ICLG

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

Article 10 of the Andorran Arbitration Act 47/2014, of 18 December 2014 (hereinafter "AAA") establishes the following requirements:

- The arbitration agreement must express the parties' willingness to submit to arbitration all or certain disputes arising between them in respect of a given legal relationship, whether contractual or otherwise.
- The arbitration agreement must directly express the procedure for appointing an arbitrator, or arbitrators, or indirectly express the procedure by reference to the appointing procedure contained in an arbitral institution rule.
- The arbitration agreement may adopt the form of clause in an agreement.
- The arbitration agreement will, if the arbitration agreement is contained in an adhesion contract, have its validity and interpretation governed by the rules applicable to such contracts.
- The arbitration agreement, whatever form it takes, must be in writing in a document signed by the parties.
- The arbitration agreement will be deemed to exist if, in an exchange of statements of claim and defence, the existence of an agreement is alleged by one party and not denied by the other.
- The arbitration agreement will also be valid if the exchange of letters, telegrams, telexes, faxes or other telecommunication methods ensure a record of the agreement is kept.

1.2 What other elements ought to be incorporated in an arbitration agreement?

There are several elements that can be agreed by the parties and are often included in the arbitration agreement, although the AAA does not contain any mandatory provisions in this sense. These elements are: the place of arbitration; the language or languages to be used in the arbitral proceedings; the qualifications that the arbitrator or arbitrators must have; the procedure to be followed by the arbitrators in conducting the proceedings; and, if it is the case, the applicable law to the dispute.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The AAA is a young law that entered into force on 22 January 2015 and accordingly there is not a specific case law-based approach. Notwithstanding that, we believe that arbitration is approached by the national courts as an opportunity to improve judicial protection rights that assist the parties.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

Firstly, the AAA governs the enforcement of arbitration proceedings, pursuant to articles 59 and 60, in order to enforce a domestic award, and pursuant to article 61 in respect of the recognition and enforcement of foreign awards.

On 11th February 2015, the Andorran Official Gazette published the adherence of the Principality of Andorra to the International Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). Accordingly, the fact of being the state number 156 adhering to this standard fully aligns Andorra as an arbitration-friendly jurisdiction.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

The AAA governs both domestic and international arbitration. International arbitration has a special section (articles 62 to 73) where the main differences with domestic arbitration regulation are set:

- Domestic form requirements do not apply to international arbitration agreements.
- The validity of the international arbitration agreement will be analysed according the law selected by the parties, the law applicable to the controversy or the Andorran law.
- An application for the setting aside of a domestic award must be made within three months of the date of notification, whereas for international awards, applications must be made within two months of the date of notification.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The AAA is not specifically based on the UNCITRAL Model Law, but has been inspired by it, based on the need to foster commercial relationships and have a faster and specialised alternative dispute resolution mechanism.

There are many differences between the AAA and UNCITRAL Model Law, which are:

(i) The UNCITRAL Model Law establishes in its article 7 (2) that the arbitration agreement shall be in writing. On its side, the AAA does not establish any formal requirement.

(ii) The UNCITRAL Model Law establishes that the parties can bring an action before a court based on an arbitration agreement, and the court can find that agreement to be null and void, inoperative or inapplicable of being performed. It is also said that, when this action has been brought, arbitral proceedings may be commenced or continued, and an award may be made, while this issue is pending before the court.

Article 9.5 of the AAA establishes that parties may reject the arbitration agreement and go through the judicial system. Even if a party does not expressly reject the arbitration agreement, filing a claim before the judicial court will have the equivalent effect of rejecting the arbitration, if the defendant files any writ before the court which is beyond the court's jurisdiction.

(iii) In respect of interim measures, the AAA does not contain the reference established in article 17.J of the UNCITRAL Model Law: "A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration."

(iv) The UNCITRAL Model Law provides in article 22 that parties are free to agree on the language or languages of the arbitral proceedings. Should the parties fail to reach an agreement, the arbitral tribunal will determine the language or languages. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation of such evidence into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

According to article 43.2 of the AAA, unless arbitrators or parties have drawn up an agreement regarding translations of documents, writs and documents written in English, Spanish or French will not need translation.

(v) The UNCITRAL Model Law states in article 24 that, unless otherwise agreed by the parties, 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.

