



Arbitration

in 47 jurisdictions worldwide

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2009



Published by
GLOBAL ARBITRATION REVIEW

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**GLOBAL ARBITRATION
REVIEW**

THE INTERNATIONAL JOURNAL OF PUBLIC AND PRIVATE ARBITRATION

Colombia

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Laws and institutions

1 International multilateral conventions

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 arbitration is your country a party to?

Colombia approved the New York Convention without any reservations in 1990, under Law 39 of the same year.

Other international conventions are:

- the Treaty on Execution of Foreign Acts, approved under Law 16, 1913;
- the Inter-American Convention on Extraterritorial Efficacy of Judgments and Arbitration Awards, approved under Law 16, 1981;
- the Inter-American Convention on International Trade Arbitration, approved under Law 44, 1986.

By means of Law 267 of 1996, Colombia ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington Convention) whereby Colombia may resort to the International Centre for Settlement of Investment Disputes (ICSID).

By means of Law 1246 of 2008, Colombia ratified the Agreement establishing the Multilateral Investment Fund II (the MIF II Agreement) and the Agreement for the Administration of the Multilateral Investment Fund II (the MIF II Administration Agreement).

2 International bilateral agreements

Do bilateral agreements relating to arbitration exist with other countries?

Colombia signed the Convention on Execution of Judgments, in Madrid, on 30 May 1908.

Currently, Colombia is a party to various international agreements that contain provisions for investment arbitration. These are: the free trade agreement with Mexico (formerly called 'G-3', before Venezuela denounced the treaty); and the bilateral investment treaty (BIT) with the United Kingdom, Peru, Chile, Spain, Cuba and the European Free Trade Area (Switzerland, Norway, Iceland and Liechtenstein). Although Colombia has not been a regular signatory of BITs, the government has recently launched a programme for the negotiation of these kind of instruments (alone or within a free-trade agreement) with different countries, including the United States, Canada, El Salvador, France, Guatemala and Honduras.

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?

Arbitration has a constitutional status, as article 116 of the Colombian Constitution empowers individuals to administer justice. Although there are different laws and regulations that deal with national and international arbitration, Decree 1818 of 1998, the Statute of Alternative Dispute Resolution Mechanisms, compiles all those different provisions into a sole instrument, missing just a few rules, which can be found in:

- the Code of Commerce (articles 86, 110, 137, 194, 221);
- the Civil Procedure Code (article 509);
- Law 23 of 1991 (articles 103, 106 and 113-115);
- Decree 2651 of 1991 (articles 19-20);
- Law 143 of 1994 (article 23(p));
- Law 222 of 1995 (articles 14, 229, 230 and 233);
- Law 335 of 1996 (article 4);
- Law 446 of 1998 (articles 10-14, 162 and 167); and
- Law 510 of 1999 (article 68 and 89-97).

In relation to public procurement, articles 70 and 71 of Law 80 of 1993 (by which the General Public Procurement Statute is issued) allow the inclusion of arbitration clauses in contracts between the state and individuals or legal entities for purposes of resolving disputes.

Regarding international arbitration, Law 315 of 1996, whose provisions were also compiled in Decree 1818 of 1998, provides that arbitration is international with the parties' agreement, subject to the fulfilment of any of the following conditions:

- the parties are domiciled in different states at the time of agreeing the arbitration clause;
- the place where the substantial part of the obligations relating directly to the subject matter of the litigation is outside the states where the parties have their main domiciles;
- the arbitration is to be carried out in a place other than the one where the parties are domiciled, provided that this possibility has been contemplated in the arbitration clause;
- the subject matter of the arbitration clause clearly affects the interests of more than one state, and the parties have agreed; or
- the controversy submitted to arbitration directly and unequivocally affects the interests of international trade.

Recognition and enforcement of foreign arbitral awards follows the exequatur procedure, which has to be completed before the country's Supreme Court of Justice. This process is regulated by articles 693 to 695 of the Civil Procedure Code.

Currently, a new project to reform the legal framework of arbitration is under study by Congress. Bill No. 177 of 2007, which has

been filed at the House of Representatives, intends to compile all national, international and public arbitration provisions into one Law. The UNCITRAL Model Law inspires most of the Bill.

