Notes on Arbitration in Argentina

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I. INTRODUCTION

THE purpose of this article is to briefly address the current issues in Argentine arbitration law, by (a) describing succinctly the current status of Argentine arbitration law (Section II), (b) analyzing the latest legislative initiative (Section III), and (c) making some comments on the current practice of arbitration in Argentina (Section IV). The analysis below does not purport to be exhaustive, but rather to inform and encourage reflection in some areas that are relevant for the development of arbitration in Argentina.

II. CURRENT STATUS OF ARGENTINE ARBITRATION LAW

The rules applicable to arbitration in Argentine law form part of the Federal Code of Procedure for Civil and Commercial Matters (Law No. 17,454, as amended) (hereinafter the Federal Arbitration Rules) and of the codes of procedure in force in each province.1 Pursuant to the Argentine Federal Constitution, modeled after the U.S. Constitution, the provinces have the power to establish their own codes of procedure. This allows for the possibility of having contradictory treatment of arbitration at different levels (i.e., federal and state level, or even between two provinces). Because of this possibility of inconsistency, there have been proposals for a federal statute on arbitration.2

The Federal Arbitration Rules reflect the concept of arbitration as a "special version of a court procedure"3 instead of a distinct means of dispute resolution. These rules include the parties' obligation, irrespective

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1. The major provinces have adopted arbitration rules similar to the federal ones, but some provinces have failed to adopt any arbitration rules at all.
2. It should be noted that at present the unification of procedural rules regarding the recognition and enforcement of arbitral awards issued outside Argentina has been achieved by the ratification of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York) and the 1975 Inter-American Convention on International Commercial Arbitration (Panama).
of the existence of an arbitration clause, to sign a "compromiso" in order to confirm their will to submit the particular dispute to arbitration. These rules do not expressly establish the autonomy of the arbitration clause with respect to the agreement containing it and, therefore, contain no provision regarding the arbitrators' power to decide on their own jurisdiction. In addition, these rules fail to expressly acknowledge the existence and validity of institutional arbitration in accordance with a specific set of rules, impose on the arbitrators the application of court procedural rules failing an agreement of the parties in this regard, and fail to identify clearly the court with jurisdiction to hear requests for recognition or enforcement of arbitral awards. The requirement of the compromiso has caused delays and contributed to the general unfavorable views on the efficiency of arbitration proceedings in Argentina, even if the Federal Arbitration Rules provide for a remedy, which is that the federal courts may order the reluctant party to execute the agreement or even execute it on its behalf. This would include stating the issues in dispute and might take place provided the party's reluctance is found to be groundless.

Given the disadvantages pointed out above, and despite the fact that the Federal Arbitration Rules do not distinguish between domestic and international arbitration, Argentine courts seem to understand that the Federal Arbitration Rules are not appropriate for international arbitrations. The fact that the parties are expressly allowed to choose the procedural rules to apply to the arbitration has been construed as compromising the parties' right to submit to institutional rules of arbitration. Therefore, even though not expressly established, institutional arbitrations are allowed in practice.

In recent years many have endorsed a thorough reform of Argentine arbitration law and there have been several legislative initiatives in this sense. The following pages analyze how the enactment of the new Federal Bill on Arbitration (the bill), modeled after the UNCITRAL Model Law on International Commercial Law (Model Law), would change the scenario described above.

4. A compromiso is a written agreement the parties must enter into once the dispute has arisen and which must have certain specific contents, otherwise it will be at risk of being declared null and void. The parties thereby designate the arbitrators and describe the issues to be submitted to arbitration.
5. See Caivano, supra note 3.
6. Id. at 141. This author suggests that this requirement may be viewed as an agreement by the parties on the basic elements that are necessary for the arbitration to commence. According to this view, it might even take place before the dispute arises and might also be expressly waived by the parties in the arbitration clause.
7. In Welbers, S.A., Enrique C. v. Extraktionstechnik Gesellschaft Fur Anlagenbau M.B.M. (Federal Court of Appeal on Commercial Matters, Branch E, 26-9-88, La Ley, 1989-E, p. 302), the court rejected a defense of lack of jurisdiction based on the Federal Arbitration Rules, on the grounds that the specific section mentioned therein referred to domestic arbitrations and was not applicable to international commercial arbitrations.
III. ANALYSIS OF THE MAIN AND INNOVATIVE PROVISIONS OF THE NEW FEDERAL BILL ON ARBITRATION

A. ORIGIN OF THE BILL AND CURRENT STATUS

On April 29, 2001, an ad hoc drafting committee within the Argentine Federal Ministry of Justice, formed by prestigious specialists in arbitration and private international law, released the proposed bill, which was sent to the Argentine Congress on February 14, 2002. This was the third attempt by the Ministry of Justice to get a new federal law on arbitration passed by Congress in the past ten years. On November 28, 2002, the Senate approved the bill with slight amendments and sent it to the House of Representatives. On August 28, 2003, the Commission of Justice of the House approved it with a slight change to the amendment proposed by the Senate. The bill is now expected to go back to the Senate and, if the latter does not insist in its previous drafting, the bill might be passed as law (although the President keeps his power to veto it).

The bill adopts the text of the Model Law, with some differences, which are discussed below. Given the federal organization of the country, the bill would become federal law, setting rules only for federal courts and those of the Autonomous City of Buenos Aires—subject to the exercise of the city's powers recognized by the Federal Constitution. In that case, the bill would be deemed to "automatically adapt" to the circumstances deriving from such exercise. The bill invites the provinces to adapt their local procedural rules to the bill.

It should be noted that in principle under Argentine law disputes between a foreign party and an Argentine individual or entity, and also between parties with domiciles in different provinces, and disputes to which the Federal Government or a province are parties, fall within the jurisdiction of federal courts. Therefore, federal courts naturally have jurisdiction in most "international" disputes, apart from the last two cases mentioned above. Furthermore, under the terms of the bill, the concept of "international" broadens, as we analyze below.

B. OBSERVATIONS ABOUT THE BILL

1. NOT LIMITED TO COMMERCIAL ISSUES

The bill does not limit arbitration to commercial issues, but comprises all issues that may be subject to transaction by the parties, much like the applicable arbitration rules contained in the Federal Code of Procedure...
for Civil and Commercial Matters. Thus, it expressly includes issues such as disputes among heirs, successors, or legatees (section 9.2.b).

2. Applies to International and Domestic Arbitrations

The first noticeable departure from the Model Law is that the bill purports to apply to both international arbitrations, provided the place of arbitration is Argentina, and domestic arbitrations.

In this regard, the bill enumerates the same circumstances chosen by the Model Law to categorize an arbitration as "international." Circumstances include the fact that the parties have, at the time of entering into the arbitration agreement, their places of business in different countries. The bill adds the situation where "one of the parties is under the control of persons domiciled outside the Argentine territory." This considerably broadens the category of "international arbitrations," because many companies incorporated under the laws of Argentina have their parent companies outside the country.

The bill would, therefore, apply to: (i) international arbitrations where the place of arbitration is Argentina; (ii) arbitrations where the subject matter would have come within the jurisdiction of federal courts failing any arbitration agreement; (iii) recognition and enforcement of arbitral awards issued outside Argentina; and (iv) domestic arbitrations where the place of arbitration is the City of Buenos Aires (subject to what has been pointed out above).

Also as in the Model Law, the parties may transform a domestic arbitration into an international one by choosing a place of arbitration outside Argentina or by expressly agreeing that the subject-matter of the arbitration relates to more than one country.

3. Provisions That Apply to All Arbitrations

Certain provisions of the bill apply to all arbitrations, irrespective of the place of arbitration. These provisions include: (i) the court’s obligation to refer the parties to arbitration if there exists an arbitration agreement and one of the parties requests arbitration, unless the arbitration agreement is void (section 8); (ii) the provisions regarding interim measures (section 17) (including the arbitrators’ ability to issue interim orders requiring a party to pay security before or after arbitration, the court’s duty to order the execution of interim measures ordered by the arbitral tribunal without analyzing the merits of the decision, unless the interim

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11. It should be noted that the categorization of an arbitration as "international" apparently has the only consequence that if a court is called upon to designate one or more arbitrators, it should "consider the convenience to appoint, as a sole or third arbitrator, an individual of a different nationality from that of the parties." (sec. 11.6).
The measure is contrary to the international *ordre publique*\(^{12}\);\(^{13}\) and (iii) provisions regarding the recognition and enforcement of arbitral awards issued outside Argentina.

The bill expressly repeals the Federal Arbitration Rules, including the provision that establishes that the *exequatur* procedure applies to awards issued outside Argentina. The latter procedure—designed mainly for foreign judgments—is replaced by more specific rules on recognition and enforcement of foreign arbitral awards based on the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), ratified by Argentina on September 28, 1988.\(^{14}\)

### C. Discussion of Departures and Innovations from the Model Law

The issues described below are those where the bill departs from provisions of the Model Law.

#### 1. General Provisions

The bill and the Model Law differ in the definition of international arbitration. The bill’s definition includes parties controlled by parties domiciled abroad (section 1.3.a). As discussed above, this broadens the scope of the definition of “international” arbitrations, given the circumstances in Argentina. Nevertheless, the rules applicable to international and domestic arbitrations under the bill being the same, the main conse-

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12. The notion of international *ordre public* is also relevant for the sections on challenge and recognition and enforcement of arbitral awards (secs. 34 & 36, respectively), and has not been defined in the bill. Although it would not be possible to provide an all-comprehensive definition of this notion, a certain guidance for courts might have been included in section 17, or alternatively, some restrictions on courts, so that no court may refuse, for instance, to assist in the execution of interim measures that are similar to those available under any procedural rules or case law applicable in Argentina.

