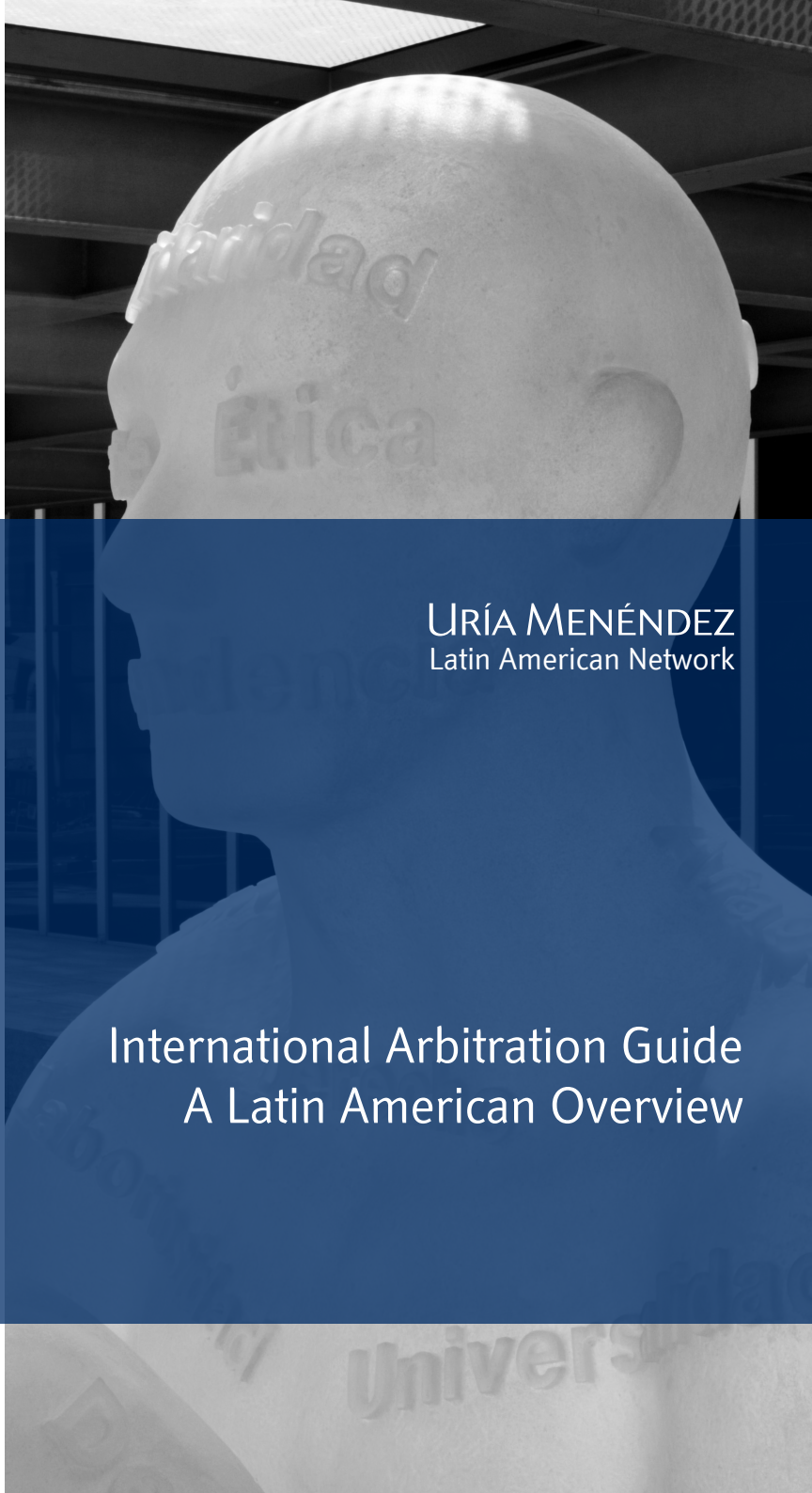

URÍA MENÉNDEZ
Latin American Network

International Arbitration Guide
A Latin American Overview

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This Guide draws upon the joint experience of our group of independent leading law firms advising foreign direct investors in Latin America and the common know-how developed by our Sino-Latin American Multilateral Practice Group, which is reflected in a number of publications and briefings that our firms regularly prepare for Chinese clients and contacts. The preparation of this Guide was made possible by that shared pool of knowledge and resources, as well as by the contributions from Uría Menéndez's Asian, European and Latin American offices (Buenos Aires, Chile, São Paulo, Lima and Mexico City) and from the leading independent firms of the group in Argentina (Marval, O'Farrell & Mairal), Bolivia (C.R.&F. Rojas Abogados), Chile (Philippi, Yrarrázaval, Pulido & Brunner), Colombia (Prietocarrizosa and Brigard & Urrutia Abogados), Ecuador (Pérez, Bustamante & Ponce Abogados), Mexico (Galicia Abogados), Peru (Payet, Rey, Cauvi, Pérez, Mur), Uruguay (Guyer & Regules) and Venezuela (ARAQUEREYNA and D'Empaire Reyna Abogados) who dedicated their valuable time and constructive thoughts in reviewing, updating and improving this Guide. This Guide is intended solely for information purposes and does not constitute legal advice. If any further clarifications are required, any of the contributing firms are available to be contacted.

