form and content requirements exist for an award?

In domestic arbitrations in law, the award must be made in writing and must state the reasons upon which it is based. The parties cannot agree otherwise. For arbitrations in equity, the award need not be reasoned.

In international arbitration, the form and content requirements for arbitral awards are similar as those contained in article 31 of the UNCITRAL Model Law. However, agreements by which the parties relinquish their right to be issued a reasoned award will only be honoured if the parties are not domiciled in Colombia or the award is the result of a settlement.

**35 Time limit for award**

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

According to the Arbitration Statute, unless otherwise agreed, the award must be rendered within six months of the first hearing. This time limit can be extended by agreement of the parties, one or multiple times, for up to six months.

Regarding institutional arbitration, the Arbitration Statute provides that the time limit can be extended by the arbitrators, one or multiple times, provided that such extensions do not exceed in total the time limit originally agreed by the parties or the default term of six months.

**36 Date of award**

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

What matters in respect of time limits is the effective date of delivery of the award. The parties must file any request for clarification, correction of clerical or typographical errors and rendering of an additional award within five days from the date of delivery. An application for annulment must be made within 30 days of the date of delivery of the award.

In respect of international arbitration, the Arbitration Statute follows the disciplines on time limits for requests for clarification, correction of clerical or typographical errors, rendering of an additional award and applications for annulment of the UNCITRAL Model Law.

**37 Types of awards**

What types of awards are possible and what types of relief may the arbitral tribunal grant?

According to the domestic arbitration provisions of the Arbitration Statute, an arbitral award is a determination on the merits. Arbitral tribunals have the power to grant relief in the form of damages, declarations and injunctions, as long as they were requested by the parties.

The Arbitration Statute follows the provisions on the types of awards contained in articles 17 and 31 of the UNCITRAL Model Law.

**38 Termination of proceedings**

By what other means than an award can proceedings be terminated?

According to the Arbitration Statute, arbitral proceedings can be terminated because:

- the parties failed to pay the administrative fees for arbitration;
- the parties have reached a settlement or by any other means decided;
- a third party, whose participation is required for the purpose of rendering the award, refuses to consent to arbitration;
- the time limit of the proceeding or its extension has expired;
- the lawsuit does not meet the requirements set forth in article 75 of the CPC; or
- the claimant withdraws the claim, unless the respondent objects and the arbitral tribunal considers it has a legitimate interest in solving the dispute.

**39 Cost allocation and recovery**

How are the costs of the arbitral proceedings allocated in awards?

The Arbitration Statute provides for both domestic and international arbitration that the arbitral tribunal shall determine the costs and expenses to be paid by each party, but not the proportion corresponding to each of them.

It is customary for each party to pay 50 per cent of emoluments set by the arbitrators and the award determines the fees and the costs of the proceedings, including attorneys' fees. These will be paid by the losing party and if the claimant partially succeeds on the merits, the tribunal will fix the fees proportionally.

When one party is comprised of several individuals, the payment of the fees and expenses of the tribunal cannot be divided and they will be held jointly and severally liable for their payment.

**40 Interest**

May interest be awarded for principal claims and for costs and at what rate?

Yes. In domestic arbitration, default interest runs automatically from the date of the award, even if the tribunal does not expressly grant it. The rate of interest is a question of law. Some arbitral tribunals are of the view that the applicable interest rate is the commercial rate, while others apply the civil rate (6 per cent).

Post-filing and prejudgment interest can only be awarded if the claimant expressly requests it.

**Proceedings subsequent to issuance of award****41 Interpretation and correction of awards**

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

In domestic arbitration the arbitral tribunal can correct, clarify or complement its award *sua sponte*, or if the parties request them to do so, within five days from the date the award is delivered to the parties.

It is impossible for arbitrators to modify or revoke the award once it is rendered.

**42 Challenge of awards**

How and on what grounds can awards be challenged and set aside?

An arbitral award can be challenged through applications for annulment, revision and protection of fundamental rights.

In domestic arbitration, the grounds for annulment of arbitral awards are the following:

- the arbitration agreement is non-existent, invalid or unenforceable. Relative nullity only can be alleged if it was invoked during the arbitral proceedings and it was not cured;
- the statute of limitations has expired;
- the arbitral tribunal lacked jurisdiction;
- the composition of the tribunal was not made in accordance with applicable law, providing this ground was raised at the first hearing;
- the party seeking annulment was not given proper notice of the arbitral proceedings or was unable to present its case, unless such nullity was remedied;
- the requests for evidence production were wrongfully denied or, being granted, were not executed, as long as failure to produce the evidence affects the decision and this ground was raised during the course of the arbitral proceedings;
- the award or the decision clarifying, or adding to the award was granted once the time limit for the arbitration had expired;
- the arbitrators decided *ex aequo et bono* having had to decide by law;
- the decision contains arithmetical errors or opposing provisions, as long as such circumstances have been timely claimed before the arbitrators and affect the decision;
- the award refers to disputes not subject to the arbitrators' decision, or *ultra petita*; or
- matters subject to arbitration were not decided in the award.

An application for revision can be filed against the arbitral award or the court judgment deciding on the application for annulment.

*Acción de Tutela* is a constitutional application for the protection of fundamental rights. Regarding arbitral awards, this only can be filed against arbitral decisions, for what is known as *vía de hecho*.

In general terms, *vía de hecho* occurs when arbitrators grossly violate due process or render the award without or against the evidence collected or manifestly exceed the scope of their powers.

In international arbitration, an arbitral award may be set aside through an application for annulment under the same grounds as established by the New York Convention. An international arbitral award rendered by a tribunal with a seat in Colombia can arguably be challenged through applications for revision and *tutela*.

**43 Levels of appeal**

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

Domestic arbitral awards are not subject to appeal, only to the applications listed in question 42.

An application for annulment can take between six to 12 months. An application of revision can take over two years. *Acción de tutela* usually does not take more than four to seven months.

It is important to note that an arbitral award is enforceable from the date of delivery to the parties, even if it is challenged through any of the aforementioned applications.

Concerning international arbitration, arbitral awards are not subject to appeal but can be challenged through an application for annulment. The grounds for annulment of international awards are the same as those listed in article 34 of the UNCITRAL Model Law.

**44 Recognition and enforcement**

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Domestic arbitral awards and international awards rendered by tribunals sitting in Colombia can be enforced immediately. They have the same force and value as domestic court judgments.

An international arbitral award rendered by a tribunal sitting outside Colombian territory is enforceable once exequatur has been granted (see question 3).

**45 Enforcement of foreign awards**

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

There are no reported cases in reference to this situation.

**46 Cost of enforcement**

What costs are incurred in enforcing awards?

No judicial costs are incurred, except for the cost of serving notice of the enforcement procedures and attorneys' fees.

In respect of international arbitration, the cost of the exequatur procedure before the Supreme Court of Justice must also be factored into the costs of enforcement.

**Other****47 Judicial system influence**

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Due to the judicial nature of domestic arbitration, dominant features of the judicial system heavily influence arbitral proceedings. Formalities such as the counting of time limits, the requirements of the statement of claim and the rules of evidence of the CPC are strictly enforced.

**48 Regulation of activities**

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

With regard to domestic arbitration, counsel and arbitrators must be fully licensed to practice law in Colombia.

According to the international arbitration provisions of the Arbitration Statute, the parties can determine whether the arbitrators need to be lawyers.

Regarding taxation, the fees for foreign arbitrators serving in a arbitration seated in Colombia are subject to withholding income tax at the rate of 33 per cent. The fees are also accrued with VAT, which shall be assumed by the Colombian payer without any withholding or deduction on the amount of the payment.

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