GLI GLOBAL LEGAL INSIGHTS

# International Arbitration

# 2021

**Seventh Edition**

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## Introduction

Law on arbitration

The Andorran Arbitration Act 47/2014 of 18 December 2014 (hereinafter "**AAA**") is not specifically based on the United Nations Commission for the International Trade Law ("**UNCITRAL**") Model Law, but has been inspired by it, based on the need to foster commercial relationships and to have a faster and specialised alternative dispute resolution mechanism.

New York Convention

The Principality of Andorra ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 19 June 2015, which entered into force on 17 September 2015 without any reservations.

Recognition and enforcement of arbitration awards

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

International arbitration

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 out as follows:

- Domestic form requirements do not apply to international arbitration agreements.
- The validity of international arbitration agreements will be analysed according to 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.

Overview of arbitration bodies

In July 2020, the Andorran Chamber of Commerce and the Andorran Bar Association signed the constitution of the Andorran Arbitration Court before a Notary Public. The next step that will need to be taken for the Court to begin working will be the approval of its regulations.

Special national courts

No special national courts for international arbitration exist in Andorra.

## Arbitration agreement

What formalities are needed for the arbitration agreement?

The requirements needed for the arbitration agreement to be valid are set out in article 10 of the AAA and can be summarised as follows:



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- 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 appointment procedure contained in an arbitral institution regulation.
- The arbitration agreement may adopt the form of a clause in an agreement.
- If the arbitration agreement is contained in an adhesion contract, its validity and interpretation will be governed by the rules applicable to such contracts.
- Whatever form it takes, the arbitration agreement 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 ensures that a record of the agreement is kept.

What disputes are arbitrable?

Arbitration under the AAA is allowed for all matters of which the parties are free to dispose. In this regard, the AAA establishes that consumer and labour arbitration are excluded from its scope.

Rules for joinder/consolidation

The AAA does not contain any specific provision on joinder or consolidation of a third party, nor does it provide a regulatory framework for consolidation of arbitral proceedings.

Competence-competence and separability

The principle of competence-competence is expressly recognised in the AAA, which clearly states that arbitrators may rule on their own jurisdiction, including any pleas with respect to the existence or validity of the arbitration agreement, or any others whose acceptance would prevent consideration of the merits of the case. Their decision may only be challenged by means of an application to set aside the final or a separate award on jurisdiction.

Under the AAA, the principle of competence-competence includes the separability principle in the sense that the validity of the arbitral agreement established as a clause of a contract does not depend on the validity of the contract itself.

## Arbitration procedure

Commencing arbitration proceedings

Unless otherwise agreed by the parties, arbitration will commence on the date on which a request to submit the dispute to arbitration is received by the respondent, as stated in the AAA, meeting the requirements established in the arbitration agreement.

Hearings outside of the seat of arbitration

The parties may freely determine the place of the arbitration. Failing to reach such agreement, the place of arbitration will be determined by the arbitrators, taking into consideration the circumstances of the case and the convenience of the parties. Arbitrators may, unless otherwise agreed by the parties and only after notifying them, meet at any place they deem appropriate for hearing witnesses, experts or the parties, inspecting goods or documents, or examining persons.



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Provisions for expedited arbitration

The AAA does not contain any specific provision on expedited arbitrations. However, article 5 of the AAA establishes that the arbitration proceedings governed by said law will be subject to the principle of celerity.

Rules on evidence

The parties are free to choose the applicable rules on evidence, subject in any case to the requirements of the institution at which the arbitration will take place, as well as observing the principles of equality, review, and rebuttal. The AAA briefly regulates this matter in articles 44 and 45 by which, subject to any contrary agreement by the parties, the arbitrators will decide whether to hold oral hearings for the presentation of statements or evidence and the issuance of conclusions, or whether the proceedings will be conducted in writing only. If a hearing for the presentation of evidence is held, said hearing must be summoned in advance. Furthermore, according to the AAA, said hearings may be held by videoconference if there exists an agreement between the parties and when authorised by the arbitrators.

Applicable rules regarding privilege/immunity and disclosure

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

With regard to disclosure rules, the arbitrators, parties, experts and arbitral institutions are bound to honour the confidentiality of the information received on the occasion of arbitration according to the confidentiality principle, unless the parties agree otherwise (articles 5.2.c and 39.2 of the AAA). However, in the case of international arbitration, parties must expressly stipulate the confidentiality of the arbitration in the arbitration agreement (article 67.2).

