Club Español
e Iberoamericano
del Arbitraje

Corporate Arbitration Commission Spanish and Ibero-American Arbitration Club

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Introduction

In 2024, the board of directors of the Spanish and Ibero-American Arbitration Club decided to establish a commission to prepare a report on the state of corporate arbitration in Ibero-American countries and asked me to chair it, which I was honoured and grateful to accept. The Commission established its working groups and began its work in January 2025.

The mandate was to study how corporate arbitration is regulated, how it is used and the problems it presents in various countries, and the measures that could be taken to promote it as the optimal means of resolving corporate disputes.

This report focuses on *corporate arbitration*, understood as arbitration provided for in the deed of incorporation or the articles of association of a commercial or capital company; therefore, it does not address arbitration agreements involving civil-law entities or partnerships, nor arbitration agreements relating to corporate disputes more generally, such as those arising from the sale of a business or *joint-venture* agreements.

The Commission gratefully builds on the work of the commission chaired by Professor Juan Fernández-Armesto, which concluded its mandate with its excellent report of 26 February 2013.[1]

However, there are notable differences between the two commissions.

The previous commission's work focused on Spain, whereas this commission's mandate is more ambitious, as it addresses corporate arbitration in Ibero-America.

This posed a major challenge because it was not possible, within the timeframe we set for ourselves, to analyse the position in each of these jurisdictions in depth; nevertheless, this report adequately outlines the state of corporate arbitration and provides a sound basis for continuing to analyse this type of arbitration in the various countries, given that part of the Club's mandate is for this report to serve as the basis for monitoring the evolution of corporate arbitration.

The previous commission was composed of 30 members, all of whom were Spanish; in this Commission, some 65 people from 20 countries have been involved, to varying degrees.[2]

Finally, the 2013 report, as stated in its introduction, "consisted of three parts:

> "The first is an analysis of the legislative reform [Law 11/2011, of 20 May, which amended Law 60/2003, of 23 December, on Arbitration] [...].
>
> The second is a model arbitration agreement, to be included in the articles of association of capital companies [...].

1 https://www.clubarbitraje.com/wp-content/uploads/2019/06/cea_Arbitraje_Societario_1.pdf

2 In alphabetical order: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Spain, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, the Dominican Republic, Uruguay, and Venezuela. Of the 22 member countries of the Ibero-American countries that make up the Ibero-American General Secretariat (https://segib.org/es/), the only countries in which it has not been possible to analyse corporate arbitration are Andorra and Cuba.

> The third is a model provision, which the CEA recommends be adopted by all Spanish arbitration institutions wishing to administer corporate arbitrations […].”

Our work has taken a very different form because more than 13 years have passed and, therefore, the relevant issues have changed, and because of the large number of countries covered by this report.

To carry out this mandate, we organised the work of the Commission’s members into the following five working groups, coordinated by and with the participation of the individuals mentioned in this report.

- **Group 1: the state of corporate arbitration in the various countries.**
- **Group 2: most common corporate disputes.**
- **Group 3: problems and limitations of corporate arbitration.**
- **Group 4: advantages of corporate arbitration.**
- **Group 5: measures that can be taken to promote corporate arbitration.**

Group 1’s work was naturally the most labour-intensive, as it required them to describe corporate arbitration in each of the 20 countries based on a set of common questions, while also adhering to a uniform drafting style and length. Groups 1, 2, 3 and 4 played a crucial role in developing the proposals set out in chapter 5.

I am deeply grateful to Eduardo Vázquez de Prada for his invaluable assistance in the overall coordination of this report and the review of its chapters and appendices, as well as to the coordinators of the five working groups (Jacqueline López, Patricia Vera, Julio González-Soria, Cecilia O’Neill, Ignacio Díaz, and Sebastián Mejía), the other members of those groups, and Cinta Garrido and Daniella Esquivel for their excellent work and dedication. I hope this report will serve to promote arbitration in Ibero-American commercial companies.

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Chair of the Corporate Arbitration Commission of the Spanish and Ibero-American Arbitration Club

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1. Corporate arbitration in the countries analysed

The state of corporate arbitration in each of the countries analysed is described in the 20 appendices to Annex 1 of this report.[3]

This chapter summarises those appendices, highlighting, first, the aspects or features common to all or most of the countries and, then, the main distinctive features of certain countries.

1.1 Overview of corporate arbitration

In a significant number of countries, corporate arbitration has legal roots dating back to the nineteenth century and, for a time, even became mandatory in some of them;[4] however, those legal systems gradually stopped regulating it specifically and even ceased to recognise that corporate disputes could be submitted to arbitration. As a result, case law in certain countries, and at certain stages, rejected it or approached it with caution.

All countries today have modern arbitration legislation, but only a few have specific rules governing corporate arbitration, which, in general, do not regulate it in sufficient detail.

Despite this, all the countries analysed now permit corporate arbitration, and the lack of specific regulation is addressed by general arbitration rules, the rules of arbitral institutions, case law, academic commentary, and practice.

Although legislation, case law, and academic commentary recognise corporate arbitration, there are countries where its substantive and personal scope may be constrained by an uncertain legal framework and inconsistent case law.

Corporate arbitration remains uncommon in some countries[5] for various reasons; in others[6], it is gradually gaining ground; and in others[7] still, it is already common.

In most of the jurisdictions, arbitration under the articles of association coexists with arbitration under shareholders' agreements, although there is little case law addressing the interrelationship between these two types of arbitration; therefore, the articles of association and shareholders' agreements should provide for the same dispute resolution mechanism. In any case, arbitration under shareholders' agreements binds on the shareholders who are parties to those agreements and, therefore, not on the other shareholders or on the company itself.

Including an arbitration agreement in the articles of association when the company is incorporated requires the consent of all shareholders.

