GETTING THE DEAL THROUGH

gar
The international journal of commercial and treaty arbitration

Arbitration

in 55 jurisdictions worldwide

2011

Contributing editors: Gerhard Wegen and Stephan Wilske

Published by
GLOBAL ARBITRATION REVIEW
in association with:

Anderson Mōri & Tomotsune
Appleby
AZB & Partners
Badri and Salim El Meouchi Law Firm LLP
Bell Dewar Inc
Bonn Schmitt Steichen
Bredin Prat
Brodermann & Jahn Rechtsanwaltsgesellschaft mbH
Carlos Aguiar, Ferreira de Lima & Associados,RL
Cavelier Abogados
Clifford Chance
Conway & Partners, Advocaten & Attorneys-at-law
Dittmar & Indrenius
Drakopoulos Law Firm
Dr Colin Ong Legal Services, Advocates & Solicitors
Esin Law Firm
Freshfields Bruckhaus Deringer
George Etomi & Partners
Gleiss Lutz
Gregoriou & Associates Law Offices
Habib Al Mulla & Co
Hamilton Abogados
Harris Kyriakides LLC
Hausmaninger Kletter Rechstanwälte
Hedman Partners
Herbert Smith CIS LLP
Heussen Rechtsanwaltsgesellschaft mbH
HM Ooi Associates
Hoet Pelaez Castillo & Duque
Hogan Lovells US LLP
Hughes Hubbard & Reed LLP
Jiménez Cruz Peña
Karanović & Nikolić
Kettani Law Firm
Kim & Chang
Kimathi & Kimathi, Corporate Attorneys
Kosheri, Rashed & Riad
Lalive
Laszczuk & Partners
Law Offices Bělohlávek
Law Office Skrastins un Dzenis
L O Baptista Advogados
Mkono & Co Advocates in association with SNR Denton
Motieka & Audzevicius
Nordia Advokatfirma
Norton Rose (Middle East) LLP
Oscós Abogados
Pestalozzi
Salans LLP
Sandart & Partners
Sherby & Co, Advs
Stikeman Elliott LLP
Tilleke & Gibbins
Tomov & Tomov
Vasil Kisil & Partners

GETTING THE DEAL THROUGH®

Arbitration 2011

Contributing editor: Gerhard Wegen and Stephan Wilske Gleiss Lutz

Business development managers
Alan Lee
George Ingledew
Robyn Hetherington
Dan White

Marketing managers
Ellie Notley
Sarah Walsh

Marketing assistant
Alice Hazard

Subscriptions manager
Nadine Radcliffe
Subscriptions@GettingTheDealThrough.com

Assistant editor
Adam Myers

Editorial assistant
Nina Nowak

Senior production editor
Jonathan Cowie

Chief subeditor
Jonathan Allen

Senior subeditor
Kathryn Smuland

Subeditors
Davet Hyland
Chloe Harries

Editor-in-chief
Callum Campbell

Publisher
Richard Davey

Arbitration 2011
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

ISSN 1750-9947

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Law Business Research

CONTENTS

Dominican Republic

Marcos Peña Rodríguez and Laura Medina Acosta

Jiménez Cruz Peña

Laws and institutions

1 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 international commercial and investment arbitration is your country a party to?

The Dominican Republic is a contracting state to the Convention for the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). It was ratified on 8 November 2001 and is in force as of 10 July 2002. No declarations or notifications were made under articles I, X and XI.

The Dominican Republic is also a party to the Inter-American Convention on International Commercial Arbitration (the Panama Convention), ratified on 24 December 2007. The ICSID Convention was signed by the Dominican Republic on 20 March 2000; however, to date it has not been ratified by the Dominican Congress. The Dominican Republic is part of the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA), which calls for dispute resolution under arbitration.

