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International Arbitration 2022

Andorra: Law & Practice
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Cases & Lacambra

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Law and Practice

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1. GENERAL

1.1 Prevalence of Arbitration

Arbitration as an alternative dispute resolution method has been recently implemented in Andorra. Indeed, the 47/2018, Act on Arbitration (AAA) was approved on 18 December 2014, yet the Arbitral Tribunal of the Principality of Andorra (ATPA) was not created until 2018 by the 13/2018 Act.

However, Andorra is working towards the implementation of arbitration as a prevalent method to resolve disputes. In fact, there is a manifest willingness among Andorran companies and businesspeople to submit their disputes to arbitration, as they understand that it is a faster and more specialised procedure that provides many benefits to the parties.

Additionally, since the approval of the new Civil Procedure Code, which entered into force on 1 May 2021, arbitral awards are automatically enforceable before the Andorran courts, resulting in the quicker and easier enforcement of awards.

1.2 Impact of COVID-19

The impact of COVID-19 cannot be assessed since international arbitration in this jurisdiction is still very limited.

1.3 Key Industries

To date, it is difficult to assess which industries are experiencing significant international arbitration activity.

1.4 Arbitral Institutions

The institution used for international arbitration is the ATPA, which was created by Act 13/2018 of 31 May 2018. No other arbitration institutions have been created since.

1.5 National Courts

In the Principality of Andorra there are no specific courts designated to hear disputes related to international arbitration.

2. GOVERNING LEGISLATION

2.1 Governing Law

In Andorra, both local and international arbitration are governed by the AAA.

The AAA is not based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law, but was inspired by it, based on the need to promote commercial relationships and to have a faster and more specialised alternative dispute resolution mechanism.

2.2 Changes to National Law

There have been no significant changes to the AAA in the past year nor is there pending legislation that may change the arbitration landscape in Andorra.

3. THE ARBITRATION AGREEMENT

3.1 Enforceability

The parties' free will prevails in international arbitration, demanding a special procedural flexibility.

The arbitration agreement will be valid, and the dispute will be subject to arbitration as long as the requirements agreed upon by the parties to govern the arbitration agreement or, subsidiarily, the requirements set forth by Andorran law are met.

The legal requirements for an arbitration agreement to be enforceable are set out in Article 10

of the AAA. Pursuant to this article, the requirements are the following:

- the arbitration agreement must express the parties' will to submit their disputes to arbitration, whether contractual or extra-contractual;
- the arbitration agreement must designate the arbitration board or determine the procedure for its designation;
- the arbitration agreement may adopt the form of a clause in a contract or a separate document containing the express will of the parties to submit a specific dispute to arbitration;
- regardless of the chosen method, the arbitration agreement must be in writing;
- the arbitration agreement must be signed by all parties concerned;
- the arbitration agreement will be valid if it is contained in letters, telegrams or other means of telecommunication provided that the method used ensures its recording.

3.2 Arbitrability

The arbitration agreement will be valid and the dispute subject to arbitration when the rules and requirements agreed upon by the parties to govern the arbitration agreement and the applicable requirements set forth by the AAA are met.

The AAA provides that all matters within the free disposition of by the parties are arbitrable. However, it specifically excludes labour and consumer matters.

3.3 National Courts' Approach

To date, there is no case law in Andorra on the law governing the arbitration agreement or on the enforcement of arbitration agreements.

3.4 Validity

According to Andorran law, an arbitration clause is valid even when the contract containing such clause is declared invalid. Thus, its validity is

not linked to the effectiveness of the rest of the contract.

Indeed, the independent nature of the arbitration clause with respect to the contract containing it is expressly provided for in Article 10.8 of the AAA – “The arbitration agreement is independent of the (...) and the decision of the arbitration board to declare the nullity of the contract does not ipso jure entail the nullity of the arbitration agreement”.

Therefore, Andorran law applies the rule of separability to arbitration clauses contained in invalid agreements.