3 The appendices describe the situation as of 30 April 2026; they do not consider legal reforms, reform proposals or drafts, or new developments in case law or academic commentary occurring after that date.

4 Spain, Portugal, Argentina, Uruguay, Bolivia, and Brazil.

5 Costa Rica, Ecuador, Spain, Paraguay, Portugal, and Venezuela.

6 Colombia, El Salvador, Mexico, Panama, and the Dominican Republic.

7 Argentina, Bolivia, Brazil, Chile, Guatemala, Honduras, and Nicaragua.

To adopt the agreement after the company has been incorporated, the quorum and voting majority requirements legally prescribed for any amendment to the articles of association generally apply; in certain countries[8], special majorities may be required. In some countries[9], unanimity is required – or, at the very least, it is unclear whether it can be dispensed with – and in others[10], the law grants shareholders who do not vote in favour of adopting the agreement the right to withdraw from the company, or it can be argued that they have such a right.

In all countries, the arbitration agreement in the articles of association binds the company and all shareholders, although in some cases it may be questioned whether it binds dissenting or absent shareholders[11] or new shareholders[12]; with regard to the latter, it is advisable to record the existence of the agreement on the corresponding share certificates or certificates evidencing membership interests issued by the company.

In most countries[13], the agreement also binds directors without the need for their express consent, provided its terms are broad enough and cover disputes involving directors. The reason for this is usually that the agreement, like any provision in the articles of association, is a rule governing the organisation or operation of the company that directors are presumed to implicitly accept upon taking office. In other countries[14], however, directors are bound only if they expressly accept the arbitration agreement or if they are notified of it when they are appointed. The same reasoning generally applies to liquidators.

Logically, third parties are not bound by the arbitration agreement, even when they bring claims provided for under company law, such as liability claims against directors or challenges to resolutions passed by the general meeting.

All the countries analysed define the substantive scope of arbitration in similar terms, referring to matters or rights that may be freely disposed of, are capable of settlement, or are pecuniary in nature.[15] In some countries, it is considered – or at least presumed – that all corporate disputes (in particular, those listed in Annex 2) concern matters or rights of this type and are therefore arbitrable; in others[16], however, there are certain disputes whose arbitrability is excluded by law or denied or disputed by case law or academic commentary because they concern matters deemed non-disposable, are governed by rules of public policy, or affect the rights of third parties.

In short, in most of the countries analysed, the substantive scope of the arbitration agreement may be drafted as broadly as the parties wish and cover all types of disputes mentioned in

8 Brazil (companies limited by shares) and Spain.

9 Colombia, Ecuador, Guatemala (companies that are neither companies limited by shares nor limited partnerships with share capital), Mexico (general partnerships and limited partnerships), Panama, Paraguay (limited liability companies), Uruguay (limited liability companies with fewer than 21 shareholders and simplified joint-stock companies), and Venezuela.

10 Bolivia, Brazil (companies limited by shares and limited liability companies), El Salvador (companies limited by shares and limited liability companies), Nicaragua, and Uruguay (limited liability companies with more than 20 shareholders and companies limited by shares).

11 Mexico and Portugal.

12 Mexico, Paraguay, and Portugal.

13 Argentina, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Spain, Guatemala, Honduras, Nicaragua, Panama, Peru, and the Dominican Republic.

14 Chile (except in cases and for companies where the law requires disputes with directors to be submitted to mandatory arbitration), Ecuador, Mexico, Paraguay, Portugal, Uruguay, and Venezuela.

15 For example, Brazil, Spain, Honduras, Panama, Paraguay, Portugal, and Uruguay.

16 For example, Bolivia, Ecuador, El Salvador, Guatemala, Nicaragua, Paraguay, and Peru.

Annex 2. Accordingly, it is advisable to use general clauses referring to any corporate dispute affecting the company or its shareholders, directors, or liquidators.

Corporate arbitration may be conducted either in law or in equity, although there are some countries[17] where it must be decided in law if the dispute concerns matters to which mandatory and public-policy rules must be applied. Generally, if the agreement is silent as to the type of arbitration, it is understood that the arbitration must be decided in law, but there are two countries[18] where the default is the opposite.

Institutional and ad hoc corporate arbitration are permitted in all countries; however, Spanish arbitration law provides that arbitration of challenges to corporate resolutions must be administered by an arbitral institution, and in Brazil, the *Câmara de Arbitragem do Mercado* is the mandatory forum for resolving corporate disputes involving companies listed on certain "segments" of the stock exchange.

Arbitrations decided in law and institutional arbitrations are not only predominant but also preferable, among other reasons, due to the specialised and legally complex nature of corporate disputes and the non-disposable nature of many company-law rules.

All countries have modern arbitral institutions with the capacity and resources necessary to administer complex arbitrations, but only some[19] have arbitral institutions with special rules for corporate arbitration. Arbitral institutions in some countries[20] offer model clauses for corporate arbitration.

The grounds for setting aside or annulling a corporate arbitration award are those that apply to any award and, in most countries, the application or action to set aside or annul it – depending on the term used in each legal system – constitutes the only possible means of challenging the award. In Chile, El Salvador, Peru, and Venezuela, however, appeals, cassation appeals, or constitutional amparo proceedings may be available in certain cases.

In El Salvador and Honduras, a challenge to the award may be resolved by another arbitral tribunal if the parties so agree or if the arbitration agreement so provides.

Finally, at present, almost no country has public data on the use, characteristics, duration, etc., of corporate arbitration *stricto sensu*. This is an issue that will hinder this Commission's task of monitoring the evolution of corporate arbitration and will need to be addressed with the main arbitral institutions in each country.

