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International Arbitration 2022

Spain: Law and Practice

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SPAIN

Law and Practice

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1. GENERAL

1.1 Prevalence of Arbitration

Spain is in favour of arbitration. Indeed, arbitral awards are automatically enforceable before ordinary courts (Article 517.2.2 of the Spanish Procedural Law, Act 1/2000, of 7 January 2000).

However, some domestic parties are still reluctant to use arbitration to resolve their disputes, although the prevalence of arbitration has increased because judicial proceedings are too slow in some parts of Spain.

Article 3 of the Spanish Arbitration Act 60/2003 of 23 December 2003 (SAA) applies to international arbitration proceedings. According to Article 3 of the SAA, arbitration proceedings shall be considered international when any of the following circumstances apply:

- at the time of the conclusion of the arbitration agreement, the parties have their domiciles in different countries;
- the place of arbitration, determined in or pursuant to the arbitration agreement, the place of performance of a substantial part of the obligations in dispute or the place with which the dispute is most closely connected, is outside the state in which the parties have their domiciles;
- the legal relationship in dispute is connected to international trade interests.

Therefore, under Spanish law, arbitration proceedings will be considered international only in those cases.

1.2 Impact of COVID-19

The COVID-19 pandemic has had an impact on the use of international arbitration because, while the ordinary jurisdiction was paralysed, the arbitration procedure offered greater flexibility. It adapted to the extraordinary situation that was occurring in the world.

In this sense, most of the arbitration procedures immediately adapted to the online format, which helped to avoid the delays resulting from the COVID-19 pandemic.

Furthermore, the availability of online arbitration proceedings has sustained over time, also reducing the high costs that can arise from international arbitration.

Consequently, arbitration has grown during the COVID-19 pandemic thanks to its flexibility.

1.3 Key Industries

In 2021–22, international arbitration has exponentially increased in fields that require higher levels of expertise.

This is the case for the construction and energy industries, in which it is quite common for the contracting parties to agree to submit their disputes to international arbitration due to the specific expertise required for the resolution of those kinds of proceedings.

Moreover, because of the COVID-19 pandemic, litigation has considerably increased during 2021–22 in the construction and energy industries. However, it is difficult to identify any industries that have experienced decreased international arbitration activity.

1.4 Arbitral Institutions

In Spain, the most frequently used international arbitration court is the Court of Arbitration of the International Chamber of Commerce (ICC).

Moreover, until 2020 there were four arbitral institutions in Spain used for international arbitration:

- the Madrid Court of Arbitration (*Corte de Arbitraje de Madrid*);
- the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje* – CIMA);
- the Spanish Court of Arbitration (*Corte Española de Arbitraje*); and
- the Arbitration Court of Barcelona (*Tribunal Arbitral de Barcelona*).

However, on 1 January 2020, the Madrid International Arbitration Center (*Centro Internacional de Arbitraje de Madrid* – CIAM) began its activity.

CIAM was created due to an agreement reached between the Madrid Court of Arbitration, CIMA and the Spanish Court of Arbitration to promote international arbitration in Spain.

In accordance with the information published by CIAM, it undertook ten cases in the period from January 2020 to December 2021.

1.5 National Courts

In Spain, there are no specific national courts to hear disputes related to international arbitrations and/or domestic arbitrations.

However, there are some national courts that have specific powers regarding international arbitration.

For instance, the courts of first instance (*Juzgados de Primera Instancia*) are entitled to recognise and enforce international arbitration awards in the terms of Article 8.6 of the SAA, and the high courts of justice (*Tribunales Superiores de Justicia*) have jurisdiction to hear appeals for the annulment of awards.

2. GOVERNING LEGISLATION

2.1 Governing Law

In Spain, the governing law on arbitration is the SAA, which includes both domestic and international arbitration.

This law is deeply inspired by the United Nations Commission on International Trade Law of 21 June 1985 (the UNCITRAL Model Law). Among their main similarities are the regulation of the requirements necessary for the agreement to submit to arbitration to be valid and the adoption of interim measures in arbitration proceedings.

However, it should be noted that, in addition to the SAA, Spanish law also incorporates the provisions relating to international arbitration established in treaties ratified by Spain or contained in national laws with special provisions on arbitration.