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?

Arbitration regulation in Colombia is not based on the Model Law, but a number of its principles are also included in the current Colombian legislation. The differences are more procedural than substantive in nature.

As stated above, a project of reform based on the Model Law is currently passing through Congress.

5 Mandatory provisions

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

When entering into a contract, the parties must stipulate (in an arbitration clause or in an annex to the contract) that any dispute arising from the performance of the agreement must be submitted to an arbitral tribunal.

If the arbitration clause is not included in the contract and a conflict arises, the parties may sign an arbitration agreement.

The parties may choose any of the three different kind of arbitration proceedings available: independent or ad hoc arbitration, institutional arbitration or legal arbitration. The latter is the one applicable by default, unless the parties opt for individual or institutional arbitration. When legal arbitration is applicable, the process shall follow all the procedure provisions contained in Decree 1818 of 1998.

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?

In domestic arbitration, arbitrators must apply Colombian substantive law. But if the arbitration is international, the parties may apply the law they have chosen. In cases involving Colombian and foreign parties, however, the Colombian side may have to request the application of Colombian laws in spite of the agreement to apply a foreign law. This is because there are some Colombian provisions that have been deemed public order provisions. Thus the parties may not waive them, and in some cases these provisions invalidate the part of the arbitration clause that refers to applicable law.

7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The most important institution is the Conciliation and Arbitration Centre at the Chamber of Commerce of Bogotá, which has its own regulation. Information about this entity can be consulted at www.ccb.org.co.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Controversies must be capable of being settled by the parties. The Supreme Court of Justice has expressed that the controversy must refer to equity rights and goods with respect to which owners have a disposing legal capacity.

Hence, rights such as those referring to the legal status of a person, his right to receive food and to bring criminal action to punish a crime may not be subject to arbitration proceedings.

With respect to industrial property, litigation concerning breach of licence agreements, or even concerning infringement, may be taken to an arbitral tribunal. But litigation relating to the granting of an industrial property right may not be so resolved, given that these rights are granted by the state.

Antitrust procedures may not be the subject matter of arbitral proceedings, given that the state is responsible for preventing certain practices within the market. But an arbitral tribunal would have jurisdiction to declare null and void a clause restricting competition. Conflicts deriving from unfair competition may be resolved through arbitration provided that the parties sign an arbitration agreement.

Executory processes, defined as processes intended to collect obligations affecting securities or instruments containing a clear, express and enforceable obligation, may not be submitted to arbitration, given that in these cases the obligation is certain and enforceable. But there is a part of the doctrine that accepts that, when defendants file meritorious defences, these defences could be submitted to arbitration.

In a public arbitration, particularly over public procurement agreements, the arbitral tribunal cannot decide on the legality of any governmental regulation but only on the economic effects of such regulations.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The agreement to arbitral proceedings may be expressed through an arbitration clause or an agreement. No formalities apply to the arbitration clause: it can be included in the contract or in an attached document, and an indication that any differences arising between the parties shall be submitted to arbitral tribunal will be sufficient for the clause to have effect. Accordingly, if the parties omitted to indicate the number of arbitrators and their appointment, the domicile of the arbitration and other aspects, the default legal provisions shall apply. It is advisable to indicate an agreed arbitral proceeding.

As to the arbitration agreement, Colombian law is more strict. The agreement shall include, at least, the following:

- full name and domicile of the parties;
- conflicts and differences to be submitted to arbitration; and
- a statement about the status of any ongoing proceeding.

In addition to these requirements, it is advisable to include the following in the arbitration clause or in the agreement:

- the arbitral centre where the proceedings will take place;
- whether the arbitrators will decide upon law or equity, or based on technical principles;
- the number of arbitrators, their names and the method of appointment;
- the place of the arbitration;
- the duration of the proceedings; and
- the regulation of the costs of the tribunal.