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

Bilateral treaties relating specifically to arbitration do not exist in the Dominican Republic; however, the Dominican state has entered into approximately 15 bilateral investment treaties with other countries, most of which contain dispute resolution provisions that include arbitration as an option:

Country	Specific Name (if applicable)	Date of treaty
Argentina	Agreement for the Promotion and Reciprocal Protection of Investments (article XI)	16 March 2001
Chile	Agreement for the Promotion and Reciprocal Protection of Investments (article XII)	28 November 2000 (in effect as of 8 May 2002)
China	Agreement for the Promotion and Reciprocal Protection of Investments (article XI)	5 November 1998 (in effect as of 27 November 2001)
Cuba		15 November 1999
Ecuador	Agreement for the Promotion and Reciprocal Protection of Investments (article 13)	26 June 1998 (in effect as of 4 November 2006)
Finland		27 November 2001 (in effect as of 27 April 2007)
France	Agreement for the Promotion and Reciprocal Protection of Investments (article 10)	14 January 1999 (in effect as of 23 January 2003)
Haiti		8 October 1999
Italy		12 June 2006 (in effect as of 18 July 2007)
Republic of Korea		30 June 2006 (in effect as of 21 May 2008)
Morocco	Agreement for the Promotion and Reciprocal Protection of Investments (article 8)	23 May 2002 (in effect as of 4 January 2007)
Panama	Agreement for the Promotion and Reciprocal Protection of Investments (article IX)	6 February 2003 (in effect as of 17 September 2006)
Spain	Agreement for the Promotion and Reciprocal Protection of Investments (article 10)	16 March 1995 (in effect as of 7 October 1996)
Switzerland		27 August 2004 (in effect as of 30 May 2006)
United Kingdom		11 July 2002

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary source of law relating to the enforcement of commercial arbitration awards and arbitral agreements, and arbitration proceedings in the Dominican Republic, is Law 489-08 on Commercial Arbitration dated 19 December 2008, published in the Official Gazette No. 10,502 on 30 December 2008. This law governs both domestic and international arbitration proceedings that take place in the Dominican Republic, as well as the enforcement of domestic and international awards.

Pursuant to article 1 of Law 489-08, an arbitration is international if:

- the parties to an arbitration agreement have their places of business in different states at the time of the conclusion of that agreement;
- the parties are domiciled outside the Dominican Republic; or
- the place where a substantial part of the obligations of the commercial relationship is to be performed is situated outside the state in which the parties have their places of business.

In addition, article 220 of the Constitution enacted on 26 January 2010 expressly provides that the Dominican government may enter into arbitration agreements for dispute resolution. Also, Law 50-87 on Chambers of Commerce, as amended, contains a chapter on arbitration (see question 7).

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?

Law 489-08 is based on the UNCITRAL Model Law on International Commercial Arbitration with a few small variations, such as:

- the definition of international arbitration is narrower, as it does not contain the opt-in option according to which the parties expressly agree that the subject matter of the arbitration agreement relates to more than one country;
- the participation of the state as a party to arbitration is addressed by the law, in which a specific procedure is set out for the notification of the demand for arbitration when the Dominican state acts as defendant in commercial and investment arbitrations;
- it incorporates the set of rules that should be taken into account by the arbitral tribunal in an international procedure to determine the validity of the arbitral agreement (article 10);
- following the general principles of arbitration, the parties are free to determine the number of arbitrators called upon to resolve the dispute, but to reduce the risk of the decision process being frustrated, the law requires an odd number of arbitrators. Failing such determination, the law provides that a sole arbitrator shall be appointed instead of three (article 14);
- when interim measures are adopted by a local court, the requesting party is bound to initiate arbitration 60 days after said order is issued;
- the arbitrators, the parties and the arbitral institutions shall maintain the confidentiality of the proceedings (article 22);
- to the extent the parties have not agreed otherwise, along with the demand for arbitration, a claimant shall notify the name of the proposed or appointed arbitrators, and within the specified time limit, the respondent shall notify the claimant of its statement of defence and propose an arbitrator or appoint an arbitrator (article 27). This differs from the UNCITRAL Model Law, according to which a request for arbitration is first submitted by the claimant and subsequently the statements of claim and defence are submitted within the time limits agreed by the parties or set by the arbitral tribunal;
- since the demand for arbitration is what initiates the proceedings, the claimant will not default on this basis, but only for not appearing before the tribunal. If under these circumstances the arbitrators continue with the proceedings and render an award, both the proceedings and award shall be considered as contradictory and no violation of the right of each party to fully present its case can be invoked (article 29); and
- the law states in a detailed manner the procedure to be followed by the parties in the taking and presentation of evidence before the tribunal, even addressing the situation in which the evidence has to be taken in a foreign country (article 30).