The main differences between the SAA and the UNCITRAL Model Law include:

- in accordance with Section 9.6 of the SAA, in international arbitrations, the arbitration agreement will be valid and the dispute shall be arbitrable if it meets the requirements stated by the law chosen by the parties to govern the arbitration agreement, by the law governing the merits of the case or by the Spanish Law; and
- in accordance with Article 15 of the SAA, unless otherwise agreed by the parties, in arbitrations that are not to be decided in equity, when the arbitration is to be decided by a sole arbitrator, the arbitrator shall be an attorney.

2.2 Changes to National Law

The Spanish arbitration legislation has not been modified in recent years.

3. THE ARBITRATION AGREEMENT

3.1 Enforceability

According to Article 9.1 of the SAA, to be valid under Spanish law, the arbitration agreement has to express the parties' willingness to submit to arbitration all or some disputes that may arise from their legal relationship. In this sense, the Spanish law follows Article 7 of the UNCITRAL.

Therefore, the key aspect to be considered in an arbitration agreement is to clearly state the intention of the parties to submit their dispute to arbitration.

In addition to this, the arbitration agreement must be made in writing and signed by both parties or exchanged in communications between the parties which provide a record of the agreement (Article 9.3, SAA).

On the other hand, in international arbitrations, the SAA expressly provides that the arbitration agreement will be valid if it meets the requirements stated by the law chosen by the parties to govern the arbitration agreement, by the law governing the merits of the case or by Spanish law (Article 9.6, SAA).

3.2 Arbitrability

Under Spanish law, the matters that cannot be submitted to arbitration are matters excluded from the free disposition of the parties. These would be considered non-arbitrable matters (Article 2.1, SAA). Moreover, Article 1.4 of the SAA excludes labour disputes from the scope of the law and, in addition, there are matters excluded from arbitration for reasons of public order, such as disputes related to personal capacity or filiation.

3.3 National Courts' Approach

Regarding the determination of the law applicable to the arbitration agreement, the main rule is the freedom of choice of the parties. In international arbitration, if there is no choice, Article 9.6 of the SAA provides that the arbitration agreement will be valid if it meets the requirements stated by the law governing the merits of the case or by Spanish law.

The Spanish courts follow this rule and do not intervene in those cases in which they lack jurisdiction unless expressly provided for by the SAA, as set forth in Article 7 of the SAA.

In this regard, in cases where there is an arbitration agreement, the national courts will refrain from hearing the dispute and will accept the decision of the parties to submit to arbitration.

Likewise, if there is an arbitration agreement between the parties, the opposing party may also allege the lack of jurisdiction of the court through a motion for lack of jurisdiction.

3.4 Validity

If the contract in which the submission to arbitration clause is contained is invalid, the arbitration clause will not be affected by the invalidity. The arbitration clause is considered a separate legal stipulation from the main contract regardless of whether it is set as a clause within the contract itself or as a separate contract.

In this sense, the principle of competence-competence is expressly recognised in Article 22 of the SAA. This principle states that arbitrators are empowered to decide on their own jurisdiction, including any plea related to the existence or validity of the arbitration agreement, or any other pleas the acceptance of which would prevent the consideration of the merits of the case.

4. THE ARBITRAL TRIBUNAL

4.1 Limits on Selection

According to Article 15 of the SAA:

- in arbitrations of law, the only limit set to the parties' autonomy is that at least one of the arbitrators must be an attorney;
- on the other hand, there is no such limitation in equity arbitrations, and there is no requirement that an arbitrator be an attorney, not even where there is a sole arbitrator.

In addition, it should be noted that the arbitrators cannot be legal entities, and there is no maximum limit on the number of arbitrators as long as there is an odd number.

4.2 Default Procedures

The parties are free to agree on a procedure to appoint the arbitrator(s), but, if the arbitrator(s) cannot be appointed by that procedure, any party may apply to the competent court to appoint the arbitrators or, as appropriate, to adopt the necessary measures.

For those cases, Article 15 of the SAA establishes the following procedure to appoint the arbitrator(s).