In the case of international arbitrations, it is necessary to include the applicable law, nationality of the arbitrators, place of the arbitration, language and express indication that the arbitration will be international.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Colombian legislation establishes that the arbitration clause is autonomous with respect to the existence or validity of the contract. This means that if the contract is declared null or invalid, this will not compromise the arbitration clause, and arbitral proceedings will have to be carried out anyway to nullify the contract containing it.

On the other hand, legal figures such as insolvency, death and legal incapacity do not prevent the carrying out of the arbitration, although they are factors that should be taken into account to determine if it is convenient to proceed or not.

11 Third parties

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

By and large, non-signatories will never be bound by an arbitration agreement. However, third parties may adhere to the arbitration agreement once the proceedings have begun, provided that: (i) they have a legal or contractual relationship with either party to justify their participation in the arbitral proceedings; and (ii) they are called by either party to adhere to the arbitration agreement, and the third party accepts this call. Without adherence, the arbitration award will not be enforceable against the third party.

Assignment of contracts obliges assignees to comply with the arbitration clause.

Given the special nature of agencies, it must be established whether the contracts were entered into in the name or in favour of the principal, in which case the second can be bound by the arbitral proceedings.

In the case of successions concerning individuals, the arbitration clause does not affect them, unless they decide to become parties to the proceedings.

Arbitration does not apply to liquidation processes, so the arbitration clause does not have any effects in these cases.

12 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?

No. In principle, Colombian law only allows the binding of companies that have signed the arbitration agreement.

13 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The multiparty arbitration agreement must observe the parameters of an arbitration clause or of an arbitration agreement for it to have legal effect. In other words, the number of subjects involved is not the issue; what matters is that they all sign the arbitration clause or agreement containing the express intention to waive ordinary justice.

For international arbitrations, the parameters of international arbitration law must be observed. In this case, the contents of the arbitration agreement must establish that differences will be submitted to international arbitration.

Constitution of arbitral tribunal**14 Appointment of arbitrators**

Are there any restrictions as to who may act as an arbitrator?

Judges may not act as arbitrators.

When the arbitration deals with legal aspects, the arbitrators must be lawyers. If the arbitration is of a technical nature, the arbitrator must possess qualifications in the relevant field. If the arbitration is in equity, the arbitrators must again hold certain qualifications, in addition to high moral and ethical values.

Under Colombian legislation, the parties may select and appoint arbitrators at their own discretion, or delegate the appointment to a third party. Selection may also be made from the list of arbitrators registered with the arbitration and conciliation centre chosen by the parties. Domestic arbitration requires Colombian nationals to act as arbitrators.

In international arbitrations the parties are totally free to designate their arbitrators pursuant to the regulation selected.

15 Appointment of arbitrators

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

When the parties have not appointed arbitrators, have not selected the third party that will appoint them, or have not delegated the appointment to an arbitration and conciliation centre, they must ask the civil circuit judge acting in the defendant's domicile to appoint the arbitrators. The number of arbitrators must be an odd number. In cases involving large amounts, the number is usually three.

16 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.

Arbitrators in Colombia have the same rank as a judge. Therefore, they have the same obligations and duties of a judge.

The grounds on which they may be removed are:

- the arbitrator deems he or she is not qualified to hear the case because of a given circumstance – if the circumstance is accepted by the other arbitrators or by the director of the arbitral centre, the parties must appoint, or delegate the appointment of, a replacement;
- the grounds provided by law, which in general terms refer to kindred, friendship, enmity, contractual or judicial relationships, etc.

The challenge must be filed within five days following the appointment of the arbitrator or within five days following the happening of the ground for removal, if this is a surviving ground. If the challenge is accepted, the parties must appoint another arbitrator or delegate his or her appointment to a third party.

Failure by an arbitrator to attend two sessions without cause generates his removal from the position and restitution of fees plus 25 per cent. If an arbitrator fails to attend three sessions with cause, the law provides for his removal, and restitution of fees only. The latter also applies in the event of resignation.

17 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators?

The relationship between arbitrators and parties must be totally objective. They are not allowed to discuss aspects of the proceedings in private and their actions must be limited to those typical of judges

and parties in judicial proceedings.

Arbitrators' fees are paid by the parties on an equal footing, at the beginning of the arbitral proceedings. Expenses of the proceedings are also shared.