5 Mandatory provisions

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

Parties have the freedom to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing such agreement, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. In either case, the arbitral tribunal has the obligation to abide by the principle of equal treatment of the parties in the proceedings and ensure that each party is given an opportunity to fully present its case.

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?

Under article 33 of Law 489-08, the arbitral tribunal decides the dispute in accordance with the rules of law chosen by the parties. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules. In the absence of an agreement between the parties, the arbitral tribunal is free to determine the applicable law. In all cases, the arbitral tribunal shall decide based on the terms of the contract and take into account the usages of the trade applicable to each case.

7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The Centre for Alternative Dispute Resolution of the Chamber of Commerce and Production of Santo Domingo
Avenida Sarasota No. 20
Torre Empresarial
Local II Oeste, 2nd Floor
Ensanche La Julia
Santo Domingo
Distrito Nacional
Dominican Republic
www.camarasantodomingo.org

The Centre for Alternative Dispute Resolution of the Chamber of Commerce and Production of Santo Domingo (previously known as the Conciliation and Arbitration Council), is the most prominent arbitral institution in the Dominican Republic. It was created pursuant to Law 50-87 on Chambers of Commerce and Production, which first admitted the possibility of the Dominican state entering into valid arbitration agreements, contrary to the criterion that had prevailed since the adoption of the Napoleonic Codes. This law was recently amended by Law 181-09 dated 6 July 2009, to adapt its provisions to those of Law 489-08. The Centre has issued rules for the administration of conciliation and arbitration procedures.

Certain provisions are similar to those of the International Court of Arbitration of the International Chamber of Commerce, such as the execution of a document that resembles the terms of reference, in which the parties and the arbitral tribunal set forth the summary of the parties' respective claims, a list of issues to be determined, the place of the arbitration, the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitral tribunal to act as amiable compositeur or to decide ex aequo et bono. Also, scrutiny of the awards is made by the Secretariat of the Centre before the award is finally delivered to the parties. Arbitrators' fees and arbitration costs are calculated based on the amount in dispute. The Centre has made available a list of arbitrators, which comprises professionals from different areas.

A very important feature of institutional arbitration under Law 50-87 is that the award is binding and definite once rendered (except in the cases expressly foreseen by the law of interpretation, correction or additional award), and does not require an authorisation or exequatur from a domestic court for its enforcement.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

The general rule is that only matters that can be subjected to compromise and settlement shall be referred to arbitration. However, Law 489-08 expressly states in article 3 that matters regarding the status

of a person, separations between husband and wife, criminal cases and cases that concern public policy cannot be resolved through arbitration. Law 489-08 does not contain a definition of 'public policy'; in our legal framework this is a constantly evolving concept with a social, moral and political component.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The general rule for an arbitral agreement to be enforceable is that it has to be in writing (article 10 of Law 489-08), a requirement that is met when its content is recorded in any form that is accessible for subsequent reference, such as in an exchange of letters, faxes, electronic communications or any other data message format. An arbitration agreement is validly formed if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other, or when reference is made in a contract to any document containing an arbitration clause. Despite this express provision, it is important to note that based on the principle solus consensus obligat (all that should count is consent), which is embodied in our Civil Code, and on the provisions of article 10(4) of Law 489-08, scholars hold that non-compliance with this requirement does not automatically render the agreement unenforceable. This requirement is considered to be ad probationem, with the purpose of serving as evidence of the act or compromise entered into between the parties.

In the case of domestic arbitration, the agreement has to comply with the general principles on the formation of contracts, set out in article 1108 of the Civil Code (the most important of these being that the parties have legal capacity to enter into agreements). The requirements for an arbitral agreement to be enforceable in an international arbitration are determined by the set of rules chosen by the parties to govern the arbitral agreement, or the substantive law that applies to the merits of the dispute, or Dominican law.