17 Peru, Portugal, and Venezuela.

18 Ecuador and El Salvador.

19 Argentina, Brazil, and Portugal.

20 Colombia and Spain.

1.2 Some national features of corporate arbitration

Argentina

The regulatory framework is favourable to corporate arbitration, which is common across all types of companies.

The Capital Markets Act requires stock exchanges to establish permanent arbitration tribunals to resolve disputes between listed companies and their shareholders or investors; arbitration is mandatory for the companies, but not for the shareholders or investors, who may bring claims before the courts.

Mandatory rules and public-policy rules impose limitations that may exclude certain corporate disputes from arbitration.

The law does not clarify whether domestic arbitration must be decided in law or in equity when the arbitration agreement is silent on the matter.

In 2001, the General Inspectorate of Justice published a model arbitration clause for limited liability companies and companies limited by shares, and since 2024, the *Centro de Mediación y Arbitraje Comercial* ("CEMARC") has had special corporate-arbitration rules that provide, among other things, that awards must be decided in law and that all arbitrations relating to the same company must be consolidated, "to the extent legally feasible," into a single arbitral proceeding before the same arbitral tribunal.

Bolivia

Almost all Bolivian commercial companies have arbitration clauses in their articles of association.

It is generally accepted that shareholders who do not agree with adopting an arbitration agreement in the articles of association after the company's incorporation have the right to withdraw from the company.

Disputes concerning non-disposable matters – such as the nullity of the company's incorporation, the compulsory transfer of shares or membership interests, the dissolution and liquidation of the company on statutory grounds, the withdrawal and expulsion of shareholders on statutory grounds, and structural modifications requiring administrative authorisation or affecting regulated sectors – are not arbitrable.

There is also debate as to whether the nullity of general meeting resolutions is arbitrable, as the Commercial Code governs the judicial procedure for resolving such disputes.

Brazil

Corporate arbitration is used primarily by companies limited by shares and limited liability companies that are medium-sized or large, or that have a sophisticated governance structure.

Companies listed on certain “segments” of the Brazilian stock exchange (Novo Mercado, Level 2, Bovespa Mais, and Bovespa Mais Level 2) must include an arbitration clause in their articles of association to resolve corporate disputes affecting shareholders, directors, or the company through arbitration administered by the *Câmara de Arbitragem do Mercado* (“CAM”).

This arbitral institution provides model corporate arbitration clauses that broadly define their personal and substantive scope.

The *Centro de Arbitragem da Câmara de Comércio Brasil-Canadá* (“CAM-CCBC”) has corporate arbitration rules that apply to collective disputes that may affect shareholders or securities holders who are not parties to the proceedings, when a uniform solution is necessary for all those affected. The rules require those persons to be notified of the existence of the arbitration so they may participate if they so wish; they also provide for the consolidation of arbitrations involving related issues.

There is a 2023 bill regulating the bringing of collective liability actions against the directors of publicly held companies (those whose securities – not just shares – are admitted to trading on the securities market), their “controlling” shareholders, and the companies themselves, among others, for damages suffered by investors as a result of the disclosure of inaccurate information to the market. It provides that such actions may be resolved through arbitration and that collective arbitral proceedings must be public.

This bill also provides for the public disclosure of arbitration proceedings involving publicly held companies that concern the liability of directors, members of the fiscal council (a body that oversees the directors’ management), or shareholders for damages caused to the company or that, due to the nature of the legal relationship, must be decided uniformly for all shareholders or otherwise affect the rights of shareholders who are not parties to the proceedings.

A separate 2025 bill proposes requiring all companies (not just publicly held ones) to expressly opt for judicial or arbitral resolution of corporate disputes in their constitutional document.

Furthermore, in both companies limited by shares and limited liability companies, shareholders who do not agree with adopting an arbitration agreement in the articles of association have the right to withdraw from the company. The law provides for a special majority to introduce an arbitration agreement into the articles of association of a company limited by shares.

There is debate as to whether the directors of companies not listed on the “segments” Novo Mercado, Level 2, Bovespa Mais, or Bovespa Mais Level 2 of the Brazilian stock exchange are bound by an arbitration agreement in the articles of association when it does not mention them; some authors consider that they are, but others disagree.

Finally, case law and most commentators do not consider a violation of public policy to be grounds for challenging an arbitral award.

Chile

Arbitration clauses in the articles of association are common across all types of company.

The Chilean legal system is guided by a legislative policy that seeks to submit most corporate disputes to arbitration. Indeed, certain disputes involving “commercial” companies (general partnerships, limited partnerships, limited liability companies, corporations, and joint-stock companies) must be resolved through arbitration; this is at odds with the essentially voluntary nature of arbitration, which is why this rule must be construed restrictively, as argued by some Chilean commentators.

A proposed general constitutional reform in 2022 included a prohibition on laws imposing mandatory arbitration, but it was not approved.

The cases in which arbitration is mandatory are set out in various laws and differ depending on the type of company. For example, arbitration is mandatory by law to resolve disputes (i) between shareholders in all commercial companies, (ii) between shareholders and the company or its directors in corporations and joint-stock companies, and (iii) between shareholders and liquidators and between the company and its directors or liquidators in joint-stock companies.

However, in corporations, the law provides – with certain exceptions – that, “upon the occurrence of a dispute, the claimant may remove the matter from the jurisdiction of the arbitrators and submit it to the decision of the ordinary courts”; thus, mandatory arbitration becomes optional and depends on the claimant’s choice.

Although it is possible to adopt arbitration agreements in the articles of association with a broader personal scope than that of mandatory arbitration (for example, including disputes with directors in commercial general partnerships, commercial limited partnerships, or limited liability companies, or with liquidators in corporations), it is considered that the persons concerned must give their consent to be bound by such agreements.