Costs are assessed against the defeated party. These costs include costs and fees paid by the succeeding party.

Arbitrators are civilly and criminally liable for acts in the proceedings that go against law or that would be deemed crimes.

Jurisdiction

18 Court proceedings despite arbitration agreement

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 parties bring a civil action in spite of the existence of an arbitration agreement, the following circumstances could arise:

- the interested party fails to allege existence of the arbitration clause or agreement as pre-trial defence, in which case waiver of the arbitration agreement is understood and the proceedings will be before a judge; or
- the interested party alleges existence of the arbitration clause or agreement as pre-trial defence, in which case the judge will declare it and deem the process terminated.

19 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 addition to the circumstances described in question 18, the interested party may adduce lack of jurisdiction within the arbitral proceeding by filing a reconsideration petition against the writ by which the arbitration request was admitted, or by including the allegation in the body of the answer to the complaint, as a meritorious defence.

The tribunal must make a decision over its own jurisdiction during the first hearing. In this hearing, the interested party may file a reconsideration petition against the writ that decides whether the tribunal has jurisdiction or not. The parties are free to express any doubts they have regarding the jurisdiction of an arbitral tribunal to hear a given matter.

Arbitral proceedings

20 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?

For arbitrations in Colombia where the parties did not agree any particular place, the seat will be the domicile of the defendant, as provided for by the Civil Procedure Code, which applies in this case. For international arbitrations, it will be the place determined by the regulation chosen.

Colombian arbitrations must be conducted in Spanish. In international arbitrations, the law allows for proceedings to be conducted in the language agreed by the parties, and in the absence of agreement, in the language stipulated by the chosen rules.

21 Commencement of arbitration

How are arbitral proceedings initiated?

Once the tribunal has been constituted, the arbitration begins by filing the original complaint before the tribunal with the same number of copies with attachments as there are defendants.

The complaint must identify the parties, claims, facts, legal grounds, a list of proofs to be asserted, a list of proofs requested, and attachments deemed compulsory by law, namely: the existence and representation of plaintiff and defendant; a document attesting to the existence of the arbitration agreement; and service addresses. Basically, in Colombia the request for arbitration needs to comply with all the requirements provided for a law suit.

22 Hearing

Is a hearing required and what rules apply?

The whole arbitration process in Colombia is conducted in hearings. Arbitrators are obliged to attend and conduct the hearings even if the parties fail to appear. Once the complaint has been admitted and replied to by the defendant, the arbitrators open an evidentiary stage, ordering the production of the evidence the parties may have requested. Then the arbitrators will analyse the evidence. The decisions are dictated in hearings and the parties may file legal remedies during the same.

23 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?

Arbitrators are not obliged to prove facts, as the burden of the proof rests on the parties. But arbitrators may order evidence *ex officio* if they deem it necessary to clarify the facts.

Colombian legislation allows all evidentiary means, ie:

- interrogation of the parties – statements given by the legal representative of the plaintiff or of the defendant;
- testimonies – statements given by all third parties knowing the facts of the case (officers of either party may declare, although their statements may be challenged on the grounds of suspicion and the evaluation of the testimonies is the arbitrators' responsibility);
- judicial inspection – the arbitrator is asked to assess, individually, any documents, people or items concerning the process;
- production of documents – the opposing party or third parties are asked to exhibit documents that are not available to the party requesting the evidence; and
- expert's opinion – intended to clarify scientific, artistic or technical issues that escape the knowledge of the arbitrator. The arbitrators appoint the experts or, if the parties reach an agreement, they may contract a person to give an opinion.

IBA rules apply only to international arbitrations where the parties have adopted this regulation or when the arbitrators have the power to adopt the same.

24 Court involvement

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

Under the present schemes, arbitral tribunals may not request assistance from judges, not even for purposes of proceedings or production of evidence.

25 Confidentiality

Is confidentiality ensured?

Confidentiality between parties operates during the proceedings, but once the award has become final, the arbitrators must convert the file into a public deed before a notary public. After this, anyone may ask for copies of the deed and access the file.

