LATIN LAWYER REFERENCE ARBITRATION 2021

Dominican Republic

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LATIN LAWYER

Legislation

1. Which legislation governs the enforcement of international commercial arbitration awards and arbitral agreements in international business contracts, and international commercial arbitration proceedings?

Law No. 489-08 on Commercial Arbitration, dated 19 December 2008 (DR Arbitration Law), governs domestic and international arbitration in the Dominican Republic. It was published in the Official Gazette No. 10502 dated 30 December 2008. There is no pending proposal in the legislature to modify the law.

Pursuant to article 1 of DR Arbitration Law, for an arbitration to qualify as international, either one of the following requirements shall be met:

- on the date of conclusion of the arbitration agreement, the parties had their places of business in different jurisdictions;
- the parties' respective place of business is outside the Dominican Republic; or
- the performance of a substantial part of the obligations in the commercial relationship takes place in a jurisdiction that is different to the parties' places of business.

Enforcement of foreign awards is ruled by the dispositions of the international treaties that have been signed and ratified by the Dominican Republic. Second, it is by articles 41 to 45 of DR Arbitration Law.

2. Has the UNCITRAL model arbitration law been adopted in your jurisdiction?

DR Arbitration Law substantially imported the text of the UNCITRAL Model Arbitration Law. Variations that may be considered significant are:

- DR Arbitration Law applies for domestic and commercial arbitration.
- Referring to the Arbitration Agreement and Substantive Claim before the Court, article 12 of DR Arbitration Law is stricter than UNCITRAL's equivalent article 8. Our wording does not give any faculty to judges to know and decide the claim when the arbitration agreement is null and void, inoperative or incapable of being performed.
- Article 14 of DR Arbitration Law establishes that if the parties fail to determine the number of arbitrators there is to be one arbitrator instead of three arbitrators as provided in article 10 of the UNCITRAL Model Arbitration Law.
- DR Arbitration Law did not incorporate the provision contained in article 34(4) of the UNCITRAL Arbitration Model Law permitting a court in charge of setting aside an award to suspend the setting aside process to give the opportunity to the arbitral tribunal to resume the arbitration proceedings or to take any other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

Conventions

3. Is your jurisdiction a party to both the New York Convention and the Panama Convention? Is it a party to any other conventions or treaties governing international commercial arbitration agreements, awards or proceedings?

The New York Convention on the Recognition and Enforcement of Arbitral Awards of 1958 was signed by the Dominican Republic. It was ratified by the National Congress in 2001.

The Inter American Convention on International Commercial Arbitration of 1975 (Panama Convention) was signed by the Dominican Republic. It was ratified by the National Congress in 2007.

The Dominican Republic is a signatory party to the Convention for the Settlement of Investment Disputes between States and Nationals of other States of 1966 (ICSID Convention) and the Interamerican

Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards of 1979 (Montevideo Convention). However, these treaties have not come into force because they are pending ratification by the National Congress.

4. Is your jurisdiction a party to the ICSID Convention? Have steps been taken to renounce the Convention or withdraw from ICSID?

On 20 March 2000, the Dominican Republic signed the Convention on the Settlement of Investment Disputes between States and Nationals of other States, known as ICSID Convention. However, it has not come into force pending ratification by the National Congress.

Nevertheless, certain investment disputes may be decided under the ICSID Additional Facilities Rules in view of the settlement dispute provisions of international free trade agreements to which the country is a party, such as the DR - Central America Free Trade Agreement (DR-CAFTA).

5. Is your jurisdiction a party to other conventions that directly affect the enforceability of arbitration agreements, rights or awards?

No.

Commercial arbitral agreements and arbitrability

6. Some jurisdictions have permitted parties to compel resolution of a dispute by means of arbitration only if the agreement to arbitrate was entered into after a dispute has arisen. Is a pre-dispute arbitration clause to resolve international commercial disputes by arbitration enforceable?

Pre-disputes arbitration clauses to resolve international commercial disputes are acknowledged in DR Arbitration Law and therefore enforceable.

Article 10 of DR Arbitration Law defines arbitration agreement as the decision to submit to arbitration all or certain disputes which have arisen or which may arise between the parties in a legal relationship, whether contractual or not.

7. What are the requirements for an enforceable arbitral agreement?

Article 10 of DR Arbitration Law is a reflection of article 7 of UNCITRAL Arbitration Model. It provides that the arbitration agreement shall be in writing, either inserted in a contract signed by the parties or in the form of an independent agreement signed by the parties.

