

International Arbitration 2026

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Introduction

Argentina is a federal republic (with both federal and provincial levels of political organisation). While substantial law is enacted by the National Congress and is applicable to the whole nation, procedural rules are passed by the provincial legislative branches. The National Congress is only empowered to enact procedural rules for disputes submitted to the federal or national courts.

Until 2015, arbitration proceedings were exclusively governed by the procedural codes of each jurisdiction. The National Code of Civil and Commercial Procedure (“NCCCP”) governed arbitration proceedings seated in the City of Buenos Aires, and several provincial procedural codes contained similar provisions to that regulation.

On 1 August 2015, the National Civil and Commercial Code (“NCCC”) entered into force: since then, it regulates arbitration agreements whose provisions are applicable to all jurisdictions.

On 4 July 2018, Law No. 27,449 on International Commercial Arbitration (“ICAL”) was enacted. The ICAL mostly adopts the United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on International Commercial Arbitration (“UNCITRAL Model Law”), as amended in 2006, and regulates international commercial arbitration proceedings.

Since the enactment of the ICAL, the Argentine legal system became a dualist one, with different sets of rules for domestic arbitration and international commercial arbitration. As the ICAL explicitly states in its Article 1, it applies to international commercial arbitration, and exclusively governs it, notwithstanding any multilateral and bilateral agreement in force in the Argentine Republic.

Therefore, in order to determine the applicable law to any arbitration with its seat in Argentina, it is necessary to distinguish between domestic arbitration (ruled by the NCCC and the procedural codes of each jurisdiction) and international commercial arbitration (governed exclusively by the ICAL, without prejudice of any relevant international treaty or convention).

Neither the NCCC nor the ICAL applies to disputes to which the state is a party. Hence, this matter is left to 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 (“NY Convention”); (ii) the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“ICSID Convention”); (iii) the

1975 Inter-American Convention on International Commercial Arbitration (“1975 Inter-American Convention”); (iv) the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (“1979 Inter-American Convention”); and (v) the 1998 Agreement on International Commercial Arbitration of Mercosur (“Mercosur Agreement”).

Arbitration agreement

According to Articles 14 and 15 of the ICAL and Article 1650 of the NCCC, an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement but shall nonetheless appear in writing. Articles 16 and 17 of the ICAL establish that an arbitration agreement is considered as executed in writing if its content is recorded in any form, and that this requirement is met (i) by an electronic communication if the information contained therein is accessible and useable for subsequent reference, and (ii) if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

Beyond these provisions, there is no other formal requirement for the validity of an arbitration agreement. From a drafting perspective, however, it is recommended that an arbitration agreement provides the place and language of arbitration, the type of arbitration (institutional or *ad hoc*; *de iure* or *ex aequo et bono*), the rules applicable to the substance of the dispute, as well as the number of arbitrators and the procedure for their appointment.

In terms of court intervention, pursuant to Articles 19 and 20 of the ICAL, a court before which an action is brought in a matter that is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his/her first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed (nevertheless, arbitral proceedings may be commenced or continued, and an award may be made, while the issue is pending before the court).

Consistently, under Article 1656 of the NCCC, the arbitral agreement excludes judicial court jurisdiction unless the arbitral tribunal has not yet been seized and the arbitration agreement is manifestly void or inapplicable.

Since the enactment of the ICAL in 2018 and the NCCC in 2015, national courts have usually referred disputes to arbitral tribunals when they did not find any of the grounds established by law for not doing so.

Arbitration procedure

Domestic arbitration proceedings are governed by the NCCC and the procedural codes of each Argentine jurisdiction. International commercial arbitration proceedings, on the other hand, are regulated exclusively by the ICAL, without prejudice to any multilateral or bilateral treaty executed by Argentina.

The NCCC provides a unique set of substantive rules applicable throughout the country, together with the procedural codes of each Argentine province for procedural matters. The ICAL is based on the UNCITRAL Model Law, as amended in 2006, although it presents certain differences, including: (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 of any relationship, contractual or not, completely or mostly governed by private law and the prescription that, in case of doubt, the commercial characterisation of the relationship should prevail (Article 6); (iii) the partial modification of Article 7(2) of the UNCITRAL Model Law regarding arbitration agreement (Article 15); (iv) the partial modification of Article 17.G of the UNCITRAL Model Law (substituting the term measure “requested” for “granted”) (Article 55); (v) the exclusion of the possibility of rendering an award without expressing the reasons for the decision (Article 87); and (vi) the reduction of the three-month term established in Article 34(3) of the UNCITRAL Model Law in order to file a set-aside request for a 30-day term (Article 100).