Finally, an application to set aside the award may be brought only where the arbitration is international, on limited grounds set out in the UNCITRAL Model Law; no other remedies are permitted.

In domestic arbitration, however, an award decided in law may be challenged through judicial appeals and cassation appeals, unless the parties have excluded such remedies; and, in the case of an award decided in equity, the only available remedy is an appeal before other arbitrators deciding in equity (*árbitros arbitradores*) when provided for in the arbitration agreement, and no cassation appeal lies on the merits.

Colombia

Corporate arbitration is becoming increasingly common. Although it is not specifically regulated, Colombian law requires the articles of association of commercial companies to specify whether corporate disputes are to be resolved by arbitration.

The adoption, amendment, or elimination of an arbitration agreement in the articles of association requires the consent of all shareholders.

Disputes concerning the dissolution of a commercial company are not arbitrable.

There are two arbitral institutions specialising in corporate arbitration: the *Centro de Conciliación y Arbitraje Empresarial de la Superintendencia de Sociedades*, established in 2012, which provides a model arbitration clause, and the Centro de *Arbitraje y Conciliación de la Cámara de Comercio de Bogotá*, which has offered a "specialised service" for corporate arbitration since 2022.

Costa Rica

Corporate arbitration lacks specific regulation and, although it is legally possible, it is uncommon.

Arbitration agreements in the articles of association are rare for several reasons. First, the Commercial Code does not provide for the resolution of corporate disputes through arbitration, and its Article 179 – which establishes the jurisdiction of the court of the company's registered office for actions to annul corporate resolutions – raises doubts in this regard. Second, the arbitration law does not provide for arbitration under the articles of association.

Ecuador

Although Ecuadorian law has expressly permitted arbitration agreements in the articles of association since 2020, they remain uncommon.

The adoption, amendment, or elimination of an arbitration agreement in the articles of association requires the consent of all shareholders.

An arbitration agreement in the articles of association binds directors and liquidators only if it is included in the notice of their appointment and they accept it expressly or tacitly.

Disputes concerning matters that cannot be settled are not arbitrable, such as certain cases of liquidation or dissolution of the company arising from a decision by the regulatory authority and, in general, claims seeking to set aside decisions by that authority, such as official intervention in a company.

Arbitration will be in equity unless the arbitration agreement provides that it is to be decided in law.

El Salvador

Corporate arbitration is uncommon, although its use is gradually becoming more widespread.

The law requires that the deeds of incorporation of partnership-type companies (general partnerships, limited partnerships, and limited liability companies) specify whether disputes arising among the shareholders "regarding the interpretation of the constitutional document or in connection with the company's business" are to be submitted to arbitration or to state courts. It provides for arbitration in the absence of such a provision.

The law prohibits disputes relating "to the dissolution and liquidation of the company, to amendments to the constitutional document, to the expulsion or withdrawal of members, and to the legal structure of the company" in partnership-type companies from being submitted to arbitration, unless the parties agree to arbitration after the dispute has arisen.

Furthermore, case law has rejected the arbitrability of corporate disputes in cases affecting public policy, non-disposable rights, or third-party rights.

In companies limited by shares, limited partnerships with share capital, and limited liability companies, dissenting shareholders have the right to withdraw from the company when an arbitration agreement in the articles of association is adopted.

Arbitration will be in equity unless the arbitration agreement provides that it is to be decided in law.

An application to set aside the award is filed with the Civil Chamber of Second Instance, unless the arbitration agreement provides that the application is to be decided by an arbitral tribunal.

The award is subject not only to an application to set aside on the grounds provided by law but is also, unless otherwise agreed, appealable – with suspensive effect – before the aforementioned chamber.

Spain

Although legislation, case law, and academic commentary are favourable to corporate arbitration, it is uncommon. Most capital companies do not include an arbitration agreement in their articles of association, and only two of the 35 companies listed on the IBEX 35 have one.

Since 2011, the 2003 Arbitration Act has contained certain special provisions regarding arbitration under the articles of association; one establishes a reinforced majority requirement for including an arbitration agreement in the articles of association, and another provides that arbitration of challenges to corporate resolutions must be administered by an arbitral institution.

There is no doubt that corporate disputes involving directors or liquidators are subject to arbitration when the arbitration clause in the articles of association refers to them, or when it refers, in general, to any corporate disputes without limiting its personal scope. Doubts arise when the arbitration agreement states that it applies to disputes among shareholders or between shareholders and the company, without mentioning directors or liquidators.

As of 3 April 2025, it is mandatory to pursue one of the "appropriate means of dispute resolution" ("MASC"), such as mediation, conciliation, an independent expert's opinion, or a confidential binding offer, before filing a court claim. Corporate disputes are not exempt from this requirement, which makes arbitration more attractive as a means of resolving them, since the law does not require recourse to a MASC before initiating arbitration.

The CEIA and some arbitral institutions offer model clauses for corporate arbitration.

Guatemala

Arbitration is most common in closely held and family-owned companies.

The adoption, amendment, or elimination of an arbitration agreement in the articles of association in a company that is neither a company limited by shares nor a limited partnership with share capital requires the consent of all shareholders, unless the constitutional document permits its amendment by a specified majority, in which case dissenting shareholders have the right to withdraw from the company.

The Constitutional Court has held in some judgments that certain corporate disputes are not arbitrable; for example, those relating to the calling of a shareholders' meeting, the resolution excluding shareholders for breach of their obligations under the constitutional document or the law, or for their alleged involvement in the commission of wilful or fraudulent acts against the company; the company's acquisition of its own shares; the amendment of the type of governing body provided for in the constitutional document; or the appointment, ratification, or removal of the external auditor.