- In an arbitration with a sole arbitrator, they will be appointed by the competent judicial court at the request of any of the parties.
- In an arbitration with three arbitrators, the parties will appoint one arbitrator each, and these two arbitrators will appoint the third arbitrator, who will be the chairperson of the arbitral tribunal. If a party fails to appoint the arbitrator within 30 days of the latest acceptance, the appointment will be made by the competent judicial court at the request of any of the parties.
- Where more than one claimant or respondent is involved, the claimants will appoint one arbitrator and the respondents will appoint another.

If claimants or respondents cannot agree on the appointment, all arbitrators will be appointed by the competent judicial court at the request of any of the parties.

If the arbitration is administered by an arbitration institution, it will apply the rules to appoint arbitrators of that institution.

4.3 Court Intervention

As stated in Article 8.1 of the SAA, the Spanish courts will intervene in the selection of the arbitrators when it has not been possible to appoint the arbitrator or arbitrators by the method stipulated by the parties, in the following cases:

- when the arbitration should be overseen by a single arbitrator and the arbitrator could not be determined in accordance with the stipulations agreed by the parties;
- when the arbitration should be overseen by three arbitrators but one of the parties has not selected the corresponding arbitrator within a period of 30 days; or
- when there are several plaintiffs or defendants and they do not reach an agreement on appointing an arbitrator.

4.4 Challenge and Removal of Arbitrators

The SAA is flexible in relation to the procedure for challenging arbitrators. It allows the parties to agree on the challenge procedure they deem most appropriate.

However, in the absence of an agreement, the party challenging an arbitrator shall state the reasons for the challenge within 15 days of becoming aware of the acceptance or of any

circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence.

Unless the challenged arbitrator withdraws from their position or the other party accepts the challenge, it shall be for the arbitrators to decide on the challenge.

The grounds on which the arbitrators may be challenged must be based on whether there are circumstances giving rise to justifiable doubts as to their impartiality or independence, or as to whether they possess the qualifications agreed upon by the parties.

4.5 Arbitrator Requirements

The arbitrator must be impartial and independent. To avoid being challenged, they must remain independent and impartial throughout arbitration (Article 17.1, SAA).

Despite the fact that no definitions of independence and impartiality are established in Spanish law, they usually consist of maintaining the absence of any personal, professional or commercial relationship with the parties, and should an arbitrator have any impediment that prevents them from meeting these requirements, they must disclose this information at the time of their appointment and without delay.

5. JURISDICTION

5.1 Matters Excluded From Arbitration

As set out in Article 2.1 of the SAA, only disputes on matters of free disposal according to law can be the subject of arbitration procedures.

In this sense, matters for which arbitration is not freely accessible to the parties include the following:

- personal capacity, filiation, marriage and minors (Article 751, Spanish Civil Procedural Law);
- rights for which waiver may be contrary to the public interest (Article 6.2, Spanish Civil Code); and
- labour matters (Article 1.4, SAA).

5.2 Challenges to Jurisdiction

In accordance with Article 22 of the SAA, the arbitrators appointed in an arbitration procedure are fully empowered to decide on their own jurisdiction. This faculty is known as the principle of competence-competence. This includes the power to decide if the arbitration agreement exists or if it is valid.

5.3 Circumstances for Court Intervention

A court may address issues of jurisdiction of an arbitral tribunal if a party files a claim with the court despite the fact that the parties have agreed on an arbitration clause. In this case, the defendant could file a motion for lack of jurisdiction invoking the existence of the arbitration agreement and could request the court to refrain from ruling on the matter. All of this is settled in accordance with Article 11.1 of the SAA and Article 63 of the Spanish Civil Procedure Law.

If the existence of the arbitration agreement can be clearly proved, the Spanish courts will refrain from intervening in the procedure.

The SAA does not establish the option for Spanish courts to review negative decisions on jurisdiction by arbitral tribunals, although jurisdiction may be reviewed by means of an action for annulment of the award (Article 41, SAA).

5.4 Timing of Challenge

The parties can only challenge the jurisdiction of an arbitral tribunal before the courts when an award has been issued (interim or final), since

Article 22 of the SAA grants exclusive jurisdiction to the arbitrators to decide on their own jurisdiction.

Therefore, the decision of the arbitrators on their own jurisdiction can only be challenged through the exercise of an action for annulment of the award, without prejudice to the fact that the parties could allege before the arbitral tribunal its lack of jurisdiction in their first writ of allegations.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

The Spanish courts will analyse the specific jurisdiction of the arbitral tribunal through a deferential review.