4. THE ARBITRAL TRIBUNAL

4.1 Limits on Selection

The AAA allows the parties to either directly appoint the arbitrator or arbitrators or to agree on the procedure to appoint them.

However, there are limits on the parties' autonomy to select arbitrators, set forth in Article 14 of the AAA:

- only individuals can act as arbitrators;
- the number of arbitrators on the arbitration board must always be an odd number;
- in the case of an arbitration with a sole arbitrator, the arbitrator must be a lawyer;
- in the case of an arbitration with three or more arbitrators, at least one of them must be a lawyer.

In the absence of an agreement as to the number of arbitrators, a sole arbitrator will be appointed.

4.2 Default Procedures

If the method chosen by the parties for the selection of arbitrators fails, Andorran law provides for the following procedures.

- In an arbitration with a sole arbitrator, the arbitration institution indicated by the parties will appoint the arbitrator. Subsidiarily, the court will appoint the arbitrator within a maximum period of one month.
- In an arbitration with three arbitrators, both parties shall nominate one arbitrator, and the two arbitrators thus appointed shall nominate a third arbitrator.

If the parties fail to reach an agreement, or the appointed arbitrators fail to appoint a third arbitrator within the legally prescribed period of time, the appointment shall be made by the arbitral institution designated by the parties.

If no arbitration institution has been appointed by the parties, the court shall appoint the arbitrator upon the request of any of the parties.

If the parties cannot agree on the number of arbitrators, the arbitration tribunal will be composed of one arbitrator.

4.3 Court Intervention

According to the AAA, the court may intervene in the selection of arbitrators. The court will list three names for each arbitrator to be elected. It must necessarily bear in mind the requirements set forth by the parties or, subsidiarily, those foreseen in the law, undertaking all means to ensure their independency and impartiality.

The court's decision on the appointment of an arbitrator cannot be appealed except when the court rejects the request to appoint an arbitrator because the non-existence or invalidity of the arbitration agreement can be inferred from the documentation.

4.4 Challenge and Removal of Arbitrators

According to the Andorran law, an arbitrator may be challenged only when circumstances arise that might cast doubt on the arbitrator's impartiality or independence.

Arbitrators may also be challenged when the conditions agreed by the parties or set forth by law are not met.

The parties may agree on the procedure to challenge arbitrators. Alternatively, they must follow the procedure set forth in the AAA.

An arbitrator appointed by a party can only be removed by that party for reasons of which it has become aware after the appointment.

Arbitrators may also be removed if they are prevented from exercising their duties or if their duties are exercised with undue delay, and whenever the parties agree to it.

4.5 Arbitrator Requirements

Arbitrators appointed by the parties must remain independent and impartial during arbitration and therefore cannot have any personal, professional or commercial relationship with any of the parties.

An arbitrator shall disclose any circumstances that prevent them from being impartial or independent. Prior to the acceptance of the appointment, the arbitrator must reveal all facts and circumstances that may cast doubts regarding their independence and impartiality before accepting their appointment.

The arbitrator must not intervene or have intervened in the past as a mediator in the same dispute, unless the parties agree otherwise.

The parties may request the arbitrators' removal when the requirements of independence or impartiality are not met, or if the arbitrator does not comply with their duty of confidentiality.

5. JURISDICTION

5.1 Matters Excluded From Arbitration

Article 3.1 of the AAA provides that all matters within the free disposition of the parties are arbitrable.

Labour and consumer arbitration are specifically excluded from the scope of arbitration.

5.2 Challenges to Jurisdiction

Article 27 of the AAA expressly recognises the principle of competence-competence, which provides for the power of the arbitral tribunal to decide on its own jurisdiction, as well as on the following matters:

- the existence and validity of the arbitration agreement;
- the appointment of arbitrators;
- the arbitrability of the dispute;
- any other plea which may prevent the review of the dispute.

5.3 Circumstances for Court Intervention

The Andorran courts may address issues of jurisdiction of an arbitral tribunal when a judicial procedure is brought up in breach of an arbitration agreement. The Andorran courts will declare themselves incompetent if the existence and validity of an arbitration agreement is proven.

