

# Argentina

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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?**

Argentina ratified the New York Convention (1958) by Law 23619 (28 September 1988), with these reservations: reciprocity; disputes have to be of a commercial nature; and the terms of the Convention will be construed in accordance with the National Constitution provisions. Argentina has also ratified other multilateral conventions, such as: Montevideo Treaties (1889 and 1940); the Geneva Protocol on Arbitration Clauses (1923); the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965); the Panamá Inter-American Convention on International Commercial Arbitration (1975); the Montevideo Inter-American Convention of the Extraterritorial Enforcement of Foreign Court Decisions and Arbitral Awards (1979); and Agreement on International Commercial Arbitration of Mercosur and relevant protocols, among others.

### 2 Bilateral investment treaties

**Do bilateral investment treaties exist with other countries?**

Argentina is party to at least 57 bilateral treaties with other countries. Most of them allow investors to refer investments disputes to the International Centre for the Settlement of Investment Disputes.

### 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?**

Since Argentina is a federal country, different procedural laws – unless the parties decide otherwise – enacted in federal (National Civil and Commercial Procedural Code, NCCPC) and provincial jurisdictions govern arbitration proceedings. The NCCPC also governs the enforcement of arbitration agreements (sections 736 to 773, NCCPC), domestic awards (sections 499 to 516) and the recognition and enforcement of foreign awards in federal territories (sections 517 to 519-bis). Likewise, provincial procedural codes govern the recognition and enforcement of awards in the provinces.

Arbitrations are generally qualified as international when interests of international trade are engaged in the dispute, or whether the parties have a nationality or an address different from the place where the arbitration takes place.

The New Federal Civil and Commercial Code (The New Code), which will be in force as from 1 January 2016, was recently approved and sets forth specific provisions for the arbitration contract.

### 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 Argentine arbitration regime is not based on, and differs from, the UNCITRAL Model Law. For example, unlike the Model law, under Argentine law:

- the parties must enter into a mandatory submission agreement (compromise arbitral) in writing and signed by the parties, notwithstanding the existence of an arbitration clause;
- unless waived, appeal remedy is available, while UNCITRAL awards are only subject to an annulment appeal;
- there is no specific provision that arbitrators have jurisdiction to rule over their own jurisdiction (however, it is worth stressing that Argentine case law upholds such principle); and
- arbitrators cannot order any interim measures or relief by themselves (section 753, NCCPC), but they may request the courts to grant them, and courts shall assist the arbitral proceedings, etc.

The New Code has used the UNCITRAL Model Law as one of its sources. For example, it is expressly set forth that arbitrators have jurisdiction to rule over their own jurisdiction; arbitrators can order interim measures or relief by themselves and such orders must be executed by a judicial court.

### 5 Mandatory provisions

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

The parties can agree upon the procedure to be followed by the arbitral tribunal during the proceedings and, in lack of said agreement, rules governing ordinary judicial proceedings apply (section 751, NCCPC). However, the arbitral tribunal shall not deviate from core procedural principles such as equal treatment between the parties, due process guaranty, equivalent opportunity to be heard and expose the case and impartiality of arbitrators. Moreover, any waiver to the submission of appeals that the parties might agree shall never include motions to clarification or annulment (section 760, NCCPC).

### 6 Substantive law

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

The parties are entitled to agree and include in the *compromiso arbitral* the substantial law that the arbitral tribunal should apply to the merit of the dispute, as long as such law is not in violation of Argentine public order. In the absence of such agreement, a general basic rule is that the substantial law in force in the place where the arbitration takes place is applicable by default.

## 7 Arbitral institutions

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

There are several arbitration institutions in Argentina. The most prominent are:

Permanent Arbitral Tribunal of the Buenos Aires Stock Exchange (BASE)  
Sarmiento 299, 1° Piso  
Buenos Aires, Argentina  
www.bcba.sba.com.ar/tribunal/tribunal.php

Business Center of Mediation and Arbitration (CEMA)  
Hipólito Yrigoyen 476 - 4° Piso Buenos Aires, Argentina  
www.medyar.org.ar/

BASE has its own procedural rules and, subsidiary, it is governed by the rules of the NCCPC in domestic proceedings and by the UNCITRAL rules in international proceedings. Arbitrators are not proposed by the parties, as the cases are decided by an already appointed permanent panel. The seat of the arbitration shall be Buenos Aires. The international proceedings will take place in Spanish unless the parties agree otherwise. The tribunal shall apply the law chosen by the parties and, by default, the corresponding law according to the rules of conflict of laws. If the fees are not agreed by the parties, they will be determined by the tribunal according to fees laws.

