

ARBITRATION IN ARGENTINA

By Marcelo Cippitelli and Sergio Villamayor Alemán, CMS

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1. Historical background

- 1.1.1 Arbitration in Argentina is based on Article 1197 of the Argentinian Civil Code, which provides that the terms of an agreement are binding in the same way as law. Consequently, contracting parties should be free to determine how they wish to resolve their disputes.
- 1.1.2 Pursuant to the Argentinian National Constitution, and because Argentina is a federal country, the National Congress can only enact international arbitration rules for the whole country.¹ Each province has its own procedural code for arbitration.
- 1.1.3 In the city of Buenos Aires, the rules governing arbitration are set out in Chapter VI of the National Code of Civil and Commercial Procedure (**CCCP**),² which also apply to federal courts. Since the CCCP was enacted, most of the individual provinces of Argentina have included similar provisions in their provincial procedural codes. Moreover some provinces like La Pampa and Tierra del Fuego have adopted more modern legislation.
- 1.1.4 At present, three different arbitration bills are being discussed in the National Congress that adapt Chapter VI of the CCCP to the UNCITRAL Arbitration Rules.
- 1.1.5 Argentina has many historic precedents relating to arbitration and the recognition of foreign awards. For example, the Montevideo Treaty of 1889 (revised in 1940) on International Procedural Law,³ between Argentina, Bolivia, Colombia, Paraguay, Peru and Uruguay, gives foreign awards from the contracting states the same status as judicial decisions.
- 1.1.6 Argentina ratified the New York Convention on 28 September 1988.⁴ Although Argentina is a party to several other arbitration-related treaties, none of those other treaties provide better material benefits or are more important to international arbitration in Argentina than the New York Convention.

¹ Argentinian National Constitution, s 121.

² National Code of Civil and Commercial Procedure Law 17.454 of 19 September 1967, text consolidated according to Decree 1.042 of 1981, Book VI, Arbitral Procedure.

³ Montevideo Treaty on International Procedural Law (adopted 11 January 1889, ratified by Argentina by Law 3192); Montevideo Treaty on International Procedural Law (adopted 19 March 1940; ratified by Argentina by Law 7771). The original treaty remains in force and official citation is usually to that treaty rather than to the 1940 treaty.

⁴ The New York Convention was ratified by Law 23.619 and came into force in Argentina on 14 March 1989 (see CMS Guide to Arbitration, vol II, appendix 1.1).

2. Scope of application and general provisions of chapter VI of the CCCP

2.1 Subject matter

2.1.1 The provisions of Chapter VI of the CCCP apply to all kinds of arbitration including institutional arbitration, ad hoc arbitration, arbitration at law and *ex aequo et bono* arbitration.

2.2 General principles

2.2.1 The CCCP, as well as the Argentinian Civil Code, sets forth several principles that should be respected in any national arbitral proceedings, as well as in any international arbitral proceedings where the award is to be enforced in Argentina.

Agreement of the parties

2.2.2 Pursuant to Article 1197 of the Civil Code, the basis for the arbitration procedure is the agreement of the parties to settle their dispute by arbitration. Similar to the New York Convention it is not possible to enforce an award in Argentina where the decision exceeded the scope of the arbitration agreement.

Due process

2.2.3 Article 18 of the Argentinian Civil Code guarantees each party the right to due process. This principle is of great importance as it may be used to challenge the enforcement of a national or international award.

Role of the courts

2.2.4 The courts can enforce the interim measures and decisions of the arbitral tribunal, but it cannot review the basis of them.

3. The arbitration agreement

3.1 Formal requirements

3.1.1 No specific wording is required to constitute an arbitration agreement.⁵

3.1.2 An arbitration agreement must be in writing.⁶ It can be included as a clause in a larger agreement or drafted as a stand-alone agreement.

⁵ Argentinian Civil Code, art 974.

⁶ CCCP, art 739.