IBA Rules on the Taking of Evidence in International Arbitration

The International Bar Association ("**IBA**") Rules are not positive law in Andorra. Consequently, they are merely indicative, not binding.

Rules regarding expert evidence

The AAA establishes that, unless otherwise agreed by the parties, arbitrators may, at their own initiative or at the request of either party, appoint experts to advise them on specific matters, as well as request any of the parties to provide documents or goods to the expert for inspection. Parties may also provide reports of experts appointed by them.

Unless otherwise agreed by the parties, if one party requires or the arbitrators deem it necessary, the expert may participate in the proceeding to answer the questions of the parties and the arbitrators.

New LCIA and IBA guidelines

Currently, there are no guidelines to take into consideration the new London Court of International Arbitration ("**LCIA**") and IBA guidelines. Consequently, they are merely indicative, not binding.

Confidentiality of evidence and pleadings

The arbitrators, parties, experts and arbitral institutions are bound to honour the confidentiality of the information received on the occasion of arbitration, unless the parties agree otherwise. However, in the case of international arbitration, the parties must expressly stipulate the confidentiality of the arbitration in the arbitration agreement.



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## Arbitrators

Appointment of arbitrators

According to the AAA, in arbitration proceedings not to be decided *ex aequo et bono* and conducted by a single arbitrator, such person will be required to be an attorney, unless otherwise agreed by the parties. When arbitration is conducted by three or more arbitrators, at least one must be an attorney.

Additionally, the parties are free to agree on a procedure for appointing the arbitrator or arbitrators, providing the principle of equality is honoured. In absence of said agreement, the AAA establishes some rules on the appointment of an arbitrator:

- In an arbitration with a sole arbitrator, he will be appointed by the arbitration institution chosen by the parties for the management of the proceedings and, if the parties have not designated any arbitration institution, by the court (*Secció Civil de la Batllia*) within a maximum period of one month.
- In an arbitration with three arbitrators, each party may appoint one arbitrator, and the two arbitrators thus appointed may appoint the third arbitrator, who may preside over the proceedings. If a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators appointed by the parties fail to agree on the third arbitrator within 30 days of the latest acceptance, the appointment will be made by the arbitration institution chosen by the parties to manage the proceedings and, if the parties have not designated any arbitration institution, by the court within a maximum period of one month.

Where more than one claimant or respondent is involved, the arbitration must consist of three arbitrators: the respondents may appoint one arbitrator, and the claimants another; and the two arbitrators thus appointed may appoint the third arbitrator, who may preside over the proceedings.

If a party does not comply with the established proceeding, the parties or arbitrators do not reach an agreement in accordance with the established proceeding, or a third party does not perform its functions, any party may apply to the competent court to appoint the arbitrators or, as appropriate, to adopt the necessary measures.

Challenging arbitrators

An arbitrator may be challenged only if justifiable doubts affecting their impartiality or independence arise, or if they do not meet the qualifications agreed by the parties. A party may challenge an arbitrator appointed by him/her, or in whose appointment she/he has participated, only for reasons of which he/she becomes aware after the appointment was made.

The parties may agree on the procedure for challenging arbitrators but, in the absence of such agreement, a party who intends to challenge an arbitrator must state in writing the grounds for the challenge within 15 days of becoming aware of the acceptance, or of the appearance of any circumstances that may give rise to justified doubts about the arbitrator's impartiality or independence.

Unless the challenged arbitrator withdraws from his/her office or the other party agrees to the challenge, the arbitrators – excluding the challenged arbitrator – shall decide on the challenge.

Are the IBA Guidelines on Conflicts of Interest in International Arbitration taken into account?

As happens with respect to the IBA Rules on the Taking of Evidence, the IBA Guidelines on Conflicts of Interest in International Arbitration are not positive law in Andorra. Consequently, they are merely indicative, not binding.



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Terminating an arbitrator's mandate

An arbitrator's mandate is terminated when the arbitral proceedings are terminated, either by a final award or if: (i) the claimant withdraws his/her claim, unless the respondent objects and the arbitrators acknowledge a legitimate interest on his/her part in obtaining a final settlement of the dispute; (ii) the parties mutually agree on the termination of the proceedings; or (iii) the arbitrators find that continuation of the proceedings is unnecessary or impossible.