CEMA adopts the UNCITRAL rules in the absence of the parties' agreement.

The New Code allows the parties to submit the arbitration proceedings and the appointment of arbitrators to the procedural rules of national and international arbitral institutions, which in such event are deemed as part of the arbitration agreement.

## Arbitration agreement

### 8 Arbitrability

#### Are there any types of disputes that are not arbitrable?

As per section 737 NCCPC, any dispute may be arbitrable unless it is related to matters that cannot be subject to transaction. Accordingly, the parties may refer any kind of matter to arbitration except public interest matters (ie, Civil Code, sections 21, 844 and 953; Bankruptcy Law public order provisions), disputes concerning criminal law and family law such as divorce, paternity or hereditary rights (Civil Code, sections 848 and 1175).

The New Code includes issues in which public policy is involved or matters related to the state or capacity of the people, matters related to the rights of the users and consumers, preformulated standard contracts, labour matters and matters in which national or local states are involved.

### 9 Requirements

#### What formal and other requirements exist for an arbitration agreement?

Local procedural laws require, in addition to an agreement to arbitrate (*cláusula compromisoria*) before a dispute arises, the execution of a special commitment (the *compromiso arbitral*) to arbitrate at the time the dispute arises. If such commitment is not agreed upon, any of the parties to the arbitration agreement may judicially request the setting-up of an arbitral tribunal and the subscription of the *compromiso arbitral*.

The *compromiso arbitral* shall contain:

- date of execution of the *compromiso arbitral* and names and addresses of the parties;
- name and addresses of the arbitrators, unless they are appointed by other arbitrators, judges or any designating authority;
- matters submitted to arbitration; and
- stipulation of a penalty that shall be paid by one party to the other party, should the former fail to comply with the acts that are indispensable to execute the *compromiso arbitral*.

Failure to comply with any of the requirements renders the *compromiso arbitral* void.

No specific form is set forth by Argentine law regarding the *cláusula compromisoria* and therefore any form (although demonstrable) should apply, whereas section 739 of the NCCPC requires an 'in-writing' compromise arbitral, whether by deed or private instrument, or extended before the trial judge.

As for state entities, some local procedural rules establish limitations or forbid some provinces from agreeing to arbitration. According to the Federal Supreme Court's doctrine, the national state is allowed to agree to arbitrate (section 116, national Constitution) where authorised by the law.

The New Code sets forth that the agreement to arbitrate shall be made in writing and can be made in a *cláusula compromisoria*, in a separate contract, in a statute, in a regulation or in a reference to a contract which contains a *cláusula compromisoria* and in the new contract is indicated that it will be subject to the arbitration agreement of the referred contract.

### 10 Enforceability

#### In what circumstances is an arbitration agreement no longer enforceable?

There is no provision that would render a *cláusula compromisoria* unenforceable. The termination of the underlying contract does not affect the enforceability of the *cláusula compromisoria* owing to its autonomy. The arbitration agreement will no longer be enforceable if the parties specifically agree its termination.

Section 748 NCCPC provides that the *compromiso arbitral* shall cease to have effect by unanimous decision of those who contracted; by expiration of the term specified in the *compromiso*, if any, and if within a period of three months the parties or the arbitrators have not performed any act aimed at boosting the proceeding.

### 11 Third parties – bound by arbitration agreement

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

Under Argentine law, there are no grounds for extending arbitration to parties that have not given their express consent to it. Only in exceptional cases arbitrators have a mandatory jurisdiction over certain matters. For example:

- when the parties failed to agree upon a price regarding services provided under a works agreement, as long as it relates to the contractor's profession or job (section 1627, Civil Code); or
- when the parties' disagreements arise as to the interpretation of any letter of credit or recommendation or as to the obligations emerging therefrom (section 491, Commercial Code); and
- in the proceedings for foreclosure of final judgments, in the case referred to in section 516, NCCPC (complex computation of amounts involved, for example).