Consent to arbitrate is also acknowledged by an exchange of communications between the parties that is evidenced in any recordable form (such as facsimiles, e-mails and others) or it can be construed from an exchange of statements of claim and defence between the parties showing no objection to the arbitration or by contractual reference to another contract containing the arbitration clause.

In the context of international arbitration, article 10.5 of DR Arbitration Law points out that the arbitration agreement is valid when the parties have complied with the requirements of the law applicable to the agreement, or the law applicable to the subject matter or the Dominican law. These choices are mutually exclusive. The autonomy of the parties is the governing principle, therefore it is reasonably inferable that Dominican law will be the alternative only when it is impossible to find out the parties' choice of law.

In all circumstances, the regulation of the centre of arbitration elected by the parties is considered part of the arbitration agreement (article 4.3).

8. Is there subject matter that is not legally subject to arbitration in the context of an international business transaction?

Article 3 of DR Arbitration Law establishes that subject matters considered to be of public order are not subject to arbitration. Paragraph 3.1 lists, in addition, certain subject matters not to be submitted to arbitration: those related to the civil status of persons, family matters and strictly personal issues, such as separation between spouses, alimony and child support, legal capacity.

Article 45 of DR Arbitration Law establishes that foreign awards that do not comply with Dominican Republic Public Order are not enforceable in the territory.

An important precedent limiting the notion of public order is Sentence No. 607-19 dated 26 December 2019 of the Constitutional Court (https://tribunalsitestorage.blob.core.windows.net/media/21495/tc-0607-19-tc-04-2016-0174.pdf).

In this case, the Dominican state pretended to set aside a domestic award on the grounds of public order. The Constitutional Court defined the notion of public order applicable to arbitration, saying that:

- It is not enough that the law governing the dispute is based on grounds of public order, but it also needs to be considered if the prescriptions are mandatory and whether they provide that disputes under the same are to be known exclusively by the jurisdictional tribunal and courts.
- It needs also to be ascertained whether the arbitration agreement is inserted in a contract that is null because the parties violated a public order law by agreeing differently.
- Disputes related to the economic public order are subject to arbitration and it is up to the judges to do a case-by-case review if the award is challenged.

Constitutional jurisprudence has considered that protection of constitutional rights and guarantees is exclusive of the Judiciary.

9. Are there any limits to the ability of a state or an instrumentality of the state to enter into an agreement to arbitrate in your jurisdiction? If so, under what circumstances may the state or its instrumentalities enter into such an agreement? Please describe the requirements that must be met for the state to enter into a binding arbitration agreement.

The answer to the first question is negative.

Article 220 of the Constitution of the Dominican Republic, enables the Dominican State and any of its instrumentalities, to agree to binding domestic or international arbitration or to submit controversies to arbitration institutions existing in virtue of applicable international treaties.

There are no impediments to a state or an instrumentality or such state to enter into an agreement to arbitrate in our jurisdiction. Article 2 of DR Arbitration Law limits the state or an instrumentality of the state that is a party in an international arbitration, to invoke sovereignty principles or legal domestic prerogatives in order to be exonerated from acquired obligations.

There are only special requirements regarding the form of the notices to the Dominican State.

10. Does the law specify whether an arbitration will be in equity or under law if the parties do not expressly specify the nature of the arbitration in the agreement?

Yes. Article 33 of DR Arbitration Law provides that the arbitral tribunal may only decide in equity when the parties have expressly authorised to do so.

11. How does the law limit party autonomy with respect to the terms of an arbitral agreement?

First of all, they can not affect public order and strictly personal matters (article 3 of DR Arbitration Law). Second, arbitration proceedings shall respect the right of each party to present its case under equality of arms (articles 4.5 and 22 of DR Arbitration Law).

Parties to an arbitration agreement are free to designate the number of arbitrators provided the total number is uneven. In case they fail to do so, there will be one arbitrator (article 14). They can either directly appoint the number of arbitrators or delegate the appointment in a third party. There is no restriction to elect the arbitral institution.

Article 23 of DR Arbitration Law establishes parties' freedom to agree on the procedural rules applicable to their dispute if they have not agreed to an institutional ruling establishing a mandatory proceeding.

Finally, parties are free to choose the seat and language of their arbitration (articles 24 and 26) with the only requirement of translating the documentation into Spanish if any assistance is required from a Dominican court.

12. Under what circumstances does the law allow a non-signatory to an arbitral agreement to pursue a claim in an international arbitration against a party that signed the arbitral agreement?

DR Arbitration Law is silent on non-signatory parties.

13. Under what circumstances does the law allow a signatory to an arbitral agreement to pursue a claim in an international arbitration against a party that did not sign the arbitral agreement?