AAA foresees in article 45.3 that oral hearings can be conducted by videoconference if arbitrators or parties agree on this matter. Article 45.4 establishes that all oral hearings must be recorded in writing.

(vi) AAA establishes in article 52.2 that the arbitrators must deliver the award within six months from the date of submission of the defence or the expiration of the deadline thereof. This term may be extended by the arbitrators for a period of two months under a duly justified decision. Article 52.7 establishes that arbitrators have to specify how they voted and explain the reason for their vote.

The UNCITRAL Model Law declares in article 28 that the arbitral tribunal shall decide the dispute in accordance with the rules of law that are chosen by the parties as applicable to the substance of the dispute.

(vii) Article 71.4 of the AAA establishes that parties can, at any point, reject the action and set aside the award. The UNCITRAL Model Law does not contain any provision in this sense.

(viii) Finally, article 71.6 of the AAA provides that a resolution granting the *exequatur* can be appealed before the *Sala Civil del Tribunal de Justicia of Andorra*. Article 71.7 establishes that a resolution denying the *exequatur* can be appealed before the Plenary of the *Tribunal de Justicia* of Andorra. The UNCITRAL Model Law does not contain any provision in this sense.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

AAA rules, as the nature of arbitration requires, are almost all non-mandatory in order to give the parties involved the power to create their own rules and process. Nevertheless, there are certain aspects which are regulated by mandatory rules:

- Labour and consumer arbitrations are excluded from the Act's scope (article 2.3 of the AAA).
- The requirements of the arbitration agreement (article 10 of the AAA).
- The requirements for being an arbitrator, the fact that the number of arbitrators must be odd, the requirements of the independency and impartiality of arbitrators throughout the arbitration, challenges of the arbitrators and the provision relating to the fact that arbitrators may rule on their own jurisdiction (articles 14, 16, 19, 21, 27 of the AAA).
- The mandatory criteria that must be met in order to get an interim measure (article 29.1 of the AAA).
- The formality of the written claim and the response statement, with their minimum contents and structure (article 44 of the AAA).
- The principles of equality, hearing and *audi alterem partem* must be respected during the arbitration (article 67 of the AAA).
- The regulations regarding the arbitrator's award, its execution, correction, recognition and impugnation (articles 49 to 60 of the AAA).

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

The AAA establishes in article 2.3 that consumer and labour arbitration are excluded from its scope. At the same time, in article 3.1 it is established that arbitration under the AAA is allowed for all matters of which the parties are free to dispose.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

Article 27.1 of the AAA incorporates the *kompetenz-kompetenz* principle, so arbitrators may rule on their own jurisdiction.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

There is still no case law on this matter in the Principality of Andorra. Nevertheless, article 9.5 of the AAA establishes that if a defendant consents to it and does not file a lack of jurisdiction before the court, parties are judged to have rejected the arbitration process in favour of the judicial system.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

The court can address the issue of the jurisdiction and competence of the national arbitral tribunal when a claimant initiates a proceeding before the court, and the defendant files a lack of jurisdiction because there is an arbitral agreement (article 9.5 of the AAA).

The decision issued by the court may be appealed before the *Tribunal de Justícia d'Andorra* (article 56.2 of the Qualified Justice Act of the Principality of Andorra).

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

According to article 10 of the AAA, it will be possible as long as the parties express their willingness to submit to arbitration all or certain disputes arising between them in respect of a given legal relationship.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

There are no limitation periods prescribed for the commencement of arbitration, but they will directly depend on the running time of the statute of limitations of the rights and actions issued to initiate the arbitration, which are regulated in substantive laws.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Article 13 of the AAA establishes:

"*The declaration of insolvency proceedings alone does not affect arbitration agreements signed by the insolvent debtor. When the jurisdictional body understands such clauses or agreements may cause harm to the insolvency creditors, it may rule suspension of their effects, all without prejudice to the provisions set forth in the international treaties.*"

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

It is regulated in article 49 of the AAA, which provides the following:

1. In the first place, the arbitrators will decide the dispute in accordance with the applicable law chosen by the parties. Any designation of the law or legal system of a given State will be construed, unless otherwise indicated, as directly referring to the substantive law of that State and not to its conflict-of-law rules.
2. Failing any precision by the parties, the arbitrators will apply the rules they deem appropriate.
3. The arbitrators will decide *ex aequo et bono* only where explicitly authorised by the parties to do so.