With respect to mandatory rules, the ICAL contains a limited number of mandatory provisions applicable to international arbitration proceedings, such as the principle of separability of the arbitration agreement and the principle of equal treatment of the parties, set forth in Articles 35 and 62 of the ICAL, respectively. Additionally, the NCCC contains some private international law rules that may have impact on international arbitration proceedings. Those rules establish the absolute exclusion of foreign substantive law and legal principles that are contradictory to Argentine international public policy even when their application is designated – imperatively – by Argentine conflict-of-law rules (Articles 2599 and 2600 of the NCCC). Therefore, although arbitral agreements are governed by the law chosen by the parties, Argentine international public policy rules shall prevail (Article 2651.e of the NCCC).

With respect to jurisdiction, Article 5 of the ICAL refers to Argentine national law to rule on the matter of arbitrability. In this respect, the NCCC establishes as non-arbitrable the following matters: (i) disputes referred to civil status or capacity of persons; (ii) family affairs; (iii) disputes involving rights of users and consumers; (iv) contracts of adhesion, whatever their purpose is; and (v) disputes related to labour relations (Article 1651). Furthermore, the NCCC establishes that the arbitration agreement cannot deal with matters where public policy may be compromised (Article 1649). Likewise, the NCCCP sets forth a general rule under which any dispute that the parties cannot compromise or settle is deemed non-arbitrable (Article 737). Most of the provincial procedural codes contain a similar provision.

In this context, Argentine law recognises the principle of *kompetenz-kompetenz*. Pursuant to Articles 35 of the ICAL and 1654 of the NCCC, arbitral tribunals may rule on their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. Also, since the enactment of the ICAL in 2018 and the NCCC in 2015, national courts have usually referred disputes to arbitral tribunals when they have not found grounds established by law for not doing so. Thus, the general approach of Argentine courts towards a party who commences court proceedings in apparent breach of an arbitration agreement is to reject such behaviour and refer the dispute to arbitration. This approach is also consistent with Article 1656 of the NCCC, pursuant to which any doubt on the matter shall be decided in favour of the arbitral agreement.

In accordance with Article 37 of the ICAL, if the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 days after having received notice of that ruling, the Argentine Court of Appeals competent in commercial matters to decide the matter. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make the final award. Although the NCCC does not specify in which circumstances national courts may address this issue, in practice, Argentinian courts normally consider that parties must wait until the final award to challenge the jurisdiction of the arbitral tribunal. However, in some cases, national courts have decided over recourses for annulment filed against the award on jurisdiction.

Under Argentinian law, an individual or entity that is not a party to an arbitral agreement cannot be forced to be involved in arbitration. Therefore, as a principle, Argentinian law does not allow an arbitral tribunal to assume jurisdiction over individuals or entities that are not themselves party to an agreement to arbitrate. Argentinian courts have addressed this issue in very few cases. Although they have made reference to the existence of a comparative case law pursuant to which the extension of the arbitration agreement to non-signatory parties has been admitted, they have highlighted that, as a rule, it is necessary to verify consent to arbitrate to extend the effects of the arbitration agreement, and that such scenarios are restrictive and exceptional. That being said, so far there has been no consistent case law admitting such possibility.

Statute of limitation periods applicable to arbitration proceedings are governed by the NCCC and are therefore considered substantive in nature. The general limitation period under the NCCC is five years (which applies to any action for which there is no other limitation period established by law). Some actions are imprescriptible (such as civil actions derived from crimes against humanity) and others are subject to

special limitation periods (such as the three-year limitation period for claims for damages arising from civil liability). Therefore, the statute of limitation period for the commencement of arbitration depends on the nature of the obligation at stake in the claim.

With respect to the law applicable to the substance of the dispute, pursuant to Articles 79 and 80 of the ICAL, the parties are free to choose the applicable law. Failing such agreement, the arbitral tribunal shall apply the rules of law it considers appropriate. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict-of-law rules. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade (Article 82 of the ICAL).