DR Arbitration Law is silent on non-signatory parties.

14. Under what circumstances may a non-signatory to an arbitral agreement compel arbitration of a claim asserted against it in a court of law by a signatory of the arbitral agreement?

DR Arbitration Law does not regulate this hypothesis. However, from the legal context, it is reasonably to infer that if the signatory party is able to prove the consent of the non-signatory party to the arbitral agreement, in any of the forms allowed by DR Arbitration Law, it may compel such non-signatory party to arbitration.

15. Is there any law in your jurisdiction specifically governing the arbitrability of consumer or labour disputes?

Consumer and labour disputes may be submitted to binding arbitration. However, there is discrepancy about labour disputes in the courts' interpretation.

Labour disputes

Pursuant to article 419 of the Dominican Labour Code, parties could submit to arbitration labour controversies of any nature. The arbitral award shall respect mandatory legal dispositions of the Dominican Republic.

There is a jurisprudential precedent that to agree to arbitration in labour matters is only possible when the dispute has been initiated (Supreme Court of Justice, Third Chamber, sentence No. 79 dated 22 February 2017). There is another jurisprudential precedent that has considered that labour disputes cannot be submitted to arbitration because they only can be known and decided in the exclusive forum of specialised labour tribunals and courts (that are of public order). Supreme Court of Justice, Third Chamber, sentence No. 526 dated 23 August 2017).

Labour arbitration is still rare in practice.

Consumer rights disputes

Article 130 of Consumer Rights Protection Law No. 358-05 dated 9 September 2005 establishes that consumers, users and suppliers may agree to arbitrate consumer disputes provided they not affect the public interest, in the estimation of the Consumers' Rights Agency (Pro-Consumidor). The Consumers Rights Protection Law considers that all the offences classified in the law as very serious affecting the public interest. Very serious offences are described in article 110:

- Sanitary violations or actions or omissions that are concurrent with sanitary violations.
- Alteration, adulteration and fraud.
- Relapse in the commission of a serious violation.
- Actions or omissions to create a shortage of goods in a specified sector.
- Excessive prices in regulated goods and services.
- Absolute refusal to cooperate or provide information when inspected.

Other breaches not subject to arbitration are listed in the Consumers' Arbitration Regulation issued by Pro-Consumidor on 3 June 2008:

- Disputes that have been already decided by a definite judicial sentence.
- Matters that are already being known in a court unless the parties expressly waive their rights to the jurisdiction.
- Breaches that involve intoxication, injuries, death or there are serious indications of a crime being committed.
- Disputes between users and/or consumers of public services that have their own regulation for the resolution of disputes.

Providers have to present a previous public offer submitting themselves to the consumer arbitration proceeding if a controversy arises. The conciliation phase is mandatory. Arbitral awards are binding and final.

Consumer arbitration is very incipient.

Specially regulated sectors

There are special laws governing specified sectors such as insurance, electricity, telecommunications and financial services that provide for their respective process of resolution of domestic disputes.

16. Does your jurisdiction provide for class-action arbitration or group arbitration? If so, are there any limitations to the arbitrability of such claims or requirements that must be met before such claims may be arbitrated?

DR Arbitration Law is silent on class-action arbitration.

17. Are contractual waivers precluding arbitration of claims on a class-wide basis enforceable? Under what circumstances have such waivers been upheld or set aside by the courts?

It is a principle of our civil procedural system that nobody can litigate in the name of another. Filing a legal action is strictly personal. Therefore, class actions are not part of our system. A number of special laws allow duly incorporated non-profit organisations to file judicial lawsuits to redress wrongs that collectively affect their members.

Therefore, contractual waivers precluding the parties from entering into class-action arbitration fit into the general concept, thus there should be no obstacle to their enforceability.

There are no precedents.

18. If the parties' contract is silent on the issue of class-action arbitration, is class-action arbitration allowed under the law of your jurisdiction?

No. Filing a lawsuit requires the plaintiff to appear and demonstrate a legitimate interest. Furthermore, the consent to arbitrate needs to be signed or undoubtedly identified in writing. There are no precedents.

19. Are foreign arbitral institutions without a physical presence in your jurisdiction authorised to administer arbitrations in your jurisdiction? Does the law require that a foreign institution be licensed under local law to administer an arbitration seated there?

There is no legal requirement demanding a foreign arbitral institution to be licensed in order to administer an arbitration seated in the Dominican Republic.

Arbitral institutions and arbitrators

20. Is an arbitral award issued in an arbitration seated in your jurisdiction under the auspices of a foreign institution (such as the ICC, ICDR, LCIA or similar institutions) vulnerable to challenge because it was issued under the auspices of a foreign institution?