To the extent it is not a substantial requirement or relates to public policy, parties may waive any formal requirement when they proceed with the arbitration without stating the objection to such non-compliance.

Regarding local or state entities, no particular requirements are imposed other than those common to all administrative contracts entered into by a dependency of the Dominican state.

Arbitration agreements may be contained in general terms and conditions provided that the general terms and conditions were known by the party against whom they are being enforced.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Arbitration agreements that are part of a contract are independent of the other terms of the contract. Thus the invalidity or unenforceability of the underlying agreement does not necessarily affect the arbitration agreement. However, pursuant to article 11(3) of Law 489-08, if a definite and irrevocable judgment declaring the annulment of the underlying contract is rendered, the arbitration agreement is no longer enforceable.

Arbitration agreements are no longer enforceable if waived by all parties, for example, by submitting to the jurisdiction of the courts, or if declared null and void by the arbitral tribunal. Insolvency will not render an arbitration agreement unenforceable. Neither will death of a party, to the extent the underlying agreement was not intuitu personae (agreements entered into in special consideration of the person that is undertaking obligations); in all other cases, the obligations under a contract with a party that has ceased to exist are transferred to the successors.

11 Third parties – bound by arbitration agreement

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

In principle arbitration agreements cannot be extended to a non-signatory party; however, the assignment of the underlying contract may be presumed to include acceptance of any arbitration agreements contained in or incorporated into the underlying agreement. An exception to this general rule also applies in the case of succession (see question 10).

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?

Law 489-08 does not contain any provisions with respect to third-party participation in arbitration. However, according to case law, where a signatory seeks to enforce an arbitral agreement against a non-signatory, the latter has to expressly agree to participate in the arbitration; the other party or parties to the arbitration do not necessarily have to consent. To the contrary, where a third party voluntarily seeks to participate in an arbitration, all existing parties are required to consent.

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?

The group of companies doctrine is recognised in the Labour Code and the Tax Code. However, no decision has been rendered by Dominican courts or arbitral tribunals to that effect.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

There is no express provision relating to multiparty arbitration agreements under Dominican law, thus the requirements would in principle be the same as those set out for the validity of any other agreement. Additionally, whenever an issue regarding the constitution of the arbitral tribunal arises, in particular if there is more than one party on one side that cannot agree on a joint nomination of one arbitrator, domestic courts or arbitral institutions shall decide based on the principles of equal treatment and due process of law.

Constitution of arbitral tribunal

15 Appointment of arbitrators – restrictions

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

Law 489-08 does not impose restrictions as to who may act as an arbitrator. If the arbitration is administered pursuant to the rules of arbitration of the Centre for Alternative Dispute Resolution of the Chamber of Commerce and Production of Santo Domingo, arbitrators may be selected from a list of arbitrators (see question 7).

16 Appointment of arbitrators – default mechanism

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

In the absence of an agreement between the parties, the default mechanism in an arbitration with three arbitrators is set out in article 15

of Law 489-08: each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator who shall preside over the arbitration. If within 30 days one or both parties have not appointed arbitrators, the appointment shall be made by the local court as specified in articles 9(1) and 15(2) of the Law.

If the parties do not reach an agreement in an arbitration with a sole arbitrator, an arbitrator shall be appointed, upon the request of any of the parties, by the local court as specified in article 15(3)(b).

When the arbitral process is being administered by the Centre for Alternative Dispute Resolution, the Centre will appoint the arbitrators when the parties fail to do so. The parties are required to nominate arbitrators in their statement of claim and defence, and should rank them in order of preference. This is taken into account by the Centre for the appointment.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced?

Arbitrators may be challenged on lack of independence or impartiality or for not meeting the qualifications agreed upon by the parties, in accordance with article 16 of the Law.

If the parties fail to agree on a procedure to challenge and replace arbitrators, a party who intends to challenge an arbitrator shall file with the arbitral tribunal a written statement of the reasons for the challenge, within 15 days of the acceptance of the arbitrator or after becoming aware of the circumstance that may give rise to justifiable doubts as to his or her impartiality or independence. If the challenge of the arbitrator under the procedure agreed upon by the parties or that stated in the Law is not successful, the challenging party may request the Court of Appeals of the place of arbitration to render a decision per curiam on the matter, which is not subject to appeal (see article 16(3)).