- 3.1.3 An arbitration agreement will be deemed to be in writing if it is concluded between the parties through an exchange of letters, facsimiles, telexes or by such other means of telecommunication that produces a permanent record of the agreement.
- 3.1.4 It should be noted, however, that prior to the commencement of any arbitral proceedings – even in the presence of an arbitration clause – the parties are required to execute an arbitration commitment (**Compromiso Arbitral**) confirming their commitment to submit their dispute to arbitration.⁷
- 3.1.5 The *Compromiso Arbitral* should contain all the necessary requirements for commencing arbitral proceedings, such as provision for the appointment of arbitrators, the selection of any institutional rules (if any) and a statement of the issues to be submitted to the arbitral tribunal.⁸
- 3.1.6 The execution of the *Compromiso Arbitral* will exclude the jurisdiction of the courts to resolve the dispute. In the event that one of the parties brings a claim which falls within the scope of the *Compromiso Arbitral* before the local courts, the other party will be able to invoke the existence of the *Compromiso Arbitral* and the court must stay its proceedings.

3.2 Special tests and requirements of the jurisdiction

- 3.2.1 Family law disputes and testamentary matters (with the exception of certain patrimonial matters) and criminal law matters (excluding civil indemnification) cannot be resolved by way of arbitration in Argentina, even if the parties are willing to do so.
- 3.2.2 Pursuant to the CCCP, only international matters may be decided in a foreign jurisdiction.⁹ In general terms, an arbitration is “international” when it exceeds the framework of one country; for example, the parties are domiciled in different countries, or a significant part of the object of the contract will be carried out in a foreign country.

3.3 Separability

- 3.3.1 Chapter VI of the CCCP does not expressly provide that an agreement to arbitrate within a contract is separable from the contract itself. However, the courts have upheld the autonomy of the arbitration clause in many judicial precedents.¹⁰

⁷ *Ibid*, art 739.

⁸ *Ibid*, art 740.

⁹ *Ibid*, art 1.

¹⁰ See, for example, Nacional Comercial Appeals Court, Panel D, “Bear Service, S.A. c. Cervecería Modelo, S.A. de C.V. s/ ordinario”, 22 February 2002, published by Microjuris MJ-JU-E-5392-AR.

3.4 Legal consequences of a binding arbitration agreement

- 3.4.1 If the parties have concluded a valid and enforceable arbitration agreement, they are required to arbitrate all disputes that fall within the scope of that agreement and cannot submit such disputes to the Argentinian courts.
- 3.4.2 If one of the parties to a valid arbitration agreement refuses to execute the *Compromiso Arbitral*, the other party can request that the courts do so on behalf of the defaulting party.¹¹

4. Composition of the arbitral tribunal

4.1 Constitution of the arbitral tribunal

- 4.1.1 The parties are free to decide how many arbitrators will constitute the arbitral tribunal. The parties can appoint an odd or even number of arbitrators, although the former is more common.
- 4.1.2 Most institutional arbitral rules have specific proceedings for the appointment of arbitrators. If the parties cannot agree upon the number of arbitrators to be appointed in an ad hoc arbitration, then a court will determine the size of the arbitral tribunal.
- 4.1.3 Anyone can be appointed as an arbitrator so long as the person is capable of exercising his/her civil rights. Pursuant to the Argentinian Civil Code, people under the age of 18, people of unsound mind¹² and persons who have been declared unable to exercise their rights by a judge for the abuse of drugs, alcohol or a temporary mental illness are considered incapable of exercising their civil rights for these purposes.¹³
- 4.1.4 If the parties agree to refer to the rules of an arbitral institution, the institution will set out the procedure for appointing the arbitrators. In certain Argentinian institutions, the parties may agree to vary these procedures.

4.2 The challenge of arbitrators

- 4.2.1 Arbitrators may be challenged by the parties on the same grounds as judges.¹⁴ Those grounds include where the arbitrator:

¹¹ CCCP, art 742.

¹² Argentinian Civil Code, art 54.

¹³ *Ibid*, art 152(bis).

¹⁴ CCCP, art 746.

- has a personal or business relationship with one of the parties or their lawyer(s);
- has an interest in the outcome of the dispute;
- has expressed a prior opinion or recommendation on issues regarding the dispute; or
- has received an “important benefit” from one of the parties.

