What 2024 Left Behind in the Field of Arbitration

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Argentina has adopted several key international instruments governing arbitration. Among them is the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which Argentina ratified in 1988. Pursuant to its terms, this treaty requires the recognition of arbitration agreements and the enforcement of foreign arbitral awards in the country, aligning Argentina with international best practices.

Among these developments, it is also worth mentioning the regulation of arbitration agreements introduced by the Argentine Civil and Commercial Code, which has been in force since 2015.

In 2018, Argentina enacted Law No. 27,449, which governs international comercial arbitration. This law establishes a clear and modern legal framework based on the UNCITRAL Model Law (United Nations Commission on International Trade Law), providing legal certainty to parties involved in international arbitrations.

The recognition and enforcement of arbitral awards in Argentina are well established. Argentine courts may recognize and enforce interim measures ordered by arbitral tribunals seated abroad, and they may also grant interim measures in support of international arbitrations, provided that such authority has not been exclusively conferred elsewhere. This ensures that arbitral decisions are respected and effectively implemented.

Developments in 2024

One of the most significant developments in the field of international arbitration in 2024 was the publication, in February 2024, of the revised ***IBA Guidelines on Conflicts of Interest in International Arbitration*** by the Arbitration Committee of the International Bar Association (IBA). The new text modernizes the previous version of the Guidelines, which dated back to 2014, while preserving their core principles.

The IBA Guidelines are a widely recognized soft law instrument and are frequently relied upon by parties, arbitrators, and arbitral institutions in connection with key issues such as arbitrators' disclosure obligations and the requirements of impartiality and independence.

The 2024 version introduces changes relating to matters such as arbitrators' disclosure of information, third-party funding, experts, and other issues. These updates reflect the continuing evolution of international arbitration and the IBA's commitment to keeping the Guidelines current in a constantly changing arbitration landscape.

The 2024 Version Introduces Several Important Changes:

1.

The rules concerning impartiality, independence, and the duty to disclose facts and circumstances that, in the eyes of the parties, may give rise to justifiable doubts as to an arbitrator's impartiality or independence have been clarified and expanded. The revised Guidelines also reinforce the principle that situations included in the Green List should not be disclosed, as they do not create an appearance of a conflict of interest. This contributes to preventing the potential abusive exercise of the right to challenge the constitution of an arbitral tribunal on the basis of circumstances that do not warrant such objections. At the same time, the Guidelines reaffirm the principle that a challenge to an arbitrator may only succeed if an objective test demonstrates an impairment of the arbitrator's impartiality or independence.

2.

The Guidelines establish that a party is deemed to have waived its right to object to facts or circumstances that could constitute a potential conflict of interest for an arbitrator if it fails to raise the objection within 30 days of becoming aware of such facts or circumstances.

3.

The scope of General Standard 6 has been expanded to include a general reference to the arbitrator's employer. It also establishes a standard under which any legal entity or natural person over whom a party exercises a "controlling relationship" is, in principle, deemed to share that party's identity. However, the Guidelines make clear that the specific circumstances of each arbitrator must be assessed on a case-by-case basis, since the mere fact that a law firm or an arbitrator's employer has performed work for one of the parties does not necessarily give rise to a conflict of interest or a disclosure obligation on the part of that arbitrator.

4.

The obligation of parties to inform arbitrators, the other parties, and the arbitral institution of any direct or indirect relationship between the arbitrator and other persons or entities that may be involved in the dispute has been expanded. The revised Guidelines further provide that this obligation must be fulfilled at the earliest possible opportunity.

5.

Part II of the IBA Guidelines, concerning the Practical Application of the IBA Standards**,** continues to employ a color-coded system for assessing specific situations that may give rise to doubts regarding an arbitrator's impartiality and independence. The categories are: *Green List* (no conflict), *Orange List* (potential conflict requiring disclosure), *Waivable Red List* (a conflict that the parties may waive), and *Non-Waivable Red List* (a serious conflict that cannot be waived). These Guidelines contain a list of concrete scenarios that may arise and classify them in order to guide parties and arbitrators on the applicable standards. While the list is not exhaustive, it covers a broad range of situations and provides useful benchmarks that may be applied by analogy to circumstances not expressly addressed.

