

Arbitration

Contributing editors

Gerhard Wegen and Stephan Wilske



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GETTING THE
DEAL THROUGH 

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Arbitration 2016

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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 signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on 25 September 1979, and it received final approval through Law 39 of 1990. Internationally, for Colombia, the New York Convention has been in force since 23 December 1979. No reservations were made by Colombia concerning any rule in the New York Convention.

Colombia is a party to the following multilateral conventions relating to international commercial and investment arbitration:

- Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards of 1979, approved by Law 16 of 1981;
- Inter-American Convention on International Commercial Arbitration of 1975, approved by Law 44 of 1986; and
- Convention on the Settlement of Investment Disputes between States and Nationals of other States of 1965, approved by Law 267 of 1996.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Colombia is party to 14 international investment agreements already in force, which are comprised by seven bilateral investment treaties and seven free trade agreements that contain investment chapters. Additionally, there are eight other agreements already signed and pending to enter into force, and another six that are under negotiation.

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?

The primary domestic arbitration-related sources of law in Colombia are:

- article 116 of the Constitution of Colombia, which allows individuals to be vested with the public function of justice administration when acting as arbitrators; and
- Law 1,563 of 2012 (the Arbitration Statute) that regulates both domestic and international arbitration in Colombia.

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?

The domestic arbitration section of the Arbitration Statute was not drafted after the UNCITRAL model law (the Model Law) and more closely

resembles a judicial proceeding before arbitrators than it does an arbitration as it is conceived in the Model Law. The major features of domestic arbitration as they differ from international arbitration are:

Arbitrators are considered public servants and are subject to the same disciplinary regime as judges.

A secretary will assist the arbitrators in conducting the proceedings.

Party-appointed arbitrators are not allowed in domestic proceedings. Parties to the arbitration must either mutually agree on the arbitrators, delegate the appointment to a third party, or, failing these, accept the appointment made by a Civil Circuit Court.

The grounds for the annulment of a domestic arbitral award are wider than those provided for in the Model Law. Please refer to our answer to question 42, below.

Domestic awards and the rulings of annulment recourses thereof may be further revised by a national court through an exceptional recourse to revision and via a constitutional claim for the protection of fundamental rights, when the decision of the arbitrators affects fundamental rights of the parties involved, especially due process.

Absent a rare agreement of the parties to the contrary, arbitration panels gather evidence in the same way that civil courts do.

5 Mandatory provisions

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

Pursuant to the Arbitration Statute, unless the state or a state-owned entity is a party to the proceedings, the parties may agree upon the procedure applicable to their arbitration, either directly or by reference to the rules of an arbitration institution, as long as they respect the constitutional principles that relate to due process, right of defence and party-equality.

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?

No. The issue is debated, although the prevailing opinion seems to be that, insofar as they are considered judges, domestic arbitrators are bound by Colombian conflict of law provisions.

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 (CAC) is the most prominent arbitral institute in the country. When the CAC appoints arbitrators, they are selected from the CAC's own arbitrators' lists. The CAC calculates the fees of the arbitration based upon the amount in dispute, not the time spent. Any domestic arbitration administered by the CAC is deemed to be seated in Bogotá, Colombia, unless otherwise agreed by the parties. Failing agreement on the seat of an international arbitration, the decision is left to the arbitral tribunal, which should take into account the convenience of the parties and the special circumstances of the arbitration.