4.2.2 Arbitrators appointed by agreement of both parties may only be challenged where the grounds for the challenge occurred after their appointment.¹⁵

4.2.3 The rules of most arbitral institutions set out the procedure for challenging arbitrators. In ad hoc proceedings, the arbitral tribunal is competent to rule on any challenge within five days of its appointment. If the challenged arbitrators refuse to hear the challenge, a judge is entitled to determine the issue and the decision cannot be appealed. The proceedings will be suspended pending the resolution of the challenge.¹⁶

4.3 Responsibility of the arbitrators

4.3.1 Once the *Compromiso Arbitral* has been executed, notice of that fact will be given to the potential arbitrators who – once they have accepted their appointments – must fulfil their duties and obligations.

4.3.2 Arbitrators may be liable for any damage or loss suffered by the parties as a result of their failure to perform their duties and obligations.¹⁷ The Argentinian Civil Code states that the arbitrators also have a general obligation to compensate third parties for damage caused by their negligence or wilful misconduct.¹⁸

4.3.3 In addition, in the event that the arbitral tribunal does not issue its award within the time limit stipulated in the *Compromiso Arbitral*, it will forfeit its right to be paid and may be liable for any damage or loss caused by the delay.¹⁹

4.3.4 Finally, arbitrators who issue awards that are contrary to established legal principles, or that are based on a false factual analysis, may be subject to criminal prosecution under which judges may apply fines ranging from ARS 3,000 to ARS 75,000 (approximately USD 1,850 to USD 21,500) and/or receive a life-long disqualification from acting as an arbitrator.²⁰

¹⁵ *Ibid.*

¹⁶ *Ibid.*, art 747.

¹⁷ *Ibid.*, art 745.

¹⁸ Argentinian Civil Code, art 511 and 1068.

¹⁹ CCCP, art 756.

²⁰ Argentinian Criminal Code, art 269.

4.4 Arbitration fees

4.4.1 In institutional arbitration, each institution typically has rules governing the payment of administrative fees and the remuneration of arbitrators. However, in ad hoc arbitration, there will be no administrative fees and the remuneration of the arbitrators will be agreed between the parties and the arbitrators (usually in the *Compromiso Arbitral*). If the parties do not agree on such remuneration and fees, a court may fix them.

4.5 Arbitration immunity

4.5.1 There is no provision in Argentinian law granting immunity to arbitrators. As detailed above, arbitrators may face significant liability depending upon their conduct.

5. Jurisdiction of the arbitral tribunal

5.1 Competence to rule on jurisdiction

5.1.1 There is no express provision in the CCCP governing the competence of the arbitral tribunal to rule on its own jurisdiction. Most jurisprudence, however, accepts that the arbitral tribunal has this authority, suggesting that the principle of *competence-competence* would apply. Nevertheless, in a case where a court also decides that it is competent to determine the issue of the arbitral tribunal's jurisdiction, only the Supreme Court is entitled to rule on the matter.

5.2 Power to order interim measures

5.2.1 Arbitral Tribunals are empowered to grant interim measures to protect the parties' rights and the integrity of the arbitral proceedings. The courts can enforce the interim measures and decisions of the arbitral tribunal, but cannot review the basis of them.

6. Conduct of the proceedings

6.1 Commencement of arbitration

6.1.1 Arbitral proceedings commence with the constitution of the arbitral tribunal.

6.1.2 It is important to note, however, that in order to stop time running for the statute of limitations, a clear and valid act of one party to constitute the arbitral tribunal should be completed (provided that an arbitration agreement exists).

6.2 General procedural principles

- 6.2.1 The parties are free to choose the procedure to be followed by the arbitrators.²¹ If the parties do not agree upon the procedure to be applied – and unless the parties have agreed otherwise – the arbitral tribunal should apply the same procedural rules as are used in judicial proceedings.²²

6.3 Seat and language of arbitration

- 6.3.1 The parties are also free to choose the seat of the arbitration. In the absence of any choice, the seat will be deemed to be the place at which the *Compromiso Arbitral* was executed.
- 6.3.2 There is no express provision in the CCCP governing the language of the arbitration. It is generally accepted, however, that the parties are free to choose the language to be used in their arbitral proceedings.