Arbitral awards will only be reviewed by the courts if an action for annulment is brought against the award as set forth in Article 56 of the AAA, or when an appeal is lodged.

5.4 Timing of Challenge

The parties have the right to challenge the jurisdiction of the arbitral tribunal in court once the decision on jurisdiction is rendered.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

For questions on admissibility and jurisdiction, the court will accede to a deferential review.

5.6 Breach of Arbitration Agreement

Under the AAA, when a party commences court proceedings in breach of an arbitration agreement, the court may declare itself incompetent and will uphold the arbitration agreement, unless it finds the arbitration agreement to be invalid. One of the parties must request the court to uphold the arbitration agreement, at the latest when filing their plea.

5.7 Jurisdiction Over Third Parties

The Andorran law does not allow an arbitral tribunal to assume jurisdiction over third parties.

To date, there is no specific case law in Andorra on this matter.

6. PRELIMINARY AND INTERIM RELIEF

6.1 Types of Relief

Unless otherwise agreed by the parties, the arbitral tribunal may grant the interim relief it deems necessary as per any of the parties' request. In this sense, the arbitral tribunal may order one of the parties to:

- maintain or re-establish the status quo pending the resolution of a dispute;
- adopt or refrain from taking certain actions to prevent damage or an interference in the arbitral proceedings;

- provide means of preserving assets to enable the proper enforcement of an arbitral award;
- preserve evidence that may be relevant or pertinent to the resolution of the dispute.

The applicant for interim measures must prove the following before the arbitral tribunal:

- That not adopting the interim measure will result in damages.
- That there is a reasonable chance that the applicant's claim on the merits of the dispute is upheld. This decision does not prejudice, in any case, the subsequent decisions of the arbitral tribunal.

The arbitral tribunal cannot impose interim measures on third parties who are not parties in the arbitral proceedings.

6.2 Role of Courts

Under the AAA, the existence of an arbitration agreement does not prevent the parties from requesting the courts to adopt interim measures, either before or during the arbitration proceedings. Neither the petition for nor the adoption of such measures has an impact on the validity of the arbitration agreement.

Any interim relief adopted by the arbitral tribunal is binding and must be immediately executed.

The power of the courts to grant interim measures in arbitral proceedings is not affected by the country in which the arbitral proceedings are taking place. The court proceeds according to its own procedures.

Under the Andorran Code of Civil Procedure, interim measures include but are not limited to freezing orders, deposits, inventory and comments in public records.

6.3 Security for Costs

The arbitral tribunal may require the party requesting an interim measure to provide adequate security for the measure requested in order to prevent possible damages that may be caused by the adoption of the measure.

7. PROCEDURE

7.1 Governing Rules

The procedure of arbitration in Andorra is governed by the AAA.

However, the parties are free to establish the procedure applicable to their agreement, the parties and the other participants in the arbitration proceedings.

In any case, the procedure established by the parties must respect the fundamental principles of due process, equality, rebuttal and the right to be heard.

7.2 Procedural Steps

The parties have full discretion to determine the procedure to be followed by the arbitral tribunal, the parties and all other participants in the procedure. If the parties do not agree on a specific procedure, the arbitral tribunal may set up the rules that will govern the arbitration procedure in the manner they deem the most appropriate. This includes the power to decide on the admissibility, relevance and usefulness of evidence.

7.3 Powers and Duties of Arbitrators

The Andorran legal framework does not determine the powers and duties of arbitrators in an exhaustive manner. However, from a detailed reading of the AAA, it can be concluded that the most relevant powers and duties of arbitrators include the following.