Mandatory laws may prevail over the law chosen by the parties in certain circumstances. In this respect, Article 2599 of the NCCC establishes that Argentine international imperative rules prevail over the law chosen by the parties. Those rules are based on public policy notions and exclude the law chosen by the parties for social, economic, environmental or security reasons considered essential for the Argentinian state.

With respect to the formation, validity and legality of arbitration agreements, pursuant to Article 99(a)(i) of the ICAL and Article 2651 of the NCCC, these matters are governed by the law chosen by the parties. In the absence of such choice, Argentine law shall apply.

Both in international and domestic arbitration proceedings, the procedure of arbitration may be freely determined by the parties. In the absence of party agreement, the arbitral tribunal may conduct the proceedings in the manner it deems appropriate pursuant to Articles 63 and 64 of the ICAL and Article 1658(c) of the NCCC. Notwithstanding, the NCCCP and the provincial procedural codes contain rules for the procedure of arbitration that may apply to any arbitral proceeding seated in the respective jurisdictions in case of silence of the parties.

In arbitration proceedings conducted in Argentina, there are no particular procedural steps required by law beyond minimum due process guarantees. While the parties are generally free to determine the arbitral procedure, Article 62 of the ICAL and Article 1662 of the NCCC establish minimum due process guarantees, requiring that the parties be treated with equality and afforded a full opportunity to assert their rights. Beyond these fundamental principles, Argentine law does not mandate any specific procedural stages or formal steps for arbitration proceedings.

As to representation and counsel conduct, Law No. 23.187 regulates the conduct of counsel in proceedings seated in the City of Buenos Aires and any other national territory (similar rules enacted by each of the provinces govern the conduct of counsel in proceedings seated in their jurisdiction). These rules limit their application to the conduct of counsel in their respective jurisdiction and establish that only a professional registered as such in the local bar association can act as counsel. Thus, these rules do not govern the conduct of counsel in arbitral proceedings seated outside the respective jurisdiction.

Arbitrators

Party autonomy over the appointment of arbitrators is broadly protected, with the main limit being the prohibition of clauses that grant one party a privileged position in the appointment process. In accordance with Article 24 of the ICAL and Article 1661 of the NCCC, any clause that gives a party a privileged situation for the appointment of arbitrators is null and void. Besides this, there are no limits to the parties' autonomy to select arbitrators.

According to Articles 24 of the ICAL and 1659 of the NCCC, if the parties' chosen method for selecting arbitrators fails:

- (i) In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator

within 30 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 30 days of their appointment, the appointment shall be made, upon request of a party, by the first-instance judge in commercial matters of the seat of the arbitration (under the ICAL) or by the arbitral institution or the judicial court (under the NCCC).

- (ii) In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he/she shall be appointed, upon request of a party, by the first-instance judge in commercial matters of the seat of the arbitration (under the ICAL) or by the arbitral institution or the judicial court (under the NCCC).

Courts may thus intervene to secure appointments if the parties' mechanism stalls, or where a party, the coarbitrators, or a designated third party fail to perform their role (Article 25 of the ICAL). Under the NCCC, when the dispute involves more than two parties, and they cannot reach an agreement on the method for the constitution of the arbitral tribunal, the arbitral institution or the judicial court shall decide on it.

As to independence and impartiality, pursuant to Articles 27 and 28 of the ICAL and Article 1662(a) of the NCCC, a person approached in connection with his/her possible appointment as an arbitrator, or appointed as arbitrator and throughout the arbitral proceeding, shall without delay disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. Article 28 of the ICAL considers the performance of the arbitrator or members of his/her law firm – or similar organisation – in another arbitration or judicial proceeding, as legal representative of one of the parties (regardless of the matter at stake) or a third party in a dispute with the same cause or subject, as grounds to challenge an arbitrator for lack of impartiality or independence (without admitting evidence to the contrary).

Under the ICAL and the NCCC, arbitrators may: (i) order interim measures and require any party to provide appropriate security in connection with such measures (Articles 38 and 51 of the ICAL and 1655 of the NCCC); (ii) conduct the arbitration as he/she considers appropriate in case the parties fail to agree on the procedure to be followed (Article 64 of the ICAL and 1658(d) of the NCCC); (iii) determine the seat and the language of the arbitration in case the parties fail to reach an agreement on such matters (Articles 65 and 68 of the ICAL and 1658(a) and (b) of the NCCC); and (iv) appoint one or more experts who will report on any specific issue to be determined by the arbitral tribunal and require any of the parties to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his/her inspection (Article 76(a) and (b) of the ICAL).