This Guide is current as of June 2014.

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Author's presentation

URÍA MENÉNDEZ

Uría Menéndez is a 500-lawyer firm widely recognized as a **leading European legal service provider** (Legal Week 2010), particularly in Spain and Portugal, where it has been consistently acknowledged as the leading law firm (Who's Who Legal 2014, IFLR 2013, Chambers Europe 2011, Legal Alliance Summit 2011, The Lawyer 2010, PLC Which Lawyer? 2009).

Uría Menéndez provides legal advice in **all areas of law**, and is the only law firm in Spain that ranks as a top tier firm in all practice areas (Chambers Global and The Legal 500 2013, Spain).

The firm has **15 offices in Europe, Asia and the Americas**. Along with its unmatched reputation in Spain and Portugal, with five offices in the largest Latin American economies (Argentina, Brazil, Chile, Mexico and Peru), Uría Menéndez has the ability to provide some of the broadest legal coverage in the region and has been acknowledged as the "go to" law firm for complex corporate and financial matters in Latin America (Harvard Business School, 2008).

URÍA MENÉNDEZ'S LATIN AMERICAN NETWORK

Who we are

Uría Menéndez's Latin American Network consists of a group of over 1,400 lawyers recognized as the world's best network in the region (PLC Which Lawyer Awards 2009).

We provide clients a team of lawyers that operates seamlessly as a single law firm through:

- **shared experience** (we have worked together in the main FDI transactions in Latin America and Europe);
- **shared quality** (we are the leading firms in each of our respective jurisdictions); and
- **shared operational platform** (we operate joint offices throughout Latin America, cross-secondment programs, annual training for our associates and multilateral practice groups for our partners).

What we do

We focus on investment work, particularly assisting Chinese entities with their outbound projects in Spain, Portugal and Latin America. Over the years, both individually and as a group, we have developed a number of initiatives with the Chinese business community, the government and academia.

- As from April 2009, the **China Council for the Promotion of International Trade** (CCPIT) relies on our group to support their 70,000 members on their investments in Spain, Portugal and Latin America.
- On behalf of the **All China Lawyers Association** (ACLA), and with the approval of the Ministry of Justice of the People's Republic of China (PRC), we operated for five years the sole legal training program entrusted to a private organization by Chinese authorities, under which Chinese lawyers join our Latin American and European teams to gain exposure to cross border work involving China.
- Uría forms part of the consortium that operates the **China EU School of Law** (CESL), the only private law school in China established under the auspices of the

European Commission and the Chinese government, and runs an educational program for CESL directed to Chinese lawyers on overseas investment in Europe.

In response to our increased involvement in China, we set up our **Beijing office** in October 2009 to assist Chinese outbound investors in their cross border ventures. To that end, and depending on the complexity of the deal and client preference, we put together an integrated team of lawyers in Beijing and Latin America or Europe to work from their respective jurisdictions.

- **From Beijing,** Latin American and other international lawyers contribute first-hand experience in China related work and overcome the challenges of having to liaise, coordinate and supervise a transaction in multiple time zones, languages and cultural environments.
- **In Latin America and Europe,** legal professionals with unparalleled expertise, influence, and track record advising foreign direct investors provide seamless execution capabilities in the target jurisdiction.

What it means for the client

The dominant position we enjoy in our respective markets has allowed us to maintain independence. That independence affords our clients:

- **flexibility:** we have no incentive to involve offices or lawyers other than those that are strictly necessary;
- **efficiency:** if a member of the group has a conflict of interest, we simply replace the firm without affecting our relationship with the client; and
- **value for money:** each member has its own fee structure, unlike many global firms that charge identical rates for all their lawyers regardless of location.

Applying this formula, we have built up a remarkable track record on Chinese financing and investments in Europe and Latin America, ranking fifth worldwide for value of deals in Latin America (Thomson Reuters, Mergers and Acquisitions, Legal Advisors, 2013) and ninth among worldwide legal advisors on Chinese transactional work (Bloomberg, Mergers and Acquisitions Legal Advisory League Tables, 2013).