6.4 Multi-party issues

- 6.4.1 Multiple parties may participate in the arbitral proceedings. Nevertheless, due process guarantees should be observed, and each party must participate for the award to be binding. In this regard, all the parties to the arbitral proceedings should also be party to the *Compromiso Arbitral*.

6.5 Oral hearings and written proceedings

- 6.5.1 The parties are free to decide whether to hold an oral hearing or whether to conduct the arbitration on a documents only basis.²³ Most arbitral institutions in Argentina have adopted the UNCITRAL Arbitration Rules for proceedings.²⁴
- 6.5.2 The arbitral tribunal must allow the parties the opportunity to make oral submissions, if so requested by either party. The tribunal will also hear all witnesses and experts (if they are summoned by the tribunal upon the request of the parties to explain their written testimony).
- 6.5.3 The parties must be given sufficient prior notice of any hearings or of any procedural actions to be taken by the arbitral tribunal.

²¹ CCCP, art 741.

²² *Ibid*, art 751.

²³ *Ibid*, art 741(1).

²⁴ For the full text of the UNCITRAL Arbitration Rules (1976) and (2010), see CMS Guide to Arbitration, vol II, appendix 3.1 and 3.2.

6.6 Evidence generally

- 6.6.1 The parties have an obligation to provide the arbitrators with all the evidence needed for the arbitral proceedings.²⁵
- 6.6.2 Pursuant to Argentinian jurisprudence, a dynamic burden of proof applies, meaning that the party who is in the best position to provide the evidence has the burden of proof to evidence that fact.²⁶

6.7 Appointment of experts

- 6.7.1 The arbitral tribunal may take the parties' depositions, hear witnesses and determine the appointment of expert witnesses, either of its own volition or at the parties' request.
- 6.7.2 In certain circumstances, the arbitrators may request the courts' support in the appointment of certain expert witnesses, ensuring the tribunal has sufficient access to information.

6.8 Confidentiality

- 6.8.1 The rules of most arbitral institutions in Argentina include express provisions regarding confidentiality.
- 6.8.2 Chapter VI of the CCCP contains no express provision regarding confidentiality. Nevertheless by virtue of Article 741(a) of the CCCP, the parties are free to decide to include in their *Compromiso Arbitral* provisions to assure the confidentiality of the proceedings.

6.9 Court assistance in taking evidence

- 6.9.1 The arbitrators may request the assistance of the courts in obtaining evidence. For example, they may request the courts to summon witnesses that have refused to voluntarily attend and give evidence. However, the power to determine the admissibility of evidence and the weight to be given to it lies within the exclusive remit of the arbitral tribunal.

²⁵ CCCP, art 387.

²⁶ See, for example, Argentinian Supreme Court, "Gallis de Mazzucci, Luisa c/ Correa, Miguel y otro", 6 February 2001, published by La Ley 2001-C, 959.

7. Making of the award and termination of proceedings

7.1 Choice of law

7.1.1 In international arbitrations, the parties are free to determine the applicable substantive law according to which the arbitral tribunal must make its award. If the parties fail to determine the applicable law, it shall be determined by the arbitral tribunal.²⁷

7.1.2 The parties may authorise the arbitral tribunal to make its decision *ex aequo et bono* (instead of rendering the decision on the basis of an applicable law).

7.2 Timing, form, content and notification of the award

7.2.1 The parties can stipulate in the *Compromiso Arbitral* the time within which the award is to be issued. In the absence of any agreement on this issue, the court shall decide.²⁸

7.2.2 Any award based on law (rather than *ex aequo et bono*) must be properly reasoned both in fact and in law. It must deal with all the issues submitted to arbitration as well as ancillary matters such as the costs of the proceedings.

7.2.3 The award itself must be in writing and state the place and date of its issuance. It must also be signed by a majority of the arbitrators.²⁹ If no majority decision can be reached on some or all of the issues – for example, if an even number of arbitrators has been appointed – a new arbitrator will be appointed to resolve such issues.³⁰ If the majority of the arbitrators agree upon some of the issues, a decision will be rendered on those issues in which there is a majority, leaving the rest of the issues for the determination of the newly appointed arbitrator.