13. It should be noted that any interim measure ordered by a court prior to the commencement of the arbitration proceedings ceases to have effect if arbitration proceedings are not commenced within thirty days after such measure has been issued. This provision is similar to a rule included in the Federal Code of Procedure with respect to interim measures requested prior to bringing a lawsuit. The intention to set a definite time-limit to interim measures is understandable, but— it is submitted— to commence arbitration proceedings within thirty days following the issuance of the order may not be feasible for valid reasons. Therefore, the standard for this provision could have been a *reasonable period of time according to the circumstances of the case*, and any allegation of lack of diligence on the part of the party who has obtained the interim measure would need to be shown by the party making such an allegation.

14. Argentina made a reservation whereby it will only apply the New York Convention to awards on *commercial* matters issued in the territory of another member state. With regard to awards issued outside any member state, Argentina will only recognize them on the basis of “reciprocity.” This requirement has been reflected in the bill. It is nevertheless submitted that reciprocity might prove to be very difficult to show if the relevant foreign country lacks any express legislation in this regard and the reciprocity has to be shown on the basis of case law, which might not exist or be contradictory, depending on the circumstances of each case.
sequence of this is that the scope of federal courts’ assistance is widened (given that most international disputes would have fallen under their jurisdiction if no arbitration agreement existed in those cases).

Unlike the Model Law, the bill sets guidelines for the intervention of the courts (section 5). This section sets a clear principle of restricted intervention of the courts in arbitration proceedings (i.e., limited to the cases provided in the bill). In its first paragraph it stresses that “the courts shall resolve the matters in which they intervene bearing in mind that it is Argentina’s law policy to promote arbitration as a means of dispute resolution. Whenever possible, the courts shall preserve the arbitration agreement.”15 The bill also determines that the motions for appointment, challenge, and removal of arbitrators, assistance in the production of evidence, enforcement of interim measures, and recognition and enforcement of awards must be filed before the courts of first instance.16 Appeals against arbitrators’ positive decisions on their own jurisdiction and applications for setting aside awards must be filed with the federal court of appeal with jurisdiction in the matter, whose decision is final.

The bill provides for two cases of intervention of third parties (section 6): (A) if a third party to the arbitration proceedings requests to take part in such proceedings, all the parties must be in agreement for such third party to be able to do so or, failing that, the arbitrators must authorize it. The arbitrators may even impose the payment of costs on a third party whose intervention was not accepted. There is no right of appeal available against the arbitrators’ refusal to grant the third party’s request to take part in the arbitration. (B) the second scenario is where either the respondent (when filing its statement of defense) or the claimant (when answering the respondent’s counterclaim) requests the intervention of a third party, the parties may agree to accept the intervention of such third party. If they do not agree, the arbitrators must resolve the issue in the form of an award if they accept such intervention. Conversely, the arbitrators’ refusal to include the third party is not subject to any formality but must be included in the following award.

The bill further establishes that the intervention of a third party will bear no consequence on the constitution of the arbitral tribunal nor will it cause the proceedings to restart.

Section 6 of the bill seems to imply that, in the alternative described under B above, the third party is not in agreement to take part in the arbitration.17 If this is the case, this provision grants the arbitrators the right to compel such third party to take part in the arbitration in the alter-

15. The Report explains that this phrasing is similar to a statement issued by the U.S. Supreme Court in order to clearly transmit reluctant courts a message of law policy that was swiftly understood in the United States.
16. Only with respect to decisions on interim measures and recognition and enforcement of awards would the parties have a right of appeal.
17. The Report does not clarify this point and only highlights the increasing significance of the participation of third parties in arbitration proceedings as compared
native described above, whenever they deem it reasonable. The third party would nevertheless have a right of appeal against such a decision of the arbitrators, given that it would be a decision on the arbitrators' jurisdiction *rationae personae*, which is subject to appeal according to section 16(3) of the bill.

The bill adopts here a specific provision of the Federal Code of Procedure for Civil and Commercial Matters that expressly allows courts to compel a third party to take part in the proceedings where certain requirements are met. In contrast with this, in ICC arbitration, if one of the parties requests the participation of a third party, the agreement of all parties, including the third party, and the arbitral tribunal itself is normally required in order for that party to be allowed to participate.

The purpose of section 6 of the bill would seem that the dispute is arbitrated among all the parties concerned, thus facilitating the arbitrators' task and saving time and costs for the parties. However, even in the cases where the third party is willing to participate, arbitrators should be very cautious when asserting their jurisdiction over a third party who is not bound by the arbitration agreement but is somehow connected to the dispute when one of the parties, especially the claimant, objects to the participation of such third party. Even if Argentine courts may accept such a decision of the arbitrators because of the local procedural rule that allows it to bring third parties to court proceedings even if one of the parties objects to it, foreign courts might find that the arbitrators lacked jurisdiction with regard to such third party and vacate the award with regard to such party.

A provision of Colombian arbitration law envisages a comparable situation. Article 30 of Decree No. 2279 (amended by Law No. 23 of 21 March 1991) establishes that:

when, due to the nature of the legal situation at issue in the arbitration, the arbitral award will have the effect of *res judicata* on persons who are not parties to the arbitration agreement, the tribunal shall summon all such persons to appear personally, so that they can join the arbitration proceedings (...). Third parties who have been summoned must expressly declare that they agree to be bound by the arbitration agreement within the next ten (10) days. If they fail to do so, the effects of the submission to arbitration or arbitration clause shall be definitively extinguished in this case, and the arbitrators shall distribute the fees and costs in the same manner as where the tribunal has decided that it does not have jurisdiction.

The arbitration would come to an end in such a case, without the original parties having had the chance to express their views on the issue.18

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18. This is highlighted by Fernando Mantilla-Serrano, who presents this as an example of assimilation of arbitration to court proceedings. See INTERNATIONAL ARBITRATION IN LATIN AMERICA 125 (Nigel Blackaby et al. eds., 2002).
An essential difference between the provision referred to above in Colombian law and section 6 of the bill is that the situation envisaged by the latter does not necessarily include the case where the award would have the effect of *res judicata* with regard to the third party in question, but both provisions adopt a solution that is closer to what is provided for court proceedings under the procedural rules in both countries than to the practice in (international) arbitration (or the contractual aspect of it).

2. Choosing Applicable Substantive Law

There is a possibility for the parties to choose the substantive law (section 28) and procedural rules (sections 7.7 and 7.8) applicable to the dispute. It should be noted that the bill expressly establishes that arbitrators must issue a decision in accordance with the substantive law chosen by the parties, but it does not order arbitrators to ignore the conflict of laws provisions of the chosen applicable law like the Model Law. The decision whether to apply such rules is therefore left to arbitrators (failing any agreement by the parties in this regard).

With regard to procedural rules, the bill expressly establishes party autonomy, but makes it subject to a sort of "procedural *ordre public*." Thus, as expressly established in section 7.8 of the bill, the parties' choice will be valid to the extent it is compatible with the principle of equal treatment of the parties, the right to present their case, and due process. This restriction entails several consequences. First, "where necessary for the applicability of the arbitration agreement," courts may amend the parties' agreement on the procedural rules, even if they have chosen institutional rules, to make it compatible with the principles referred to above (section 7.8). Second, although not expressly established in this section, arbitrators could depart from the procedure agreed upon by the parties to the extent it is not compatible with the principles referred to above, especially taking into account that such a violation is one of the grounds for having the award vacated by courts. Since section 7.8 apparently establishes the incurable nullity of any provision of the parties' agreement on the set of procedural rules to be applied that are not compatible with the principles of equal treatment of the parties, their right to present their case and due process, it might leave open to one of the parties, who origi-

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19. It is nevertheless submitted that parties, under Argentina Private International Law, would be able to choose the applicable law only in disputes arising out from international contracts. Given the broad definition of "international" arbitrations under the bill, it would be possible to submit a dispute arising from a wholly domestic contract to which Argentine law applies to an international arbitration — because, for instance, one of the parties is wholly owned or controlled by a foreign person — but this would not necessarily mean that the parties are allowed to choose the substantive applicable law.

20. *But see* section 18 of the bill, which establishes that "arbitral proceedings shall be conducted in accordance with the parties' agreement and the rules that, failing such agreement, are established by the arbitral tribunal. The parties must be treated equally and each of them must be allowed to present its case adequately, and due process must be respected."
nally agreed on such procedure, to have the award set aside, even in the cases where the parties' agreement on the procedural rules has been followed to the letter by the arbitrators. If such construction is accepted, this latter possibility considerably broadens (at least in theory) the chances for a losing party to have the award vacated by a court that understands that the original agreement on the procedural rules—or even the institutional arbitration rules chosen by the parties—is (partially or wholly) null and void for lack of respect of the due process principles. Nevertheless, this possibility should not be frequent, and this section should be taken instead as a warning to arbitrators to ensure that the arbitration proceedings comply with the principles of due process at all times in order to avoid any possibility of having the award set aside.

D. Arbitration Agreement

1. Provisions the Parties may not avoid by Contract (section 7.7)

As discussed above, section 7.7 sets a broad principle of freedom for the parties to agree on “every aspect of the arbitration, prior to or after its commencement,” in which case their agreement will prevail over the law “provided it is compatible with the equal treatment of the parties, their right to present their case and due process.” The same section clearly establishes that the parties may not contract out of: (i) the provisions establishing the scope of application of the bill (section 1); (ii) the characterization of arbitrable matters (section 9); (iii) the courts’ jurisdiction (except as permitted by the applicable procedural rules) (sections 11, 13.2, 14, 16.3, 17.2, 27, 34.3, and 36); (iv) the guarantees of equal treatment of the parties, of their right to present their case, and of due process; and (v) the provisions on challenge of awards (sections 33-36).