With respect to his/her duties, under the ICAL, arbitrators must be: impartial and independent from the parties (Article 27); disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence without delay (Article 28); treat the parties with equality and give them the full opportunity to assert their rights (Article 62); and render an award or an order deciding the termination of the proceedings (Article 90). Under the NCCC, arbitrators must: (i) disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence; (ii) stand in the arbitral tribunal until the termination of the proceedings; (iii) maintain the confidentiality of the arbitration; (iv) have sufficient time to carry out his/her tasks as arbitrator; (v) assist in the hearings; (vi) participate on the deliberation with his/her co-arbitrators; and (vii) render a reasoned award in the agreed term.

Finally, there is no statutory arbitrator immunity in Argentina.

Interim relief

Pursuant to Articles 38 to 40 of the ICAL and Article 1655 of the NCCC, the arbitral tribunal may, at the request of a party, grant interim measures in order 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 to the arbitral process itself; (iii) provide a means of preserving assets out of which a subsequent award may be satisfied; or (iv) preserve evidence that may be relevant and material to the resolution of the dispute. Where prior disclosure could frustrate the purpose

of the measure, tribunals may issue preliminary orders; for such orders, security is generally required unless deemed inappropriate or unnecessary (Articles 42, 43 and 52 of the ICAL). Although tribunals do not need court assistance to order such relief, judicial assistance is sought for enforcement (Article 56 of the ICAL and 1655 of the NCCC).

Articles 21 of the ICAL and 1655 of the NCCC establish that it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, an interim measure of protection to a court, nor for a court to grant such measure. Therefore, national courts are entitled to grant interim relief in proceedings subject to arbitration and parties can request such relief from the judicial court without affecting the jurisdiction of the arbitral tribunal. In practice, courts assess interim relief by applying the same standards as in judicial proceedings – legal plausibility, risk of irreparable harm or peril in delay, and security – as appropriate. Argentine law does not regulate anti-suit injunctions in aid of arbitration, and such measures are not commonly sought. Tribunals may require the party requesting an interim measure to provide appropriate security in connection with such measure (Article 51 of the ICAL and 1655 of the NCCC). Local courts generally recognise and enforce interim and preliminary relief, refusing only in statutory circumstances.

Arbitration award

Under the ICAL, an arbitral award shall be made in writing and signed by the arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall suffice, provided that the reasons for one or more omitted signatures are stated. The award shall state the reasons upon which it is based, unless the parties have agreed that the award is on agreed terms under Articles 84 and 85 of the ICAL. The award shall also include the date and the place of arbitration.

Under the NCCC, the award shall state the reasons on which it is based and issued within the established term (Article 1662(g)).

Tribunals may correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature by the request of a party or by its own initiative and to interpret the award by a party request, forming the interpretation part of the award (Articles 93 and 94 of the ICAL). The tribunal also has the power, at the request of the parties and unless otherwise agreed, to make an additional award as to claims presented in the arbitral proceedings but omitted from the award (Articles 95 and 96 of the ICAL).

For domestic awards, arbitrators may correct, at the request of a party, any material error, clarify some obscure concept without altering the substance of the decision and supply any omission in which it had incurred on some of the claims (Articles 166(2) of the NCCCP and 1665 of the NCCC). These remedies apply even if the parties have waived all means of recourse against the award (Article 760 of the NCCCP). The NCCCP and the NCCC do not regulate additional awards other than providing for decisions on correction and clarification of the award.

Challenge of the arbitration award

Recourse to a court against an international commercial arbitral award may be made by an application for setting aside, only if: (i) a party to the arbitration agreement was under some incapacity or restriction to capacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the Argentine legislation; (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his/her case; (iii) the award deals with a dispute not contemplated by the arbitration agreement, or 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 submitted, only the latter may be set aside; (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the law from which the parties cannot derogate, or, failing such agreement, was not in accordance with the law; (v) the subject-matter of the dispute is not capable of settlement by arbitration under Argentine law; or (vi) the award is in conflict with Argentine public policy (Articles 98 and 99 of the ICAL).