5.6 Breach of Arbitration Agreement

In the event that a party files a claim when it should have initiated arbitration proceedings due to the existence of an arbitration agreement, the court should act in accordance with the arbitration agreement unless it considers it to be invalid.

It should also be noted that the parties may modify the submission made to arbitration by tacitly submitting the dispute to the courts. Thus, if a claim has been filed with a court despite the fact that the parties have agreed an arbitration clause and the opposing party replies to the claim without objecting to the jurisdiction of the tribunal within ten days, it will be understood that the parties have agreed to submit their dispute to the jurisdiction of that court.

5.7 Jurisdiction Over Third Parties

Spanish law does not recognise the capacity of arbitral tribunals to uphold jurisdiction over persons or entities that are not parties to the arbitration agreement.

However, there are certain cases in which it has been accepted that arbitration agreements may affect non-signatory parties if they have a close and strong relationship with the signatories or play a relevant role in the execution of the contract submitted to arbitration.

6. PRELIMINARY AND INTERIM RELIEF

6.1 Types of Relief

Article 23 of the SAA establishes that the arbitrators may, at the request of a party, adopt the precautionary measures that they deem necessary in relation to the object of the proceedings. In such cases, arbitrators may require the claimant to furnish sufficient security.

The SAA does not detail any specific interim measures and, therefore, arbitrators commonly apply by analogy some of the measures listed in Article 727 of the Spanish Procedural Law (Act 1/2000, of 7 January 2000), such as preventive seizure of goods, judicial intervention or administration of productive goods, goods depository, etc.

6.2 Role of Courts

The competence to adopt precautionary measures in the framework of arbitration procedures vests in the arbitrators themselves. However, to achieve effective compliance, the collaboration of the courts is often necessary.

Moreover, it is worth mentioning that the national courts can grant interim measures in aid of international arbitration in accordance with Article 722 (first paragraph) of the Spanish Procedural Law (Act 1/200, of 7 January 2000), which regulates interim measures in arbitration proceedings and foreign litigation. This provision determines that whoever can prove to be a party of an arbitration agreement may seek injunctions from the court prior to or during the arbitration proceedings.

According to Article 722 of the Spanish Procedural Law, whoever can prove to be a party to any judicial or arbitration proceedings being conducted in a foreign country can request interim measures in Spain, except in the cases where the main matter at issue should solely lie within the competence of Spanish courts.

Although the SAA does not regulate the use of emergency arbitrators, the Madrid International Arbitration Center's Arbitration Rules include a specific procedure for the request of urgent interim measures by any of the parties. By means of this procedure, the parties have the ability to obtain provisional protection of their rights and interests when a situation arises that does not allow them to wait for the establishment of the arbitral tribunal (Articles 58-67, CIAM's Arbitration Rules).

In this sense, the decision of the emergency arbitrators will be binding for the parties and will cease to be binding if the court terminates the request for emergency arbitration or if the request for arbitration has not been filed within the established time limit, among other reasons.

In this regard, the arbitrators of the main proceedings will have the ability to modify, suspend or revoke the decision of the emergency arbitrator, provided that one of the parties requests it.

6.3 Security for Costs

When interim relief is requested in an arbitration procedure, the arbitrators can, in accordance with Article 23 of the SAA, require the requesting party to pay a bond to ensure that they can repay the damages that the requested measure could potentially cause to the other party.

7. PROCEDURE

7.1 Governing Rules

In Spain, the principle of party autonomy, regulated in Article 25.1 of the SAA, governs the arbitration procedure.

Therefore, the only mandatory rule that governs the arbitration procedure is respect for due process rights (ie, the right to be heard and the equal treatment and contradiction of the parties).

7.2 Procedural Steps

As mentioned in **7.1. Governing Rules**, the principle of party autonomy will govern the arbitration procedure, respecting the principles of due process and equal treatment in all cases.

7.3 Powers and Duties of Arbitrators

Spanish national law does not contain a list of arbitrators' duties and powers. However, they include the following.

- Duties:
  - (a) they must act in a fair and impartial manner, treating both parties equally;
  - (b) their performance has to fall within the established legal or contractual framework; and
  - (c) they must keep the procedure confidential.
- Powers:
  - (a) the power to decide on their own competence; and
  - (b) the power to adopt interim reliefs.