The following is the contact information of the CAC:

Av. El Dorado No. 68D-35, Piso 3
Bogotá
www.centroarbitrajeconciliacion.com

The arbitration rules of the CAC are available online: www.centroarbitrajeconciliacion.com/contenido/contenido.aspx?catID=834&conID=62.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

As a general rule, any matter which may not be settled between the parties may not be settled by arbitration. The law may include any additional specific matter that may not be settled by arbitration. Among such matters, we highlight the following:

- fundamental rights;
- marital status;
- validity of decisions taken in a corporation's shareholders' or board of directors' meeting (except within a Sociedad por Acciones Simplificada); and
- legality of administrative acts.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

In Colombia, there still exists the distinction between an arbitral clause and a submission agreement or *compromiso*, depending on whether the agreement is executed as part of a contract or independently after the existence of a dispute. In both cases the arbitration agreement must be expressed in a document containing the consent of the parties to arbitrate any dispute arising out of the concerned contract or expressing the dispute the parties consent to arbitrate, if it already exists. Notwithstanding, whenever the defendant in a judicial proceeding invokes the existence of an arbitral agreement and the claimant does not oppose it, the existence of the arbitral agreement will be deemed successfully demonstrated.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

The voidance of an arbitration clause may be pursued before the Arbitration Tribunal if it does not comply with the general requirements for the existence or validity of contracts, or the specific requirements for validity of arbitration agreements, as discussed in the previous point. Arbitration agreements will not cease to be enforceable on the grounds of death of one of the parties (contractual successors will be bound), bankruptcy or expiration or voidance of the contract that contains it.

11 Third parties – bound by arbitration agreement

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

In domestic arbitration, when the guarantor of obligations contained in an agreement that includes an arbitration clause is summoned to the proceedings by the guaranteed party the guarantor will be bound by 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?

Third-party participation is allowed in Colombia by the Arbitration Statute, subject to the relevant rules found in the Colombian Code of Civil Procedure (CCCP) and, as of 1 January 2016, the Colombian General Code of Procedure (CGCP) if provided; the respective adhesion from the third party to the arbitration agreement; and the recalculation of the arbitrators' fees, that must be paid by the third party interested in participating in the proceedings or by either of the parties to the dispute. In cases where a third

party holds an interest against both parties to the dispute the proceedings may continue disregarding the payment of the recalculated arbitrators' fees.

Additionally, if due to the nature of the dispute, the arbitral award will have *res judicata* effects upon a third party that has not executed the arbitration agreement, the arbitral tribunal will order the third party to express whether or not they will adhere to the arbitration agreement. If they do not adhere, the arbitration tribunal will declare that the effects of the arbitration agreement are extinguished with regard to the dispute.

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?

There is no specific rule in this regard. Whether an arbitration agreement is extended to third parties will most likely be defined by applying the usual test of consent.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Arbitration Statute does not include a rule on the matter of a multiparty arbitration agreement.

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?

Requirements to act as an arbitrator in domestic arbitral proceedings are the same as those established in the law for whoever wishes to be appointed to a judicial district's appellate court, namely:

- holding Colombian nationality and citizenship;
- being admitted to practise law in Colombia;
- having no less than eight years of professional experience; and
- not having been disqualified or removed from public office.

No special criteria, as per nationality or professional qualifications, must be met to act as an arbitrator in international arbitration proceedings.

We are not aware of a statute that would prevent the parties from considering limiting their options of arbitrators on the grounds of nationality, religion or gender.

16 Default appointment of arbitrators

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

Regarding domestic arbitration, in the events where the parties must mutually agree on the appointment of arbitrators, yet fail to appoint them, the arbitration centre will make the appointments if the arbitration agreement so stipulates. This appointment must be made randomly from the centres' lists of arbitrators. In the absence of an appointment by the arbitration centre, the arbitrator(s) will be appointed by a civil circuit court.

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?

Challenge of an arbitrator in domestic arbitration proceedings is subject to the same grounds and procedure for the challenge of national judges found in the CCCP and the CGCP. Such rules, generally, relate to the existence of a relationship between a judge and one of the parties to the process, or

between the judge and the dispute itself, that offers a reasonable source of concern as to its independence and impartiality. Additionally, an arbitrator can be challenged on the basis of having breached the duty of disclosure.