7.2.4 In this situation, the parties will have to decide the appointment of a new arbitrator and a fixed term for him to render the award for the matters for which there was no majority, and failing to do so, a judge may appoint the new arbitrator. This new arbitrator will make a determination only upon the basis of the evidence already presented in the proceedings.

²⁷ CCCP, art 49(2).

²⁸ *Ibid*, art 741.

²⁹ *Ibid*, art 755.

³⁰ *Ibid*, art 757.

7.3 Settlement

7.3.1 The proceedings will terminate if the parties settle their dispute. The arbitral tribunal will record the settlement in the form of an award on agreed terms if so requested by the parties, provided that the arbitral tribunal considers that the settlement is in accordance with the law. An award on agreed terms has the same effect as any other award made by an arbitral tribunal.³¹

7.3.2 The arbitrators may schedule one or more settlement hearings at the outset or during the proceedings to encourage the parties to settle their dispute amicably. In keeping with the powers of judges in judicial proceedings in Argentina, the arbitrators may be actively involved (as quasi-conciliators) in any settlement discussions that result from the settlement hearings. These possibilities may vary depending on the procedural rules agreed by the parties.

7.4 Power to award interest and costs

7.4.1 The parties can decide in the *Compromiso Arbitral* by which party and to which extent the costs of the arbitration, including the arbitrators' fees and the parties' legal fees, will be borne.

7.4.2 In the absence of any prior agreement between the parties on this issue, the arbitrators will determine the costs of the arbitration in their award and allocate the responsibility for paying such costs between the parties.³² As a general rule, the winning party is entitled to recover its costs from the losing party.

7.5 Termination of the proceedings

7.5.1 The arbitral proceedings terminate when the final award is issued. The arbitral proceedings will also be terminated in the following circumstances:

- by agreement between the parties;
- upon the expiration of the term indicated in the *Compromiso Arbitral* or where otherwise stated by the court; or
- if neither the parties nor the arbitrators take any steps in the proceedings for a period of three months.³³

7.6 Correction, clarification and issue of a supplemental award

7.6.1 Any party to the arbitral proceedings may file a motion requesting the arbitral tribunal to clarify the terms of the award.³⁴ This motion should be filed within

³¹ *Ibid*, art 741.

³² *Ibid*, art 760.

³³ *Ibid*, art 748.

³⁴ *Ibid*, art 166.

three days of receipt of the award, and should invite the arbitral tribunal to correct any typographical error or omission or clarify the grounds on which the award has been made. Arbitral institutions set forth longer terms (e.g. 30 days) for this motion.

- 7.6.2 Either party may request an additional award if the arbitral tribunal failed to make an award on any claim submitted to the arbitral tribunal for consideration. This motion should also be filed within three days of receipt of the award. Nevertheless the failure of the arbitral tribunal to include essential points in the proceeding may be a ground for a request to set aside the award.

8. Role of the courts

8.1 Jurisdiction of the courts

- 8.1.1 If a valid and binding arbitration agreement has been agreed by the parties, the courts are required to decline jurisdiction over the subject matter specified in the arbitration agreement. However, the CCCP gives the courts limited jurisdiction to provide legal assistance to the arbitral process in certain circumstances. The courts can, amongst other things, assist in relation to the appointment and challenge of arbitrators,³⁵ in obtaining evidence as well as in the enforcement of interim measures granted by the arbitral tribunal.³⁶

8.2 Stay of court proceedings

- 8.2.1 The court will decline jurisdiction over a claim that falls within the scope of an arbitration agreement, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

8.3 Preliminary rulings on jurisdiction

- 8.3.1 If the arbitral tribunal is unable to decide whether or not it has jurisdiction over the dispute, a party may request that the competent court decides on the jurisdiction of the arbitral tribunal.³⁷ The proceedings are suspended until a party files a copy of the court's decision with the arbitral tribunal.
- 8.3.2 The court also has jurisdiction to review the arbitral tribunal's assumption of jurisdiction upon application by a party.³⁸

³⁵ *Ibid*, art 746.