Taking into account that the parties are free to choose a third-party administrator and the absence of a legal requirement that the institution should be local, there is no basis to challenge an arbitral award issued in an arbitration seated in the DR under the auspices of a foreign institution.

An arbitral award issued by foreign institutions, will be treated as an "institutional arbitration" defined in article 4 of Law No. 489-08. The award could be challenged in accordance with the dispositions of Dominican law, if the lex arbitri is Dominican.

21. Does the law require that arbitrators in international arbitrations be nationals or residents of your jurisdiction?

DR Arbitration Law does not preclude a person to be an arbitrator on the basis of nationality. In fact, there are foreigners in the official list of the Centre of Alternative Disputes Resolution of the Chamber of Commerce of Santo Domingo. There are specialised laws such as the Consumer Rights Law that require the arbitrators to be Dominican.

22. Does your law require that arbitrators in international cases be lawyers?

DR Arbitration Law does not require arbitrators to be lawyers. Parties' autonomy to name any person as arbitrator is not limited. Persons from different professional backgrounds are members of the list of arbitrators of the Centre of Arbitration of the Chamber of Commerce and Production of Santo Domingo.

23. Does your jurisdiction provide immunity from civil lawsuit to arbitrators serving in an arbitration with its legal seat in your jurisdiction? Under what circumstances does such immunity apply or not apply?

No. Parameters that may be applied by the local courts are those limiting civil liability of judges to very serious limited circumstances, like proved malice or gross negligence. Arbitration rules of local Centres of Arbitration include immunity provisions.

24. Are the fees of foreign arbitrators serving in an arbitration seated in your jurisdiction subject to taxation?

The taxation regime of the Dominican Republic is based on the Dominican source of the income. Therefore, the key aspect would be to ascertain whether the fees earned by a foreign arbitrator in an international arbitration seated in the Dominican Republic would be considered Dominican income.

There is a rule in article 270 of the Dominican Tax Code that reputes that services by a foreign person are considered to be Dominican income if the service is performed locally for more than six months, continuous or not, in any given 12-month period. In light of this article, it is recommendable to avoid incurring into that lapse of time, otherwise it would not be taxable.

However, the case is unprecedented. We do not know of any jurisprudence or any doctrinal opinions.

25. Must arbitrators in international arbitrations be independent and impartial? What is the legal standard governing conflicts of interest and disclosure by arbitrators in international arbitrations?

Yes. Article 16 of the DR Arbitration Law mandates arbitrators to reveal to the parties, in good time and in writing, any circumstance that may generate justified doubts about his or her impartiality or independence. The disclosure obligation is in force until the conclusion of the arbitral proceedings. A party with justified doubts about the arbitrator's impartiality or independence may challenge the appointment. IBA standards are well known as soft law. Sentence No. 026-03-2017-SSEN-0310 dated 26 May 2017 of the Second Civil Chamber of the Appeals Court annulled a domestic award for lack of proper disclosure by an arbitrator that caused justifiable doubts about his or her independence. Paragraph 16 of said sentence quotes IBA standards. http://www.alarb.org/alarb/Rep%C3%BAblica%20Dominicana/2017/Jurisprudencia/Rep%C3%BAblica%20Dominicana.%202017.%20Jurisprudencia.%20Sentencia%20No.%20026-03-2017-SSEN-00310%20-%202SCCCCADN%20(00367799xAEE47).pdf

26. Will courts entertain requests to disqualify an arbitrator before the conclusion of an award?

Yes, because there are legal scenarios that enable courts to that end. The first scenario occurs if during the arbitral proceedings circumstances arise that create justifiable doubts about the arbitrator's impartiality or independence (article 16). The second scenario occurs when factual or juridical circumstances prevent an arbitrator to perform the work and parties fail to agree on the removal (article 18).

Arbitral proceedings

27. Discuss the public perception of the reliability of arbitration as a dispute resolution method in your jurisdiction.

Arbitration in the Dominican Republic is on a good path. The Centre for Arbitration of the Chamber of Commerce and Production of Santo Domingo reported a 30 per cent increment in cases during 2019 (https://www.argentarium.com/veedor/noticias/47274-arbitraje-en-rd-aumento-30-durante-el-ultimo-ano-construccion-lidera-sectores/). We do not have statistics for the pandemic period. Courts consistently respect the autonomy of the parties. Courts have ruled against the Dominican State in matters of setting aside an adverse arbitral award (Constitutional Court. Sentence No. 607-19 dated 26 December 2019).