2. Form and Effects of the Arbitration Agreement (section 7)

a. A party’s consent to arbitration may also result from its actions or omissions (section 7.1)

The bill does not include the requirement of the Model Law that “the arbitration agreement shall be in writing” (article 7.2 of the Model Law). In a more comprehensive manner, it expressly establishes that a party’s will to submit to arbitration in any given dispute or disputes may be inferred from its own acts or omissions. This is a specific application of a similar principle applicable under Argentine contract law to establish a party’s consent to a contract (article 1145 of the Argentine Civil Code).21

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21. The Report explains that the hostility against arbitration that reigned at the time the Model Law was drafted has been eliminated. Consequently, it is now appropriate to treat the arbitration agreement as any other agreement, as established in the U.S. Federal Arbitration Act (sec. 2). Thus, estoppel and other rules and theories applicable to contracts in general would also be applicable to the arbitration agreement. With respect to the parties’ consent, under articles 1145 and 1146 of the Argentine Civil Code, consent may be implicit and may result from “facts, or facts presuming it or leading to presume it, except in the cases where an express
b. E-mail messages (sections 7.2 and 7.3)

Under article 1147 of the Argentine Civil Code, consent of the parties where they are not both at the same place may be expressed through agents or by letter. Consistent with such general legislation and more specific legislation on digital signature currently applicable in Argentina, section 7.2 of the bill includes the exchange of e-mail messages in the definition of "written form" and sets the basic requirements for this in section 7.3. The information of the message must be accessible for later verification, and a technically reliable method must be used to identify the author of the document in order to show that he has approved the information included in the data message and to ensure it cannot be altered. This rule would nevertheless apply in the event there is no evidence of the arbitration agreement under the remaining provisions in section 7.

c. Basic written evidence (section 7.5)

In order to show the existence of the arbitration agreement, it is sufficient to establish the existence of "basic written evidence." The bill establishes that the existence of an arbitration agreement may be shown by any means of proof, provided there exists at least what is called in the Argentine Civil Code "basic written evidence," yet another concept extracted from the general contract law in force in Argentina (in fact, section 7.5 of the bill expressly refers to general contract law for the construction and evidence of the arbitration agreement).

Article 1192 of the Argentine Civil Code defines "basic written evidence" as "any public or private document emanating from the opposing party, its predecessor or any party concerned in the matter, or who would be concerned if alive, and that renders the disputed fact credible." The wide scope of this definition is evident, since the criterion of "credibility" is highly subjective and therefore will be left to the arbitrators' judgment.

Consequently, provided there is basic evidence of the arbitration agreement, the existence of such an agreement might also be shown by witness evidence.23
Also, where the arbitration agreement refers to institutional or ad hoc arbitration rules, such rules together with the decisions taken by arbitration institutions are incorporated by reference to the arbitration agreement (section 7.4).

d. Arbitrable matters

The bill maintains a wide definition of "arbitrable matters" (section 9). The bill expressly establishes that all matters related to any right of which a party may freely dispose, whether or not such right is contractual, commercial, or disputed, and whether or not the dispute is an existing one or might take place in the future may be subject to arbitration. Although the scope of this provision may not be considered wider than that of the provision currently in force under the Federal Arbitration Rules, it nevertheless eliminates certain previous doubts as to the actual extent of the latter.

Section 9.2 further specifies which matters are among those that may be submitted for arbitration. These include controversies between any type of legal entity and its members and those among the members themselves that are related to the agreements, resolutions, or shareholders' meetings, or to the activities or purposes of the entity itself. The only exceptions are stock companies whose stock is listed in a stock exchange market. All other companies may include the arbitration agreement in their by-laws. Additionally, this section includes controversies among heirs, successors, or legatees, where arbitration has been chosen as a means of dispute resolution by the predecessor.

E. ARBITRAL TRIBUNAL

Failing agreement by the parties on the number of arbitrators, a sole arbitrator will be appointed (section 10). Except for arbitrations "ex aequo et bono," the arbitrators must be practicing lawyers (section 11.1,

24. Articles 736 and 737 establish that all controversies between parties may be submitted to arbitration, except for those that may not be freely settled or compromised by parties (i.e., matters where public policy is involved, such as those concerning the pursuit of criminal lawsuits, issues on family status, rights with respect to which parties may not enter into any contract, which includes items that may not be traded, or actions that are impossible, illegal, or contrary to bonos mores or to freedom of conscience, or that are prejudicial for a third party; certain aspects of company law, antitrust, among others). Argentine law further contains specific provisions for arbitration in case of bankruptcy proceedings, labor, and consumer disputes.

25. The Report stresses that these controversies were already arbitrable under the original Code of Commerce (the section on companies has been later replaced with a separate statute on companies that did not provide for arbitration: Law 19,550). Also, it should be noted that the Argentine Companies House has already expressly accepted the inclusion of arbitration clauses in the articles of association of limited liability companies, and also of stock companies that are subject to its control, as well as in the agreements for cooperation between companies (joint ventures) (General Resolution No. 4-2001, dated May 22, 2001).

26. The Model Law establishes that three arbitrators shall be appointed (art. 10.2).
as amended by the Commission of Justice of the House of Representatives).

According to the Report prepared by the drafting committee (hereinafter the “Report”), the convenience of requiring that the parties be represented by lawyers or that one or more arbitrators are lawyers was discussed when drafting the bill. The drafting committee believed it was not necessary to impose on the parties the requirement of being represented by lawyers, because in practice this is what parties generally choose in order to obtain better results in the arbitration. In those cases where they do not need to be represented by lawyers because the dispute depends almost exclusively on technical issues, as opposed to legal ones, there is no argument for the requirement of representation by a lawyer. The same would apply to the selection of arbitrators.

The Senate, however, introduced both requirements mentioned above, allegedly under pressure of legal practitioners. The requirement—in its current version—that the sole arbitrator or all the members of the arbitral tribunal be practicing lawyers is not favorable for arbitration and has not been adopted by the major arbitration laws. First, it must be borne in mind that the bill would apply to both domestic and international arbitrations. In an international arbitration where the place of arbitration is Argentina, could a party validly object to the appointment of a person who is a lawyer in a foreign jurisdiction as sole arbitrator, co-arbitrator or chairman of the arbitral tribunal by arguing that such person may not practice as a lawyer in Argentina? Although the bill has not specified that arbitrators must be licensed to practice in Argentina, the scope of the requirement might lead to confusion and unnecessary delays. Second, the parties may contract around this requirement by agreeing to appoint an arbitrator who is not a lawyer. It is uncertain in such a case whether an express agreement of both parties is required, or whether a simple lack of objection from any of the parties would suffice. Some suggest, therefore, that both the requirement of the qualification as lawyer for arbitrators and that of the representation by legal counsel should be eliminated or at least circumscribed to domestic arbitration.

No arbitrator may act as such in “related” arbitration proceedings unless the arbitral tribunal is constituted with the same members in all related arbitrations (section 11.10). The bill establishes that in “related” arbitration proceedings, “no person may be designated or act as arbitrator, unless all the arbitrators acting in such proceedings are the same or they are all different.” The criteria to establish whether two or more arbitration proceedings are “related” is whether the proceedings followed, the evidence submitted, the allegations made, or the decisions or awards issued in one of the arbitrations “may have an effect on the others.” An arbitrator may be successfully challenged by a party if he has accepted appointments in two or more related arbitrations where the arbitral tribunals are not formed by the same members.
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The Report explains that the objective of this provision is to ensure equal treatment of the arbitrators and of all the parties in separate and formally independent arbitrations among which "there exists nevertheless a connection."

The question of whether an arbitrator who acts as such in related arbitrations would be in a privileged position with regard to the other members of the arbitral tribunal or may be prejudiced as a result of his previous access to information on a party or on a particular dispute has been discussed by international arbitration scholars. It certainly is not a straightforward question, but rather a very subjective one that should be treated on a case-by-case basis.

By adopting a radical, but seemingly valid approach, the bill purports to avoid any possibility of privilege or prejudice. Nevertheless, taking into account that under the bill an arbitrator may be successfully challenged if he happens to act as such in related arbitrations where the arbitral tribunals are not identical, it is submitted that the criteria to establish under what circumstances two or more arbitration proceedings may be considered "related" should be described in more precise or objective terms. Indeed, to establish whether the proceedings, the evidence, or decisions in one arbitration may "affect" or "influence" those of another arbitration may not be self-evident in all cases, especially in those cases where disputes arising from agreements that are somehow related are submitted to arbitration among different parties. To adopt such an ample definition of "related arbitrations" undermines legal security, since different courts (who ultimately will have to decide on the challenge of an arbitrator) may apply different standards as to what may be an effect or "influence" of one arbitration on another one.

It should be noted that parties may contract out of this provision. However, in a case where the relation between two arbitrations is not apparent or is not necessarily known to all parties in both arbitrations, a party might be able to successfully challenge an arbitrator acting in both such arbitrations practically at any time during the proceedings, by arguing that it has just become aware of the relationship between the two arbitrations.

Also, it is not clear whether the related arbitrations must take place at the same time, or may be consecutive in order to come under the definition of "related" arbitrations. If consecutive arbitrations are comprised under the definition, must the conclusion of one of the arbitrations be close in time to the commencement of the other one, or are arbitrations that are far from each other in terms of time also comprised in the definition? An all-comprehensive rule is extremely difficult to establish; therefore, objective parameters such as coincidence in one or more parties or in the subject-matter (i.e., same legal relationship or same operation) could have been used as parameters to establish whether one or more arbitrations are "related," making it expressly independent of the time when they take place.
Arbitrators are liable for damages derived from non-fulfillment or bad performance of their duties (section 11.8). The Federal Arbitration Rules contain similar provisions, in line with legislation with Latin roots. Apart from this, arbitrators may be criminally liable if, in an arbitration according to law, they issue decisions that are contrary to the law as cited by them or by the parties, or (even in arbitrations ex aequo et bono) base their decisions on false facts, purposefully in all cases.