OUR INTERNATIONAL ARBITRATION PRACTICE

The International Arbitration Group forms part of the firm's Dispute Resolution Practice Area. The Group has ample experience in all aspects of international commercial and investment arbitration. It is comprised of seasoned arbitration practitioners from different jurisdictions, fluent in a number of languages, with distinct legal backgrounds and training, in both civil and common law traditions.

We have represented clients in arbitral proceedings in the main seats of arbitration around the world and under a variety of national laws, not only Spanish, Portuguese or Latin American law, but also the laws of Algeria, England, France, Germany, Namibia, Pakistan, Switzerland and Turkey, to name a few from our recent experience.

Members of the group regularly argue cases in English, French, Portuguese and Spanish.

Legal system overview

1. INTRODUCTION

Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru, Uruguay and Venezuela (the "Latam Countries"), as with all other Latin American jurisdictions and mainland China, have civil law systems. Furthermore, the Latam Countries' codes and other legal norms tend to be very similar, a feature that probably stems from their common Iberian legal heritage.

Nevertheless, the way of applying and enforcing regulations in individual Latam Countries varies greatly. For example, regarding contract enforcement before State courts, there are significant differences among Latam Countries in connection with the time and costs required to pursue a claim. An unfortunate common feature that Chinese companies may encounter when enforcing contracts in any of the Latam Countries is that it will be more cumbersome than in their own country. The following table illustrates that point clearly.

COUNTRY	CONTRACT ENFORCEMENT	
	Time to judgment[1] (days)	Cost[2] (% of claim)
China	406	11.1
Mexico	540	10 - 15
Venezuela	600	28.7
Bolivia	730	10

1.- Refers to the time to obtain judgment at the first instance and on appeal for an ordinary claim, excluding enforcement of the judgment.

2.- Includes legal and court fees for a claim amounting to USD 1,000,000.

Uruguay	900	20
Argentina	990	18 to 32
Chile	1,200	6
Peru	1,460	5
Colombia	1,825	9
Brazil	2,160	10 - 20
Ecuador	2,500	25

Source: Based on the experience of each firm in its own jurisdiction.

In view of systematic difficulties caused by the excessive length and localism present in judicial proceedings, arbitration is flourishing in the region as an alternative method to resolve both domestic and international disputes. In large construction contracts, arbitration is preferred by both domestic and international players.

Arbitration is the primary means of settling investment disputes in the region. The enforcement of awards is relatively simple due to the Convention on the Recognition and Enforcement of Foreign Awards (the "New York Convention"), which all Latam Countries and China have ratified.

General analysis

2. INSTITUTIONAL ARBITRATION VS. AD HOC ARBITRATION

In accordance with the global trend, arbitration has emerged as the preferred dispute resolution method for foreign companies doing business in Latin America. Institutional arbitration is the norm in Latam Countries.

To date, the most popular **international arbitration institution** in Latin America is the **International Chamber of Commerce (ICC)**, followed by the **International Centre for Dispute Resolution (ICDR)** - the international branch of the American Arbitration Association (AAA).

Madrid is a popular seat for cross-border arbitration involving Latin American parties due to its modern infrastructure as well as Spain's close cultural and investment ties with Latin America. Madrid is often selected as the seat for institutional arbitration following the ICC or ICDR Rules.

There is also an increasing use of local arbitration institutions by both national and international actors. Domestic institutions typically allow proceedings in other languages, such as English.

The following table lists the most well-known **domestic arbitration institutions** in the region.

COUNTRY	ARBITRATION INSTITUTION[3]
Argentina	- Tribunal de Arbitraje General de la Bolsa de Comercio de Buenos Aires - Centro Empresarial de Mediación y Arbitraje (CEMA) - Center for Mediation and Commercial Arbitration of the Argentine Chamber of Commerce (CEMARC)
Bolivia	- Centro de Conciliación y Arbitraje Comercial de la Cámara de Industira y Comercio de Santa Cruz - Centro de Conciliación y Arbitraje de la Cámara de Comercio y Servicios de Cochabamba - Centro de Conciliacion y Arbitraje de la Cámara Nacional de Comercio de Bolivia
Brazil	- Chamber of Business Arbitration – Brazil (CAMARB) - Câmara de Conciliação, Mediação e Arbitragem CIESP/FIESP - Câmara FGV de Conciliação e Arbitragem - Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CCBC)
Chile	- Santiago Arbitration and Mediation Center - Santiago Chamber of Commerce (CAM Santiago)
Colombia	- Arbitration and Conciliation Centre of the Chamber of Commerce of Bogotá - Centro de Conciliación, Arbitraje y Amigable Composición de la Cámara de Comercio de Medellín

3.- The table shows original institution names in the local language provided that there is no official name in English.