### 12 Third parties – participation

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

The NCCPC does not provide for consolidation of multiple arbitrations. Rules on consolidation of court proceedings could be eventually applied. Third parties may intervene in the arbitration only if all the parties involved in the proceedings consent to their intervention.

### 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?

Although Argentine law rules on corporate groups, the sole membership in a certain group does not affect the individuality of each society. Accordingly, it is not viable to extend the effects of a contract concluded by a company over another by the mere fact of belonging to the same group, unless there is a pathological use of separate legal personality or it is demonstrated that the non-signatory company somehow gave its consent to the arbitration agreement (section 54, Law 19,550).

#### 14 Multiparty arbitration agreements

##### What are the requirements for a valid multiparty arbitration agreement?

Argentine law neither governs multiparty arbitration, nor does it rule the appointment of arbitrators in multiparty arbitrations. The parties may either agree on the method of appointing arbitrators or refer the issue to the domestic courts.

The New Code set forth that when the controversy involves more than two parties, in lack of their agreement the entity which administers the arbitration or, in absence of the same, a judicial court, shall decide the arbitrator or arbitrators who will intervene.

#### 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?

Argentine law does not limit the parties' autonomy to appoint arbitrators. Nevertheless, arbitrators shall be over 21, in full exercise of their civil rights (section 743, NCCPC) and may not be judges or employees of the judiciary (unless the government is a party to the dispute) to be appointed.

The New Code set forth that the parties can stipulate that the arbitrators need to meet certain requirements of nationality, profession or experience. Further, it renders void any clause in the agreement privileging any of the parties for the appointment of arbitrators.

#### 16 Default appointment of arbitrators

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

The NCCPC rules an arbitration proceeding with a tribunal composed of three arbitrators. Two of them shall be nominated by the parties, while the third arbitrator shall be nominated by the parties or those two nominated arbitrators whether agreed. If the parties' chosen method fails, a judicial court will appoint the arbitrators (sections 742 and 743 NCCPC). For arbitral institutions appointments, see question 7.

The New Code rules as default procedure: if no agreement is reached the dispute will be solved by three arbitrators, one elected by each of the parties and the third one will be appointed by the party-appointed arbitrator. If the parties do not make such appointment or if the arbitrators do not reach an agreement on the third arbitrator, one will be appointed by the judiciary. The intervention of the judiciary will also apply in case it was set forth the intervention of a sole arbitrator or when there are more than two parties and the parties cannot reach an agreement to appoint the arbitrator/s.

#### 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?

The parties may challenge arbitrators on the same grounds as judges are challenged (section 746, NCCPC), such as family relationship, enmity or friendship which manifests great familiarity, being judge, creditor, debtor or guarantor of any of the parties, having a pending lawsuit with them, etc (section 17, NCCPC).

The interested party must file a written plea before the arbitral tribunal within five days of becoming aware of the appointment, expressing the ground of challenge and attaching the evidence that support such challenge (sections 744 and 20, NCCPC). If the arbitrator admits the challenge, it will automatically be removed and replaced as agreed in the arbitration agreement or a new arbitrator will be appointed by a judicial court (section 744, NCCPC). If the ground is not admitted, the challenge will be finally solved by the judicial court. The arbitral procedure shall be suspended until the challenge is settled. In the event of resignation, illness or death of an arbitrator, another arbitrator shall be appointed following the same

procedure (section 744, NCCPC). When agreed by the parties (section 751, NCCPC), the IBA Guidelines on Conflicts of Interest in International Arbitration could be applied. Moreover, there is a tendency for practitioners to consider such set of guidelines.

The New Code sets forth that the arbitrators can be challenged on the same grounds as judges, adding that such analysis should be made on the basis of the law of the place of the arbitration. Moreover, it indicates that the challenge will be settled by the arbitral institution (if any) or by a judicial court if there is no arbitral institution administering the arbitration proceeding.