Arbitrators' fees are fixed by agreement among the parties and all the members of the arbitral tribunal, and failing agreement, by courts (section 11.7). While arbitration laws in most Latin American countries and Spain leave it to the arbitral tribunal itself to fix its own fees, the solution proposed by the bill appears to be more logical and in tune with a contractual notion of the arbitration.

F. PROCEDURAL RULES

1. The unification of two or more arbitral proceedings may be carried out provided that all parties consent (section 11.11). A reference to the notion of due process is introduced as an autonomous concept in provisions concerning the conduct of the proceedings (sections 7.7, 18, 34.3.b, and 36.2.a)

The bill refers to "right to a due process" among the provisions from which parties are not allowed to contract out. Accordingly, arbitrators must guarantee that due process is respected during the conduct of the proceedings. Finally, arbitral awards may be set aside or their recognition and/or enforcement may be refused if due process has not been followed during the arbitral proceedings. Therefore, the due process notion appears to have a significance of its own within the bill, since it is always referred to after the requirements of "equal treatment to the parties" and "each party's right to present its case," both used in the Model Law. It could, therefore, be assumed that the notion of due process comprises further conditions or features apart from the two other notions mentioned immediately before. Nevertheless, no definition (even a non-comprehensive or illustrative one) is provided in the provisions of the bill.

Since the violation of due process may result in setting aside of the award or the refusal to recognize or enforce it, the bill should have included at least some guidelines as to the contents of such a notion (apart
from the two requirements mentioned above), at the risk of leading to contradictory decisions on matters of such a high significance for the practice of arbitration.

2. **Failure to send the other party copies of the communications exchanged between one party and the arbitrators constitutes grounds for challenge of the arbitrators (section 24.3)**

   Arbitrators may be penalized not only for failure to copy all the other parties in their communications with one of the parties, but also for failure to send a copy to the other parties of any communications they may receive from one of the parties. The need for transparency in arbitration justifies this provision. However, to penalize arbitrators for a party's negligence in sending a copy to the other party or parties of its own communications with the arbitrators appears to be excessive.

3. **Specific provisions are set forth with respect to documentary evidence and experts appointed by the arbitrators (section 26)**

   The bill expressly establishes arbitrators' powers to order a party to identify and/or produce documentary evidence, and also to draw conclusions from the party's reluctance to do so. With respect to the appointment of experts by arbitrators, in addition to the party-appointed experts, the bill imposes on arbitrators the obligation to follow a procedure of consultation to the parties and grants the parties the right to jointly appoint an expert and agree on his fees with him. All of these provisions take into account the need to avoid excessive costs and abuse of power by arbitrators, who may be delegating their duty to solve the dispute to the experts.\(^{31}\) In addition, under section 27, the courts may assist arbitrators in the implementation of interim measures. However, courts assisting arbitrators are expressly prevented from examining the merits of the interim orders that are issued by the arbitrators.

**G. Award and Conclusion of the Proceedings**

1. **No guidelines as to the law applicable to the merits of the dispute (section 28)**

   The bill contains no conflict of laws rules providing any indication to the arbitrators as far as choice of law is concerned,\(^{32}\) except for the arbitrators' obligation to apply the law chosen by the parties to solve the

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32. Compare with the Spanish arbitration law, which contains a whole section of conflict of laws rules establishing the law applicable to matters such as the parties' capacity to enter into an arbitration agreement, the validity of the arbitration agreement, and also determining that arbitrators must apply the law chosen by the parties, or failing an agreement, the law applicable to the contract, or failing this, the most appropriate law with regard to the circumstances of the dispute (secs. 60-63, Law No. 36, Dec. 5, 1988).
dispute. Failing any such agreement, the arbitrator has the right to apply the law he deems most appropriate (both included in the Model Law). However, unlike the Model Law, the bill does not expressly eliminate renvoi, i.e., the possibility to apply the conflict of laws rules of the law chosen by the parties and thus be referred to a third law that would be applicable (or to yet another law, by application of the conflict of laws rules of the latter law). Also unlike the Model Law, failing any choice-of-law clause, the bill does not expect arbitrators to determine the applicable law by referring to the conflict of laws rules the arbitrators consider applicable. The only guidance for arbitrators is that they should base their decision on the provisions of the contract entered into between the parties and must take into account the usages (not only "trade usages," as specified in the Model Law) that may apply.

2. The third arbitrator or chairman of the arbitral tribunal may issue decisions on his own—including the award—in the event majority is not attained (section 29)

It should be noted that both the Model Law and the bill leave the choice on the number of arbitrators to the parties. They differ only in the consequence each assigns to the absence of agreement by the parties on this issue. While the Model Law provides in such case for a three-member arbitral tribunal, the bill establishes that a sole arbitrator will conduct the arbitration.

The bill further establishes that, if no majority can be attained, the third arbitrator or the chairman of the arbitral tribunal will be able to issue the particular decision (which also includes the award) on his or her own. The Report of the drafting committee explains that the objective of this provision is to avoid situations where the "third arbitrator," who considers his coarbitrators to be biased, feels compelled to align his decision with one of them, "which seldom favors the quality of the award." The bill departs here from the Model Law, which gives the power to the presiding arbitrator to decide on his own only "questions of procedure, if so authorized by the parties or all the members of the arbitral tribunal" and adopts a similar solution to the one established in article 25(1) of the ICC arbitration rules.

Colombian arbitration law contains a similar provision whereby "failing majority consent, the opinion of the Chairman of the tribunal shall prevail." Peruvian arbitration law establishes that "in the case of a tie the Chairman shall have a casting vote" and "if there is no majority vote,

33. It should be noted that under the Model Law and the bill it is possible – although unusual and not advisable – for parties to agree on an even number of arbitrators (i.e., two or four, for example). But clearly, if such is the case, one of them must chair the arbitral tribunal for the provision granting the presiding arbitrator the power to issue decisions on his own to have any effect.

34. Para. 44, Report of the drafting committee.

35. Art. 24, Law No. 9307, Sept. 23, 1996 (as quoted in INTERNATIONAL ARBITRATION IN LATIN AMERICA, supra note 18).
the Chairman shall decide." 36 This may be a real solution for cases where arbitrators are unable to reach an agreement, but it also grants an ample power to the presiding arbitrator, which he should not abuse.

As to dissenting opinions, the bill does not indicate whether they, both in majority awards and awards issued solely by the presiding arbitrator, should be or may be communicated to the parties. Nevertheless, this should normally be the case.

3. The Right to Challenge the Award

The parties’ right to challenge the award before the courts is restricted (sections 33 and 34). While the Model Law distinguishes the application for correction or interpretation of the award that is made to the arbitral tribunal from the application for setting aside the award, which is recourse to the court against the award, the bill seems to establish a sort of “double instance” challenge. The first instance would be the arbitral tribunal itself, since the bill expressly establishes that upon notification of the award 37 a party may request the arbitral tribunal not only to correct any “error in computation, clerical or typographical,” but also to “decide any claim included in the proceedings but not dealt with in the award” or “remedy any defect that, if verified, could entail the setting aside of the award.” It is only by filing this latter request with the arbitral tribunal (a sort of first instance) that the party willing to challenge the award is allowed afterwards to do so before a court (second instance). 38

Thus, the bill significantly restricts parties’ right to challenge the award by establishing a short time-limit for the parties to request the arbitrators to correct any defect in the substance of the award, and by further making the recourse to the courts dependent on such previous procedure before the arbitral tribunal. It also gives the arbitrators the ability to amend their award if the party’s allegations are justified. While the attempt to restrict the parties’ right to challenge the award is comprehensible, it should also be borne in mind that the parties keep their right to oppose to the recognition or enforcement of the award on the same grounds used for the challenge (in any case this is true with respect to the courts of the New York Convention member states).

On the other hand, as pointed out above, the notion of “violation of the due process,” if established as a separate ground for setting aside the award, might lead to an expansion of the parties’ right to challenge the

36. Art. 119, last paragraph, General arbitration law No. 26572, in force since Jan. 6, 1996 (as quoted in INTERNATIONAL ARBITRATION IN LATIN AMERICA, supra note 18).

37. The time-limit to file this application is ten consecutive days following reception of the award by a party, failing a time-limit agreed upon by the parties, or established by the arbitral tribunal (the time-limit set for this in the Model Law is thirty consecutive days – art. 33).

38. It should also be noted that the court with jurisdiction to decide on the challenge is the court of appeal with jurisdiction in the matter.
award, especially given that no guidelines for the construction of such notion are provided in the bill.

The bill also specifies in section 34.2, that arbitrators’ errors when establishing the facts or applying the law may be subject only to judicial revision if they constitute grounds for setting aside the award.39

Finally, the bill sets specific procedural guidelines for the challenge, but does not specify whether the application for setting aside the award has the effect of suspending the enforcement of the award pending a decision in this regard.40

4. Categories of Awards

Different recognition and enforcement procedures are set out for different categories of awards (sections 35 and 36). The bill establishes that awards rendered in Argentina are recognized and/or enforced pursuant to the provisions of the applicable procedural rules (at the federal or the provincial level).41 Awards rendered abroad in the territory of a State that is a member of any international treaty ratified by Argentina will be enforced in accordance with the provisions of the particular treaty.42 Finally, the remaining awards rendered abroad will be recognized and/or enforced on the condition of “reciprocity” on the part of the State or States where the winning party or parties are domiciled. This reflects the reservation made by Argentina when ratifying the New York Convention, and is funded in the consideration that a party who is domiciled or has assets in Argentina, where foreign arbitral awards are easily enforceable, will not be on an equal level with respect to a party who is domiciled in a country where the former party may not enforce (or may have to face significant obstacles when trying to enforce) a favorable arbitral award.43 The reciprocity might nevertheless prove to be hard to show with respect to countries where there is no specific provision applicable in this regard.