Ecuador	- Arbitration and Mediation Centre of the Quito Chamber of Commerce - Centro de Arbitraje y Conciliación de la Cámara de Comercio de Guayaquil - Centro de Arbitraje y Mediación de la Cámara de Comercio Ecuatoriano-Americana
Mexico	- Arbitration Center of Mexico (CAM) - Commercial Mediation and Arbitration Commission of the Mexico City National Chamber of Commerce (CANACO)
Peru	- American Chamber of Commerce Center of Arbitration (AMCHAM) - Arbitration Center of the Lima Chamber of Commerce - PUCP Center of Arbitration
Uruguay	- Conciliation and Arbitration Centre -MERCOSUR International Court of Arbitration Uruguayan Stock Exchange-
Venezuela	- Arbitration Centre of Caracas Chamber (CACCC) - Business Center of Mediation and Arbitration (BCMA)

In Spain and Portugal, the most popular domestic arbitration institutions are:

Spain	- Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid (CAM) - Civil and Mercantile Court of Arbitration (CIMA) - Spanish Court of Arbitration
Portugal	- Centre of Commercial Arbitration of the Portuguese Chamber of Commerce and Industry

3. THE STATUS OF ARBITRATION LEGISLATION IN LATAM COUNTRIES

As a rule, arbitration proceedings taking place in any of the Latam Countries are governed by the law of the seat of arbitration. In turn, an arbitral award rendered in the country of the seat of arbitration will be deemed domestic in that country ("domestic award").

In general, Latam Countries have adopted arbitration laws based on the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law"), leading to legal convergence across the region. Nevertheless, the degree of adherence to the Model Law varies. For example:

- In Mexico, the 1985 original version of the Model Law was adopted in full.
- The arbitration laws in Brazil, Bolivia, and Chile were based more loosely on the 1985 version of the Model Law.
- In Peru and Ecuador, the arbitration law is based on the Model Law with its 2006 amendments. In Colombia, only the international chapter of its arbitration law is based on this version of the Model Law.

Notable exceptions include Argentina and Uruguay, where no specific arbitration law has been adopted to date. Arbitration in Argentina and Uruguay remains governed by the rules contained in each country's civil procedure law. A draft arbitration law has been discussed in Uruguay's parliament, but has not been approved. In Argentina, a draft of the new Civil Code was recently submitted to Congress with the purpose of modernizing the country's arbitration framework.

4. CAN PARTIES FREELY CHOOSE THE APPLICABLE LAW?

In general, parties to an international agreement can freely choose the law applicable to their legal relationship if arbitration is the selected method for dispute resolution. If no law has been chosen by the parties and a dispute arises, the arbitral tribunal may determine the applicable law, taking into account the nature of the commercial dealings and the characteristics of the dispute.

Public contracts, in contrast, are generally governed by local law.

Pursuant to most institutional rules and arbitration laws, if an agreement does not establish that the dispute will be decided according to principles of equity (*ex aequo et bono*) the dispute shall be decided by law. There are though a few exceptions to that principle. For example, according to the Civil Procedure Code of Uruguay, disputes will be decided in equity unless provided otherwise.

In other countries, including Colombia, the dispute must be decided in law when a public entity is party to the arbitration proceedings.

5. CAN FOREIGN QUALIFIED PROFESSIONALS ACT AS ARBITRATORS OR LEGAL COUNSEL?

As a general rule, qualified foreign professionals may act as arbitrators or legal counsel in international arbitration proceedings with a seat in any of the Latam Countries. However, only lawyers admitted to the local bars of the Latam Countries may act as legal counsel in judicial proceedings required to assist arbitration proceedings.

6. HOW LONG DO ARBITRATION PROCEEDINGS LAST?

Most institutional arbitration rules set time constraints for awards to be issued. Some arbitration laws in Latam Countries establish time limits, which usually may be modified by the parties, as indicated in the following table.

COUNTRY	TIME LIMIT (IN DAYS)	CAN PARTIES MODIFY THE TIME LIMIT?
Argentina	No statutory limit	—
Bolivia	180 (following the date of the arbitrator's acceptance)	No
Brazil	Default rule 180 (following the arbitrators' confirmation)	Yes
Chile	Default rule 180 (maximum of 2 years) No time limit for international arbitration.	Yes
Colombia	In domestic arbitration, the default rule is 180 (from the date of the first hearing ["*Primera Audiencia de Trámite*"]). No time limit for international arbitration	Yes
Ecuador	150	Yes, to 150 additional days
Mexico	No statutory limit	—
Peru	90 (after the final hearing)	Yes

Uruguay	90 for domestic arbitration No statutory limit for international arbitration	Yes
Venezuela	180	Yes

According to experience, the average length of international arbitration proceedings is as follows:

COUNTRY	LENGTH OF INTERNATIONAL ARBITRATION PROCEEDINGS (IN DAYS)
Argentina	600
Bolivia	180 (following the arbitrator's acceptance) + 60
Brazil	540
Chile	540
Colombia	548
Ecuador	240
Mexico	365
Peru	365 (following the nomination of the arbitral tribunal)
Uruguay	365 -730
Venezuela	180 - 360

Arbitration agreement

7. WHAT ARE THE LEGAL REQUIREMENTS FOR AN ARBITRATION AGREEMENT TO BE VALID?

Following the Model Law requirements, arbitration laws in Latam Countries establish essentially the same features for the validity of an arbitration agreement: the arbitration agreement must be in writing, either in the contract or in a separate instrument, which could consist of an exchange of e-mails or other written correspondence, and must express the parties' consent to submit the dispute to arbitration. In practice, in some jurisdictions, including Brazil, Mexico, Argentina and Bolivia, State courts have established that the arbitration agreement or main contract must be signed by the parties. In other jurisdictions, including Colombia, the arbitration agreement need not necessarily be in writing for domestic proceedings insofar as neither of the parties is a public entity.

Courts in Latam Countries tend to favor and compel arbitration when the jurisdiction of an arbitral tribunal is challenged.

In any case, the arbitration agreement should be drafted broadly in order to cover all possible disputes arising from the parties' legal relationship, i.e., "arising out of or in connection with" their contractual agreement(s). If the parties opt for institutional arbitration, the model clause suggested by the chosen institution may be useful.

It is worth noting that, in the case of domestic arbitrations, Latam Countries like Argentina and Uruguay continue to differentiate between the arbitration agreement and the submission agreement. This means that, even if the parties agreed on an arbitration clause, they must nevertheless execute a submission agreement (usually with a notary public) stipulating, among other matters, the issues to be resolved, the time to issue the award, and the rules governing the proceedings.

8. ARE ARBITRATION AGREEMENTS MANDATORY IN ANY TYPE OF CONTRACT?

Some Latam Countries require specific types of contracts to stipulate that disputes be resolved exclusively through arbitration. For example:

- Brazil: corporate and shareholder's disputes involving certain types of Brazilian companies.
- Peru: all agreements executed by the State or State-run entities.
- Uruguay: disputes related to the application, interpretation, enforcement, performance and termination of public-private partnership agreements must be resolved through arbitration by law.
- Bolivia: disputes concerning insurance issues.
- Colombia: certain disputes involving technical issues deriving from agreements for the exploitation of hydrocarbons must be submitted to technical arbitration (i.e. resolved by technical experts and not lawyers).
- Chile: significant cases include corporations' shareholders and any other partnership disputes; disputes on agents' accountability in agency contracts; and inheritance.

Arbitrability

9. WHAT DISPUTES MAY NOT BE RESOLVED BY ARBITRATION?

Investment and commercial disputes may, in general, be submitted to arbitration.

Some Latam Countries establish additional non-arbitrable matters. For example:

- Brazil: issues related to labor law and specific antitrust issues.
- Chile: disputes related to antitrust issues; employment and labor law; public law disputes; and matters concerning foreign investment agreements executed under Chilean Foreign Investment Statute (under Law Decree 600).
- Mexico: matters involving land and water resources.
- Uruguay: disputes regarding lease agreements of urban real estate.
- Venezuela: in general, disputes related to "public interest contracts" (pursuant to art. 151 of the Constitution).
- Peru: disputes involving intellectual property rights, antitrust matters and environmental issues.

In Brazil and Argentina, only disputes involving freely-disposable economic rights are arbitrable.

10. IS THE *KOMPETENZ-KOMPETENZ* PRINCIPLE ACKNOWLEDGED?

The principle of *Kompetenze-Kompetenz*, which empowers the arbitral tribunal to rule on its own jurisdiction, is recognized in virtually all Latam Countries.

Arbitration laws based on the Model Law expressly recognize the *Kompetenze-Kompetenz* principle. In countries where the principle is not expressly recognized (e.g. Argentina), or is legally recognized solely for domestic arbitrations (e.g. Uruguay), the

principle is continuously respected and upheld by case law. In Argentina, the principle is expressly included in the new Civil Code currently discussed in Congress.

Arbitration and the State

11. CAN STATES SETTLE DISPUTES BY ARBITRATION?

In Argentina, Brazil, Bolivia, Ecuador and Uruguay the State can agree to submit all contractual disputes to arbitration.

However, special requirements must be met in some countries.

- Argentina: as established by case law and scholars, the State and its agencies require special legal authorization to enter into an arbitration agreement if the matter relates to the State's sovereign powers (i.e. the State or agency is not acting as any other private contractor).
- Brazil: for an arbitration agreement included in a concession contract or in a public partnership contract to be valid, the parties must agree that the language of the proceedings will be Portuguese, the seat of arbitration will be fixed in Brazil, and Brazilian law will apply to the merits of the dispute.
- Chile: the State may not agree to submit disputes to arbitration, unless a law that permits arbitration agreements exists. Public companies are allowed to submit to arbitration.
- Ecuador: prior authorization by the Attorney General's office is required.