Interim measures**26 Interim measures by the courts**

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Interim measures in Colombia are very limited. Measures may be applied only from the first hearing and are restricted to litigation where right of fee, simple ownership or other in rem rights are discussed. The interim measure is the filing of the complaint before the public records office.

27 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?

In Colombia, an arbitral tribunal is allowed to decree two kind of interim preventive measures:

- registration of the complaint in the public registry for goods subject to registry. This does not withdraw the goods from commerce. The goods may be disposed of but the person who acquires them knows that he may have to reconstitute the goods; and
- seizure of moveable goods, in which case the tribunal will name a bailee while the measure is standing.

Awards**28 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 if an arbitrator refuses to take part in a vote or sign the award?

Decisions must always be arrived at by a majority of the members. All arbitral tribunals must be formed by an odd number of arbitrators. The dissenting arbitrator can express his or her opinion through a dissenting vote.

Legislation provides that arbitrators refusing to sign shall lose part of their fees; however, it does not regulate the consequences of this refusal. Our opinion is that if a judge refuses to vote or to save his or her vote, a new arbitrator should be appointed immediately. This, though, involves a risk that the award could be handed down out of the term, which would render it null and void.

29 Form and content requirements

What form and content requirements exist for an award? Does the award have to be rendered within a certain time limit?

Arbitration awards are comparable to judgments. Therefore, they must contain an analysis of the facts expressed by the parties, analysis of evidence and legal or technical analysis, or an analysis of the reasons for impartiality, as the case may be, on which the decision is based.

The arbitral award must be rendered within the terms established by the parties. If there is no agreement of the parties on that respect, the law establishes by default six months counted from the first hearing, extendible by up to six more months.

30 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?

Awards are valid for an indefinite amount of time as soon as they are served, provided they are not annulled or revised.

Awards must be delivered during the time stipulated by the parties as the duration of the arbitration, or within the extensions of time the parties may have requested. Otherwise, awards should be delivered within the terms provided by law, which for local arbitrations is six months, extendible for an equal term.

The arbitrators may complement, clarify or correct the award ex officio, or within five days of its delivery upon express request of the parties.

Action for annulment applies against arbitral awards. It must be filed within five days of the service of the award or of the clarification, correction or supplement ruling.

Finally, motion to revise applies against the award and the ruling that decides the annulment, which must be filed within two years of enforcement of the ruling.

31 Types of awards

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

Under the Colombian scheme, all awards are final and must, in principle, resolve all the aspects set forth in the complaint. But if by a mistake made in the formulation of claims the arbitrators refrain from resolving a given aspect, the award shall be partial. There is no limit on the kind of relief that the tribunal may grant.

32 Termination of proceedings

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

The proceedings can terminate because the parties reach a conciliatory or a settlement agreement. In either case, the parties must inform the tribunal, which issues a writ deeming the proceeding terminated.

33 Cost allocation and recovery

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

The defeated party assumes costs in whole. The successful party recovers: the portion of arbitration fees that this party would have had to assume; the portion of administrative fees this party would have had to assume; and attorneys' fees or court costs as the arbitral tribunal indicates. These costs correspond to a percentage of the claims. They are established according to the complexity of the case and the participation of the parties in the proceedings, taking into account the fee schedules of the lawyers' Bars for these types of matter.

34 Interest

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

Accrued interest may be awarded provided that the parties have requested it in the claims. Interest does not apply to costs.

Proceedings subsequent to issuance of award

35 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?

Under Colombian law, arbitral tribunals may correct, clarify or complement the award within five days of its delivery. During this time, the parties may request clarification, correction or complementation of the award.

36 Challenge of awards

How and on what grounds can awards be challenged and set aside?

Awards may be challenged through motions for annulment or review. Annulment must be grounded on one or more of the following causes:

- the arbitral agreement is unlawful because the cause or subject matter is unlawful – giving rise to absolute nullity;
- the arbitral tribunal is not constituted in a legal manner – this cause must be adduced during the first hearing;
- there was a failure to decree production of evidence without legal grounds and failure to produce decreed evidence, provided that the production of said evidence may affect the decision;
- the award is issued after the term set for the arbitration or after a term extension;
- the arbitrators decide in equity when they should decide at law, provided that this circumstance is evident in the award;
- the subsequent part of the award has mathematical mistakes or contradictory provisions;
- the decision refers to issues not subject to arbitration or exceeds what was asked for; or
- the subject matter of the arbitration has not been decided.