39. Grounds for the annulment of awards are listed in section 34.3 and correspond exactly to the list included in the Model Law, except for the addition of the separate notion of “violation of due process.”
40. But, since section 36.3 of the bill establishes that a court being requested to recognize or enforce the award “may” (but not “must”) postpone its decision pending a decision of a court of the place of arbitration before which an application for setting aside the award has been filed, it can be concluded that the latter application does not suspend the enforcement of the award by itself.
41. At the federal level, arbitral awards are equated to judgments as far as the enforcement procedure is concerned (art. 490 of the Federal Code of Procedure for Civil and Commercial matters). The codes of procedure of the major provinces in Argentina contain similar provisions, with slight variations in terms of the steps to be taken for the enforcement of arbitral awards.
Also, where there are several persons (for example, co-claimants) with domiciles in different countries who request the enforcement of an award in their favor, should reciprocity be analyzed with regard to each party separately or by looking at the legislation of all countries involved as a whole? In any case, parties may avoid this restriction by choosing the place of arbitration in a country that has ratified a convention applicable in Argentina (such as the New York Convention). With respect to this latter category of awards, it should be noted that the violation of due process has been added as grounds for refusing recognition or enforcement.44

Finally, the bill has set a three-year time-limit for the parties to request the recognition and/or enforcement of arbitral awards in section 36.3. It is not clear whether such time-limit applies to all awards (i.e., those rendered in Argentina and abroad), but since no distinction is made, it can be concluded that it effectively applies to all arbitral awards. With regard to recognition of awards, no time-limit should have been imposed on the parties to request such recognition, since no apparent damage may result from the delay of a party to request such recognition. Parties should be allowed to request recognition at their convenience, in order to avoid depriving the award from its effect.

As far as enforcement of awards is concerned, it may be acceptable, for the sake of legal security of the losing party, to penalize the party who postpones the request for enforcement without any reason. However, the time-limit to file the request for enforcement should start to run from the date when any obligation imposed on the losing party has become due, instead of running from the notification of the award, as established in the bill.45 Finally, it should also be noted that the application of this time-limit to awards rendered in a member state of the New York Convention (and other international treaties, such as the Inter-American Convention on International Commercial Arbitration, Panama, 1975, which Argentina has also ratified) may be in violation of such treaty, since it would mean that an additional ground (a time bar) for refusing to recognize or enforce an award is being applied.

H. Arbitral Expertise

Finally, the bill states that legal references to an “arbitral expertise” should be construed as referring to ex aequo et bono arbitration (section 37). The Federal Arbitration Rules refer to this procedure (article 773) and also apply to it the rules on ex aequo et bono arbitration. Under the bill, disputes that call for arbitrators with specific expertise are necessarily ex aequo et bono, given the requirement included in section 11.1 that the

44. The observations made above with regard to the challenge of the award apply also here.
45. This time-limit is not established in the current rules applicable to the recognition and enforcement of arbitral awards in the federal arbitration rules.
sole arbitrator or the members of the arbitral tribunal be practising lawyers.

I. Consequences of the Enactment of the Bill

The enactment of the bill by the Argentine Federal Congress would entail the following consequences, among others:

- The archaic institution of the "separate arbitration agreement" or "compromiso" would be eliminated;
- The arbitration clause would be considered autonomous with respect to the contract containing it and arbitrators would be able to decide on their own jurisdiction. These conceptions are not expressly established under the Federal Arbitration Rules;46
- The parties would be expressly allowed to agree on the procedural rules they deem most suitable, failing which arbitrators would establish them (whereas the Federal Arbitration Rules establish that in absence of agreement by the parties, the arbitrators must apply the same procedural rules as those applicable to judicial proceedings);
- Arbitrators would only be able to decide *ex aequo et bono* if the parties expressly authorize them to do so (whereas the Federal Arbitration Rules establish that, failing any express indication in the arbitration agreement as to whether the arbitrators should decide based on the law or based on considerations of justice ("equity"), the arbitrators must act as *amiables compositeurs*);
- Arbitrators would be clearly able to issue orders for interim measures, which the Federal Arbitration Rules seem to forbid by establishing that "the arbitrators may not issue compulsory or enforcement orders. They must request them to a judge and the latter must provide his jurisdictional assistance for the fastest and most efficient development of the arbitration proceedings."47 This provision has been construed as a prohibition for arbitrators to issue interim measures. A different view holds that the prohibition is for arbitrators to enforce any order, for which national courts have exclusive jurisdiction, but not a prohibition for arbitrators to decide on whether interim measures should be issued, taking into account that they are the only ones with jurisdiction to solve the dispute submitted to arbitration;48
- Neither appeal nor any other recourse against arbitral awards would exist, apart from the possibility to challenge them on grounds similar to those listed in article V of the New York Convention on recognition and enforcement of foreign arbitral awards. The Federal Arbitration Rules establish that the parties are free to

46. After citing case law on the subject, Caivano concludes that "case law has oscillated between wholly accepting the principle of autonomy of the arbitration agreement, and restricting the arbitrators' jurisdiction to the result of a previous court judgment establishing whether the arbitration agreement and the agreement containing it are valid." Caivano, *supra* note 3, at 165-66.
47. Section 753, Federal Code of Procedure for Civil and Commercial Matters.
present all recourses against the arbitral award, unless they have expressly waived their right to do so.

IV. CHARACTERISTICS OF THE ARBITRATION PRACTICE IN ARGENTINA

A. INCREASING POPULARITY OF ARBITRATION

International arbitration is increasingly proving a valid means of dispute resolution for controversies arising from international (and domestic) agreements. With regard to arbitration under the rules of the International Court of Arbitration of the International Chamber of Commerce (ICC), the number of parties in ICC arbitrations of Argentine nationality rose dramatically in 2002, amounting to 23 percent of all Latin American parties, second only to Mexico in the Latin American and Caribbean region and positioning within the first thirteen most common nationalities for parties.

The number of Argentine parties has risen from five in 1993 to thirty in 2002. While only two arbitrations took place in Argentina in 1993, in 2002 the number rose to six (although all cases were a result of the parties choosing a city in Argentina as place of arbitration, as opposed to the ICC court fixing it). Finally, while in 1993, only four arbitrators were Argentinean in ICC arbitration, last year nineteen Argentine arbitrators were appointed (which has positioned Argentina to eleventh in 2002, when considering arbitrators' nationalities).

Argentina has ratified several treaties on arbitration and recognition and enforcement of arbitral awards, inter alia, the New York and Panama Conventions, the Montevideo Treaties on International Procedural Law (1889 and 1940), the Inter-American Convention on the Extraterritorial Effect of Foreign Arbitral Decisions (Montevideo, 1979), and the Protocol on Jurisdictional Cooperation and Assistance on Civil, Commercial and Labor Matters (known as “Las Leñas Protocol,” 1992).

Argentina has also entered into numerous “Bilateral Investment Treaties” providing for arbitration under the rules of the International Center for the Settlement of Investment Disputes (ICSID). At present, there are approximately thirty cases of claims from foreign investors against Argentina pending before ICSID panels. Several disputes have originated or are likely to stem from the emergency legislation enacted by the Argentine Congress in January 2002, which devalued the Argentine cur-


50. Argentine parties amount to 1.85 percent of the total number of parties in cases registered in 2002 (ICC International Court of Arbitration Bulletin cited above). It should be noted that the first twelve countries are mostly the United States, Western European countries, Turkey, and Mexico (the latter provided 2.10 percent of the total number of parties in 2002).

rency, abolished all kind of indexation in contracts entered into by the public administration and subject to public law, including contracts for works and public services, and converted the prices and rates resulting from such indexation clauses to Argentine Pesos at a one to one exchange rate with the U.S. Dollar.\footnote{2}

In view of the increasing number of claims for violation of the guaranteed protection to foreign investment, the Argentine Government has recently created the “Federal Council for Amicable Negotiations” within the organism in charge of the defense of the state, which forms part of the executive branch.\footnote{3} This Council is formed by several ministries of the federal government (and according to the case, also of provincial governments) and the general counsel of the state and, together with the Unit for Amicable Negotiations, will participate and promote negotiations with foreign investors submitting claims. This is in order to fulfill the previous negotiation period established under many investment protection treaties.

Concerning the emergency legislation mentioned above, an interesting development for the subject of arbitration is the question whether arbitrators, in international or domestic arbitrations, have the power to examine whether certain legislation is compatible with the Argentine Federal Constitution.\footnote{4} The arguments in favor of this are: (i) the Federal Arbitration Rules do not prohibit arbitrators to do so, and (ii) the Argentine Supreme Court has recognized the judicial nature of the arbitrators’ task\footnote{5} and has stated that the mere fact that the compatibility of certain legislation with the Federal Constitution is discussed would not be enough grounds to take the dispute off the arbitral tribunal.\footnote{6} Therefore, arbitrators would have jurisdiction to declare that a particular statute is unconstitutional, provided such declaration is not the main objective of the claim. This is resisted by those who believe that the Argentine legal system has assigned the task of examining whether legislation is constitutional exclusively to national courts.