28. Does the law require that arbitral proceedings seated in your jurisdiction be held in a specific language?

Parties are free to choose the language of the arbitration with the only requirement of translating the documentation into Spanish if any assistance is required from a Dominican court (article 26).

29. Can foreign lawyers serve as advocates in arbitral proceedings in your jurisdiction? If so, can they do so alone or must a local lawyer serve as co-counsel?

Not alone if the arbitration is seated in the Dominican Republic. The requirements for the exercise of the legal profession in the Dominican Republic, are listed in Law 3-19 dated 24 January 2019 that incorporates the Dominican Republic Bar Association. Either to counsel or to legally defend rights and interests in the territory, the lawyer shall:

- be a graduate from a national university or have had his foreign title locally revalidated;
- be authorised to exercise the profession in the country by an exequatur of the President of the Republic; and
- become a member of the Dominican Bar Association.

We understand that if the international arbitration is not seated in the Dominican Republic but only hearings are known there, there is no mandatory need to appoint local counsel.

30. Are the fees of foreign lawyers earned for services rendered in connection with an arbitration seated in your jurisdiction subject to local taxation?

The taxation regime of the Dominican Republic is based on the Dominican source of the income.

However, it is important to follow the rule established in article 270 of the Dominican Tax Code that reputes that services by a foreign person are considered to be Dominican income if the service is performed locally for more than six months, continuous or not, in any given 12-month period. In light of this article, it is recommended to avoid entering that time period.

31. In what circumstances, if any, does your law allow the consolidation of multiple arbitral proceedings into a single proceeding?

DR Arbitration Law does not refer to the issue. Local rulings of centres of arbitration in the Dominican Republic have dispositions on this regard

32. Please describe common practice and usage in international arbitrations seated in your jurisdiction with respect to a party's right to require an opposing party to produce documents pertinent to the dispute.

Parties are free to agree on procedural rules governing their dispute. Therefore, they could agree to a discovery process for their arbitration proceeding to the extent they deem it convenient.

However, in our jurisdiction, there is no discovery process. In civil and commercial proceedings, the parties file the evidence they will use in support of their pleas or defence, at their discretion. Likewise, every person has the constitutional right not to submit evidence that could be detrimental to his own cause.

Only if a party could prove beyond doubt that the other party is withholding relevant document(s) – specifying which document(s) – and provided that the other party does not claim the right to not present detrimental evidence, may the judge order such party to present the documentation and may impose an astreinte (obligation to pay a certain amount for each day of delay) or simply could make reasonable deductions from the refusal, with the adequate motivation.

This significant procedural difference is important because if court assistance is required a discovery is not likely to happen.

33. Does the law impose a duty of confidentiality in arbitration? If so, on whom?

Yes. Article 22 of DR Arbitration Law binds arbitrators, parties and arbitration centres to keep the confidentiality of all information exchanged or produced during an arbitration proceeding.

34. Does the law authorise third-party funding for international arbitration? Are there any ethical limitations imposed upon counsel to the parties that restricts the use of such funding?

DR Arbitration Law is silent on third-party funding. The principle is that it is not expressly forbidden it is allowed. Therefore there are no ethical limitations imposed upon counsel in that event.

35. Are there any mandatory national rules of professional ethics that apply to counsel in an international arbitration in your jurisdiction? If so, are those rules applicable to counsel from another jurisdiction participating in an arbitration in your jurisdiction?

Only standard professional ethics rules that are of common knowledge. There is nothing more conspicuous.

36. Are there any mandatory rules on oath or affirmation for witnesses testifying in an arbitration in your jurisdiction that have to be administered prior to their testimony? If so, what are they?

No. Admission, relevance, materiality and weight of evidence, including witnesses, is subject to what the parties agree. If they fail to do so, the arbitrators have the authority to decide as long as they maintain the equality of arms between the parties (articles 22 and 30 of DR Arbitration Law).

Court support for arbitration

37. Are there restrictions in your jurisdiction on the interviewing of witnesses in anticipation of hearings or giving of testimony?

No. In arbitration, the proceeding is flexible enough. In proceedings before courts there are restrictions: witnesses shall appear personally, serve an oath and give their testimonies orally, being available to immediate oral examination.

38. Can arbitrators decide on their own jurisdiction? Is the principle of 'Kompentenz-Kompetenz' followed in the courts?

The answer to both questions is yes. "Kompetenz-Kompetenz" principle is of application under article 20 of DR Arbitration Law that reproduces the wording of article 16 of the UNCITRAL Arbitration Model Law.

The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. Our statute adds that the arbitral tribunal may rule on any other circumstance that is alleged to impede knowing and decision of the subject matter.