Motion for review may invoke the following causes, inter alia:

- documents that would have changed the decision are found after the award is delivered;
- documents decisive for the award are declared false by criminal justice;
- the award is based on testimonies given by people adjudged for false testimony due to these testimonies;
- the award is based on experts' opinions criminally adjudged for unlawful acts committed in the production of the evidence;
- a criminal judgment states that there was violence and bribery in the delivery of the award; or
- collusion or any other fraudulent manoeuvre by the parties.

37 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?

Colombian legislation does not allow for appeals against arbitral awards.

38 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?

In local arbitrations, the only requirement for enforcing the award is that it has become final. The interested party has to bring an executory proceeding before a judge against the debtor if the debtor refuses to comply with the award.

For arbitrations carried out abroad, exequatur must be obtained

Update and trends

The Colombian Congress is currently discussing a new project for an arbitration law that regulates integrally the subject of arbitration in Colombia.

for the award. The requirements for exequatur are:

- there shall exist a treaty with the originating country that would acknowledge effects to the award – failing this, there must exist reciprocity with respect to Colombian judicial decisions or awards;
- the award shall not refer to in rem rights in goods that were in Colombian territory when the proceedings began;
- the award shall not go against laws or other Colombian public order provisions, excepting procedural provisions;
- the award shall be final under the law of the country of origin, and filed in duly authenticated and legalised copy;
- the matter to which it refers shall not be of the exclusive jurisdiction of Colombian judges;
- there shall not be an ongoing action or a final decision of local judges referring to the same matter in Colombia;
- if delivered in a contentious proceeding, the requirement of due servicing and right of defence for a defendant must have been met pursuant to the law of the country of origin, which is assumed from the enforcement;
- if the award is not in Spanish, a translation by an official translator registered in Colombia must be filed along with the legalised copy of the award; and
- the exequatur must be processed before the Supreme Court of Justice.

39 What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Since Colombia is a party to the New York Convention and to the Inter-American Convention on International Commercial Arbitration, Colombian Courts must apply the rules pertaining to the inapplicability or suspension of arbitral awards provided therein. Indeed, the interested party may request the denial of the recognition and enforcement of an arbitral award based on the fact that it has been annulled or suspended by the courts at the place of arbitration. Moreover, the interested party may request before the Supreme Court of Justice the suspension of the process of exequatur until the annulment remedy filed before the court at the place of arbitration against the arbitral award is decided; it may also request that the party interested in the process of exequatur grants the appropriate guarantees before recognising and executing the award.

40 Cost of enforcement

What costs are incurred in enforcing awards?

For local awards, the costs refer to those accrued in the executory proceeding, which can last from two to four years, depending on the activity of the defendant, and are the following:

- bond to be posted for injunction measures, equivalent to 10 per cent of the amount to be collected;
- costs generated by seizure and attachment of goods;
- monitoring of the matter at the courts; and
- attorneys' fees.

For foreign awards, the expenses refer to those originating in the

exequatur process, which are the following: monitoring of the matter at the court, translation into Spanish, legalisations, questioning of witnesses and attorneys' fees. Once the exequatur has been obtained, the executory proceeding must be brought, thus generating the costs listed above.

Other

41 Judicial system influence

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

As mentioned above, freedom to produce evidence exists in Colombia. But arbitrators prefer to produce the evidence directly to observe procedural guarantees referring to non-discrimination and right to object. For this reason, written statements are not very useful.

Party officers may testify, but the arbitrator must evaluate the evidence anyway to establish credibility.

42 Regulation of activities

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

If the arbitral tribunal is international, but conducted in Colombia, arbitrators need a visa permitting them to stay in the country for the duration of the trial.

They are obliged to pay VAT, and if their income exceeds US\$30,000, they must pay income tax.

The same applies to foreign lawyers working in Colombia.

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