The Arbitral Tribunal of the Buenos Aires Stock Exchange has recently pronounced itself in favor of the possibility that an arbitral tribunal may declare that a given statute is unconstitutional, for the reasons stated above, and also based on the fact that by submitting to arbitration the parties to a contract waive their right to have their disputes heard by national courts and expressly designate an arbitral tribunal to hear their disputes.\footnote{7}

\begin{itemize}
  \item \footnote{2} Art. 8, Law No. 25,561. The executive branch was granted the power to renegotiate the contracts referred to in such provision.
  \item \footnote{4} This issue has arisen in certain ICC arbitrations, but it is still too early to predict the general attitude of arbitrators in this regard.
  \item \footnote{5} “Fallos” (Collection of Supreme Court judgments), Vol. 322, 1100.
  \item \footnote{6} “Fallos” (Collection of Supreme Court judgments), Vol. 173, 221.
  \item \footnote{7} Arbitration No. 51601, CIE R F SA vs. Grinbank, Daniel E. (El Derecho, Aug. 13, 2002).
\end{itemize}
NOTES ON ARBITRATION IN ARGENTINA

B. Domestic Arbitration

Several arbitration centers function in the domestic domain in Argentina:

1. The permanent Arbitral Tribunal of the Buenos Aires Stock Exchange is a prestigious arbitration panel created in 1963 to deal with disputes arising out of several types of contracts. Its arbitration rules are nevertheless quite similar to those regulating traditional litigation before the courts in Argentina.

2. The Argentine Chamber of Commerce also has a permanent arbitral tribunal and its own arbitration rules. This organism has launched a national network of commercial arbitration and mediation centers in cooperation with the Inter-American Development Bank and the Multilateral Investment Fund aimed at the formation of arbitrators and mediators and the promotion of arbitration and mediation centers throughout the country.

3. The Arbitration Chamber of the Cereals Exchange, founded in 1905 by a group of associates from the cereal sector of the Buenos Aires Stock Exchange, solves disputes arising from the trade of cereals through *ex aequo et bono* arbitrations.

C. Courts' Attitudes with Respect to Arbitration

In the past years, Argentine courts have increasingly shown a favorable attitude toward arbitration (with the Argentine Supreme Court historically heading this trend by refusing to revise arbitral decisions in several cases) in accordance with the parties' will to submit their disputes to arbitration and the resulting waiver of their right of recourse to national courts and by asserting the jurisdictional nature of the arbitrators' activities.

Some courts with jurisdiction in commercial matters seem to have understood the purpose of arbitration, and the limits to their own powers when deciding on the challenge against an arbitral award. In a recent decision, the Federal Court of Appeal in Commercial matters (Branch D) found that the substance of arbitral awards may be revised by courts only when an appeal against a particular award has been filed, but not in case of challenge of the award. In this latter case, the court may only control that certain requirements considered essential by law have been complied with in order to guarantee the administration of justice.


59. See id.

V. CONCLUSION

Current arbitration law in Argentina does not favor the development of these means of dispute resolution in that country. The bill is, therefore, a positive initiative that should be pursued, despite the ambiguity or potential risk of some of its provisions. Both judges and practitioners in Argentina should be better informed about the nature and purpose of arbitration, in order to achieve knowledge that would allow arbitration to develop and prevent incorrect application of arbitration rules. Argentine courts generally seem to grasp the significance of the parties’ will to submit their disputes to arbitration, and some domestic arbitration bodies have managed to implement relatively successful arbitration alternatives. It is to be expected that the enactment of the bill or of any similar legislation could only improve such understanding and settle the bases for a significant development of arbitration in Argentina.
NOTES ON ARBITRATION IN ARGENTINA

UNOFFICIAL TRANSLATION OF
THE "FEDERAL BILL ON ARBITRATION"
AS APPROVED BY THE SENATE OF THE
ARGENTINE FEDERAL CONGRESS
ON NOVEMBER 28, 2002

Translated by Maria Beatriz Burghetto

*NOTE : The sections that appear in bold represent the main innovations from the 1985 UNCITRAL Model. Law.

CHAPTER I - GENERAL PROVISIONS
Scope of Application

Article 1

1. This law applies to:

   a) International arbitrations where the place of arbitration is within the Argentine territory. The provisions in articles 8, 17, and 36 of this law shall also apply where the place of arbitration is located abroad;

   b) Arbitrations conducted within the Argentine territory, where the subject-matter would have been adjudicated by a federal court had no arbitration agreement existed;

   c) Disputes that would have been adjudicated by non-federal courts of the City of Buenos Aires had no arbitration agreement existed;

   d) The recognition and enforcement of awards issued abroad.

2. This law shall be applied by federal or state courts, pursuant to the rules of jurisdiction over objects and persons, in accordance with the provisions set forth in article 75, paragraph 12 of the Federal Constitution and the legislation enacted thereunder.

3. An arbitration is international if:

   a) The parties to an arbitration agreement have, at the time of the conclusion of that agreement, their domiciles or places of business in different states, or one of the parties is controlled by persons domiciled outside Argentine territory; or

   b) One of the following places is situated outside the state in which the parties have their domiciles or places of business:

      I. The place of arbitration if determined in, or pursuant to, the arbitration agreement;

      II. The place where a substantial part of its obligations of the relationship is to be performed;

      III. The place with which the subject-matter of the dispute is most closely connected; or
c) The parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one state.

4. For the purposes of paragraph 3 of this article:
   a) If a party has more than one place of business or domicile, the place of business or domicile is that which has the closest relationship to the arbitration agreement;
   b) If a party does not have a place of business or domicile, reference is to be made to its habitual residence.

5. This law shall not affect any other federal or state law by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this law.

Definitions and Rules of Interpretation

Article 2
For the purposes of this law:
   a) “Arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
   b) “Arbitral Tribunal” or “Tribunal” means a tribunal formed by one or more arbitrators;
   c) “Court” means a judge or tribunal of the judicial system of any jurisdiction;
   d) “Competent court” means the judge or judicial tribunal established in paragraphs 3 and 4 of article 5 of this law;
   e) Where a provision of this law, except for paragraph a of article 25 and sub-paragraph a of paragraph 2 of article 32, refers to an action, claim or request, it shall apply also to a counterclaim, and where it refers to an answer, it shall also apply to the answer to such counterclaim;
   f) Where a provision in this law, except for paragraph 1 of article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

Receipt of Written Communications

Article 3
Unless otherwise agreed by the parties:
   a) Any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address. If none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the
addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of the attempt to deliver it.

b) The communication is deemed to have been received on the day it is so delivered.

The provisions of this article do not apply to communications in court proceedings.

**Waiver of Right to Object**

**Article 4** —

A party who knows that any provision of this law or any other law it considers applicable, or the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating its objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived its right to object and to have consented the non-compliance.

**Extent of Court Intervention**

**Article 5**

1. In matters governed by this law, no court shall intervene except where so provided in this law. The court shall resolve the matters in which it intervenes in relation to this law bearing in mind that it is the state’s law policy to promote arbitration as a means of dispute resolution. Wherever possible, courts shall preserve the arbitration agreement.

2. The intervention of a court shall not suspend the arbitral proceedings, unless the court issues an order resolving otherwise and providing reasons therefor.

3. In arbitrations falling within the jurisdiction of federal courts, there shall intervene:

   a) A federal court of first instance in the cases of articles 11, 13(2), 14, 17(2), 27, and 36. There shall be no recourse of appeal against decisions made pursuant to articles 11, 13, 14, and 27.

   b) The Federal Court of Appeal, acting as a court of sole instance, in the cases of article 16(3) and 34(3);

4. If a local court has jurisdiction, the competent court shall be determined in accordance with the applicable local law.

**Joinder of Third Parties**

**Article 6**

1. Any of the respondents in its statement of defenses, or any of the claimants in its answer to the counterclaim, may request the joinder of a third party to the arbitration.
2. A third party's application to join the arbitral proceedings is subject to the consent of all the parties or, failing that, to the Arbitral Tribunal's approval.

3. Disputes concerning the joinder of third parties shall be solved by the Arbitral Tribunal. A decision of the Tribunal accepting the joinder must be in the form of an award; a decision rejecting the joinder is not subject to any formality, but shall be included in the first award issued by the Tribunal, which may order the third party whose joinder was not accepted to bear the costs. There shall be no recourse against a decision rejecting the joinder requested by a third party. The joinder of a third party once the Arbitral Tribunal has been constituted shall have no effect on the constitution of the Tribunal nor shall it reverse the arbitral proceedings.

CHAPTER II
ARBITRATION AGREEMENT
Definition and Form of Arbitration Agreement

Article 7

1. "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The will of a party to submit to arbitration certain controversies may result also from acts or omissions from which it can be inferred that such party has wished or consented that said controversies be submitted to arbitration.

2. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, e-mails, telegrams, or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense or other submission in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the reference is such as to make that clause part of the contract.

3. Where an exchange of communications takes place by electronic means, the arbitration agreement shall be deemed to have been concluded if the information of the data message can be accessed for later consultation and a technically reliable method is used to identify the author of the document, to show that such person approves the information contained in the data message, and to ensure the impossibility to modify it. These requirements only apply if no evidence of the arbitration agreement existed under other provisions of this article.
4. When the agreement of the parties refers to an arbitral institution or to arbitration rules, all provisions of the rules and all decisions of the arbitral institution shall be deemed to form part of the parties' agreement.

5. The existence of an arbitration agreement may be shown by any means, provided there is *prima facie* written evidence thereof. Arbitration agreements shall not be construed restrictively and shall be subject to the rules applicable to contracts in general.

6. The arbitration agreement is independent of the contract in which it has been inserted or to which it refers and shall survive the annulment or termination for any reason of the contract or transaction.

7. The parties may agree on any aspect of the arbitration, before or after the arbitral proceedings have started. The agreement shall prevail over the provisions hereof, provided that the agreement is compatible with the parties' right to equal treatment, to present their cases and to a due process. The parties may not contract out of the provisions concerning the scope of application or the validity of this statute, non-arbitrability of certain disputes, the courts' jurisdiction (except as permitted by applicable procedural laws), the parties' right to equal treatment, to present their cases, and to a due process, or articles 33, 34, 35, and 36 hereof.