Despite this, there is an increasing trend in favour of the arbitrability of all corporate disputes, unless the rights of third parties are affected, as the Commercial Code expressly permits commercial disputes – including corporate ones – to be resolved through arbitration. To dispel any doubts, the Commercial Code was amended in 2018 to add that "the arbitration agreement prevails over any judicial proceeding or remedy specifically provided for in this Code or in other commercial laws."

The application for review is unusual because the court before which it is filed may modify the award.

Honduras

The law provides that disputes between shareholders "will be resolved through arbitration, whether or not there is an arbitration agreement" and requires judges to inform persons filing claims concerning shareholder disputes of their "right to bring the matter before an arbitral tribunal". If the judge fails to do so, the judicial proceeding may be set aside at the request of a party. Despite this, corporate arbitration is not common.

An application to set aside an award must be brought before the Court of Appeals, unless the parties agree otherwise or the arbitration agreement provides that an arbitral tribunal will resolve the matter.

Mexico

Although there is a trend toward "prioritising" alternative means for resolving corporate disputes, such as arbitration, and their use has increased in recent years, corporate arbitration remains uncommon.

The General Law on Commercial Companies provides, in relation to simplified joint-stock companies, that the resolution of disputes among shareholders through "alternative mechanisms" must be “given priority,” unless otherwise agreed. Although the interpretation of this provision is unclear and there is no case law on the matter, commentators consider it to be merely a “best practice” of corporate governance aimed at promoting such alternative mechanisms.

Furthermore, the 2025 Code of Principles and Best Practices for Corporate Governance issued by the Business Coordinating Council “suggests” that the aforementioned “alternative dispute resolution mechanisms” be “given priority.”

Separately, the 2024 reform of the Judiciary, which replaced “career” judges with those elected by popular vote, has caused significant uncertainty and is likely to lead companies to submit their disputes to arbitration.

The adoption, amendment, or elimination of an arbitration agreement in the articles of association of general partnerships and limited partnerships – which are rarely used – requires the consent of all partners, unless otherwise agreed; in that case, dissenting shareholders have the right to withdraw from the partnership.

It is questionable whether an arbitration agreement in the articles of association binds future shareholders or even on dissenting or absent shareholders, even though the law provides for this in companies limited by shares. To avoid doubts regarding the extension of the agreement to new shareholders, it is advisable to include a reference to it in the corresponding share certificates or in the certificates evidencing membership interests issued by the company; likewise, it is recommended to record the new shareholder’s express consent in the minutes of the meeting or in the agreement for the acquisition or subscription of shares or membership interests.

Directors and liquidators must expressly accede to the arbitration agreement set out in the articles of association for it to bind them.

The prevailing legal view holds that all corporate disputes may be submitted to arbitration, although some commentators question the arbitrability of challenges to general meeting resolutions because the General Law on Commercial Companies provides that shareholders may challenge such resolutions in court and because an “isolated opinion” (*tesis aislada*) from 1978 by the Third Chamber of the Supreme Court of Justice of the Nation held that these resolutions can only be set aside by a court.

Nicaragua

Corporate arbitration has grown to the point where it is now common to find arbitration agreements in the articles of association, especially in closely held or family-owned companies and in medium- and large-sized companies with complex corporate structures.

It can be argued that shareholders who do not agree with adopting an arbitration agreement in the articles of association have the right to withdraw from the company.

Directors and liquidators are bound by the arbitration agreement in the articles of association if the agreement itself so provides or if this is provided in separate agreements with them.

Disputes concerning matters governed by public-policy rules, such as mandatory judicial dissolution, are not arbitrable.

Panama

Corporate arbitration is becoming increasingly common.

Although there are doubts on this matter, it is understood that adopting an arbitration agreement in the articles of association requires the consent of all shareholders, since the law requires this for decisions affecting the "acquired rights" of shareholders.

Paraguay

Corporate arbitration is rare, primarily because it is at a disadvantage compared to judicial proceedings when it comes to obtaining interim measures that can be enforced quickly.

Although there is some uncertainty, it is understood that, in limited liability companies, adopting an arbitration agreement in the articles of association requires the consent of all members, as the law requires this for amendments to the articles of association that increase the members' obligations.

It is debatable whether an arbitration clause in the articles of association binds shareholders who join the company after its adoption. To avoid this uncertainty, it is advisable to include the clause in the corresponding share certificates.

The binding effect of the clause on the governing bodies and individuals acting as representatives of the company is also questionable; therefore, it is advisable to document their consent in writing.

Finally, it is doubtful whether disputes regarding shareholders' rights to information and voting – which lack pecuniary content in the strict sense – and regarding the right of withdrawal are arbitrable, given that the rule prohibiting the exclusion of that right or the tightening of the conditions for exercising that right may be considered a matter of public policy.

Peru

The lack of public data on corporate arbitration makes it impossible to know how widespread it is.

The General Companies Act provides that an arbitration agreement in the articles of association binds the company and its partners, shareholders, directors, officers, and representatives, including those who join the company after the agreement is adopted and those who cease to be such before the dispute "arises."

All corporate disputes may be submitted to arbitration, except those relating to the convening of meetings of shareholders, which the law expressly excludes from arbitration.

Arbitration must be decided in law if the dispute concerns matters to which mandatory or public-policy rules must be applied.

The award may be challenged by filing an application to set aside before the competent *Corte Superior*, and if the *Corte Superior* annuls the award in whole or in part, a cassation appeal may be filed with the Supreme Court.

Furthermore, if there is a "manifest infringement" that affects a constitutional right, an amparo claim may be filed against the judgment that upheld the award or, if the judgment set aside the award and a cassation appeal has been filed, against the Supreme Court's decision. In certain cases, an amparo claim may even be filed against the award itself.