In other Latam Countries, the State may only agree to submit certain types of disputes to arbitration.

- Chile: public infrastructure concession agreements and international commercial financial contracts.
- Colombia: disputes involving administrative acts of the government under the exercise of the administration's exceptional powers are excluded from the general rule of arbitrability of contractual disputes.

- Mexico: the State may not agree to submit to arbitration disputes related to antitrust, government liability, or tax issues.
- Venezuela: the State may agree to the arbitration of public infrastructure concession agreements and loans and bonds.

Arbitration Proceedings

12. ARE ARBITRATION PROCEEDINGS CONFIDENTIAL?

One of the main advantages of arbitration as compared to court proceedings is its private nature. Parties can expressly agree on the confidentiality of the arbitration proceedings or incorporate institutional rules that establish confidentiality. As institutional rules vary in this respect, strict confidentiality of arbitral proceedings should never be presumed.

The extent of the confidentiality duty varies from one country to another. For example:

- Peru: the arbitration law stipulates that parties, advisors, representatives, arbitrators, arbitral secretaries, the arbitral institution, witnesses, and experts must respect the confidentiality of the proceedings, except when the parties agree otherwise or one of the parties is the State or a State institution.
- Brazil: a confidentiality obligation is legally imposed only on the arbitrators.
- Venezuela: the arbitrators are bound to protect the confidentiality of all substantive material related to the arbitration procedure.
- Bolivia: arbitrations are confidential.
- Ecuador: the law specifically acknowledges the parties' right to have confidential arbitration proceedings. However, if not expressly agreed, the arbitration will not be confidential.

13. ARE ARBITRATORS EMPOWERED TO ISSUE INTERIM MEASURES?

In Latam Countries, arbitrators can grant interim measures and require an adequate guarantee from the requesting party if needed. The exception is Uruguay, where the authority to grant interim measures rests solely in State courts.

The power of arbitrators to grant preliminary relief does not prevent parties from requesting interim measures directly from State courts; however, this may vary based on the timing of the request. For example:

- Brazil, Ecuador, Peru and Venezuela: State courts have the authority to grant preliminary relief only prior to the constitution of the arbitral tribunal (once the tribunal is established, the power lies solely in the arbitrators). The situation is the same in Colombia, although limited to international arbitration.
- Bolivia: although the law specifically allows arbitrators to grant preliminary relief even prior to the constitution of the tribunal, in practice it is seldom used.
- Argentina: interim measures may be granted by the arbitrators, depending on the rules chosen be the parties.
- Chile: according to the International Arbitration Law, State courts always have authority to grant interim relief.

14. WHAT ARE THE FORMAL REQUIREMENTS FOR AN AWARD TO BE VALID?

In all Latam Countries, the formal validity requirements of an award mirror those of the Model Law and the New York Convention. Essentially, the award must be in writing and issued within the required term, signed by the arbitrator(s) (if more than one arbitrator is appointed, the signature of the majority is sufficient), and indicate the date and place of issuance. The award must include a decision on all disputed matters and indicate the reasoning upon which the decision is based.

15. WHICH PARTY BEARS THE COSTS OF ARBITRATION PROCEEDINGS?

The allocation of costs will be subject to the parties' agreement, either expressly in the arbitration clause or by incorporation of institutional rules on the matter.

In practice, the allocation of the costs of arbitration proceedings varies among Latam Countries. For example:

- Argentina, Brazil, Colombia, Mexico and Bolivia: absent party agreement, the losing party will bear the costs of the arbitration proceedings; however, the arbitrators may allocate the costs differently if justified.
- Uruguay and Venezuela: absent party agreement, the costs will be allocated evenly between the parties.

In some countries, such as Brazil, apart from the costs of the arbitration proceedings, the losing party may be ordered to pay between 10 to 20% of the amount to be paid by the losing party directly to the winning party's lawyers (*honorários de sucumbência*).

Challenge of Awards

16. ON WHAT GROUNDS CAN AN AWARD BE CHALLENGED?

In Latam Countries, the grounds to set aside an award tend to follow the provisions of the Model Law. As such, grounds include:

- A party was under some incapacity or the arbitration agreement is not valid;
- A party was not given proper notice of the constitution of the tribunal or the arbitral proceedings, or was otherwise unable to present its case;
- The award relates to a dispute that falls outside the scope of the arbitration agreement;
- The constitution of the arbitral tribunal or the procedure was not in accordance with the parties' agreement;
- The subject matter of the dispute is not capable of settlement by arbitration under the law of the seat; or
- The award violates the public policy of the seat of the arbitration.