Another noteworthy development in 2024 was the adoption of a new Organizational Regulation by the General Arbitration Tribunal of the Buenos Aires Stock Exchange (Bolsa de Comercio de Buenos Aires), which entered into force on March 1, 2024, including with respect to arbitrations already underway. This new regulation substantially updates and improves the procedural framework governing arbitrations administered by that tribunal. It reflects the evolution of arbitral practice and the experience accumulated over the years by this highly regarded institution.

A third significant development was the enactment of Law No. 27,742 (the "Bases Law"), which amended Article 12 of Public Works Law No. 17,520, providing that all concession contracts may include mechanisms for dispute prevention and resolution, conciliation, and/or arbitration. It further establishes that technical or economic disagreements arising between the parties during the performance of a concession agreement may be submitted, at the request of either party, to a technical panel or arbitral tribunal.

The technical panels shall be composed of independent and impartial professionals, all of whom must possess demonstrated expertise and experience in the relevant field. These bodies shall have jurisdiction to intervene in, facilitate the settlement of, and resolve disputes of a technical nature, as well as disputes relating to contractual interpretation and economic or financial matters that may arise during the performance or termination of a contract. In doing so, they shall apply standards of speed and efficiency in dispute resolution that are compatible with the timelines for the execution of the relevant contracts.

Where arbitration with a waiver or extension of jurisdiction in favor of a foreign forum is chosen, the corresponding arbitration clause must be included in the contract and expressly approved by the National Executive Branch in a non-delegable manner, with immediate notice being given to the National Congress.

Furthermore, Article 217 provides that sanctions imposed by the enforcement authority upon Long-Term Strategic Project Vehicles (VPUs) included within the ***Incentive Regime for Large Investments (RIGI)*** may be challenged through administrative appeals under the procedures established by Law No. 19,549 on Administrative Procedures and its implementing regulations, *without prejudice to the VPU's right to elect to submit the dispute to arbitration pursuant to Article 221 of the law*.

In turn, Article 221 establishes that all disputes arising from or related to the RIGI, between the National Government and a participating VPU, including but not limited to disputes concerning the implementation, application, scope, or interpretation of the regime and related regulations, or concerning the use, enjoyment, termination, and/or exercise of the rights, benefits, and incentives obtained by the VPU (including, without limitation, issues regarding their validity, application, and scope), shall first be addressed through consultations and amicable negotiations.

If the dispute cannot be resolved amicably within sixty (60) calendar days from the date on which the VPU notifies the National Government of the existence of the dispute, the VPU, or its foreign partners or shareholders in the cases contemplated by subsections (b) and (c), shall submit the dispute to arbitration in accordance with, at the VPU's election:

a) The 2012 PCA Arbitration Rules;

b) The Rules of Arbitration of the International Chamber of Commerce (ICC) (excluding the Expedited Procedure Rules); or

c) The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, or, where applicable, the ICSID Arbitration (Additional Facility) Rules.

Except where the VPU elects arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, the arbitral tribunal or the administering institution, as appropriate under the applicable rules, shall determine the seat of arbitration, which must be located outside Argentina and in a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.

The law further provides that the arbitral tribunal shall consist of three (3) arbitrators, to be appointed in accordance with the applicable procedural rules. None of the arbitrators may be a national of Argentina or of the home State of the VPU's majority shareholder.

The arbitration shall be conducted in the Spanish language, except in cases under subsections (b) and (c) above that are submitted to arbitration by foreign partners or shareholders, in which case the proceedings may be conducted in either Spanish or English.

In addition, the law authorizes the National Executive Branch to establish project-specific dispute resolution mechanisms with the VPU in the administrative act approving the application for inclusion in the regime and the corresponding investment plan.

The year 2024 was a significant one for arbitration, bringing important developments and updates that further strengthened both the legal framework and arbitral practice in Argentina and internationally. The adoption of new guidelines and regulations, together with the enactment of specific legislation, demonstrates Argentina's continuing commitment to the modernization and enhancement of its arbitration system.

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