The judgment resolving the amparo claim may be challenged by filing an appeal. If the appellate judgment dismisses the claim, an appeal on grounds of "constitutional grievance" may be filed with the Constitutional Court.

Portugal

Corporate arbitration is uncommon.

Academic commentary considers that all corporate disputes are of a pecuniary nature, including those concerning participation rights, such as voting rights, and are therefore arbitrable.

For an arbitral award to have res judicata effect against the company and its shareholders and directors, it is considered necessary for those shareholders and directors to have had the opportunity to participate in the proceedings, including the constitution of the arbitral tribunal. Arbitration must therefore be conducted with a level of publicity at least equivalent to that of judicial proceedings.

Commentators debate whether an arbitration agreement in the articles of association binds dissenting or absent shareholders and on future shareholders, given that the law requires unequivocal written consent regarding any arbitration agreement.

Nor is it clear whether directors and liquidators who have not given their consent are bound; in general, it is understood that acceptance of the office implies tacit acceptance of the arbitration agreement, although some authors consider that an accession document is necessary.

The prevailing view is that all arbitration proceedings involving the same subject matter (particularly those concerning challenges to corporate resolutions) must be consolidated into a single proceeding to prevent conflicting awards from being rendered.

Academic commentary also maintains that arbitration cannot be decided in equity if the dispute concerns matters to which mandatory rules apply.

The *Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa* has special rules for corporate arbitration and provides a model corporate arbitration clause.

Dominican Republic

Although corporate arbitration is still at an early stage, it has gained acceptance over the past decade. Case law and academic commentary have highlighted its advantages for improving corporate governance.

An arbitration agreement in the articles of association binds directors and liquidators only if it expressly mentions them.

Uruguay

Until 1975, arbitration of disputes among shareholders was mandatory; since then, corporate disputes may be submitted to arbitration if so provided in the articles of association.

The adoption, amendment, or elimination of an arbitration agreement in the articles of association in limited liability companies with fewer than 21 shareholders and in simplified joint-stock companies requires the consent of all members.

In limited liability companies with more than 20 shareholders and in companies limited by shares, shareholders who do not agree with the adopting an arbitration agreement in the articles of association have the right to withdraw from the company.

Directors and other representatives of the company are bound by the arbitration agreement in the articles of association only if they accept it at the time of their appointment.

Venezuela

Corporate arbitration appears to be rare in Venezuela, as there is no record of arbitration proceedings concerning corporate disputes at either of the two main arbitration centres (*Centro Empresarial de Conciliación y Arbitraje* and the *Centro de Arbitraje de la Cámara de Caracas*).

Some authors argue that the adoption, amendment, or elimination of an arbitration agreement in the articles of association requires the unanimous consent of the shareholders; others maintain that a two-thirds majority of the share capital is necessary and that dissenting shareholders have the right to withdraw. A third – and more convincing– view is that that the majority specified in the articles of association is sufficient for any amendment to the articles of association or, failing that, a majority of the share capital present.

Although it is reasonable to assert that the arbitration agreement in the articles of association binds the members, directors, statutory auditors, and liquidators, there is no unanimous position in academic commentary. As for new members, some authors consider that their express and independent consent is required, while others maintain that such consent is not necessary.

Some authors consider that disputes relating to the dissolution and liquidation of the company are not arbitrable.

Arbitration must be decided in law if the dispute concerns matters to which public-policy rules must be applied.

A judgment resolving an application to set aside an award may be challenged through a constitutional amparo claim or constitutional review.

2. Most common corporate disputes

The following are the most common corporate disputes, regardless of whether they must be resolved in court or through arbitration. This list helps readers understand the following chapters, which address the limitations and problems of corporate arbitration, its benefits and advantages over court proceedings, and, finally, the measures that can be taken to address these problems and limitations and promote the use of corporate arbitration.

i. **Disputes concerning incorporation of the company**

   a. Existence and valuation of capital contributions.

   b. Special rights of the founders.

   c. Rules governing companies in formation or irregular companies, and the liability of shareholders for debts incurred.

   d. Nullity of the company.

ii. **Disputes concerning shareholders' rights**

   a. Information.

      - Denial or limitation of information requested by minority shareholders:
         - In connection with a convened meeting.
         - To request the convening of a meeting.
         - Outside the context of any meeting (the autonomous right to information, not the right to information as ancillary to the right to vote).
      - Limits imposed by law or the articles of association, such as the relevance of the information, the protection of secrets, etc.

   b. Voting.

      - In general and in special cases (for example, usufruct or pledge of shares).
      - Voting syndicates.

   c. Principle of equal treatment of shareholders who are in the same circumstances.

   d. Participation by shareholders in the management body.

e. Privileges or special rights of certain shareholders:

- Preferential dividend.
- Multiple voting rights.

iii. **Disputes concerning shareholders' obligations**

a. Loyalty and good faith towards the other shareholders and the company.

b. Abuse by the majority (squeezing out minority shareholders, tunnelling, etc.) or by the minority (unjustified veto of decisions or requests for information).

iv. **Disputes concerning ancillary obligations**

v. **Challenges to general meeting resolutions**

a. Based on a breach of the law or the articles of association, regarding:

- The notice of meeting.
- The constitution or holding of the meeting.
- The right to information or to ask questions during the meeting.
- The adoption of resolutions.
- Votes cast by shareholders with conflicts of interest.

b. Because they are contrary to the company's interest or were adopted through an abuse of the majority.

c. Based on a breach of an omnilateral shareholders' agreement or one to which only the challenging shareholders or those who voted in favour of the resolution are parties.

d. Approval of the annual financial statements.

e. Negative resolutions or failure to adopt a resolution.

vi. **Disputes concerning the distribution of dividends**

a. Calculation of distributable profits.

b. Distribution of dividends when such distribution is contrary to the company's interest, such as by jeopardising the company's financial stability, etc.