On 5 February 2020, the Civil and Commercial Chamber of the Supreme Court of Justice dismissed a recourse against a judicial ordinance that suspended a domestic arbitration while the action to set aside the arbitral agreement was pending. The Court said that the judge had no power to suspend the arbitration, because both the action to suspend an arbitral proceeding and the action to set aside the arbitral agreement were to be known first by the arbitral tribunal in virtue of the Kompetenz-Kompetenz principle (http://poderjudicial.gob.do/Reportepdf/reporte2014-3216.pdf).

39. Do the courts follow the principle of the independence and separability of the arbitration clause?

Yes. The principle of independence and separability of the arbitration clause is clearly established in article 11 of DR Arbitration Law. The arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

On 31 August 2018, by Sentence No. 1487, the Civil and Commercial Chamber of the Supreme Court of Justice confirmed the Kompetenz-Kompetenz principle and also elaborated on the independence of the arbitral agreement from the principal contract. The Supreme Court concluded that the termination of the arbitral agreement does not discard that the dispute that may arise between the parties afterwards is subject to arbitration (https://www.poderjudicial.gob.do/Reportepdf/reporte2014-847.pdf).

40. Are arbitral tribunals empowered to grant interim relief? If so, how is that relief enforced in the courts?

Yes, however, they are limited under article 21 of DR Arbitration Law to the parties in the proceeding.

The interim measure shall be in the form of an arbitral award. In the case of non-compliance, competent courts may provide assistance for enforcement upon petition of the party seeking the interim measure.

41. Can arbitrators issue orders, subpoenas or use other legal processes to compel the production of evidence by a third party or compel a third-party witness to appear before them? If so, will a court lend its aid in enforcing such an order against a recalcitrant third party? Also, if arbitrators can issue orders, subpoenas or use other legal processes to compel the production of evidence by a third party or compel a third-party witness to appear before them, are there any limitations to their doing so?

The answer to the first two questions is no. Arbitrations are limited to the ambit of the parties in the process. Article 9 of DR Arbitration Law gives competence to the first instance tribunal of the arbitration place or the place where the action shall be taken, to assist in matters concerning evidence, including hearing of witnesses. However, our civil and commercial courts do not issue subpoenas because the civil and commercial process only affects the parties involved (see question 31).

42. Can a party to an arbitration seek relief from the court to obtain evidence in aid of an international arbitration? What is the scope of such relief?

In our civil law system, it is not possible that civil or commercial judges compel a third party to provide evidence unless the third party may be forced to intervene in the process by the interested party. Even in that case, the scope of such relief is limited. Refer to answers provided in questions above regarding court support.

43. Can a party in an international commercial arbitration seek interim or provisional relief from a court without first seeking relief from the arbitral tribunal?

Yes. Article 13 of DR Arbitration Law permits that before or during arbitral proceedings, a party asks a court to grant interim relief. If the request is made before arbitral proceedings, the court granting the interim measure shall ask that the arbitral action is filed within the next 60 days. Interested parties may be required to place a security.

44. Have the courts issued injunctions enjoining arbitral proceedings from going forward?

Yes. However, said injunctions have been either reversed by the Supreme Court of Justice or validly ignored by the arbitral tribunals that have moved forward with the arbitration pursuant to the powers conferred to them by article 12.3 of DR Arbitration Law.

45. Does the law provide that post-award interest accrues on an unpaid arbitral award?

The law does not regulate this matter. Therefore, the arbitral tribunal shall expressly grant interests in the award. The criteria are that the rate to be used by the tribunal shall be reasonable and that adequate motivation shall be provided.

46. Is an arbitral tribunal empowered to award attorneys' fees to the prevailing party or is that power reserved to the courts?

Yes. Article 36, paragraph 6 of DR Arbitration Law expressly allows arbitrators to award attorney's fees and expenses to the prevailing party.

Awards - content

47. Is an arbitral tribunal empowered to award punitive or exemplary damages? Is the arbitral tribunal empowered to award interest?

Depending on the law that governs the dispute. Under Dominican law, there are no punitive or exemplary damages. Civil liability is based on direct restitution to the victim (compensatory damages). The arbitral tribunal is empowered to award interests provided they are reasonable.

48. What are the grounds for challenging or vacating an international award issued in an arbitration seated in your jurisdiction?

Article 39 of DR Arbitration Law establishes limited grounds to challenge an arbitral award before theCivil and Commercial Chamber of the Appeals Court of the National District of Santo Domingo. They are:

- A party to the arbitration agreement was under some incapacity or said agreement is not valid under its governing law or in case of silence, under Dominican law.
- Lack of due process affecting the challenging party's ability to present its case.
- The award deals with a dispute not covered in the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement. In any event that it is possible to separate such decisions, only they will be set aside by the court.
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the law which the parties cannot derogate or failing such agreement, was not in accordance with the law.
- That the dispute was not subject to arbitration.
- That the award is not compatible with public order.