In all cases, the arbitrators will decide in accordance with the terms of the contract, having regard to standard practice in connection with the transaction.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

Article 41.4 of the AAA establishes:

"*Failing any indication by the parties, the place of arbitration determines the applicable law to the arbitration of the controversy, the arbitration agreement, the arbitral proceedings (lex arbitri), the national courts with competence to assist and control arbitration, constitution of the arbitrators, the grant of interim measures and the nationality, form and the action to set aside the final award.*"

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Article 41.4 of the AAA provides that, failing any indication by the parties, the place of arbitration determines the applicable law to the arbitration agreement. Article 10 of the AAA governs the formation, validity and legality of arbitration agreements.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The parties are free to establish the number of arbitrators, subject to the requirement that they appoint an odd number thereof (article 16.1 of the AAA). There is also a second limitation in article 18.1 of the AAA: three arbitrators are mandatory in case of multiple parties.

Persons in full possession of their civil rights may be arbitrators, unless prevented therefrom by legislation to which they may be subject to in the practice of their profession (article 14.1 of the AAA). Moreover, according to article 14.3 of the AAA, when there are over three arbitrators, at least one must be a jurist. Finally, it also has to be taken into account that nobody should be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties (article 14.4 of the AAA).

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Article 17 of the AAA regulates the default procedure in case the parties' chosen method for selecting arbitrators fails.

In an arbitration conducted by a single arbitrator, failing the agreement of the parties, the arbitrator will be appointed by the arbitral institution. If the arbitral institution also fails to agree on an arbitrator, the arbitrator will be appointed by the court at the request of a party. In an arbitration with three arbitrators, each party will appoint one arbitrator, and the two arbitrators thus appointed will appoint the third arbitrator, who will preside over the proceedings. If a party fails to appoint an arbitrator within 30 days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of the latest acceptance, the appointment will be made by the arbitral institution. If the arbitral institution also fails, arbitrators will be appointed by the court at the request of a party.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

According to article 17 of the AAA, failing the parties' agreement on a procedure for appointing the arbitrator or arbitrators, the court will appoint them.

The court also appoints arbitrators when: (i) one or both parties do not act according to the appointment proceedings; (ii) the parties or two arbitrators do not come to an agreement regarding the appointment proceedings; and (iii) a third party, including an arbitral institution, does not act according to the appointment proceedings.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

These requirements are regulated under article 19 of the AAA, which establishes that:

- Arbitrators may not maintain any personal, professional or commercial relationship with the parties or their representatives.
- Persons proposed to act as arbitrators must disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence.
- Except as otherwise agreed by the parties, the arbitrator may not intervene as a mediator in the same dispute.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

According to article 40.1 of the AAA, the parties are free to determine the arbitration procedure.

Furthermore, article 15 of the AAA foresees the possibility of institutional arbitration being commissioned to an arbitral institution such as the Chamber of Commerce of the Principality of Andorra.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

The parties are free to agree on the procedure to be followed by the arbitrators in conducting the proceedings, always respecting the mandatory rules contained in the AAA. Mandatory rules regarding arbitration procedures are:

- The mandatory criteria that must be met in order to get an interim measure (article 29.1 of the AAA).
- The formality of the written claim and the response statement, with their minimum content and structure (article 44 of the AAA).
- The principles of equality, hearing and *audi alterem partem* must be respected in the arbitration (article 67 of the AAA).
- The regulations regarding the arbitrator's award, its execution, correction, recognition and impugnation (articles 49 to 60 of the AAA).

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

There are no provisions in this sense in the AAA, but Andorran lawyers must comply with the rules of ethics contained in the "Estatut i Normes Deontològiques 1993" and the Code of Conduct for European Lawyers ("CCBE").

Article 4.5 of the CCBE provides that the rules governing the lawyer's relationship with the judges also applies with the arbitrators.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

The AAA gives the following powers to arbitrators:

- the right of designation, acceptance or refusal, and the right to reject when the arbitrator cannot perform its functions (article 22);
- the ability to decide over its own jurisdiction and the validity of the arbitration agreement (article 27);
- the ability to appoint experts, although parties can challenge this (article 47);
- the ability to apply interim measures (though it should be noted that parties can avoid this by including, in advance, in the arbitration agreement a clause limiting an arbitrator's powers in this area) (article 28); and
- to issue partial awards (article 49).