Against domestic awards, appeal and setting-aside applications are available. While the former is freely waivable by the parties, the latter is not. A set-aside application may only be based on: (i) essential procedural errors in the proceedings; (ii) the award being rendered after the term for making the award had elapsed; (iii) the award includes decisions on issues not submitted to the arbitrators; and (iv) the award is inconsistent and contains contradictory decisions (Articles 1656 of the NCCC and 760 and 761 of the NCCCP). The Argentine Supreme Court of Justice has developed a restrictive approach in the analysis of the admissibility of a set-aside application against an arbitral award.

The ICAL does not provide the parties with the right to exclude grounds of challenge against an arbitral award. For its part, the NCCC and the NCCCP declare as non-waivable the set-aside request, allowing the waiver of others' recourses (Articles 1656 and 760 of the NCCCP).

Pursuant to Articles 100 and 101 of the ICAL, an application for setting aside shall be made within 30 days as from the date on which the party making that application had received the award or, if a request for interpretation or correction had been made, from the date on which that request had been disposed of by the arbitral tribunal. The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting-aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside. With respect to domestic awards, Article 759 of the NCCCP establishes a five-day period to challenge an arbitral award before the corresponding judicial court (similar provisions are contained in the rest of the procedural codes of each jurisdiction).

Enforcement of the arbitration award

Argentina signed and ratified the NY Convention without any reservation, and approved it through Law No. 23.619 of 11 May 1994, published on the Official Gazette on 4 November 1988. Argentina is also a party to the 1975 Inter-American Convention. Although Argentina is also party to the 1979 Inter-American Convention and the Mercosur Agreement, their provisions refer to the 1975 Inter-American Convention in the recognition and enforcement of arbitral awards matters.

Besides the NY Convention and the 1975 Inter-American Convention, the ICAL includes a regulation for the recognition and enforcement of arbitral awards. National courts normally recognise and enforce foreign arbitral awards and only refuse to do it when they believe that a ground for refusal has been proved.

Pursuant to Articles 102 and 103 of the ICAL, the party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in the official language of this state, the court may request the party to supply a translation thereof into such language. Similar provisions are contained in the NY Convention and the 1975 Inter-American Convention.

Under Argentinian law, an arbitral award has the same effects as a judicial sentence. Therefore, the fact that certain issues have been finally determined by an arbitral tribunal precludes those issues from being re-heard in a national court.

Pursuant to Article 347 of the NCCCP, *res judicata* occurs when a dispute with the same parties, subject and cause of action, has been resolved earlier in a definitive manner.

Foreign arbitral awards will not be recognised or enforced in Argentina if they run against essential principles of fairness and justice that are a part of both Argentine internal and international public policy. For instance, the due-process guarantee embodied in Article 18 of the Argentine Constitution requires every party to have a fair opportunity to be heard and state his/her case. Therefore, recognition and enforcement of foreign arbitral awards violating Argentine general principles of morality and justice, or Argentine social, economic and political organisation and policies may be refused by Argentine judicial courts.

Investment arbitration

Argentina ratified the ICSID Convention on 19 October 1994. The ICSID Convention entered into force on 18 November 1994. Argentina is also a party to more than 60 Bilateral Investment Treaties (“BITs”) and has signed regional instruments such as the Colonia Protocol for the Promotion and Reciprocal Protection of Investments and ratified the Buenos Aires Protocol for the Promotion and Protection of Investments from Non-Mercosur State Parties, although these instruments are not yet in force.

Argentina has no BIT model and therefore, the languages employed in all of the treaties differ. Nonetheless, the standards of protection being given to foreign investors by Argentina are often similar to the standards protected in every BIT without an intended significance.

With respect to state immunity, Law No. 24,488 governs jurisdictional immunity, while there is no statutory regulation of immunity from execution.

Pursuant to the Argentine Supreme Court of Justice case law (developed since the *Blasón* case in 1999, and which continues to this day) if a foreign state had waived jurisdictional immunity, this does not imply a waiver of the state immunity execution and, considering that Argentina does not have a regulation of state immunity execution, it is not appropriate to seize goods from a foreign state unless the latter expressly consents to it, in order to respect and maintain diplomatic relations with foreign states.



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María Inés Corrá is co-head of the international arbitration, administrative law and economic regulation practice areas at Bomchil. She has more than 25 years of experience in arbitral practice, representing multinational companies as co-counsel or lead counsel both in investments and commercial international matters under the main rules of international arbitration (such as the ICSID, ICC, ICDR, UNCITRAL and other rules). She also acts as international arbitrator.

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