If only one of a three-arbitrator tribunal is challenged, the challenge will be decided by the remaining two arbitrators. In the case of a sole-arbitrator tribunal, or when two or three arbitrators of a three-arbitrator tribunal are challenged, the challenge will be decided by a civil circuit court.

In the case of disability or death of an arbitrator, the proceedings will be stayed, until the concerned arbitrator is replaced.

Regarding international arbitration, the parties are free to agree on a procedure to challenge the arbitrators.

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.

There exists no contractual, labour or commercial relationship between the parties and arbitrators.

19 Immunity of arbitrators from liability

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

Arbitrators in domestic arbitrations, given that they carry out a public function, are subject to liability in the same conditions as national judges. In the case an arbitrator or an arbitral tribunal causes an unlawful damage to a person, they may seek reparation against the Colombian state, which may, in its way, pursue reparation against the arbitrator or arbitrators, as long as there exists proof of their gross negligence or wilful misconduct in causing the damage.

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?

The defendant in court proceedings that wants to invoke the existence of an arbitration agreement enforceable against the claimant must do so in the first opportunity granted to present its case. If the court is convinced with regard to the existence of the arbitral agreement, the court proceedings will be terminated.

If an arbitral tribunal decides that it has jurisdiction over a matter that is already being heard by a national court where a first instance ruling has not been rendered, it is entitled to order the relevant court to terminate the proceedings and submit the file docket to the arbitration panel.

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?

In domestic arbitration proceedings the decision of arbitrators on the matter of their own jurisdiction is final and shall prevail over any other judicial decision on the matter, with the exception of what a national court may decide in the proceedings to annul the award.

Regarding international arbitration, the arbitration tribunal will decide on the matter of its own jurisdiction. The parties must object to the jurisdiction, to the latest, at the time of filing the response of the claim unless applicable rates state otherwise. The arbitration tribunal will solve these objections before, or within the final award. If the arbitration tribunal does not agree with the objections they could still be argued in the annulment recourse.

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?

Regarding domestic arbitration, failing prior agreement, the proceedings will be conducted in the manner specified by the arbitration rules of the concerned arbitral institution (the language must be Spanish and the seat will be the city where the concerned institution is located).

Regarding international arbitration, if no institution intervenes in the given proceedings, arbitrators will decide on the place and language, according to the specificities of the case.

23 Commencement of arbitration

How are arbitral proceedings initiated?

Domestic arbitral proceedings initiate with a complaint that must satisfy all the requirements laid down in the relevant rules regarding civil judicial complaints. In general, such requirements are:

- identification of the parties to the process
- a clear description of the facts of the dispute;
- expression of the claims;
- identification of the rules applicable to the dispute;
- an estimate of the monetary value of the claims; and
- indication of the evidence to be produced and submission of any documents that intend to be used as evidence and are in the party's power.

The complaint must be signed by the claimant's attorney and must be filed along with all the documentary evidence available, a copy for the defendant, a copy for the tribunal, and a copy for the arbitration institution, if applicable.

The beginning of an international arbitration will vary according to the rules chosen, but it usually takes place with a request for arbitration. Requirements that exist in the context of domestic arbitrations are not applicable to international arbitrations.

24 Hearing

Is a hearing required and what rules apply?

In domestic arbitrations, the Arbitration Statute provides for various hearings, namely the: installation hearing, settlement hearing, first hearing, evidentiary hearings, final statements hearing, award hearing and the clarification, correction, or addition award hearing.

The celebration of hearings in international arbitration proceedings is for the arbitral tribunal to decide, upon the specific circumstances of the case.

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?