Immunity of arbitrators

As previously indicated, arbitrators have not been granted immunity. They are subject to a very high standard of liability, which means they could be responsible for damages and prejudices caused when acting in bad faith, temerity or wilful misconduct, as determined in article 25.1 of the AAA. Arbitrators or arbitral institutions acting on their behalf will be bound to take liability insurance or equivalent security for the amount established in the specific arbitral institution rules.

Secretaries to the arbitral tribunal

The AAA establishes that the arbitrators, under the parties' agreement, may appoint one secretary and fix his/her administrative functions and remuneration.

## Interim relief

What types of interim relief are available to parties?

Article 28 of the AAA establishes that, unless otherwise agreed by the parties, arbitrators can grant any interim measures deemed necessary in connection with the object of the dispute, at the request of any party. In such cases, the arbitrators may order any party:

- to maintain or restore the *status quo* until the dispute is resolved;
- to adopt measures to avoid any current or imminent damage in the arbitration proceedings, or refrain from carrying out certain acts that may cause damages or interference in the arbitration proceedings;
- to provide some means to preserve the necessary goods to allow the execution of the final award; or
- to keep evidence that may be relevant to resolve the dispute.

Can the parties apply to both courts and tribunals for such interim relief?

Parties may apply to both courts and arbitral tribunals in order to be granted any interim measure.

Can and do national courts order anti-suit injunctions in aid of international arbitration?

Andorran law does not provide for the granting of any form of anti-suit injunction and, as of today, no court has granted an anti-suit injunction.

Can and do national courts order anti-arbitration injunctions in aid of domestic litigation?

Andorran law does not provide for the granting of any form of anti-arbitration injunction and, as of today, no court has granted an anti-arbitration injunction.

Security of costs

The AAA establishes that arbitrators may, at the request of the parties, adopt any interim measures deemed necessary in connection with the object of the dispute, requiring the claimant to furnish sufficient security.



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## Arbitration award

Formal requirements for an arbitration award

An arbitration award must fulfil the following formal requirements in order to be valid and enforceable:

- It must be issued within six months (extendable for a further two months by reasoned resolution of the arbitrators) from the date of submission of the statement of defence or from the expiration of the deadline to submit said written statement, unless otherwise agreed by the parties.
- It must be issued in writing and signed by the arbitrators. Arbitrators may specify the reasoning behind their votes.
- It must explain the grounds upon which it is based unless the award is issued as a way of termination by mutual agreement of the parties.
- It must contain the date, the names and addresses of the parties, their attorneys and the arbitrators, the place of arbitration, a concise summary of the claims of the parties, the evidence, and the decision.
- It must contain a decision regarding the costs of the arbitration, subject to the agreement of the parties.
- It must be expressly notified to the parties, according to the form and within the time frame agreed by them or, failing that, by delivering a signed copy of the award to each party.

Time frame for the arbitration award

Subject to any contrary agreement of the parties, the arbitrators must deliver the award within six months from the date of submission of the statement of defence or from the expiration of the deadline to submit said written statement. Unless otherwise agreed by the parties, this term may be extended by the arbitrators for a period of no longer than two months under a duly justified ground. The failure to deliver the award on time will not affect its validity, unless otherwise agreed by the parties.

Can an arbitral tribunal order costs for the parties? If yes, under what criteria?

An arbitral tribunal may condemn the defeated party to bear the other party's costs. The AAA establishes that the award shall express, subject to agreement by the parties: the arbitrators' decision on arbitration costs, to include the arbitrator's fees and expenses and, as appropriate, the fees and expenses of the parties' defence or representatives; the cost of the service rendered by the institution conducting the arbitration; and all other expenses incurred within the arbitral proceedings.

Can interest be included in the award and/or costs?

The AAA does not expressly regulate the possibility of claiming interest on arbitration costs. However, there is no legal impediment to include interests in the final award but only regarding the principal amount claimed in the proceedings.

## Challenge of the arbitration award

Can an arbitration award be appealed in your jurisdiction?

Generally, an arbitration award cannot be appealed before the ordinary courts in Andorra. An arbitration award constitutes *res judicata*, which means that there are no other actions against it except for those seeking to set it aside.

On what grounds can an arbitration award be challenged?

The AAA provides a restrictive list of grounds under which an award can be set aside before



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the Supreme Court of Justice (*Tribunal Superior de Justicia*). All such reasons must be demonstrated, in any case, by the applicant party:

- The arbitration agreement did not exist or was not valid.
- The applicant party did not properly receive notice of the appointment of an arbitrator and/or of the arbitration proceedings or was otherwise not able to present their case.
- The arbitrators decided on questions not subject to their jurisdiction.
- The arbitrators did not observe the agreement of the parties regarding their appointment and/or the arbitral proceedings, unless such agreement does not respect any imperative provision of the AAA, or, failing such agreement, the arbitrators have proceeded against the AAA.