#### 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.

Case law has determined that the parties have a contractual relationship with each of the arbitrators, which is established by signing an agreement with the arbitrators that is independent of the *cláusula compromisoria*. The New Code expressly sets forth that the arbitrator who accepts his designation makes a contract with each one of the parties.

With respect to the fees, the parties can reach an agreement with the arbitrators. In the case of the BASE the fees of the permanent arbitrator tribunal arbitrator are paid by the stock exchange, which only collects from the parties a fee to be determined according to a scale. In the case of CEMA, the fees are determined according to a scale fixed by such institution.

The New Code sets forth that parties may agree with them how fees shall be determined and paid. By default, arbitrator fees shall be determined according to the law that sets forth the parameters for determining the fees of lawyers in extrajudicial issues.

#### 19 Immunity of arbitrators from liability

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

Arbitrators must act impartially and render the award within the time limit fixed in the compromise, if any. Should arbitrators fail to comply with their duties, they may be found liable for damages caused to the parties (section 745, NCCPC). Moreover, in the event arbitrators fail to issue the award within the fixed period, they shall not receive any fees (section 756, NCCPC).

The New Code sets forth certain obligations of the arbitrators that in case of a breach may determine their liability, such as the obligation to disclose any circumstance that may affect their impartiality or independence, to perform their duties as arbitrator until the arbitration proceeding is terminated, to respect the confidentiality of the proceedings, to make time available for handling the procedure, to personally attend the hearings, to deliberate with the rest of the members of the arbitral tribunal, to issue the award with conclusions duly supported and in due time, and in all cases to guarantee the equality of the parties the principle of contradictory debate, and to grant each of the parties sufficient opportunity to defend its rights.

#### Jurisdiction and competence of arbitral tribunal

#### 20 Court proceedings contrary to arbitration agreements

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

If a party commences court proceedings in breach of an arbitration agreement, the other party is entitled to object to the court's jurisdiction by filing a defence of lack of jurisdiction before the court in which the claimant filed its complaint. The time limit will depend on the type of process, ranging from five to 15 days from the defendant's service of process (sections 338, 347 and 498, NCCPC). If the court's jurisdiction is not objected to, the right to arbitrate the dispute will be waived (section 7, NCCPC).

The New Code sets forth that the arbitration contract excludes the jurisdiction of judicial courts on the disputes submitted to arbitration by the parties unless the arbitral tribunal is not constituted and the arbitration agreement does not seem evidently void or inapplicable. In case of doubt judges should consider the arbitration agreement as valid.

## 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?

A party may either object to the arbitral tribunal's jurisdiction in the arbitral proceedings, requesting the same to decline their jurisdiction or refer the dispute to a court (sections 7 to 13, NCCPC) for such court to assume jurisdiction on the dispute and communicate it to the arbitrators. In the case of disagreement with the court resolution, the common superior tribunal shall decide which tribunal will hear the case. The time limit will depend on the type of process from five to 15 days from the defendant's service of process (sections 338, 347 and 498, NCCPC).

The New Code upholds the principle that arbitrators have jurisdiction to rule on their own jurisdiction.

## Arbitral proceedings

### 22 Place and language of arbitration

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

In the absence of agreement by the parties, the place of the arbitration shall be the one in which the compromise arbitral is executed (section 741 NCCPC) and the language shall be Spanish (sections 751, 115 and 123, NCCPC).

### 23 Commencement of arbitration

#### How are arbitral proceedings initiated?

Unless a specific agreement or rules are adopted, a claimant seeking to initiate an arbitration without the collaboration of the other party should promote a judicial claim to set up the arbitral tribunal and to grant the *compromiso arbitral*. The defendant will have a 10-day term to reply to such claim and a hearing will take place in order to formalise the *compromiso arbitral*. In case the parties do not agree, the court will decide on the existence of arbitral jurisdiction, and the issues that must be included in the *compromiso arbitral* (section 742, NCCPC).

### 24 Hearing

#### Is a hearing required and what rules apply?

In the proceeding described above a mandatory hearing will be held for the parties to formalise the compromise arbitral. NCCPC rules governing judicial hearings will apply to arbitration hearings unless the parties have agreed otherwise.