Where an arbitrator has been successfully challenged, or that arbitrator's mandate is terminated due to agreement between the parties, or a de jure or de facto situation has made it impossible for him or her to act as an arbitrator, or has resigned, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators?

Arbitrators, whether party-appointed, designated by an institution or otherwise, are required to be independent and to act fairly and impartially. Arbitrators are not agents nor representatives of the parties in the dispute. Arbitrators are entitled to remuneration. Subject to the agreement of the parties, the arbitral tribunal shall fix the costs of arbitration in the award. Such costs may include the fees and expenses of the arbitrators, the administrator, legal representation of the parties, and any such costs incurred in connection with the arbitration.

No reference is made in the Law as to the liability or immunity of arbitrators for errors made during the proceedings.

In institutional arbitrations, article 1 of the Rules of Arbitration of the Centre for Alternative Dispute Resolution of the Chamber of Commerce and Production of Santo Domingo provides immunity from civil liability to the Chamber of Commerce and Production, the board of directors, the members of the Centre and arbitrators with regards to matters related directly or indirectly to the award rendered in a case.

Jurisdiction

19 Court proceedings contrary to arbitration agreements

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

The negative and positive effects of the Kompetenz-Kompetenz principle apply to both domestic and international arbitrations under Dominican law. Article 20, which embodies the positive application of this principle, recognises the arbitral tribunal has the primary authority to decide on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

On the contrary, pursuant to the negative effect, local courts must decline jurisdiction when there is an arbitration agreement and submit the parties to arbitration. A petition on these grounds shall be decided by the local court prior to any other motion, regardless of the right recognised in practice to the court to request the parties to present other motions, including on the merits. The judgment on the jurisdiction is not subject to appeal.

20 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?

Once constituted the arbitral tribunal is competent to rule on its own jurisdiction. A party making a jurisdictional challenge before the arbitral tribunal shall raise the motion no later than the submission of the statement of defence pursuant to article 20 of Law 489-08. A party is not precluded from raising jurisdiction objections by the fact that it has appointed or participated in the appointment of an arbitrator.

A motion that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

The arbitral tribunal may address these issues in a preliminary award before ruling on the merits of the case. The award rendered may only be challenged through an annulment action. The initiation of an annulment action does not suspend the ongoing arbitral proceedings.

Arbitral proceedings

21 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 between the parties, the arbitral tribunal determines the place of arbitration and the language of the proceedings, having regard to the circumstances of the case. The arbitrators are given the right to allow the submission of documents or the taking of any other evidence in a language different to that of the arbitration, if the parties do not oppose such actions.

22 Commencement of arbitration

How are arbitral proceedings initiated?

As per articles 25 and 27 of Law 489-08, arbitration proceedings are initiated with the demand for arbitration, which usually includes details about the nature and issues in dispute, the underlying agreement, the reliefs sought and the evidence in support of the claims. It shall include the nomination or appointment of the arbitrators.

In administered arbitrations conducted under the Rules of Arbitration of the Centre for Alternative Dispute Resolution, arbitration proceedings also begin with the demand for arbitration, which shall

be served consecutively to the defendant and the Secretariat of the Centre.

23 Hearing

Is a hearing required and what rules apply?

A hearing is not required. The arbitral tribunal may decide whether to hold oral hearings for the presentation of evidence or for oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials. However, a hearing shall be held if a party or both parties so request, or when the tribunal orders it on its own initiative, to the extent that there is no prior agreement to the contrary. There is not a set of rules applicable to the hearings.

24 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?

In both domestic and international arbitrations, the practice is to require the parties to adduce the evidence on which they rely concurrently with the submission of their respective briefs. Under Dominican procedural laws, parties have the burden of putting forth the evidence that supports their argument (following the rule from the proceedings before local courts of actore incumbit probatio). However, the admissibility, relevance, materiality and weight of any evidence are subject to the discretion of the arbitral tribunal.