8. The provisions contained in the arbitration agreement or in the rules selected by the parties in the arbitration agreement, or the decisions of the arbitration institution chosen by the parties that are null and void or not compatible with the principles established in the previous paragraph, shall not apply. Where necessary for the effectiveness of the arbitration agreement, the competent court shall complete the arbitration agreement with the principles that reflect the presumed will of the parties at the time of entering into the arbitration agreement.

Arbitration Agreement and Substantive Claim Before Court

**Article 8**

1. A court before which an action is brought in a matter which is the subject of an arbitration agreement shall refer the parties to arbitration if a party so requests, unless the agreement is clearly null and void or non-existing. Such request shall be deemed to have been waived if it is not made at the latest when a party submits its first statement on the substance of the dispute.

2. Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, before the issue is solved by the court or the court issues an order to adjourn the arbitral proceedings.
Arbitrable Matters

Article 9

1. All matters relative to disposable rights, whether contractual, commercial, already in litigation, current or future, may be submitted to arbitration.

2. The following matters are included:
   a) Disputes among companies, associations, foundations, or other legal entities and their members, associates, partners, and those among the latter, in relation to their agreements, the compliance with their by-laws or articles of association, the validity of their agreements, decisions, meetings, or concerning the activities of the entity, its purposes or objectives. The companies that make public offerings of their shares are excluded. The arbitration agreement may be included in the by-laws or in the articles of association;
   b) Disputes among heirs, successors, or beneficiaries, if the predecessor has provided for arbitration in a clause of his or her will.

CHAPTER III – COMPOSITION OF THE ARBITRAL TRIBUNAL

Number of Arbitrators

Article 10

The parties are free to determine the number of arbitrators. Failing such determination, a sole arbitrator shall be appointed.

Appointment of Arbitrators

Article 11

1. No person shall be precluded by reason of his nationality from acting as an arbitrator. Only individuals with full legal capacity may serve as arbitrators. Except for arbitrations ex aequo et bono, the sole arbitrator, the third arbitrator, and/or the presiding arbitrator, shall be lawyers.

2. The parties are free to agree on a procedure for the appointment of the arbitrator or arbitrators.

3. Failing such agreement:
   a) In arbitrations with three (3) arbitrators, each party shall appoint one (1) arbitrator, and the two (2) arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint an arbitrator within thirty (30) calendar days following a request to do so by the other party, or if the arbitrators fail to agree on the third arbitrator within thirty (30) calendar days following their appointment, the appointment shall be made by the competent court, upon request by any of the parties.
b) In arbitrations with a sole arbitrator, the sole arbitrator shall be appointed by the competent court, upon request by a party.

4. Where the parties have agreed on a procedure for the appointment of arbitrators that cannot be completed, any party may request the competent court to appoint the arbitrators that could not be appointed pursuant to such agreement.

5. The competent court shall appoint an independent and impartial individual who meets the requirements to serve as arbitrator contained in the arbitration agreement.

6. In international arbitrations, the competent court shall consider the convenience to appoint as sole arbitrator or third arbitrator an individual of a nationality other than that of the parties.

7. All agreements on fees with one (1) or more arbitrators must be agreed upon by all the parties with respect to all the arbitrators. If the parties fail to reach an agreement, the fees of all the arbitrators must be fixed by the competent court. Any agreement on fees that is not under the terms of this paragraph shall be null and void and shall constitute grounds for removal of the particular arbitrator. The competent court shall appoint a replacing arbitrator.

8. Arbitrators are liable for damages resulting from their failure to perform or defective performance of their functions.

9. Where the parties to an arbitration are more than two (2) and fail to agree upon the appointment of the arbitrators, any of the parties may apply to the appointing authority or, failing that, to the competent court for the appointment of all the arbitrators. In this case, the appointment of arbitrators made by one or more parties shall have no effect.

10. In related arbitrations, no person may be appointed or serve as arbitrator, unless all the arbitrators in the related arbitrations are the same or all differ. For the purpose of this provision, arbitrations are related provided the procedure, evidence, arguments, resolutions, or awards of one of them may have an influence over one or more of the other arbitrations. An arbitrator who has accepted an appointment or continues in his office in breach of this provision is subject to removal.

11. The consolidation of arbitral proceedings requires the agreement of all the parties.

Challenge

Article 12

1. An individual to whom a possible appointment as arbitrator is communicated must disclose all circumstances that may cast doubts as to his impartiality or independence, or that may prevent or obstruct his per-
formance. After his or her appointment, the arbitrator shall disclose without delay any such circumstance. Failure to do so shall be a cause for his or her removal.

2. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties or required by this law. A party may challenge an arbitrator appointed by that party, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

**Challenge Procedure**

**Article 13**

1. The parties are free to agree on a procedure for challenging the arbitrators. Failing such agreement, a party that intends to challenge an arbitrator shall, within fifteen (15) calendar days after becoming aware of the constitution of the Arbitral Tribunal or of a ground for challenge, send a written statement of the reasons for the challenge to the Arbitral Tribunal. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the Arbitral Tribunal shall decide on the challenge.

2. If the Arbitral Tribunal rejects the challenge, the challenging party may, within fifteen (15) judicial days after having received notice of the decision rejecting the challenge, have recourse to the competent court.

**Failure or Impossibility to Act**

**Article 14**

Where an arbitrator becomes *de jure* or *de facto* unable to perform his or her functions, fails to perform them appropriately, or acts with undue delay, the procedure established in the previous article shall apply. Withdrawal by the arbitrator does not imply the acceptance of the grounds for challenge or request for removal.

**Appointment of Substitute Arbitrator**

**Article 15**

Where it is necessary to replace an arbitrator, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. Where a new arbitrator incorporates to the Arbitral Tribunal, the latter shall decide by majority whether it is appropriate to draw back the proceedings or part of them.
CHAPTER IV
JURISDICTION OF ARBITRAL TRIBUNAL

Competence of Arbitral Tribunal to Rule on its Jurisdiction

Article 16
1. The Tribunal may rule on its own jurisdiction with respect to a subject-matter or person, including any objections with respect to the existence or validity of the arbitration agreement.

2. All objections to the jurisdiction of the Arbitral Tribunal shall be raised not later than the objecting party's first submission on the merits of the matter or within thirty (30) calendar days since the party has learned or should have learned about the grounds for such objection, if they are subsequent to such first submission. A party is not precluded from raising such a plea by the fact that it has appointed or participated in the appointment of an arbitrator.

3. The Arbitral Tribunal may rule on an objection to its jurisdiction as a preliminary question. If it rules that it has jurisdiction, any party may appeal against such decision before the competent court within the time limit and by following the procedure established in article 34, paragraph 4. If it fails to do so, it shall be deemed to have waived the objection.

Power of Arbitral Tribunal to Order Interim Measures

Article 17
1. The Arbitral Tribunal may, at the request of a party, order any interim measure as it may consider necessary in order to secure the subject-matter of the dispute and it may require the requesting party to provide appropriate security for the damages that may result from such measure.

2. The competent court shall order the execution of the interim measures ordered by the Arbitral Tribunal in accordance with its own procedural rules, but without analyzing the merits relied upon to order them, unless they affect its international ordre public.

3. The application of a party to a court, before the commencement or during the development of the arbitral proceedings, for interim measures, or the granting of any such measures by a court, is not incompatible with the arbitration agreement.

4. Interim measures granted by a court shall cease to have effect if the arbitral proceedings are not commenced within thirty (30) calendar days after they have been granted.
CHAPTER V
ARBITRAL PROCEEDINGS

Due Process

Article 18
The arbitral proceedings shall be conducted in accordance with the parties’ agreement and the rules that, failing such agreement, are established by the Arbitral Tribunal. The parties shall be treated with equality and each party shall be given a full opportunity to present its case and a due process. Representation by counsel is required.

Evidence

Article 19
The Arbitral Tribunal shall determine the admissibility, relevance and weight of any evidence.

Place of Arbitration

Article 20
Subject to the parties’ consent, the Arbitral Tribunal may decide that the hearings be conducted in a place other than the place of arbitration. The Tribunal may meet at a place other than the place of arbitration. The carrying out of procedures outside the place of arbitration shall not be construed as a change of the place of arbitration.

Commencement of Arbitral Proceedings

Article 21
The arbitral proceedings shall be deemed to have commenced on the date on which a request for that dispute to be referred to arbitration is received by the respondent or the arbitration institution, whatever takes place first.

Language

Article 22
1. Failing an agreement by the parties, the Arbitral Tribunal shall determine the language or languages to be used in the proceedings and the awards.

2. The Arbitral Tribunal may order that any documentary or oral evidence in a language other than that of the arbitration shall be accompanied by a translation into the latter. The cost of the translation shall be borne by the party producing the document or the oral evidence.
NOTES ON ARBITRATION IN ARGENTINA

Statements of Claim and Defense

Article 23

1. Within the period of time determined by the Arbitral Tribunal, the claimant shall state the facts supporting its claim, shall indicate the points at issue, and shall state the relief or remedy sought. The respondent shall state its defense in respect of these particulars and claims within the time limit set forth by the Tribunal.

2. Either party may amend or supplement its claim or defense at any time during the course of the arbitral proceedings, unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Hearings and Written Proceedings

Article 24

1. The Arbitral Tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceedings shall be conducted on the basis of documents and other materials. The arbitral tribunal shall hold such hearings if so requested by a party.

2. The parties shall be given sufficient advance notice of any hearing and of any meeting of the Arbitral Tribunal for the purposes of inspection of goods, other property, or documents.

3. All statements or communications by one of the parties with one or more arbitrators and all communications by one or more arbitrators with any of the parties shall be immediately communicated to the other parties and arbitrators. Non-compliance with this obligation shall be grounds for challenge of the arbitrator.