³⁶ *Ibid*, art 753.

³⁷ *Ibid*, art 752.

³⁸ *Ibid*, art 742.

8.4 Interim protective measures

- 8.4.1 The courts in Argentina have jurisdiction to grant interim measures in support of arbitral proceedings both before and after the constitution of the arbitral tribunal.
- 8.4.2 The courts also have exclusive competence in enforcing interim measures granted by the arbitral tribunal.

8.5 Obtaining evidence and other court assistance

- 8.5.1 The courts have jurisdiction to assist the arbitral tribunal in obtaining evidence.³⁹ As an example, courts may summon witnesses in a compulsory manner. In addition, courts may also assist the arbitral tribunal in obtaining information from third parties, including public authorities, using their legal authority to compel such information.⁴⁰

9. Challenging and appealing an award through the courts

9.1 Appeals

- 9.1.1 Most arbitral institutions consider awards as final and binding and not subject to appeal.
- 9.1.2 In ad hoc arbitration however, unless the parties agree otherwise, awards can be appealed by the parties on the same grounds as court judgments unless the parties have waived such a right or the arbitration was conducted on an *ex aequo et bono* basis.⁴¹

9.2 Applications to set aside an award

- 9.2.1 The parties are not entitled to waive the right to apply to set aside an award. The grounds upon which an award can be set aside are the following:
- a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;
 - the award was granted after the deadline fixed in the *Compromiso Arbitral*;
 - the award contains decisions on matters beyond the scope of the *Compromiso Arbitral*; decisions that exceed the arbitral tribunal's jurisdiction will be null and void;

³⁹ *Ibid*, art 753.

⁴⁰ *Ibid*, art 398.

⁴¹ *Ibid*, art 758 and 771(1).

- the party which concluded the arbitration agreement did not have legal capacity;
- the arbitration agreement is not valid under the law which the parties have chosen, or failing any indication thereof, under Argentinian law;
- the subject matter of the dispute is not capable of settlement by arbitration under Argentinian law; or
- the award is in conflict with the rules of Argentinian public policy.⁴²

9.2.2 The application to set aside the award must be submitted within five days of receipt of the award by the parties.⁴³

9.2.3 In arbitrations decided on the basis of substantive law, any application to set aside an award should be filed before the arbitral tribunal. If the tribunal decides to grant the application, it will remit the file to the Ordinary Appeal Court, which will rule on the application without the participation of the other party (albeit that this method has recently been considered unconstitutional). If the arbitral tribunal rejects the application, the party challenging the award may file an application to set aside the award before the Ordinary Appeal Court.⁴⁴

9.2.4 In cases decided *ex aequo et bono*, an application to set aside the award should be filed before the competent First Instance Court. The only valid grounds for such a challenge are:

- the award was rendered after the deadline fixed in the *Compromiso Arbitral*;
or
- the award contains decisions on matters beyond the scope of the *Compromiso Arbitral*.⁴⁵

9.2.5 No appeal may be lodged against the decision of the court on an application to set aside an award, but a party may apply to the Supreme Court of the Republic of Argentina for so-called judicial revision of the decision if the court committed a substantial breach of law.

9.2.6 It is important to note that the filing of an application to set aside the award will not have the effect of suspending enforcement of the award in *ex aequo et bono* proceedings. Enforcement may, however, be suspended if an appeal is filed in the context of an arbitration at law.

⁴² *Ibid*, art 760 and 761.

⁴³ *Ibid*, art 759.

⁴⁴ *Ibid*, art 282 and 283.

⁴⁵ *Ibid*, art 771.

10. Recognition and enforcement of awards

10.1 Domestic awards

10.1.1 The effect of an award is the same as that of a final and binding (non-appealable) court judgment.⁴⁶ The court with jurisdiction to enforce a domestic award is the local court agreed by the parties in the *Compromiso Arbitral*. In the absence of agreement between the parties on this issue, the competent court will be the one which would have been competent to hear the dispute if no arbitration agreement had been concluded.