It is important to note that the challenge of an award must be submitted by the parties within three months from the date of notification of the award (or within two months in the case of international arbitration).

On the other hand, the Supreme Court, at its own initiative or at the request of the Public Prosecutor, may challenge the arbitration award if it verifies that the award decided on non-arbitrable matters or violated public policy.

Modifying the arbitration award

The AAA establishes that the parties are entitled to apply for the correction, rectification and clarification of the award and/or the issuance of an additional award. A party may apply for this modification of the arbitration award when some of the following circumstances apply:

- miscalculation or clerical, typographical or similar errors in the arbitration award;
- need of clarification of a specific point or part of the award;
- need of an additional award to resolve the claims made and not resolved in the award; or
- overreach of the award to non-arbitrable matters or matters not submitted to arbitration.

Recent examples of successful and unsuccessful attempted challenges of arbitral awards

Due to the recent coming into force of the AAA, case law on challenges of arbitral awards remains unexplored.

## Enforcement of the arbitration award

Under what convention can an international arbitration award be enforced in your jurisdiction? What formal requirements are needed?

The enforcement of international awards is regulated in article 61 of the AAA, which refers to the application of the Convention on Recognition and Enforcement of Arbitral Awards made in New York on 29 April 1977.

To enforce an international arbitration award, the formal requirements needed in Andorra are established in our Procedural Law (article 19 of the Qualified Act on Justice of 3 September 1993, and articles 47 and subsequent of the Transitory Act on Judicial Proceedings of 21 December 1993), by reference to the Andorran legal system on the recognition and enforcement of international judicial sentences.

Can an arbitration award be enforced if it has been set aside at the courts of the seat of arbitration?

The award is enforceable even if a party has challenged it. However, the executed party may request the court to suspend the execution if it proves it has challenged the award, and as far as it offers a guarantee for the value of the sentence plus the damages that may result from the delay of the execution. Once the application for suspension has been submitted, the court will decide. No appeal may be lodged against the court's decision.



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Trends of enforcement − pro-arbitration or anti-arbitration

There are no trends of enforcement in the Andorran jurisdiction.

## Investment arbitration

Bilateral investment treaties

Andorra signed one bilateral investment treaty ("**BIT**") with the United Arab Emirates in 2017.

Multilateral investment treaties

Andorra has not yet signed any multilateral investment treaties ("**MITs**").

Recent investment arbitration cases

To the best of our knowledge, there have been no investment arbitration cases against Andorra. The Principality does not have any experience in investment arbitration.

Treatment of investment arbitration by the courts

The Principality of Andorra does not have any experience in investment arbitration.

Has your State accepted the award and paid the investors?

The Principality of Andorra does not have any experience in investment arbitration.



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Miguel Cases is the co-managing partner of Cases & Lacambra. He leads the Markets & Financial Services Group of the firm and is qualified to practise both in Spain and the Principality of Andorra.

Miguel has extensive experience advising credit institutions and investment services firms, acting regularly as the key legal counsel for major national and international financial institutions, public administrations and both public and private investment funds in the structuring of financial transactions, derivatives, financial sector reorganisation, M&A deals and special situations. In the latter topics he has participated in several of the most cutting-edge transactions in both Spain and the Principality of Andorra in recent years.

Miguel's practice includes the regulation of the financial sector where he is an expert in the legal framework and regulatory environment applicable to entities subject to prudential supervision, especially those rendering financial and investment services. Furthermore, his practice extends to special situations and turmoiled entities.

Miguel also acts as an advisor for corporations, family offices and private investors that place trust in his knowledge of the financial sector to structure and define the legal risks inherent to their investments. He is also an expert in cross-border asset recovery matters and has acted as arbitrator in finance-related matters.

Before founding Cases & Lacambra, Miguel developed his career in the Spanish Confederation of Savings Banks ("**CECA**"), la Caixa (now Caixabank) and Cuatrecasas.

He is a regular lecturer in international business schools in his specialty areas, in particular financial instruments that simulate and replicate cash flows, and has participated in the drafting of standards for master netting agreements, in the regulation of netting and financial guarantees and in multiple regulations of the financial sector.

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