Taking of evidence in domestic arbitration as provided for in the law, and absent an agreement of the parties that provides otherwise (which is a rare occurrence in Colombia (if in fact it has ever happened)) is subject to the same rules as judicial proceedings. The most prominent provisions in this regard are:

- documents: these must be presented by the parties along with their complaint or response to the complaint, respectively. Notwithstanding, if so requested by a party, the tribunal may order the opposing party to submit additional documents;
- witnesses: the parties are required to express the name and domicile of the persons they intend to call as witnesses to the proceedings, as well as a brief indication of the purpose of the witness's declaration. Witnesses are summoned for oral testimony and no written testimonies may be filed. No depositions exist prior to the rendering of the testimony;

- experts: parties to a domestic arbitration may choose between submitting expert reports drafted by party hired experts or requesting that the tribunal order the expert reports to be drafted by tribunal appointed experts; and
- party declarations: if so requested, the arbitral tribunal and the counterparty may ask a party, or its legal representative, on the facts of the dispute.

International arbitral proceedings are ruled by a provision drafted after article 19 of the Model Law whereby tribunals are free to establish the rules for taking of evidence in the absence of an agreement of the parties on the matter.

26 Court involvement

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

With regard to domestic arbitration, national courts may intervene in arbitral proceedings in the following circumstances (among others):

- to designate the arbitrators;
- to decide the challenge against the sole arbitrator or the majority of the arbitral tribunal; and
- to assist the tribunal in the practice and enforcement of interim measures.

In international arbitration, court involvement opportunities are:

- ordering and enforcement of interim measures;
- appointment of arbitrators;
- deciding the challenge of an arbitrator;
- gathering of evidence;
- action to set aside awards; and
- recognition and enforceability of awards.

27 Confidentiality

Is confidentiality ensured?

The Arbitration Statute remains silent on the matter.

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?

Regarding international arbitration, the Arbitration Statute provides that before or during the arbitration proceedings, any given party is entitled to seek interim relief from local courts, and such request will not constitute a waiver of the arbitration agreement. No such provision exists for domestic arbitrations.

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?

No.

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?

Both domestic and international arbitration tribunals may order interim measures as they see fit. For international arbitration the parties may agree otherwise. Domestic arbitration tribunals may additionally order the same interim measures available to the courts where, absent the arbitration agreement, the dispute would have been resolved.

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? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

Yes. Arbitrators have the same duties and powers as judges. Therefore, they may expel people from hearings, impose fines and order arrest penalties, among others. However, this rarely occurs.

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?

For domestic arbitration, the arbitral award must be decided by the majority of the members of the arbitral tribunal.

For international arbitrations, the arbitral award must be decided by the majority of the members of the arbitral tribunal, unless otherwise stated by the parties.

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

In domestic arbitrations, arbitrators may express dissenting as well as concurring opinions. However, if an arbitrator expresses a dissenting opinion regarding the decision of the jurisdiction of the tribunal issued in the first hearing, the arbitrator will cease its functions and will have to be replaced.

For international arbitration, the Arbitration Statute remains silent on the matter.

34 Form and content requirements

What form and content requirements exist for an award?

Regarding domestic arbitration, the arbitral award is the judicial decision that is rendered by the arbitral tribunal. Hence, the arbitral award must comply with the formal requirements of judicial decisions.

Regarding international arbitration, awards must: be written and signed by the arbitrators, however the default of the signatures does not affect the validity of the award; provide the reasoning of the arbitral tribunal unless otherwise agreed by the parties; and state the date and seat of the arbitration.

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?

Regarding domestic arbitration, except when otherwise stated in the arbitration agreement, the time limit for the arbitrators to render the arbitral award and, when applicable, the clarification, correction, or addition of the award, is six months from the so-called first hearing, which is the moment in which the tribunal makes a decision on its own jurisdiction and orders the collection of evidence. This term may be extended as requested by the parties, but the extension cannot exceed an additional 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?

Regarding both domestic arbitration and international arbitration, the decisive date is the date of the delivery of the award.

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

In domestic arbitration, the arbitral tribunal can issue arbitral awards in law, technical awards, or *ex aequo et bono*, when expressly stated by the parties. There are two arbitral awards: the final award, and if applicable, the addition to the final award.