7.4 Legal Representatives

The SAA does not include legal provisions that provide for particular qualifications or other requirements for legal representatives, beyond requiring that the representative has sufficient powers to act as such.

8. EVIDENCE

8.1 Collection and Submission of Evidence

As regards the collection and submission of evidence at the pleading stage and at the hearing in the Spanish jurisdiction, it should be noted that the parties are free to choose the applicable rules of evidence, subject to the requirements adopted by the arbitration institution where the arbitration takes place.

Thus, as for the existence of specific rules applicable to the different types of evidence, the arbitrator may order the disclosure of documents and the appearance of witnesses. They may even request the assistance of the competent court in the submission of evidence, in accordance with Article 33 of the SAA.

In this regard, with respect to the possibility for one party to disclose the documents to the other party or to the arbitrator, it should be noted that the parties may fix the rules and scope of disclosure by mutual agreement, which must be approved by the arbitrator.

8.2 Rules of Evidence

According to the SAA, the parties and the arbitrator will have full freedom and flexibility in the evidence phase. Thus, as long as the principles of equality and contradiction are complied with, there is no difference between international arbitration and national proceedings.

In this regard, if the arbitration is administered by an arbitral institution, the rules of evidence could be those established by the institution.

On the other hand, if the arbitration is an ad hoc arbitration and the parties have not agreed on the rules of evidence, the arbitrators shall determine how it is to be regulated, provided that the principle of equal treatment is granted.

8.3 Powers of Compulsion

According to Article 33 of the SAA, the assistance of the courts in the collection or submission of evidence may be requested whenever necessary.

It shall be the court of first instance of the place of arbitration or of the place where the assistance is requested that will assist the parties or the arbitrators in the taking of evidence. Such assistance may consist of the collection or submission of evidence by the court itself or the adoption of specific measures to enable the collection or submission of certain evidence.

9. CONFIDENTIALITY

9.1 Extent of Confidentiality

Article 24.2 of the SAA expressly establishes that the arbitrators, the parties, and the arbitral institutions must respect the confidentiality of the information and documentation provided for in the arbitration proceedings.

The principle of confidentiality affects both the information and documentation related to the merits of the case, as well as the documentation and evidence related to the arbitration proceedings.

10. THE AWARD

10.1 Legal Requirements

The legal requirements for an arbitral award to be valid and enforceable in Spain are set forth in Article 37 of the SAA. They can be summarised as follows:

- the time limit for rendering the award is six months from the filing of the statement of defence or from the expiration of the time limit for filing it, unless otherwise agreed;

- the award must be made in writing and signed by the arbitrators;
- the award must include a statement of the reasons on which the decision is based, unless it is rendered by termination by mutual agreement of the parties;
- the award must contain a specific decision on the costs of the arbitration; and
- the award must be expressly notified to the parties, in the manner and within the period agreed by the parties or, failing this, by delivery of a signed copy of the award to each party.

The six-month period for delivery of the award, unless otherwise agreed, may be extended in a duly justified manner by the arbitrators for a period not exceeding two months.

10.2 Types of Remedies

As to the types of remedies that an arbitral tribunal may award, arbitrators can award both declaratory relief and monetary compensation.

At the same time, arbitrators have the possibility of ordering the specific performance of a contract by one of the parties or the pursuit of a certain action.

However, as regards the existing limits on such remedies, it is necessary to specify that punitive damages do not exist in Spain and, consequently, it could be understood that they are contrary to public policy.

10.3 Recovering Interest and Legal Costs

Pursuant to Article 37.6 of the SAA, the arbitrators' award on the costs of the arbitration shall include the following:

- the fees and expenses of the arbitrator and, if applicable, the fees and expenses of the defence and of the representatives of the parties;
- the cost of the services rendered by the arbitration institution; and
- all other expenses incurred within the arbitration proceedings.

Also, the payment of legal interest concerning the principal sum awarded is generally imposed.

Unless otherwise agreed by the parties, the arbitrators shall decide on the distribution of the costs generated by the arbitration proceedings. Thus, the arbitrators can decide whether to distribute the costs depending on the costs incurred by each party, or whether one party should compensate the other for the costs incurred.