And the following duties:

- to decline his designation when the arbitrator does not consider himself independent or impartial, revealing all the facts and circumstances that justify it (article 19);
- to complete his functions until the end of the arbitration procedure (article 22);
- to comply faithfully and accurately with the received assignment (article 25);
- to have a civil liability insurance policy (article 25.3);

- to treat the parties according to the principles of equality, to give them the opportunity to defend their rights, and to act with loyalty and promptness during the procedure (article 42);
- when the arbitration is according to law, the arbitrator has to justify his decision (article 52); and
- the award shall be written and finalised; in order to end the procedure, the requirements specified in article 53 are met.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Act 48/2014, of 18 December, on the practice of law and the Andorran Bar Association, establishes that it is a major breach to practise law without being registered with the Andorran Bar Association.

Nevertheless, the practice of law is defined in article 3.2 as relating to "defending the parties in whichever administrative or judicial proceeding" and does not mention arbitrations. Nor is there any provision restricting the appearance of lawyers from other jurisdictions when a foreign law, not the Andorran one, has to be practised.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There are no rules or laws providing for an arbitrator's immunity. Nevertheless, article 25 of the AAA establishes arbitrator liability for damages in case of improper performance of their duties based on bad faith, temerity or wilful misconduct.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

According to article 9 of the AAA, courts have jurisdiction over arbitration assistance and supervision:

- to appoint and dismiss court-appointed arbitrators;
- to provide court assistance for the collection of evidence;
- to adopt interim measures;
- to enforce and recognise awards; and
- to rule on the application for setting the award aside.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

Arbitrators can award interim measures and preliminary orders according to articles 28 and 30 of the AAA. The interim measures can be awarded in order to:

- Maintain or recover the *status quo* during the arbitration.
- Avoid any damage or interference with the arbitration.
- Preserve some assets in order to execute the final award.
- Preserve evidence that could be relevant in order to resolve the arbitration.

A preliminary order can be awarded in a way that guarantees that it cannot be overruled by any successive interim measures.

Arbitrators do not need the assistance of the court to award interim measures or preliminary orders.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Articles 9 and 38 of the AAA establish that the Civil Section of Andorran Court (*Batllia*) is competent to adopt interim measures before, or during, the arbitration requested by the parties. Neither the request nor the granting of the interim measure will affect the validity of the arbitration agreement.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

There is still no case law experience on these matters, but the approach should be positive, due to the fact that the procedure is perfectly defined in the AAA.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

Although there are no special provisions in the AAA, article 8 prevents courts acting when the dispute is referred to arbitration.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

Article 33 of the AAA establishes that the arbitrators may require the claimant to furnish sufficient security.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

There is still no case law experience on these matters, but article 36 of the AAA establishes that interim measures adopted by the arbitrators will be subject to the general provisions regarding the annulment and the enforcement of the award.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

The AAA does not provide for particular rules of evidence in arbitral proceedings.

Article 9 of the AAA establishes that the Civil Section of Andorran Court (*Batllia*) is competent to provide court assistance for taking evidence.

Moreover, article 47 of the AAA foresees that arbitrators, on their own initiative or at the request of a party, can appoint one or more

experts to report on specific issues and may call any of the parties to furnish the expert with all relevant information, display thereto all relevant documents or goods, or afford them access to such documents or goods for examination.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

The AAA does not have any specific provisions for arbitrators on these matters.

Nevertheless, article 48 of the AAA establishes that the arbitrators, or a party with their approval, may request a competent court to furnish assistance with the collection of evidence pursuant to the applicable rules on the means of proof. Such assistance may consist of the collection of evidence by the competent court or the adoption thereby of any specific measures needed to enable the arbitrators to do so.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

According to article 48 of the AAA, a court is only able to intervene when the arbitrators, or a party with their approval, requests said court to furnish assistance in the collection of evidence.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

There are no provisions in this sense in the AAA. Article 40 establishes that the parties are free to agree on the procedure to be followed by the arbitrators in conducting the proceedings.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

According to article 13.2 of Act 48/2014, of 18 December, on the practice of lawyer profession and the Andorran Bar Association, communications between lawyers attract privilege. Privilege is deemed to have been waived when the other lawyer authorises it or the Bar Association waives it.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contain reasons or that the arbitrators sign every page?