Regarding international arbitration, the award can be in law or *ex aequo et bono*, when authorised by the parties. Partial awards are allowed in international arbitration, as per the applicable arbitration rules.

38 Termination of proceedings**By what other means than an award can proceedings be terminated?**

Domestic arbitration may terminate by settlement or the claimant choosing to desist from the claims. There are no default judgments under Colombian law, in arbitration or otherwise. Written briefs should be filed for this purpose.

International arbitrations may be terminated in any way consistent with applicable arbitration rules.

39 Cost allocation and recovery**How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?**

In domestic arbitration, as per article 25, and 26 of the Arbitration Statute, the arbitrators will determine the costs and expenses that must be paid by the parties.

As per article 13 of the Arbitration Statute, in the award, the tribunal shall decide upon the final allocation of costs and expenses and shall order the losing party to pay them. This will include the expenses of the proceeding (ie, arbitration fees, experts opinion's fees, etc, and the attorney's fees of the prevailing party).

Regarding international arbitration, costs will be allocated as determined by the applicable arbitration rules.

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

Applicability of interest as well as applicable rates will be determined by applicable substantive law.

Proceedings subsequent to issuance of an 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 arbitrations, the arbitral tribunal can clarify, correct, or make additions to the award *sua sponte* within the five days following delivery of the award. Within the same timeframe, the parties may request the clarification, correction, or addition of the award.

In the case of international arbitrations, within the next month after the delivery of the award and unless otherwise agreed, any party can request the correction of a calculation, typographical or transcription mistake, as well as the clarification of the award; the arbitral tribunal may, *sua sponte*, correct a calculation, typographical or transcription mistake in the award; and any party can request the addition of the award regarding claims that were brought to the arbitral tribunal during the arbitration proceeding and that were omitted in the award.

42 Challenge of awards**How and on what grounds can awards be challenged and set aside?**

In domestic arbitrations, the party that wishes to request the annulment of the award has 30 days from the service of the award or from the decision that decides the clarification, correction, or addition of the award to submit the annulment to the tribunal.

The grounds for setting aside the award are the following:

- (i) non-existence, nullity, or unenforceability of the arbitration agreement;
- (ii) the action is time-barred or there is lack of jurisdiction;
- (iii) the tribunal was not duly integrated;
- (iv) one of the parties was not duly represented in court or was not duly notified (this applies only if the defect was not amended during the proceedings);
- (v) a piece of evidence duly requested was not ordered or when ordered was not collected, as long as the defect was mentioned in the corresponding legal remedy filed against the tribunal's decision and the same was relevant to the ruling;
- (vi) the arbitral award or any addition, correction, or clarification thereof was issued after the expiration of the period fixed for the arbitration process;
- (vii) the award was issued in equity (*ex aequo et bono*), when it should have been issued in law, on the condition that this circumstance appears evident in the award;
- (viii) the award contains contradictory statements or mathematical or other errors in the part of the judgment or with an influence on it, provided that these errors were previously pointed out to the tribunal; and
- (ix) the award was rendered on issues that were not subject to the arbitrators' decision, awarded in excess of that which was claimed or failed to decide on issues that were subject to the arbitration.

Grounds (i), (ii) and (iii) may be invoked only if the appellant alleged these defects at the moment of filing a motion to reconsider against the tribunal's decision during the arbitral proceeding. Ground (vi) may not be alleged by the party that failed to present it before the tribunal prior to the expiration of the established term.

Grounds for annulment of an award rendered by an international tribunal seated in Colombia are the following:

At the request of one of the parties:

- such party to the 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 Colombian law;
- such party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- the award refers to a difference not contemplated by or not falling within the scope of 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 so submitted, only the latter will be set aside;
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, except when such agreement comes in conflict with a mandatory provision of Colombian international arbitration law or, failing such agreement, was not in accordance with Colombian international arbitration law; or
- when the annulment judge finds that:
 - the subject matter of the difference is not capable of settlement by arbitration under the laws of Colombia; or
 - the recognition or enforcement of the award would be contrary to Colombian international public policy.