### 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?

Argentine Procedural Rules do not set out any special rules of evidence applicable to arbitral proceedings. Unless the parties have agreed otherwise, the rules of evidence governing judicial proceedings will apply to arbitration (section 751, NCCPC).

Arbitrators may request the courts to order compulsory disclosure of documents. The arbitral tribunal may draw negative inferences if the party does not collaborate in the production of such evidence. Third parties may oppose submission of documents by declaring that their submission might cause them prejudice.

When a party believes that during arbitral proceedings the production of some evidence may become impossible or very difficult, its anticipated production can be requested via a judicial court.

Under Argentine law witnesses will declare under oath to tell the truth and can be interrogated directly by the tribunal and by both parties. Written testimonies are allowed only for certain government officials.

Expert opinions are admissible if a special or particular knowledge is required. The court shall appoint a single expert, while each party is entitled to appoint a private one. Both experts should present their respective informs separately. The IBA Rules on the Taking of Evidence may apply if the parties so agree.

Notwithstanding the foregoing, in contradiction to section 751 NCCPC, the New Code sets forth, that, where the parties cannot agree, the arbitral tribunal shall lead the arbitration in the manner that it deems most appropriate.

### 26 Court involvement

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

Since arbitrators lack the power to enforce injunctive reliefs, courts should assist them to enforce their orders (section 753, NCCPC). If the parties did not agree a specific procedure, courts have the jurisdiction to deal with procedural issues such as:

- ruling on the arbitral tribunal's jurisdiction upon respondent's request for the judicial court to assume jurisdiction;
- appointing any member of the arbitral tribunal and designating the chairman should the parties fail to agree on its constitution;
- forcing the defaulting party to execute the compromise arbitral;
- granting injunctions or interim measures at request of the parties or the tribunal or assisting the tribunal during the hearings;
- ruling on the challenge of arbitrators; and
- enforcing awards, ruling on the parties' appeal (unless waived) or a petition to vacate an award as a result of annulment appeal (see also question 25).

The New Code expressly sets forth the possibility for the arbitral tribunal to request of the judiciary the adoption of injunctions and preliminary measures.

### 27 Confidentiality

#### Is confidentiality ensured?

Under Argentine law arbitration proceedings are not expressly protected by confidentiality. Notwithstanding this, the parties may agree that arbitration proceedings will be conducted on a confidential basis. Confidentiality duties may result from other relationships or contracts.

The New Code sets forth confidentiality as an optional provision of the arbitration contract (section 1658, e). However, it expressly imposes a confidentiality duty upon the arbitrators (section 1662, c).

## 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?

Courts may grant preliminary or interim measures at the request of one party or the arbitral tribunal. The application of a party to a court requesting such measures neither breaches nor implies a waiver of the arbitral jurisdiction. These requests are addressed by courts as if they were made in judicial proceedings. Argentine law allows national courts to order security for costs for an amount to be discretionally determined by such court.

The New Code expressly sets forth that the parties are entitled to request preliminary measures and injunctive relief to judicial courts, such petition will neither be considered as a breach of the arbitration contract nor a waiver of the arbitral jurisdiction and does not exclude any of the power of the arbitral tribunal.

### 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?

Neither the NCCPC nor the rules of arbitration of the institutions listed in question 7 set forth an emergency arbitrator prior to the constitution of the arbitral tribunal. BASE procedural rules set forth that the permanent arbitral tribunal may grant the same measures that could be eventually awarded by the emergency arbitrators. Where such rules are not adopted, these measures could be requested of the judiciary.

**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?**

As per section 753 NCCPC, arbitrators are entitled to order preliminary measures or interim relief. However, they, as well as any of the parties, may request the court to order such measures (see question 28). Some consider that such provision does not forbid the arbitrators from granting such kind of relief and that it only determines that the arbitrators will need the help of the judiciary to enforce the same.

The New Code provides that, unless otherwise agreed by the parties, arbitrators can order preliminary measures and injunctive reliefs by themselves, and order the requesting party to provide an appropriate security for costs concerning the measure. Those measures shall be executed by a judicial court.