11. REVIEW OF AN AWARD

11.1 Grounds for Appeal

According to Article 41 of the SAA, the award may be set aside if any of the following circumstances is proved:

- if the arbitration agreement does not exist or is invalid;
- if it has not been possible to give proper notice of the appointment of an arbitrator or of the arbitral proceedings, or if a party has not been able to assert its rights;
- if the arbitrators have ruled on matters not submitted to their decision;
- if the appointment of the arbitrators or the arbitration proceedings have not been in accordance with the agreement of the parties, unless such agreement would be contrary to a mandatory rule of the SAA, or, in the absence of such agreement, if they have not been in accordance with the SAA;
- if the arbitrators have ruled on matters not subject to arbitration; or
- if the award is contrary to public policy.

The party requesting the award to be declared null and void must file a claim with the high court of justice of the autonomous community in which the award has been rendered.

Generally, the application for annulment of the award may be filed within a maximum period of two months from the date of receipt of the award by the applicant party. However, when the application is for rectification, clarification or supplementation of the award, the time limit will begin from the date of receipt of the decision on the application by the applicant party or from the date of expiration of the time limit for deciding on the application.

The annulment action will be substantiated through the channels of the verbal proceeding, but with the following particularities:

- the claim must contain the documents supporting the claim, the arbitration agreement and the award, and, if applicable, it shall contain the proposal the practice of which of interest to the plaintiff; and
- the time limit for replying to the appeal by the opposing party shall be 20 days and must contain the means of proof the practice of which is of interest.

Some institutional arbitrations recognise the parties' right to appeal the award. This is the case, for example, of Article 54 of the Arbitration Rules of the Madrid Court of Arbitration.

11.2 Excluding/Expanding the Scope of Appeal

The SAA does not regulate the possibility of excluding or expanding the scope of appeal of the awards since, in the Spanish legal system, there is no second instance in arbitration matters. There is simply the possibility of filing an action for annulment on the grounds set out in the law, which in no case affects the merits of the case.

Thus, the voluntary submission of the parties to arbitration has the consequence that the possibilities for appealing the decision arising from the proceedings are limited.

In this regard, it should be noted that the exclusion by the parties of the action for annulment of the award is not allowed under Spanish law.

11.3 Standard of Judicial Review

The standard of judicial review is deferential, since the Courts cannot review the merits of the dispute resolved by the arbitrator.

According to Article 41 of the SAA, the award may be set aside if any of the following circumstances is proved:

- if the arbitration agreement does not exist or is invalid;
- if it has not been possible to give proper notice of the appointment of an arbitrator or of the arbitral proceedings, or if a party has not been able to assert its rights;
- if the arbitrators have ruled on matters not submitted for their decision;
- if the appointment of the arbitrators or the arbitration proceedings have not been in accordance with the agreement of the parties, unless such agreement would be contrary to a mandatory rule of the SAA, or, in the absence of such an agreement, if they have not been in accordance with the SAA;
- if the arbitrators have ruled on matters not subject to arbitration; or
- if the award is contrary to public policy.

As can be seen, the law does not recognise the possibility of applying for the annulment of an award on the grounds that the rules applicable to the merits of the case have been violated.

12. ENFORCEMENT OF AN AWARD

12.1 New York Convention

In July 1977, Spain enforced the Convention on the Recognition and Enforcement of Arbitral Awards, as adopted in New York in June 1958, which is the instrument that generally governs the enforcement of international awards in Spain.

This is established in Article 46 of the SAA. However, it also mentions that the New York Convention will be applicable in the absence of more favourable international conventions.

12.2 Enforcement Procedure

In Spain, the procedure and rules for the enforcement of an award depend on whether the award to be enforced is national or international.

If the award is national, the party seeking to enforce the award simply has to apply for enforcement before the court of first instance of the place in which the award was rendered.

On the other hand, if the award is international, the general rule is that a party must apply for its recognition before the court of justice of the domicile of the party against whom the award is to be enforced, or in the place where the award should produce its effects.

Once it is recognised, enforcement may be sought before the court of first instance of the domicile of the person against whom the award is to be enforced, or where it should produce its effects.

The international relevance of annulment decisions made by the courts in the country in which arbitration took place is controversial. In general, if an award is annulled in the state of origin, it will not be subject to recognition in another state, since, if it is not valid in its state of origin, it cannot be valid in any other jurisdiction.