Numerous sentences of the Supreme Court of Justice show respect for the autonomy of the parties.

49. Is "lack of reasonableness", manifest disregard or a mistake in the application of the substantive law to the dispute of an international award grounds to vacate it?

No. The grounds to challenge an award are limited and do not include these aspects. They are listed in article 39 of DR Arbitration Law.

50. Have international awards rendered in your jurisdiction been vacated on the grounds of "public policy"? If so, how has the "public policy" ground for vacating an award been interpreted in your jurisdiction?

We do not know of any precedents.

51. What is the period of time a party has to challenge such an award after its issuance?

One month after receiving notice of the award, not counting the first and last day. The term is extended at the same time required for the interpretation or clarification of the award, if a petition was made to that effect.

52. Please describe any recent significant experiences or cases that illustrate the attitude of your courts towards the annulment of international awards rendered in your jurisdiction.

On 28 September 2018, the Supreme Court of Justice ruled that the process of recognition and enforcement of a foreign award is meant only to verify that the award has met the formal requirements of its governing law. The judges are limited to verify the non existence of the breaches sanctioned by the DR Arbitration Law. It ruled that Dominican courts have no competence to vacate foreign awards on the grounds of violation of the applicable substantive law (https://www.poderjudicial.gob.do/Reportepdf/reporte2015-63.pdf).

Awards enforcement

53. Do the courts consider themselves empowered to vacate an arbitral award rendered in another jurisdiction?

See answer above.

54. May parties waive all court review of an arbitral award rendered in your jurisdiction (or restrict or expand the scope of that court review)?

Article 39 of DR Arbitration Law provides that some of the grounds for challenging an arbitral award may be ruled by judges of their own motion (without having been directly invoked by the challenging party). Those grounds are:

- lack of due process affecting the challenging party's ability to present its case;
- that the dispute was not subject to arbitration; or
- that the award is not compatible with public order.

This possibility is interpreted by part of the doctrine as implying that these grounds shall not be waived by the parties.

55. Please describe the process for enforcing an arbitral award rendered in another jurisdiction.

Article 9.6 of DR Arbitration Law gives exclusive competence to the Civil and Commercial Chamber of the First Instance Tribunal of the National District of Santo Domingo to know and decide the recognition and/or enforcement petitions of international arbitral awards. Articles 42 to 45 of DR Arbitration establish the process.

The interested party shall file an enforcement application before the Presidency of the Civil and Commercial Chamber of the First Instance Tribunal of the National District of Santo Domingo. The application shall be accompanied by one original of the arbitral award and one original of the arbitral agreement or the contract that contains it. The documents shall be apostilled and translated officially into Spanish (in accordance with other provisions applicable to foreign documents). The procedure is non-contentious.

The tribunal shall not recognise or enforce a foreign award if any of the following circumstances is verified (article 45):

i A party to the arbitration agreement was under some incapacity or said arbitration agreement is not valid under its governing law or in case that it cannot be determined, under the law of the country where the award was issued.

ii Lack of due process that affected the losing party's ability to present its case.

iii That the foreign award deals with a dispute not covered in the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement. If it is possible to separate the decisions that exceed the terms of the agreement, only they will be set aside by the court.

iv That the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or failing such agreement, was not in accordance with the law of the country where the award was issued.

v That the foreign award is not yet binding between the parties or it has been vacated or suspended by a competent authority of the country where it was issued or a competent authority according to the law where the arbitration is seated.

vi That according to the law of the Dominican Republic, the dispute was not subject to arbitration.

vii That the foreign award is not compatible with the public order of the Dominican Republic.

Grounds on paragraphs (ii), (vi) and (vii) can be pronounced by the tribunal on its own motion.

If the losing party objects the enforcement decision (exequatur), the dispute should be known and decided by the Civil and Commercial Chamber of the Appeals Court of the National District of Santo Domingo, following the same procedure established in the law to challenge an award.

56. Assuming that the award is covered by a convention applicable in your jurisdiction, how long does it take to obtain an order of enforcement in the first instance? How long does it take for the enforcement process to run its full course through to the last instance?

No more than two months on average. However, it is just a good faith estimate. If the exequatur is challenged and the process become contentious, the process full course could take in average 18 months.

57. Please compare how long it takes to enforce an arbitral award rendered abroad with how long it takes to domesticate a foreign judgment.