The requirements of the arbitral awards are contained in article 52 of the AAA. These requirements are the usual and can be summarised as follows:

- The award will state its date.
- Complete name or denomination of the parties and their address.
- Name of the lawyer or the person who represents the parties.
- Name of the arbitrators.
- The place of arbitration. The award will be deemed to have been made at the place specified.
- Short brief regarding the claims made by the parties and means of proof to be effected.
- The decision.
- The arbitration costs, if not decided in the arbitration agreement.
- The award will state the grounds upon which it is based, except for awards delivered on agreed terms pursuant to article 51 (settlement by agreement).
- All awards must be issued in writing and signed by the arbitrators.
- In arbitral proceedings with more than one arbitrator, the signatures of a majority of all arbitrators or of the president will suffice, provided that the reasons for the omissions are stated.
- Arbitrators may specify how they voted.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

According to article 54.3 of the AAA, the arbitrators may correct any error of the type referred to in sub-item 1.a) of the same article, on their own initiative within 10 days of the date of the award. The types of error are:

a) errors in computation, as well as clerical, typographical or similar errors;

b) an error regarding the interpretation of a specific point or part of the award;

c) an additional award on claims presented in the proceedings and omitted from the award; and

d) the rectification of a partial overextension of the proceedings in an award covering questions not submitted to the arbitrators or questions on a matter not subject to arbitration.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

According to the AAA, parties have two options:

- An action to set aside a final award (article 56 of the AAA). For this purpose, a party has to allege and prove:
  - (i) that one of the parties was incompetent at the moment of signing the arbitration agreement, or that the arbitration agreement did not exist or was not valid according to the law chosen by the parties, or, if there was not agreement about the applicable law, according to Andorran law;
  - (ii) the applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
  - (iii) that the award contains decisions on questions not submitted to arbitration or questions that exceed the arbitration agreement; or
  - (iv) that the appointment of the arbitrators or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with an imperative provision of this act, or, failing such agreement, was not in accordance with this act.

  The court hearing the case for the setting aside of the award on its own initiative or at the request of the Public Prosecutor, in connection with interests whose defence is legally attributed thereto, may determine that:

(i) the subject matter of the dispute is not apt for settlement by arbitration; or

(ii) the award is in conflict with Andorran public policy.

- An action for the review of the award, pursuant to the provisions of civil procedure rules in the Principality of Andorra (article 58 of the AAA).

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

There is nothing provided in the AAA regarding this matter, but, *a priori*, it seems that parties shall not be able to exclude the possibility of setting aside a future award.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

There is nothing provided in the AAA regarding this matter.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

Article 57 of the AAA establishes the procedure to set aside an arbitral award, as follows:

a) The application must be submitted in conjunction with any supporting documents, the arbitration agreement and the claimant's proposal for the means of proof to be effected.

b) The court will notify the respondent of the claim. In his defence, which must be submitted within 20 days, the respondent must attach any substantiating documents and propose all the means of proof from which he will draw. The claimant will receive copies of the defence and the attached documents to be able to submit any additional documents or propose further means of proof.

c) After the defence is received or the respective time limit lapses, the court will set the date for the hearing, if so requested by the parties in their statements of claim and defence.

The court's sentence will not be appealable.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

The Principality of Andorra ratified the New York Convention on the Recognition and Enforcement of foreign arbitral awards on 19 June 2015 and it entered into force on 17 September 2015 without any reservations.

Relevant national legislation for recognition and enforcement of foreign awards is contained in:

- Articles 59 to 61 of Act 47/2014 on arbitration of the Principality of Andorra.
- Enforcement Civil Procedure Rules of the Principality of Andorra, and more specifically:
  - "*Decret, del 6 de maig de 1922, execució de sentències*".
  - "*Decret, del 4 de febrer de 1986, regulador de l'execució de les resolucions judicials en matèria civil*".
  - "*Llei 43/2014, de 18 de desembre, del saig*".
  - "*Llei 44/2014, de 18 de desembre, de l'embargament*".