10.2 Foreign awards

10.2.1 Foreign awards are enforceable in Argentina in accordance with the provisions of multilateral conventions and bilateral treaties ratified by Argentina. The most important arbitration convention to which Argentina is a party is the New York Convention.⁴⁷

10.2.2 Procedurally, the party seeking enforcement of a foreign award will need to obtain an order of *exequatur* from the local courts in order to enforce the award. The court will only refuse to grant such an order if:

- the subject matter of the dispute is not arbitrable under Argentinian law; or
- the award is contrary to Argentinian public policy.⁴⁸

10.2.3 The scope of Argentinian public policy may be modified depending on whether the Argentinian state is a party or not. While in commercial arbitration, only certain public policy breaches may be a ground for succeeding with a setting aside application,⁴⁹ the criteria may be wider when the Argentinian state is party to the dispute.

10.2.4 As an example, in *Estado Nacional – Procuración del Tesoro v/ Cámara de Comercio Internacional (dec. 15-XII-05) s/ proceso de conocimiento*, on July 17 2008 Argentinian Federal Administrative Appeals Court considered itself competent to review a decision by the ICC that rejected a challenge to an arbitrator that had been requested by the Argentinian state, ordering the arbitration court as well as the other party to suspend the proceeding until the challenge was decided by such Court.

⁴⁶ *Ibid*, art 499.

⁴⁷ *Ibid*, art 519(bis) (see CMS Guide to Arbitration, vol. II, appendix 1.1).

⁴⁸ *Ibid*, art 517.

⁴⁹ See Commercial Court of Appeals, Panel E, “Ogden Entertainment Services Inc v. Eijo Néstor E” (refusing the enforcement of an ICC award on the basis of Argentinian public policy).

10.2.5 There is no express provision governing which court is competent to hear applications for the recognition and enforcement of foreign awards. However, in principle, such an application should be lodged with the court that would have been competent to hear the dispute in the absence of an arbitration agreement.

11. Special provisions and considerations

11.1 Consumers

11.1.1 Arbitration is encouraged for the resolution of domestic consumer disputes under Argentinian consumer law.⁵⁰ There are specialised arbitration courts to solve disputes of this nature arising from product liability claims.

11.1.2 For international arbitration, any dispute arising from a credit sale to a consumer will be dealt with by the competent court in the consumer's jurisdiction.⁵¹

11.2 Labour Disputes

11.2.1 Mediation with a conciliator is mandatory before any labour dispute. The conciliator may propose the parties to resolve their dispute by means of arbitration and request they execute a *Compromiso Arbitral*.⁵² The arbitral proceedings then should be carried out under similar terms of Chapter VI of the CCCP.

11.2.2 Awards in labour disputes may be appealed to the National Labour Appeals Court.

12. Concluding thoughts and themes

12.1.1 Arbitration in Argentina is still in the process of development. Nevertheless, the present legal framework – including the CCCP, the arbitration rules of the principal Argentinian arbitral institutions, and the international conventions to which Argentina is party – provide a solid foundation for the future and serve to ensure that both domestic and foreign awards are enforceable in Argentina.

12.1.2 Commercial arbitration has been encouraged by Argentinian courts as a safe means of resolving disputes.

⁵⁰ Law 24.240, s 59.

⁵¹ *Ibid*, s 36.

⁵² Law 24.635, s 28.

12.1.3 Nevertheless, due to the wide variety of legal procedure codes in the different provinces, and the undetermined scope of the public policy that may jeopardise the enforcement of the awards, it is recommended that local advice is sought both in cases where the arbitration will be held in Argentina and when an international award requires enforcement in Argentina.

13. Contacts

CMS Bureau Francis Lefebvre

Marcelo T. de Alvear 612 Piso 1
C1058AAH Capital Federal
Buenos Aires
Argentina

Marcelo Cippitelli

T +54 11 4311 1008

E mcippitelli@cms-bfl.com.ar

Patrick Patelin

T +54 11 4311 1008

E ppatelin@cms-bfl.com.ar