- Duties:

- (a) to respect the duty of confidentiality;
 - (b) to act in accordance with the procedure previously established by the parties or subsidiarily, by the law;
 - (c) to remain independent and impartial during the arbitration process;
 - (d) to withdraw from their position if they cannot be impartial and independent;
 - (e) to act in accordance with the principles of due process, equality and rebuttal;
 - (f) to render an award within six months from the date of the rebuttal plea, unless otherwise agreed by the parties.
- Powers:
- (a) they may rule on their own competence;
 - (b) they may grant interim measures, if requested by one of the parties;
 - (c) they may appoint experts;
 - (d) they may decide on the appropriateness and utility of the evidence presented.

7.4 Legal Representatives

No specific requirements or qualifications are requested for the intervention of legal representatives within an arbitration process in Andorra. They must however prove they are fully empowered to act on behalf of any of the parties.

8. EVIDENCE

8.1 Collection and Submission of Evidence

Regarding the collection and submission of evidence, the parties' freedom to determine the procedure includes the power to set the applicable rules of evidence, which are subject to the principles of equality, review and rebuttal, at any stage of the procedure.

8.2 Rules of Evidence

Articles 44 and 45 of the AAA set forth the rules of evidence. The parties must provide, alongside their pleadings, all documents they deem appro-

priate, as well as any other means of evidence they wish to provide.

Unless otherwise agreed by the parties, the arbitral tribunal decides whether to hold hearings to present pleadings, evidence or oral conclusions, or whether the proceedings are to be conducted on the basis of documents and other written evidence without the need for a hearing.

The arbitral tribunal will summon the parties in advance to hold hearings and meetings to examine goods and documents. The parties may intervene personally or through their representatives and the hearing must always be documented.

Video conferencing is allowed as long as the parties consent and the arbitral tribunal approves.

A copy of all documents, expert reports and other information or evidence must be given to the parties. If a party possesses evidence, the arbitral tribunal may request the party to produce it.

8.3 Powers of Compulsion

Arbitrators are invested with the power to request any of the parties to produce the evidence they may have in their possession.

The arbitral tribunal, or any of the parties with the prior approval of the arbitral tribunal, may request the assistance of the Andorran courts to execute any means of evidence admitted by the tribunal.

Judicial assistance may consist of:

- executing means of evidence before the court and under its exclusive direction;
- adopting the measures deemed necessary to execute the evidence requested by the parties before the arbitral tribunal.

The competency to provide assistance in the execution of means of evidence is attributed to the civil section of the court.

9. CONFIDENTIALITY

9.1 Extent of Confidentiality

Confidentiality is one of the main principles of the arbitration procedure. However, with regard to international arbitration, the law provides that the parties must expressly agree for it to be confidential.

10. THE AWARD

10.1 Legal Requirements

Pursuant to Article 52 of the AAA, unless otherwise agreed by the parties, an arbitral award must:

- be in writing and signed by the arbitrators composing the arbitral tribunal;
- be rendered within six months (extendable by reasoned decision for an additional period of two months) from the date of the submission of the statement of defence or from the expiration of the deadline for submitting the statement of defence;
- contain the date, the names and addresses of the parties, the names of the lawyers and arbitrators, the place of arbitration, a brief statement of the parties' claims, the evidence, and the decision;
- rule on costs, except when the parties agree otherwise;
- be motivated;
- be duly notified to the parties once it has been issued, in the manner and within the timeline agreed by the parties.

10.2 Types of Remedies

The arbitral tribunal may award compensatory damages, rectification and injunctions. Punitive damages are not allowed.

10.3 Recovering Interest and Legal Costs

The AAA does not expressly provide for the possibility of recovering costs arising from the arbitration proceedings. The arbitral award must set the costs to be borne by each party, unless the parties have previously agreed otherwise.

The arbitral tribunal may order the defeated party to pay the costs of the arbitration proceedings. The costs include the fees and expenses of the arbitrators, as well as the fees and expenses of the parties' defence or representatives and any other expenses incurred in the arbitral proceedings.

11. REVIEW OF AN AWARD

11.1 Grounds for Appeal

Article 55 of the AAA foresees the *res judicata* effect of the arbitral award.