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

No other conventions concerning the recognition and enforcement of arbitral awards have been signed by the Principality of Andorra.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

There is still no case law regarding this matter.

Regarding the steps that parties are required to take, it should be noted that:

- Recognition of the award is regulated, according to article 61 of the AAA under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, drawn up in New York on 10 June 1958. The requisite procedural steps will be performed as set out in the civil procedure rules for judgments delivered by foreign courts.

The recognition of foreign civil judgments is regulated by articles 47 to 49 of the "*Llei transitòria de procediments judicials, de 21 de desembre de 1993*". According to these articles, steps for recognition are:

- Recognition of the award has to be issued, by one of the parties, before the *Tribunal Superior de Justícia d'Andorra*.
- The recognition proceeding consists of controlling and verifying:
  - The jurisdiction where it has been granted.
  - The regularity of the proceeding where it has been granted.
  - The application of competent law according to national conflict rules.
  - The consistency with national and international public domain.
  - The absence of contravention of national law.
- Execution of the award is regulated, according to article 59 of the AAA, in accordance with this chapter (where article 59 is contained) and the provisions of the Civil Procedure Rules.

The civil procedure rules regarding execution in Andorra refer to the "*Llei transitòria de procediments judicials, de 21 de desembre de 1993*", of which article 92 establishes:

- Execution will be regulated under the "*Llei del saig*", the "*Llei de l'embargament*", and the Annex III of the "*Decret del 4 de febrer de 1986*".
- The party has to apply for the enforcement before the *Secció Civil de la Batllia*, and also has to supply to the court the duly authenticated original award and the original arbitration agreement or a duly certified copy.
- If the award or agreement is not made in Catalan, Spanish or French, the party applying for enforcement of the award will have to produce a translation of these documents into Catalan. The translation has to be certified by a sworn translator.
- The court will proceed through the steps established by the ordinary enforcement regulation granting the enforcement or not. In cases where enforcements are granted, the "Saig" will continue with the potential research of assets, possible seizures and subsequent measures.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Article 55.1 of the AAA establishes that arbitral awards constitute *res judicata*. It means that the award cannot be modified unless through the correspondent action to set aside awards. It also means that what has been decided by the award cannot be re-heard before another arbitration or court.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

There is still no case law regarding this matter.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Article 5.2.c of the AAA on arbitration of the Principality of Andorra establishes the principle of confidentiality unless otherwise provided.

On the one hand, article 67.2 of the AAA about international arbitrations provides that parties must expressly stipulate that the proceeding is confidential in the arbitration agreement.

On the other hand, article 39 of the AAA establishes the obligation of confidentiality from everybody who is involved in the arbitration with regards to all of the information involved in it.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

It depends on what the parties have agreed with regards to confidentiality.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

There are not any specific limits in the AAA related to the types of remedies.

13.2 What, if any, interest is available, and how is the rate of interest determined?

There are no articles in the AAA related to interest. The determination of interest and the rate of interest will depend on the applicable law according to each action issued, and also on the agreements reached by the parties.

The Andorran Government approves every year legal and late-payment interest rates. According to 2017 National Budget Law 3/2017, during 2017 the legal interest rate was 0.846%, and late-payment interest rate was 1.692%.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Pursuant to article 52.3.h) of the AAA, subject to agreement by the parties, the award will include the arbitrators' decision on arbitration costs.

Shifting fees and costs depend on the agreement of the parties.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

The award itself it is not subjected to any tax, but a difference is made with the content of the award. According to article 5 of the Personal Income Tax Act, compensation as a result of personal liability for damages legally or judicially recognised are tax-exempted.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

There are not any known restrictions on third parties, including lawyers, funding claims.

Yes, contingency fees are legal in Andorra. Article 37 of the Statutes of the Bar Association of Andorra establishes that contingency fees are permitted as long as a minimum wage is fixed for the lawyer's time and for all the expenses incurred in his action, such as taxes and attorney and experts' fees.

Although here in Andorra there are no visible signs of professional active funders, such funders are very active in Europe for international arbitration and judicial proceedings; therefore they may also act here due to the particular interaction between Andorran and international markets.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

No, the Principality of Andorra has not signed the ICSID.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

The Principality of Andorra signed in 2015 a Bilateral Investment Treaty with the United Arab Emirates for the promotion and reciprocal protection of investments. The Treaty has not yet entered into force.