In some Latam Countries, parties may have recourse to other actions related to the protection of the parties' fundamental rights. If the action is upheld, the final effect is to vacate the award, operating as if it were an action to set aside the award.

An application for setting aside the award may only be submitted to a court in the country in which the award was rendered, i.e., the country of the seat of the arbitration.

17. WHAT IS THE LIMITATION PERIOD TO CHALLENGE AN AWARD AND HOW LONG DO THE PROCEEDINGS TAKE?

The time limit to challenge an award varies from five days to the three months provided in the Model Law, although the usual length of the proceedings differs among the Latam Countries, as indicated in the following chart.

COUNTRY	TIME LIMITATION (IN DAYS)	APPROXIMATE LENGTH (IN YEARS)
Argentina	5 business days from service	1 - 3
Bolivia	10	2 - 3
Brazil	90	2 - 6
Chile	90	1 - 3
Colombia	30	1 - 2
Ecuador	10 business days	0.5 - 1
Mexico	90	1
Peru	20 business days	2 - 4
Uruguay	5 business days	1 - 2
Venezuela	5 business days from service	2 - 5

18. DOES THE CHALLENGE OF AN AWARD STAY ITS ENFORCEMENT?

In most Latam Countries, challenging an award does not automatically stay enforcement proceedings. However, the challenging party may request the suspension of the enforcement proceedings by providing a sufficient guarantee.

In Uruguay, the enforcement of a domestic award cannot be requested until the challenge is decided.

19. CAN THE RIGHT TO CHALLENGE AN AWARD BE WAIVED?

In Latam Countries, parties are not generally entitled to waive their rights to challenge an award, as it is considered a matter of public policy. The exceptions are Peru and Colombia, where, if the parties are non-nationals and are not domiciled or hold their principal place of business in Peru or Colombia, respectively, and the arbitration is international, they may waive their rights to challenge an award or limit the grounds to do so. This agreement may be included in the arbitration clause or in a subsequent document.

20. CAN AN AWARD BE APPEALED?

Awards cannot generally be appealed in Latam Countries. Nevertheless, in:

- Argentina: final awards may be appealed on the merits within five working days of the date of its notification. However, the parties are entitled to, and typically do, waive their right to appeal.
- Colombia: awards may be subject to an extraordinary review (*recurso extraordinario de revisión*) based on exceptional grounds (e.g., perjury, corruption or forgery, as declared by a criminal court, availability of pertinent

documents that could not be submitted during the arbitration proceedings). Awards may also be subject to a constitutional claim (*acción de tutela*) if the parties' constitutional rights are infringed. Although recourse to either of these actions is rare, it may have similar effects to an appeal if upheld.

- Venezuela: the Supreme Tribunal has held that constitutional remedies (*amparo*) may be admitted in cases in which a gross violation of the parties' fundamental rights has been demonstrated.
- Chile: unless otherwise agreed, domestic awards may be appealed, except those rendered by *ex aequo et* bono arbitrators. In contrast, international arbitration awards may not be appealed.

21. WHAT IS THE PROCEDURE TO ENFORCE A DOMESTIC AWARD?

Most arbitration awards are complied with voluntarily. Nevertheless, it is worth noting that, in most Latam Countries, the procedure to enforce a domestic award is essentially the same as that followed to enforce a State court judgment. This is the case in Argentina, Brazil, Colombia, Ecuador, Mexico, Peru, Uruguay, and Venezuela.

- In Argentina, the winning party may enforce the award through an expedited proceeding (*ejecución de sentencia*) in which limited challenges are afforded to the losing party. Injunctions to freeze assets should be granted at this stage.
- In Bolivia, the interested party may request enforcement before the competent judicial authority where the award was issued.
- In Brazil, enforcement requests must be submitted to the State court chosen by the parties or, if one was not chosen, the State court corresponding to the respondent's domicile.

- In Chile, enforcement of domestic awards may be requested, indistinctly, from: (i) the arbitrator who rendered the award; or (ii) the corresponding national court. When enforcement requires coercive measures or affects rights of non-signatory parties, it must be requested from the corresponding national court.
- In Mexico, enforcement is filed before a Local Civil Judge (or a Federal Civil Judge in the case of commercial matters).
- In Peru, in order to enforce a domestic award, an action is filed before the commercial State courts. Peruvian law closely mirrors the grounds for non-recognition under the Model Law and the New York Convention, according to which, the enforcement of the award can only be rejected under specific terms.
- In Uruguay, when an award is rendered, enforcement must be filed before the State court that would have had jurisdiction over the case if no arbitration agreement had existed.
- In Venezuela, there is no legal distinction between domestic and international awards. In the case of publicly-owned entities, enforcement is subject to special rules.