**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?**

NCCPC (section 740, 4) and BASE procedural rules set forth that the compromise arbitral must contain a penalty that will be imposed on the party that does not cooperate in accomplishing the acts necessary for the compliance with the compromise. Moreover, it has been held that arbitrators can 'punish' the parties by imposing penalty payments and fines that are authorised by the NCPCC (sections 34, VI), 35, 3) 37 and 45, NCCPC), which shall be always executed by a judicial court.

**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?**

As the tribunal is composed of more than one arbitrator, the award shall be given by the majority decision. No consequences arise from dissenting votes. If it becomes impossible to reach a voting majority, another arbitrator shall be appointed to make the decision (section 757, NCCPC).

**33 Dissenting opinions**

**How does your domestic arbitration law deal with dissenting opinions?**

There are no legal objections to the issuance of dissenting opinions in an arbitral proceeding governed by the NCCPC.

**34 Form and content requirements**

**What form and content requirements exist for an award?**

Domestic awards shall comply with all domestic judgments requirements. The award shall decide all the matters submitted to the arbitrators, and may not include matters which are not included in the compromise. The award shall state the reasons upon which it is based and deal with ancillary matters such as costs and fees.

The New Code also sets forth that the award shall be duly based (which is an ordinary requirements of judicial judgments) and issued in due time.

**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?**

The arbitral tribunal must render the award within the time limit fixed in the compromise arbitral, bearing in mind the extensions agreed with the parties, if any, or granted at the tribunal's request.

**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?**

The date of the award is relevant in determining whether it has been issued by the arbitral tribunal in due time, the failure of which enables the parties to submit a claim for annulment and determines the loss of right to fees for the arbitrators (section 756, NCCPC). The date of delivery and receipt of the award by the parties is decisive to determine when the term for the parties to file any appeal (if not waived), motion of correction or appeal of nullity will expire.

**37 Types of awards**

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

Under Argentine law the awards should be final and include all the matters submitted by the parties (section 754, NCCPC), unless they agree that the arbitrators issue partial awards. In cases in which a majority cannot be reached in order to conclude every issue, the NCCPC authorises the issuance of partial awards with respect to those in which a majority of votes has been successfully conformed by the arbitrators. In those cases, a new arbitrator shall be appointed to settle the remaining matters (section 757, NCCPC).

**38 Termination of proceedings**

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

Argentine law does not specifically rule on means of termination of the arbitral proceeding other than the award. However, the *compromiso arbitral* will be terminated by unanimous decision of the parties, by the expiration of its term and if during the term of three months neither the arbitrator nor the parties perform any act aimed at boosting the proceeding (section 748, NCCPC). Moreover, the proceeding may terminate by means of any unusual ways of terminating the judicial process (section 751, 304 to 318 NCCPC) - withdrawal of the claim, acknowledgement of the other party's right, transaction, conciliation and expiration of jurisdiction.

**39 Cost allocation and recovery**

**How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?**

Section 772 NCCPC states that arbitrators shall award fees and costs as stipulated in section 68 NCCPC. The general rule is that the losing party shall pay them, but they may be shared in specific circumstances (novelty of the legal dispute involved, the behaviour of any or both parties, special agreements, etc).

**40 Interest**

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

Argentine law does not provide any particular interest to be applicable in arbitration. As a general rule, if claimed, the arbitral tribunal will award them. Interests to be awarded should be comparable with those applicable in short-term bank loans, depending on the kind of business involved. Normally, arbitrators will consider the interest rates usually awarded by judicial courts.

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

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

The NCCPC provides that the arbitral tribunal is entitled to correct any material error in the award without altering the substance of the decision. Said facility can be exercised by the tribunal before notifying the award to the parties, or at any of the parties' request submitted within five days after the notification of the award (sections 759 166, 1) and 2); and 36, 6), NCCPC).

**Update and trends**

National Law 26,944 approved the new national Civil and Commercial Code (which will rule as from on 1 January 2016). The New Code includes a national regulation on the arbitration contract, which is currently regulated in the different procedural codes. The main relevant amendments introduced by the new national rules have been included among the answers to this chapter.

The New Code also sets forth that the jurisdiction of the arbitrators is extinguished with the issuance of the award except for the issuance of clarifying or complementary decisions according to what the parties had agreed or according to the law of the place of the arbitration.