c. Unjustified retention of profits.

d. Right to withdraw from the company where dividends are not distributed.

vii. **Disputes concerning amendments to the articles of association**

a. *De jure* or *de facto* amendment of the corporate purpose.

b. Amendments that alter the corporate governance structure, such as the creation or modification of governing bodies, changes to the requirements for adopting resolutions, or the introduction of new qualified majorities.

c. Structural modifications (mergers, demergers, transfer of the registered office, etc.).

viii. **Disputes concerning increases or reductions in share capital**

a. Pre-emptive subscription rights.

b. Improper determination of the value of new shares or membership interests.

c. Abusive capital increases.

d. Mandatory reduction due to accumulated losses.

e. Accordion transactions or reductions in share capital to offset losses.

ix. **Disputes concerning transfers of shares or membership interests**

a. Rights of first refusal and repurchase rights.

b. Valuation of shares or membership interests.

c. Restrictions on the transfer of shares or membership interests.

d. Drag-along or tag-along clauses.

x. **Disputes concerning the withdrawal or expulsion of shareholders**

a. Grounds for withdrawal or expulsion.

b. Rights and obligations of the withdrawing or expelled shareholder.

c. Valuation of membership interests.

xi. **Disputes concerning deadlock in the company's governing bodies (blockage) and requests for a general meeting to be convened, whether by a court or by arbitration**

xii. **Disputes concerning the dissolution and liquidation of the company**

a. Existence of a statutory- or articles of association-based ground for dissolution.

b. Liquidation.

- Method of liquidating assets, including how to value them, sell them, etc.
- Distribution of the company's assets following dissolution.

xiii. **Disputes concerning transactions involving financial assistance**

xiv. **Disputes concerning directors**

a. Appointment and removal.

b. Remuneration.

c. Company action for liability for breach of duties (care, loyalty, confidentiality, etc.).

d. Individual liability action.

e. Restitution of the benefit obtained or unjust enrichment.

xv. **Challenges to board resolutions**

xvi. **Disputes concerning corporate groups**

a. Right to information regarding group companies.

b. Related-party transactions.

c. Prejudice to a company's interest for the benefit of the parent company or another group company (compensatory advantages).

Despite the breadth of this enumeration, Annex 2 lists the most common corporate disputes.

3. Problems and limitations of corporate arbitration

Corporate arbitration remains uncommon in many countries[21] for various reasons.

In some countries, the consent of all shareholders is required to adopt arbitration agreements in the articles of association after the company's incorporation, or, at the very least, it is unclear whether unanimity is necessary.[22] In others, a certain majority is sufficient to approve the agreement, but the law grants dissenting or absent shareholders the right to withdraw from the company, or it can be argued that they have such a right[23].

As for the personal scope of the arbitration agreement in the articles of association, in quite a few countries, directors are bound only if they expressly accept the agreement or if it is communicated to them when they are notified of their appointment; or, at the very least, it is debatable whether they are bound if this is not done. The same reasoning usually applies to liquidators.[24]

In some countries, it is even questionable whether dissenting or absent shareholders or [25]new shareholders[26] are bound by the agreement. As regards the latter, it is advisable to record the existence of the agreement on the corresponding share certificates or on the certificates evidencing membership interests issued by the company.

As for the substantive scope of the arbitration agreement, in a number of countries there are certain corporate disputes that the law excludes from arbitration or that case law or academic commentary (at least in part) rejects or disputes as being arbitrable, primarily because they concern matters considered non-disposable, must be resolved by applying public-policy rules, or may affect the rights of third parties.[27]

Furthermore, the courts and academic commentary in some countries[28] sometimes adopt a restrictive, strict, or even overly formal interpretation of the terms of the arbitration agreement, which excludes certain corporate disputes from arbitration (due to their subject matter or the persons involved).

In almost all countries, an application to set aside or annul – which can be based only on certain grounds and precludes a review of the merits of the dispute – is the sole means of challenging the award. This is generally an advantage of arbitration over court proceedings, but it can also be a drawback for parties who do not want to stake everything on a single decision.

21 Costa Rica, Ecuador, Spain, Paraguay, Portugal, and Venezuela.

22 Colombia, Ecuador, Guatemala (companies that are neither corporations nor limited partnerships with share capital), Mexico (general partnerships and limited partnerships), Panama, Paraguay (limited liability companies), Uruguay (limited liability companies with fewer than twenty-one shareholders and simplified joint-stock companies), and Venezuela.

23 Bolivia, Brazil (corporations and limited liability companies), El Salvador (corporations and limited liability companies), Nicaragua, and Uruguay (limited liability companies with more than twenty shareholders and corporations).
In Guatemala (companies that are neither companies limited by shares nor limited partnerships with share capital) and in Mexico (general partnerships and limited partnerships), although the law requires unanimity, the constitutional documents may provide that a specific majority is sufficient; however, in such cases, dissenting shareholders or partners, as applicable, have the right to withdraw from the company or partnership.

24 Chile (except in cases and for companies where the law refers disputes with directors or liquidators to mandatory arbitration), Ecuador, Mexico, Paraguay, Portugal, Uruguay, and Venezuela.

25 Mexico and Portugal.

26 Mexico, Paraguay, and Portugal.

27 Argentina, Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Paraguay, Peru, and Venezuela.

28 For example, Brazil (whether the directors of companies not listed on the Novo Mercado, Level 2, Bovespa Mais or Bovespa Mais Level 2 "segments" of the stock exchange are bound) and Spain.

There are some countries, however, where appeals, cassation appeals, or even constitutional amparo may be available in certain cases.[29] This delays obtaining a final decision on the dispute and, therefore, undermines one of the usual advantages of arbitration, which is obtaining a final and unappealable decision more quickly than in court proceedings.