Default of a Party

Article 25

If, without showing sufficient cause:

a) The claimant fails to communicate his statement of claim within the fixed time limit, the Arbitral Tribunal shall terminate the proceedings;

b) The respondent fails to communicate his statement of defense within the fixed time limit, the Arbitral Tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

c) Any party fails to appear at a hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the award on the evidence before it.
Documentary and Expert Evidence

Article 26

1. At the request of a party, and after having heard the other parties, the Arbitral Tribunal may order one party to identify the documents within its control in relation to any of the matters at issue, exhibit them, or make them available for the other party or for the expert or experts that the latter designates. The Tribunal shall exercise such power with caution and bearing in mind the allegations of confidentiality with respect to one or more of such documents. In the event of unjustified resistance or refusal to comply with the issued order, or incomplete or selective compliance, the Tribunal may infer the conclusions it deems fit. The same rules apply to the exhibition or inspection of things, assets, places, or documents.

2. If after receiving the testimony of the experts proposed by the parties and questioning them, the Tribunal considers that by applying the rules of the onus probandi and its powers to assess the evidence, it cannot reach, due to the exceptional circumstances of the case, a fair decision without first receiving the testimony of another expert, it shall:
   a) inform the parties;
   b) indicate the specific points on which it wishes to receive such additional opinion; and
   c) establish a reasonable time limit for the parties to jointly propose a new expert and agree upon his or her fees with him or her and establish the manner in which they shall be borne.

3. If the parties fail to make a proposal within the fixed time-limit, the expert may be appointed by the Tribunal after consultation with the parties. The Tribunal may appoint the expert, agree upon his fees with him, and the manner in which they shall be borne.

Court Assistance in Taking Evidence

Article 27

The Arbitral Tribunal, or any of the parties with the approval of the Arbitral Tribunal, may request from a competent court assistance in taking evidence. The competent court shall execute the request without assessing its merits, by applying its procedural rules on requesting and taking evidence.

CHAPTER VI
MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Rules Applicable to Substance of Dispute

Article 28

1. The Arbitral Tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties.
2. Failing any choice by the parties, the Arbitral Tribunal shall apply the law that it considers applicable.

3. The Arbitral Tribunal shall decide *ex aequo et bono* or as *amicable compositeur* only if the parties have expressly authorized it to do so.

4. In all cases, the Tribunal shall decide in accordance with the terms of the contract and shall take into account the applicable usages of the trade.

**Decision-Making by Panel of Arbitrators**

**Article 29**

Unless otherwise agreed by the parties, in an Arbitral Tribunal formed by more than one arbitrator, all decisions shall be made by a majority of all its members. If there was no majority, the third arbitrator or the presiding one shall decide by himself or herself.

**Article 30**

1. If during the arbitral proceedings the parties settle the dispute, the Arbitral Tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the Tribunal, shall record the settlement in the form of an arbitral award.

2. Such an award shall be made in accordance with the provisions of article 31 and shall state that it is a final award.

**Form and Contents of Awards**

**Article 31**

1. The awards shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the chairman of the Arbitral Tribunal shall suffice, provided that the reason for any omitted signature is stated.

2. The awards shall state the reasons upon which they are based and shall determine the manner to bear the costs of the arbitration, unless the parties have agreed the opposite or the particular award incorporates a settlement.

3. The awards shall state the date they have been issued and the place of arbitration and shall be deemed to have been made at such date and place.

4. After an award is made, an original shall be delivered to each party, together with dissenting opinions, if any.

**Termination of Proceedings**

**Article 32**

1. The arbitral proceedings are terminated by the final award.

2. The arbitral tribunal shall also issue a final award where:
a) The claimant withdraws its claim, unless the respondent objects thereto and the Arbitral Tribunal recognizes a legitimate interest on its part in obtaining a final settlement of the dispute;

b) The parties agree on the termination of the proceedings;

c) The Arbitral Tribunal finds that the continuation of the proceedings is unnecessary or impossible.

3. After the award that terminates the proceedings is issued, the Arbitral Tribunal shall maintain its jurisdiction for the purpose of article 33 of this law.

Correction of Interpretation of Award and Additional Award

Article 33

1. Within ten (10) calendar days of receipt of the award, or within the time limit agreed upon by the parties or fixed by the Arbitral Tribunal, any of the parties may, with notice to the other party, request the Tribunal to:

   a) Correct any computation, copy, clerical, or typographical errors or any errors of similar nature;

   b) Give an interpretation of one or more specific points or parts of the award;

   c) Issue a decision on claims included in the arbitral proceedings but omitted in the award; or

   d) Correct any defect that, if proven, could result in the annulment of the award.

2. The Arbitral Tribunal shall decide on these requests within thirty (30) calendar days following reception of the request, unless it establishes a longer time limit by issuing a reasoned decision.

3. The Arbitral Tribunal may on its own initiative, within ten (10) calendar days after the date of the award and after hearing the parties, solve any issues referred to in paragraph 1 above.

4. These issues shall be decided in an additional award.

CHAPTER VII
RECOUSE AGAINST AWARD

Article 34

1. Recourse to a court against an arbitral award may be made only by an application for setting aside. The challenging party must have filed its objections before the Arbitral Tribunal first, in accordance with article 33, paragraph 1, section d.

2. Any error in establishing the facts or the law that may have been made by the Arbitral Tribunal shall only be subject to judicial review where it constitutes one of the grounds for annulment set forth in this law.
3. Arbitral awards may be set aside by the competent court only if the party making the application furnishes proof that:
   
a) It was under some incapacity to enter into the arbitration agreement or that said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Argentine law; or
   
b) It was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case, or the Arbitral Tribunal has not respected its equality with respect to the other parties, or it was not given the opportunity to present its case properly or a due process was not followed; or
   
c) The award deals with a dispute not contemplated by the arbitration agreement or contains decisions on matters that have not been submitted to the Arbitral Tribunal. If the decisions of the award that refer to the issues submitted to arbitration can be separated from those not so submitted, only the latter may be set aside; or
   
d) The composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the arbitration agreement, unless such agreement was in conflict with a provision of this law from which the parties cannot derogate; or
   
e) The subject-matter of the dispute is not capable of settlement by arbitration under Argentine law; or
   
f) The award is in conflict with the international *ordre public* of Argentina.

4. An application for setting aside must be made within ten (10) judicial days following the date of reception of the award or, in the case of article 33, following the date of reception of the decision or additional award by the Arbitral Tribunal. The recourse shall be founded within thirty (30) judicial days following reception of the award or, in the case of article 33, following reception of the decision or additional award.

**CHAPTER VIII**

**RECOGNITION AND ENFORCEMENT OF AWARDS**

**Awards Made in the Argentine Territory**

**Article 35**

The awards made in the Argentine territory are enforceable in accordance with the applicable procedural rules.

**Awards Made in a Foreign Territory**

**Article 36**

1. The awards made in a foreign country to which an international treaty with Argentina as a party applies, shall be recognized and enforced in Argentina in accordance with the provisions of such treaty.
2. The awards made in a foreign territory to which no international treaty to with Argentina as a party applies, shall be recognized and enforced in Argentina on the basis of reciprocity with the country or countries where the domicile of the party or parties in whose favor the award has been made. Unless the lack of reciprocity results in an additional ground, its recognition and enforcement shall only be denied:

a) At the request of the party against which the award is invoked, if the latter shows before the competent court that:
   
   I. It was under some incapacity to enter into the arbitration agreement or that said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the place of arbitration; or
   
   II. It was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or its equality with respect to the other parties was not respected, it was otherwise unable to present its case properly, or a due process was not followed; or
   
   III. The award deals with a dispute not contemplated by or not included in the arbitration agreement or contains decisions on matters that have not been submitted to the Arbitral Tribunal. Provided the issues submitted to arbitration can be separated from those not so submitted, the part of the award that decides issues submitted to that Tribunal may be recognized or enforced; or
   
   IV. The composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the arbitration agreement or, failing any provision contained therein, with the law of the place of arbitration; or
   
   V. That the award has not yet become binding on the parties or has been set aside or suspended by a court of the country that award was made.

b) If the competent court finds that:
   
   I. The subject-matter of the dispute is not capable of settlement by arbitration under Argentine law; or
   
   II. The recognition or enforcement of the award would be contrary to Argentine international *ordre public.*

3. The application for recognition and, if applicable, enforcement must be made before the competent court within three (3) years following receipt of the award. If an application for the setting aside or suspension of the award has been made before a court of the place of arbitration, the competent court may postpone its decision, if it deems appropriate. At the request of the party applying for recognition and
enforcement, it may also order the respondent to furnish the appropriate security.

4. The party applying for recognition or enforcement shall supply an original or duly authenticated copy of the award and the arbitration agreement and, if any of these documents are made in a foreign language, its certified translation to the national language.

CHAPTER IX
SPECIAL AND TRANSITORY PROVISIONS

Arbitral Expertise

Article 37
In the cases where a law requires an arbitral expertise comprised within the provisions of this law, it shall be construed to refer to an arbitration ex aequo et bono or of amiable compositeurs.

Entry Into Force

Article 38
1. This law shall enter into force within thirty (30) days following its publication and shall apply to arbitrations commenced after its entry into force.

2. In the arbitrations commenced after the entry into force of this law that are based on arbitration agreements made prior to such date, any of the parties may choose in its first submission to have the previous law applied.

Repeal

Article 39
Book VI and article 519 of the Federal Code of Procedure on Civil and Commercial Matters is hereby derogated.

Local Jurisdictions

Article 40
This law applies to the Autonomous City of Buenos Aires without prejudice to its powers under article 129 of the Federal Constitution. When such powers are exercised, this law shall be deemed to automatically adapt itself to the circumstances resulting from such exercise. The provinces are hereby invited to amend their local legislation to the provisions of this law.

Article 41
Let this be communicated to the executive branch.