An arbitration award may only be set aside by the Civil Chamber of the High Court of Justice in the following cases.

- When one of the parties proves that:
 - (a) the arbitration agreement by which the parties submitted to arbitration was not valid because of the incapacity of one of the parties or for any other reason;
 - (b) the appointment of the arbitrators composing the arbitral tribunal and the proceedings carried out by the arbitrators have not been properly notified;
 - (c) the arbitral award resolves a dispute not provided for in the arbitration agreement or exceeds the terms of the arbitration

agreement;

- (d) the composition of the arbitral tribunal or the arbitral proceedings have not been in accordance with the parties' agreement or, in the absence of an agreement, with the law.
- Likewise, the arbitral award may be set aside when the High Court, ex officio or at the request of the Public Prosecutor's Office, establishes that:
 - (a) the subject matter of the dispute is not arbitrable;
 - (b) the arbitral award is contrary to international public policy.
- The motion to set aside an arbitral award must be brought within two months of the date of notification of the award.

All documents certifying the adequacy of the claim must be attached to the petition as well as all means of evidence considered necessary. The decision of the Superior Court of Justice is binding and cannot be challenged on appeal.

11.2 Excluding/Expanding the Scope of Appeal

The AAA does not expressly foresee the possibility of excluding or expanding the scope of the appeal brought against the arbitral award. Grounds for appeal are *numerus clausus*.

11.3 Standard of Judicial Review

The standard of review is deferential. The Andorran courts may review any challenges set forth by law but cannot review the merits of the case.

12. ENFORCEMENT OF AN AWARD

12.1 New York Convention

On 19 June 2015, the Principality of Andorra ratified the 1958 New York Convention on the

Recognition and Enforcement of Foreign Arbitral Awards without any reservations.

12.2 Enforcement Procedure

The procedures and standards for enforcing an award are set forth in the AAA as well as in the Civil Procedure Act.

The arbitral decision is enforceable even if a petition to set it aside has been filed. However, the executed party may request the suspension of the execution as long as a bond or guarantee is offered.

Once the petition to set aside a decision is dismissed, the Court will enforce the decision. The executor may at that time request compensation for the damages caused by the delay on the execution.

12.3 Approach of the Courts

The arbitration award is enforceable even when a motion to set it aside has been filed. Nevertheless, the suspension of the award can be requested with an offer of sufficient caution.

On many occasions the Andorran courts have acknowledged their inability to analyse the essence of the dispute submitted to arbitration. Regarding the enforceability of an arbitration award, the court must limit its duties to those attributed by law and can only justify denial of the enforceability of an award for the reasons legally foreseen.

Therefore, the execution of an arbitral award can only be rejected when any of the conditions set forth in Article 56 of the AAA are met. This same article empowers the court to set aside ex officio an arbitral award and deny its executions when:

- the subject matter of the controversy is not arbitrable; and
- when it is contrary to public policy.

13. MISCELLANEOUS

13.1 Class Action or Group Arbitration

There is currently no legislation in Andorra that expressly provides for class actions or group arbitration.

13.2 Ethical Codes

There is no specific ethical code that is directly applicable to counsel or to the members of the arbitration tribunal.

In this sense, according to Article 39 of the AAA, any arbitration procedure shall respect the principles of equality, hearing, confidentiality and contradiction.

Additionally, arbitrators are expected to act with independence and impartiality. Failure to comply with any of these requirements may lead to the arbitrators being challenged or removed.

13.3 Third-Party Funding

To date, there are no provisions or restrictions on third party funders.

13.4 Consolidation

There are no specific provisions on consolidation of arbitration proceedings. However, the parties may agree to the consolidation of separate proceedings.

13.5 Binding of Third Parties

The scope of the award is limited only to the parties who were involved in the negotiation and the arbitration process.

Thus, the consequences of the arbitration proceedings cannot be extended to third parties outside the arbitration proceedings.

Furthermore, Article 29.3 of the AAA prohibits the extension of interim measures to third parties.

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