Recognition and Enforcement of Foreign Awards

22. ON WHAT GROUNDS CAN A FOREIGN AWARD BE DENIED ENFORCEMENT?

Like China, all Latam Countries are party to the New York Convention. As such, the grounds for refusing enforcement of an award are those established in Article V of the New York Convention.

The grounds for refusing the enforcement of a foreign award are essentially identical to those in the Model Law to set aside an award (see section 16), with one additional basis for refusing enforcement: if the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the laws of which, the award was rendered.

In Latam Countries, as a matter of practice, the attitude of State courts towards arbitration is very favorable and enforcement of foreign awards under the New York Convention is usually non-problematic, with limited scope for any review of the merits (only Argentina has adopted a more revisionist approach, although is increasingly leaning towards a limited review).

23. CAN THE DECISION RECOGNIZING OR REJECTING RECOGNITION OF A FOREIGN AWARD BE APPEALED?

The court order deciding on the recognition of a foreign award cannot be appealed in the Latam Countries. As an exception:

- Argentina: the decision on the recognition of a foreign award can be challenged before the Court of Appeals.
- Brazil: the decision can be appealed, provided that the recognition has not been challenged by the counterparty.

- Colombia: although the arbitration law expressly excludes the appeal of the decision on the recognition of the foreign arbitration award, it may be subject to a constitutional claim (*acción de tutela*) should the parties' constitutional rights be infringed.

24. WHAT IS THE PROCEDURE TO RECOGNIZE AND ENFORCE A FOREIGN AWARD?

In Latam Countries, a foreign award must, in general, be initially recognized by a court through an *exequatur* proceeding. Once the foreign award is recognized, normally, the enforcement is sought before the competent first instance civil or commercial court. However, there are some exceptions:

- Brazil: the enforcement will take place before federal State courts. Since 2005, the Superior Court of Justice has exclusive authority to grant *exequatur*.
- Ecuador: the Supreme Court is the court with authority to grant *exequatur*, except when the provincial Appeals Court is the court with authority to recognize the validity of the award.
- Colombia: the Supreme Court of Justice is, in principle, the court with authority to recognize a foreign award. However, it could be argued that, whenever a Colombian public entity is a party to the arbitration proceedings, the court with authority is the State Council ("*Consejo de Estado*"). This matter has yet to be resolved by Colombian case law.

Regarding the need for *exequatur*, the notable exception is Venezuela, where *exequatur* is not required and foreign awards are treated as domestic judgments. Therefore, enforcement can be sought directly from the corresponding court, without any need for prior recognition.

The following chart indicates the statute of limitations for seeking recognition and enforcement of a foreign award in Latam Countries, as well as the customary length of enforcement proceedings.

COUNTRY	STATUTE OF LIMITATIONS (IN YEARS)	APPROXIMATE LENGTH (IN YEARS)
Argentina	10	1 - 3
Bolivia	1	1
Brazil	10	2 - 5
Chile	-	1 - 3
Colombia	10	2 - 5
Ecuador	10	0,5
Mexico	-	1.5
Peru	10	1
Uruguay	20	1
Venezuela	20	1

While *exequatur* proceedings are pending, in most Latam Countries parties may request conservatory interim measures to secure enforcement of a foreign award. The notable exception is Brazil, where case law determined that these measures are only available pending enforcement proceedings but not pending recognition proceedings.

Investment Arbitration

25. WASHINGTON CONVENTION

Argentina, Chile, Colombia, Peru and Uruguay are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "Washington Convention"), establishing the jurisdiction of the International Centre for Settlement of Investment Disputes ("ICSID").

Brazil and Mexico are not party to the Washington Convention. Bolivia, Ecuador, and Venezuela were initially party to the Washington Convention but in recent years withdrew from it and are no longer parties.

26. BILATERAL TREATIES ON INVESTMENT PROTECTION

Excluding Brazil and Venezuela, all Latam Countries have ratified bilateral investment treaties ("BITs") with China. Chile and Peru have entered into Free Trade Agreements ("FTAs") with China that include investment protection provisions.

BITs and FTAs afford investors important protections *vis-à-vis* state conduct and usually related to political risk for the investor including, in particular: (i) national treatment, most favored nation status; (ii) substantive protections (prohibition on arbitrary and discriminatory measures, obligation to afford fair and equal treatment); (iii) prohibition against expropriation without prompt and adequate compensation; (iv) convertibility, free transferability of profits, dividends, interest, payments; and (v) the obligation to honor specific undertakings in favor of the investor.

Investors can resort to international arbitration to resolve investment disputes covered by either BITs or FTAs.

In the international legal order, the prospect of paying a foreign investor damages for failing to protect its investment, and the concomitant harm to a sovereign's reputation, is a strong incentive for States to honor their commitments under such treaties and agreements.