Institutional domestic awards do not require to be homologated in virtue of Law No. 50-87 (and its modifications) that allows the incorporation of Chambers of Commerce and Production in each province, each one of them enabled to have a Centre of Arbitration.

Ad hoc domestic awards do require homologation. The process should not have differences in timing.

58. Please describe some significant recent experiences with the enforcement of foreign arbitral awards.

The courts' attitude is favourable to enforcement. The criteria of the Supreme Court of Justice (as contained in Sentence No. 1637 dated 28 September 2018 referred earlier), are that the enforcement of a foreign award is meant to verify only that the award has met the formal requirements of its governing

law. Additionally, Dominican courts have no competence to vacate foreign awards on the ground of violations to substantive law, a procedure that shall be initiated before the competent authority of the place where the award was issued.

The outlook

59. To what degree has "public policy" been a ground to refuse enforcement of an international award rendered abroad?

We are not aware of any precedents in that regard.

60. Can a foreign arbitral award be enforced if the award has been set aside by the courts at the seat of the arbitration?

No, in accordance with article 45 of DR Arbitration Law, it cannot be enforced if it has been vacated or suspended by a competent authority of the country where it was issued or a competent authority according to the law where the arbitration is seated.

61. Has your jurisdiction refused to pay an international arbitral award issued against the state or an instrumentality of the state in your jurisdiction? If so, please provide a brief explanation.

There are no public precedents of international arbitral awards issued against the state or an instrumentality of the state where the state has denied payment. However, since matters are confidential, it is hard to tell. We understand the Dominican state has reached confidential agreements in those cases.

62. What is your view of the future of international arbitration and is the trend positive in your jurisdiction? What advice do you have with respect to dispute resolution for a foreign lawyer advising a foreign client contemplating entering into a business deal with a company from your jurisdiction?

The Dominican Republic meets all the standards to have a bright future in international arbitration. Law No. 489-08 on International Arbitration is a unitary framework that efficiently reproduces UNCITRAL Arbitration Model Law. Our courts are knowledgeable and respectful of arbitration. The autonomy of the parties is recognised. Criteria of the Supreme Court of Justice are consistent with the principles of arbitration.

The Dominican state and any of its instrumentalities are constitutionally allowed to submit disputes to binding domestic or international arbitration. The Centres for Resolution of Disputes that operate in the Chambers of Commerce and Production benefit from good modern regulations. Their awards are enforceable without the need of homologation.

Our advice to a foreign lawyer advising a foreign client entering into a business deal with a company from our jurisdiction is not to be afraid of Dominican institutional arbitration. Also, foreign lawyers from a common law background should obtain good advice on cultural and procedural differences with a civil law system, such as ours. It is advisable to keep an eye on the jurisprudence.

Wanda Perdomo

Biaggi Abogados

Wanda Perdomo has been a member of the team since 2008. She has about thirty (30) years' experience in dispute resolution, civil and commercial law and economic regulation.

In the last ten years, she has worked intensely in arbitration. She is an Arbitrator for the Center for Alternative Resolution of Disputes of the Chamber of Commerce and Production of Santo Domingo (CRC) and the Center for Alternative Resolution of Disputes of the Chamber of Commerce and Production of Santiago (CRC-Santiago). She has acted as joint arbitrator, presiding arbitrator and sole arbitrator in many disputes. She has also acted as attorney for parties both in ad hoc and institutional arbitrations, locally and internationally. She is one of the ten (10) specialized sports arbitrators for the CRC.

In the regulated sector, she worked for over twelve years in telecommunications as In House Counsel for one of the major industries in the country.

2005-2017 she was a member of the Board of Directors of the Foundation for Institutionalism and Justice (FINJUS), a nonprofit nongovernmental organization engaged in strengthening institutionalism and the rule of law, where she now contributes as an Associate Member.

She is frequently invited to speak at academic events related to arbitration and private international law, among other subjects.

Areas of practice

Wanda Perdomo has a practice in litigious and corporate matters, specialized in civil and commercial, constitutional law, administrative law, economic regulation, commercial arbitration and sports. In addition, it cultivates private international law.

We are a law firm that provides efficient solutions, based on high ethical and professional values.

Our prestige is founded on the practice of professionals with recognized experience, technical capacity and strategic vision, whose talent allows the versatility and dynamism required to adequately handle a wide range of legal issues, regardless of complexity.

As a result of hard teamwork, our clients are satisfied, a fact endorsed by the renowned international directories *Chambers and Partners* and *The Legal 500*, which consider us among the best law firms in the Dominican Republic.

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