The Arbitration Statute allows parties to an arbitration that is seated in Colombia to partially or completely waive recourse to annulment, when all parties are domiciled outside Colombia. An award rendered under such a waiver requires a recognition proceeding in order to be enforced in Colombia.

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?**

Arbitral awards are not subject to appeal; nevertheless they can be challenged through annulment recourse, revision, and, in some instances through a constitutional action.

The Constitutional Court established general grounds for the admissibility of the petition for constitutional protection against awards as well

Update and trends

Three years after its enactment, the Superior Council of the Judiciary has determined that the CGCP will enter into force, regarding civil jurisdiction, on 1 January 2015. Entry into force of this regulation regarding judicial or arbitral proceedings where a state entity is a party had been already established via case law.

as special grounds for granting the protection of a fundamental right violated by an award. Hence, the plaintiff must prove each and every one of the general requirements as well as at least one of the special grounds for an award to be annulled.

The great majority of constitutional actions that are attempted against arbitration tribunals or the awards they render are unsuccessful. Constitutional actions will be solved within 10 days; however that decision may be appealed and ultimately reviewed by the Constitutional Court.

Costs will be mainly attorney's fees.

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?

Regarding domestic arbitrations and international arbitrations seated in Colombia, awards can be enforced immediately, except in international arbitration when parties agreed to renounce to the annulment recourse; in this case, the award must be recognised as it will be treated as a foreign award.

In order to seek the recognition of a foreign award, the interested party shall submit to the Supreme Court of Justice the request with a copy of or the original arbitral award.

The sole grounds for denying the recognition of a foreign arbitral award are identical to the ones in article 36 of the Model Law.

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 on the matter.

46 Enforcement of orders by emergency arbitrators

Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

No.

47 Cost of enforcement

What costs are incurred in enforcing awards?

Doing Business 2015 (www.doingbusiness.org/data/exploreeconomies/colombia#enforcing-contracts) states that enforcing a judgment in Colombia will cost around 12.1 per cent of the claim's value.

Other**48 Judicial system influence**

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

Owing to the well-known judicial nature of domestic arbitration, many aspects of our judicial system permeate arbitration such as: formalities regarding complaint and response content; rules regarding evidence; time terms; and final decision to pay costs and expenses.

49 Professional or ethical rules applicable to counsel

Are specific professional or ethical rules applicable to counsel in international arbitration in your country? Does best practice in your country reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

Law 1123 of 2007 regulates the Disciplinary Code for Lawyers in Colombia, and it is applicable for lawyers acting in Colombia or outside of the country if the assignment was requested in Colombia. Arguably, it could be applicable for foreign lawyers working in Colombia.

50 Regulation of activities

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

Regarding domestic arbitration, arbitrators must fulfil the requirements laid down in our answer to question 15. Counsellors must be lawyers.

Regarding international arbitration see question 49.

Regarding taxation, the fees for foreign arbitrators serving in an arbitration seated in Colombia are subject to withholding income tax at the rate of 33 per cent. The fees are also levied with VAT, which would be collected by the Colombian payer via the reverse-charge mechanism without exerting any withholding or discount on the payment.

According to Colombian migratory law, there are two legal ways that a foreigner may enter Colombia to provide professional services:

- PIP 6. This permit is issued to foreigners who do not require a visa to enter Colombia and is requested before 'Migración Colombia' in the Colombian airport upon their arrival; and
- Visa TP12. This kind of visa is issued by the Colombian Ministry of Foreign Affairs or a Colombian Consulate in another country for a foreigner with restricted nationality who wants to enter Colombia with or without a labour contract to perform commercial activities, business matters, or labour activities, for a period of 90 calendar days. Nevertheless, according to the Arbitration Statute, the arbitrators could perform their duty by conference calls, hence, never actually entering the country.



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