The tribunal may require a party to produce specific documents, appoint experts to assist in the fact-finding mission, order site inspections, and hear technical experts and factual witnesses. In domestic arbitrations, tribunals are inclined to rely on documentary evidence.

To date, there is no tendency to rely on the IBA Rules on the Taking of Evidence in International Commercial Arbitration (1999) as guidance on how to deal with document production and witness evidence.

Obtaining evidence during arbitration can be done by the arbitrators directly or by requesting the courts to do it pursuant to the provisions in the Civil Procedural Code and applicable treaties.

25 Court involvement

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

The intervention of local courts is limited to the appointment of arbitrators, assistance in obtaining evidence, adoption of interim measures, challenge of awards and recognition and enforcement of awards.

26 Confidentiality

Is confidentiality ensured?

If the parties do not agree otherwise, article 22(2) of Law 489-08 foresees that information discovered during the arbitration is kept confidential by the parties, the arbitrators and the arbitral institution.

Interim measures

27 Interim measures by the courts

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

Article 13 of Law 489-09 permits the parties to request a court to order an interim measure before or during the arbitral proceedings. If the court orders such relief, it shall request the petitioner to submit its statement of claim for arbitration within 60 days as of the date the order is issued. The court may also require the party requesting an interim measure to provide appropriate security, if necessary. Once the arbitral tribunal is constituted, if it orders the suspension or termination of the interim measures adopted by the court, the decision of the arbitrators prevails.

Moreover, pursuant to article 48 of the Code of Civil Procedure, a party whose credit is in danger may request the first instance court of the competent jurisdiction to order a provisional or interim measure to prevent the insolvency of the debtor for the payment of its debts. The authorisation process is ex parte.

28 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?

Pursuant to article 21 of Law 489-08, the arbitral tribunal may, upon the request of a party, grant interim measures and, accordingly, require the party requesting an interim measure to provide appropriate security in connection with the measure. The decision on interim relief will be subject to the rules on challenges and enforcement applicable to arbitral awards (except those relating to the suspension of enforcement of the award).

Awards

29 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?

Failing party agreement, decisions are adopted by a majority of votes of the members of the arbitral tribunal. If no majority is reached, the decision shall be the one with which the chairman of the arbitral tribunal concurs. There is no consequence if an arbitrator dissents.

30 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

Law 489-08 does not expressly refer to dissenting opinions; however its admissibility is implied by article 36, which provides that awards must be in writing, and contain the signatures of all the arbitrators, who may express their disagreement.

31 Form and content requirements

What form and content requirements exist for an award?

The award must be in writing, indicating the date and place it has been rendered, signed by all the arbitrators (who may express their dissenting opinion) or a majority of arbitrators (stating the reasons for the missing signatures) and state the reasons upon which it is based.

32 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law?

There is no time limit for the award to be rendered, however, in institutional arbitrations such as the ones conducted pursuant to the Rules of Arbitration of the Centre for Alternative Dispute Resolution of the Chamber of Commerce and Production of Santo Domingo, arbitrators must issue the award during the month that follows the closure of the debates. This time limit, however, may be extended with prior authorisation from the Centre's executive board.

33 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?

Arbitrators shall serve the award to the parties during the five days following the date it has been rendered. The date the award is served is relevant for the commencement of the time limits for the request for correction and interpretation, additional or supplementary awards, and challenge of the award. A request to set the award aside through an annulment action should be filed within one month of the date it was served to the parties.

34 Types of awards

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

Arbitrators may issue one final award or as many partial awards as required. A consent order in the form of an award can be rendered if the parties settle the dispute during the arbitral proceedings.

Awards or orders on interim measures are subject to the same requirements on recognition and enforcement as a final award, regardless of the form they adopt.

35 Termination of proceedings

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

The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in the following cases:

- when the claimant withdraws the claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;
- the parties agree on the termination of the proceedings; or
- the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

Such decisions or findings may take the form of an order issued by the tribunal or the arbitral institution if the arbitration is conducted under the rules of the Centre for Alternative Dispute Resolution.