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

Awards can be challenged by resorting to appeal (if not waived), on the same grounds set forth for judicial proceedings. This requires evidence of the prejudice caused to the appealing party. In this case the grounds for revision will be very broad.

Awards can also be challenged by an annulment appeal, on the grounds of:

- essential defect in the procedure;
- issuance of award after the deadline agreed by the parties; and
- having the arbitral tribunal judged on items that were not included in the compromise arbitral. In the case of the last ground, the nullity shall be partial if the award is divisible (section 760 NCCPC).

These appeals have to be submitted before the arbitral tribunal, clearly stating the grounds, within five days as of the service of the award.

The New Code rules that awards issued according to its rules can be reviewed by the competent judicial court when grounds for total or partial nullity under the provisions of such code are alleged. It also rules that the parties cannot waive the right to challenge a final award that is contrary to the law. Some authors consider that this last incorporation would grant broader ground for revision of the awards.

**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?**

Once the appeal or the annulment appeal is granted by the arbitral tribunal, the appeal will be decided by the judicial Chamber of Appeals (section 759, NCCPC). The prejudiced party can file a direct appeal before the Chamber of Appeals if the arbitral tribunal fails to grant the appeal. A 1.5 per cent court tax must be paid upon filing such appeal.

If those appeals are not admitted by the Chamber of Appeals, if a federal matter is involved or in case of arbitrariness, the parties can submit an extraordinary appeal before the same Chamber within 10 days of its resolution. This appeal, if granted, will be decided by the Federal Supreme Court. If the appeal is not granted, a direct appeal would need to be filed within five days as from the service of process of the resolution that denied the extraordinary appeal. The submission of this direct appeal requires the prior payment of a tax of 15 Argentine pesos.

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

Domestic awards are directly enforced as if they were local judicial judgments (section 499 NCCPC). If no treaty is involved, Argentine courts would acknowledge and enforce foreign awards only if they:

- were a final decision issued by a competent foreign court pursuant to the international jurisdiction rules acknowledged by Argentina;
- comply with the due process of law rules;
- meet all requirements to be valid and enforceable in its original jurisdiction, and all the authentication requirements under Argentine laws;
- abide by Argentine public order; or
- are not incompatible with a prior or simultaneous Argentine courts award on the matter. Arbitration awards acknowledged in Argentina will have *res judicata* effects in the whole country and national courts are precluded from rehearing the same issues under any circumstances.

Having Argentina ratified the treaties mentioned in question 1 – among them the New York Convention – with the reservations there indicated – the requirements set forth in those treaties will be applicable for the recognition and enforcement of the foreign awards issued in the countries that are signatories of such treaties.

**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?**

See question 44.

**46 Cost of enforcement****What costs are incurred in enforcing awards?**

Where an action in Argentine federal courts is submitted in order to enforce a domestic award, a 3 per cent court tax must be paid. The same court tax applies upon the filing of a request for *exequatur* in connection with a foreign award.

Counsel's fees in these actions shall be determined by the court in accordance with the general rule set forth by section 67, NCCPC (see question 39) and in the Lawyers Fee Law.

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**Other**

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

When it has not been agreed by the parties, arbitrators are reluctant to order the compulsory discovery-style disclosure of documents. According to procedural standards that would apply by default, the documents for which disclosure is required by the parties shall be accurately identified, shall concern both parties or minimally refer to a fact involving the requesting party (not third parties).

Written witnesses statements would be admitted if the parties have so agreed. In the absence of such agreement, statements shall be orally produced, even in the case of illness of the witness (section 436, NCCPC), except for certain government officials (see question 25). Party officers are frequently admitted to testify, although their settlements are carefully evaluated.

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**48 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?**

Argentine law does not set forth specific professional or ethical rules applicable to counsel in international arbitrations. Local counsel shall comply with professional and ethical cares provided by national and local rules and codes of ethic in accordance to the place of their registration.

Argentine regulations do not contradict the IBA Guidelines on Party Representation in International Arbitration.

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**49 Regulation of activities****What particularities exist in your jurisdiction that a foreign practitioner should be aware of?**

There are no particularities concerning visa requirements, work permits or taxes when functioning as a foreign arbitrator or counsel in proceedings seated in Argentina.