Furthermore, the Principality of Andorra has entered into a Good Neighbour Agreement with Spain and France, based on the principle of good-neighbourliness, which crystallises in: (i) the rejection by the contracting states of those performing any acts seeking to establish zones of influence or domination; and (ii) their commitment to maintain a peaceful coexistence.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

In the Bilateral Investment Treaty with the United Arab Emirates, expressions of noteworthy language as "principle of balance" should be highlighted as a reflection of the aforementioned aims of this agreement.

Regarding the Good Neighbour Agreement with Spain and France, the "most favoured nation principle" must be highlighted as an example of noteworthy language. In the context of this agreement, such principle means that each contracting state shall grant in its territory to the investments and income obtained by the investors, a treatment no less favourable than treatment granted to the investments and income of its own investors or to the investors of any third state, and must apply the treatment which results to be most favourable between these two alternatives.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

Article 63 of the AAA provides that States and the entities under their aegis may not invoke the prerogatives of their own legal systems in connection with matters subject to arbitration.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

Arbitration has been initiated in the Principality of Andorra since their law entered into force on 22 January 2015.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

There is a joint project between the Andorran Bar Association ("CAA") and the Andorran Chamber of Commerce ("CCISA") for launching the first and unique arbitral institution in the Principality of Andorra.

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Miguel Cases is the managing partner of Cases & Lacambra. He leads the Corporate and Banking & Finance practice and is qualified to practise both in Spain and the Principality of Andorra.

Before founding Cases & Lacambra, Miguel carried out the project to establish the Banking practice of Cuatrecasas in its Barcelona office. Before that he developed his career as legal counsel and responsible for derivatives in "la Caixa" and in the Spanish Confederation of Savings Banks, "CECA".

He has extensive experience as an arbitrator, being regularly appointed as a specialised arbitrator in financial instruments. He is a regular lecturer in international business schools in their specialty areas and, in particular, financial instruments which simulate or replicate cash flows. He has participated in the drafting of the Spanish standards for master netting agreements, in the regulation of netting and financial guarantees and in other regulations of the financial sector. He also has been a member of different working committees for the development of market standards in the International Swaps and Derivatives Association, "ISDA".

CASES & LACAMBRA

Cases & Lacambra is an independent law firm founded with the ambition of providing legal tailor-made services designed to fulfil the needs of both private clients and financial institutions. We are the forerunners of the high-end law firms that are based on true specialisation, the expertise of our teams, innovative and flexible organisation, efficient services, cutting-edge technology, confidence, and loyalty to clients. Whether acting on a single transaction basis, or providing continuous, highly-focused advice, the firm is committed to the highest standard of client care that can be expected. We provide advice to our clients understanding their commercial threats, opportunities and goals. Our aim is to maintain a long-lasting client relationship with a very careful client selection among their different business areas.

Arbitration is currently experiencing a very significant increase in popularity, showing itself as an alternative, agile, efficient, specialised and confidential system for dispute resolution. It is precisely for this reason that the team of Cases & Lacambra intervenes as counsel, defending our clients' interests in arbitral proceedings, both national and international, before internationally-recognised arbitral institutions or "*ad hoc*" tribunals. The common practice of the firm articulates these arbitration proceedings, whether solving complex commercial disputes between companies, advising in specialised banking litigation, or resolving any differences arising between governments and individuals from other States for breaching any bilateral or multilateral international treaties. Our arbitration team is regularly immersed in some of the most complex and relevant investment arbitration proceedings that are being carried out at an international level. The team is also closely collaborating with several Chambers of Commerce, advising on the creation and implantation of new Arbitration Tribunals. Likewise, as a result of its wide experience in the subject, the members of the arbitration team of Cases & Lacambra are regularly selected to act as sole arbitrators or to integrate arbitration Tribunals, both national and international, ruling in matters of their specialty. They are members of the International Bar Association Arbitration Committee, members of the Spanish Arbitration Club, regular collaborators in legal works and specialised publications, lecturers regarding arbitration, and regular attendees to congresses related to the subject.

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