36 Cost allocation and recovery

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

Law 489-08 does not contain an express rule on how the costs should be allocated between the parties; in local courts, following the provisions set forth in article 130 of the Civil Procedure Code, the party against which the decision is rendered shall bear the costs of the process. The recoverable costs are the administrative fees, attorneys' fees, and any such costs incurred in connection with the arbitration, pursuant to article 36(6) of Law 489-08.

37 Interest

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

The laws on arbitration do not contain any provisions on this matter. Article 1153 of the Civil Code, however, recognises the application of interest as part of the damages that a court may award in actions for payment of monetary obligations. However, Law No. 183-02 dated 1 November 2002 expressly repealed the order that established legal interest. The Supreme Court of Justice has stated that through the enactment of this law, no interest can be accrued as additional indemnity (SCJ, 9 November 2005, BJ 1140). For interest to be awarded, the parties must have agreed to it.

However, it is our view that courts are not prohibited from awarding additional compensation in the case of monetary claims to indemnify for the loss of opportunity (lucrum cessans) for the delay in making the payment that the claimant is entitled to receive.

Proceedings subsequent to issuance of award

38 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?

Parties may request the arbitrator to correct a material error in the award, to interpret a section of the award or to issue an additional award within 10 days of its notification to the parties. The arbitral tribunal may, on its own initiative, correct material errors in the award within that same time frame.

39 Challenge of awards

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

The grounds for challenging an award issued in arbitration with its seat in the Dominican Republic are set forth in article 39 of Law 489-08, and basically follow the provisions of the Model Law. Hence, an award shall be set aside when the party against whom enforcement is invoked demonstrates:

- a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the laws of the Dominican Republic;
- there has been a disregard of the rules of due process that results in a violation of the rights of a party to present its case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award that contains decisions on matters not submitted to arbitration may be set aside;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Law 489-08 from which the parties cannot derogate, or, failing such agreement, was not in accordance with said law;
- the subject-matter of the dispute is not capable of settlement by arbitration under the laws of the Dominican Republic; or
- the award is in conflict with the public policy of the Dominican Republic.

The last two causes may be sought by the local court on its own initiative. As previously mentioned, a request for setting aside may not be made after a month has elapsed from the date the award was delivered, or if a party requested the correction, interpretation or additional award, from the date any such decision from the arbitral tribunal was delivered to the parties.

The request for setting aside the award must be filed with the Court of Appeals of the Judicial Department where the award was rendered, but it does not automatically suspend enforcement. For a suspension to take place the interested party shall file a demand for suspension with the president of the Court of Appeals that is to hear the challenge; enforcement will be suspended from the date a copy of the demand for suspension received by the court is served to the opposing party, until the first hearing is held. If the suspension is admitted, the requesting party will be required to present a guarantee.

40 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?

Article 40(4) expressly states that there is only one recourse available against the decision on the challenge issued by the Court of Appeals, which is an appeal before the Supreme Court of Justice. A challenge at this level may take up to one year. Costs are allocated to the party against which the decision is rendered. It is important to mention that the Supreme Court of Justice only reviews the application of the law by the lower courts and not the merits.

41 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?

Foreign awards may become enforceable through an authorisation or exequatur rendered by the Civil and Commercial Chamber of the First Instance Court of the National District without further review on the merits, pursuant to and under the terms of Law 489-08 and the applicable international convention to which the Dominican Republic is a party (the New York Convention or the Panama Convention).

The first instance court of the district where the award was issued is the competent jurisdiction for the enforcement of domestic awards, pursuant to articles 9 and 41 of Law 489-08.

The party seeking the enforcement of the award shall file a request with the competent court, along with the original award and the arbitral agreement or contract where the agreement is contained. It is a non-adversarial procedure in which the court shall examine the award within the limits set forth in the law and international convention, if applicable. The decision on the recognition and enforcement may be challenged before the Court of Appeals, which shall render a final and binding decision in accordance with the applicable international convention, where applicable. In the case of domestic awards rendered by the Alternative Resolution Centres of the Chambers of Commerce and Production, the awards do not require an authorisation from a court for enforcement.

42 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?