In any case, denying a foreign award because it has been annulled by a foreign court decision means giving effect, indirectly, to the award in Spain.

In conclusion, there is a wide margin of manoeuvre for Spanish courts not to deny the exequatur of foreign arbitral awards that have been annulled on grounds contrary to Spanish public policy.

On the other hand, if the appeal for annulment of the foreign award is still pending, the Spanish exequatur court may postpone the decision on the enforcement of the award.

Regarding the possibility for a state or state entity to successfully raise a defence of state or sovereign immunity in the enforcement stage, Article 2.2 of the SAA prevents the possibility for a state to oppose the prerogatives of its own law to breach the obligations contained in an arbitration agreement.

Therefore, in 2015, Spain passed Act 16/2015, on State Immunity, which covers the content of the UN Convention on State Immunity (UNCSI) of 2004. In this regard, according to Article 16 of the UNCSI, there is an exception to jurisdictional immunity when there is an arbitration agreement relating to a commercial transaction between the state and a private individual from a different state.

Thus, Article 17 of the UNCSI provides for the immunity of the state from enforcement measures, as it allows enforcement proceedings against assets located in Spain and used for purposes other than official non-commercial ones. In turn, enforcement will be possible when there is a tacit or explicit consent of the state by

means of an international agreement, a written contract or a declaration within a judicial proceeding.

12.3 Approach of the Courts

The case law of the Spanish courts in relation to the exequatur of foreign awards respects the autonomy of the will of the parties to submit their dispute to arbitration and, consequently, interprets the principle of public policy in a restrictive manner.

Occasionally, there are some decisions that cause some controversy as to the scope and extent of the concept of public policy, but generally the exceptionality of its nature is recognised.

13. MISCELLANEOUS

13.1 Class Action or Group Arbitration

Nowadays in Spain, the unique specific regulation concerning class-action arbitration is the Royal Decree 231/2008, of 15 February, which regulates the consumer arbitration system.

In general, class action in arbitration is neither ruled out nor adequately covered by current legislation. However, due to the specific characteristics of class actions, it is difficult to carry out an arbitration procedure without specific regulation of these procedures.

In this sense, in class actions brought before the ordinary courts, Spanish law requires, for example, the publicity of the actions in order for the plaintiffs to join the proceeding and request their individual compensation.

13.2 Ethical Codes

The Arbitration Law does not include ethical codes binding arbitrators and lawyers. Thus, the only requirements are independence and impartiality. However, it is true that arbitrators and lawyers admitted to the bar are obliged to comply with the professional code and the ethical rules applicable to lawyers.

Spanish practitioners are also aware of the guidelines accepted by the International Bar Association and the Spanish Arbitration Club, which include ethical rules.

13.3 Third-Party Funding

Arbitration and national laws do not regulate third-party funding. However, there is also no regulation applicable to arbitration or civil procedure that prevents third-party funding.

The use of third-party funders in arbitration is commonly accepted. However, the lack of regulation causes some doubts, for example, regarding the costs to be imposed in the award.

13.4 Consolidation

The SAA does not regulate the possibility for an arbitral tribunal or court in Spain to consolidate several separate arbitration proceedings.

However, the fact that this aspect is not regulated does not mean that it is prohibited, since it will depend on the procedural rules agreed upon by the parties, in accordance with Article 26 of the SAA.

In this sense, the Madrid International Arbitration Centre provides for the consolidation of several arbitration proceedings (Article 19, CIAM Arbitration Rules).

In conclusion, the agreement of the parties and the internal regulations of the arbitration institution in which the arbitration is being administered must be followed.

13.5 Binding of Third Parties

It must be taken into account that the scope of the award must be limited to the parties who

entered into the arbitration agreement and who participated in the arbitration process. An award does not have effects on third parties who were not able to exercise their right of defence within the arbitration process itself.

When the effects of the award are intended to be extended to third parties who did not participate in the arbitration, they must challenge the award through constitutional channels, as long as there is a direct impact and that they affect their constitutional rights.

However, there are certain cases in which it has been admitted that arbitration agreements may affect non-signatories if they have a close and strong relationship with the signatories or play a relevant role in the execution of the contract submitted to arbitration.

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