If an award has been set aside by a court at the place of arbitration, local courts will not order recognition or enforcement, pursuant to article 45(1)(e) of Law 489-09, which provides a ground for refusing recognition and enforcement of an award if it has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Update and trends

Arbitration continues to evolve as an alternative mechanism for dispute resolution in the Dominican Republic. The modernisation and strengthening of the legal framework governing arbitration proves in theory the tendency towards favouring arbitration; and in practice, such tendency is proven by the proliferation of treaties where the state consents to arbitration as the forum for disputes, as well as the increase in the number of domestic cases either involving only private parties or between a private party and a government-controlled entity.

From 2007 to date, the Dominican state has participated in approximately seven international arbitration cases, brought before different arbitral institutions under different rules of procedure, mainly related to concessions in the energy sector. Most of these cases have been resolved through settlement agreements. A proceeding before the International Court of Arbitration of the International Chamber of Commerce is currently pending decision.

The limited intervention of state courts in disputes arising out of a contract containing an arbitral clause, and the extent of the analysis and review that courts are subject to when deciding a request for recognition and enforcement of an arbitral award, are matters that have required more attention, but the Supreme Court of Justice in association with local and foreign arbitral institutions have assumed the compromise of educating judges in their involvement with arbitration. Few cases under Law 489-08 have been decided.

43 Cost of enforcement

What costs are incurred in enforcing awards?

In principle, the exercise of a right in justice is not subject to charge; however there are minimum court fees that are incurred in filing the action, attending hearings and obtaining copies of orders or awards. In addition, certain enforcement actions are carried out through bailiff's acts, which represent additional expenses; the costs of bailiff's acts differ depending on the number of places or addresses contained in the act where the bailiff has to serve the act, and also on the object of the action that is being notified through said act.

Marcos Peña Rodríguez **mpena@jcpdr.com**
Laura Medina Acosta **lmedina@jcpdr.com**

Torre Citi en Acrópolis, piso 14
Av Winston Churchill 1099
Santo Domingo
Distrito Nacional
Dominican Republic

Tel: +809 955 2727
Fax: +809 955 2728
info@jcpdr.com
www.jcpdr.com

Other

44 Judicial system influence

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

The legal system of the Dominican Republic follows the civil law tradition and thus there is primacy of written documentation over oral evidence. Disclosure of documents is limited to a certain extent, compared to the flexible discovery process; it is limited to a presentation of documents by which the parties support their arguments. In civil and commercial cases, witness statements are a less reliable type of evidence, but if ordered by the court, they are most likely to be oral statements presented in a public hearing. Parties' officers may present declarations at a hearing, but they are not considered, in most cases, as evidentiary support. Since it is believed that they will give declarations in support of their own cause, no credibility can be assessed.

45 Regulation of activities

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

Law 489-08 does not contain prohibitions on the nationality of the arbitrators or restrictions on their profession, therefore a foreign citizen or a non-resident may act as an arbitrator as well as a non-lawyer. The fact that the place of the arbitration is the Dominican Republic is not a sufficient basis for applying income tax or withholding taxes over the fees paid to the arbitrators. It is important to note, though, that if payment for the services is to be made abroad by a Dominican tax-paying entity, it may be subject to 25 per cent withholding tax.

A foreign lawyer can provide legal services different to those related to the judicial exercise or appearance in court, as long as they are members of the Bar Association of the Dominican Republic, according to Law 91-83 dated 3 February 1983, which institutes the Bar Association of the Dominican Republic. Pursuant to the United States–Dominican Republic Central American Free Trade Agreement (DR-CAFTA), a foreign lawyer who is not a member of the Dominican Bar Association can provide consulting services regarding foreign law as long as the foreign lawyer has a licence to exercise law in a jurisdiction that allows Dominicans to provide consulting services on foreign law. It is not clear whether a foreign lawyer may assist a client before an arbitral tribunal, when such assistance is the result of a particular case and not aimed to establish a practice in the Dominican Republic. Our view is that a foreign lawyer may assist a client in an international arbitration taking place in the Dominican Republic. The lawyers' fees may be subject to local taxation, as stated in article 270 of the tax code.

 ISSN 1750-9947