Furthermore, arbitral awards do not bind, even as authoritative precedent (unlike court judgments, even those of courts of first instance). Because they are generally not made public, arbitral decisions are less predictable than judicial ones and do not form a body of authority. This creates a certain degree of legal uncertainty – which occurs to a lesser extent in the state court system – and is particularly serious in a field as technical as company law.

Another problem is the existence of concurrent proceedings (judicial and arbitral) when (i) a corporate resolution is challenged in arbitration by shareholders or directors and in court by one or more third parties, or (ii) a shareholder and a third party each bring separate individual liability actions against the directors based on the same unlawful conduct, the former through arbitration and the latter through the courts.

This duality of proceedings creates a risk of conflicting decisions – the arbitral award and the court judgment, both having the same force of res judicata – which is difficult to resolve, given that legal systems do not regulate this matter. In such cases, there is no *lis pendens*, as the claimants in the two proceedings are not the same; the proceedings cannot be consolidated due to their lack of homogeneity; and, unless the parties agree, neither proceeding can be stayed on preliminary-issue grounds, as neither procedural law nor arbitration law provides for this.

It does not appear to be open to dispute that an award annulling a corporate resolution has res judicata effect *erga omnes*; however, it is doubtful whether it binds persons who were not parties to the arbitration (shareholders and, above all, third parties) when the award decides not to annul the contested resolution.

Apart from these general issues, it is important to highlight certain problems specific to Chile, a country where the statutory imposition of mandatory arbitration to resolve certain corporate disputes can lead – when companies lack arbitration clauses covering other disputes – to parallel arbitral and court proceedings.

Furthermore, the fragmented nature of the Chilean rules on mandatory arbitration –which differ depending on the type of company – and the uncertainties surrounding their application to certain disputes sometimes give rise to controversies over whether the dispute in question is subject to arbitration and, consequently, to delays in the proceedings.

For example, some commentators consider that the statutory provision mandating arbitration for disputes among shareholders of general partnerships, limited partnerships, and limited liability companies extends to disputes between the shareholders and the company. However, other commentators disagree, arguing that since the rules mandating arbitration constitute an exception to the principle of party autonomy, they must be interpreted narrowly.

29 Chile, El Salvador, Peru, and Venezuela.

4. Advantages of corporate arbitration

Corporate arbitration offers the advantages inherent in arbitration generally, as a means of dispute resolution, as well as other particular advantages. Analysing these advantages together with the problems and limitations identified in chapter 3 reveals the value of corporate arbitration.

4.1 Advantages of arbitration in general

- **Flexibility of the procedure**. Arbitration is flexible and subject only to the principles of equality, the right to be heard, and the adversarial principle, in contrast to the rigidity of most national procedural laws, which *constrain* judicial proceedings and, in particular, the parties' ability to make submissions and adduce evidence and the judge's role. In arbitration, by contrast, the parties have full autonomy to structure the course of the proceedings in the manner they deem most appropriate for presenting their cases and for the tribunal's conduct of the arbitration (arguments, evidence, deadlines, hearings, etc.).

- **Flexibility regarding language**. The parties are free to determine the language of the arbitration, in contrast to the legal requirement that judicial proceedings be conducted in the national language.

- **Greater time commitment of arbitrators**. Arbitrators typically have far more time than judges to hear the parties and expert witnesses and to analyse the evidence; hearings may last for several days. In contrast, judges and court officials usually have limited time, which is clearly insufficient in complex cases, due both to procedural rules and to the usual heavy workload of the courts.

- **Multi-member tribunals**. The arbitration agreement may provide that disputes be resolved by a tribunal composed of several arbitrators; in contrast, courts of first instance are typically presided over by a single judge.

- **Shorter duration**. Arbitration generally takes less time than ordinary judicial proceedings at first instance in most countries; awards are typically issued more quickly than judgments, and challenges to the award are usually resolved more rapidly than challenges to a judgment through the various judicial remedies available against it.

- **Confidentiality**. Unlike court proceedings, arbitration is confidential throughout all stages of the proceedings, unless the parties agree to anonymously make the award public.

- **Supervision**. In institutional arbitration, the arbitral institution supervises the conduct of the proceedings and reviews the draft award before it is rendered (through scrutiny), whereas a first-instance judgment is subject to review only after it has been given (through the appeals provided for by law).

- **Higher degree of voluntary compliance**. Those bound by an award comply with it voluntarily more often than those bound by a judgment.

- **Finality.** With very few exceptions, an application to set aside or annul – which can be based only on certain grounds and precludes review of the merits of the dispute – is the sole means of challenging the award; in judicial proceedings, by contrast, there are appeals and cassation appeals, and either may result in the first-instance decision being modified.

- **Neutrality of the forum**. In disputes with international elements, arbitration allows the parties to choose a neutral forum, independent of the judicial bodies of their respective states.

- **Easier recognition and enforcement**. Arbitral awards can be recognised and enforced internationally more easily than court judgments, thanks to the 1958 New York Convention.

- **Preservation of business relationships**. Because arbitration is private, flexible, and less adversarial than litigation, it helps reduce the antagonism inherent in court proceedings.

4.2 Advantages of corporate arbitration in particular

- **Protection of corporate harmony**. Because corporate arbitration is a private, flexible, expeditious, and less *contentious* means of dispute resolution than litigation, it causes less disruption to corporate harmony and the company's ordinary business. This is especially important in family-owned businesses, where relationships among shareholders are often influenced by emotional and generational factors.

- **Confidentiality**. The confidentiality mentioned in section 4.1 is a particularly important advantage in the corporate context, where disputes frequently involve sensitive information about the company's affairs. The publicity surrounding court proceedings can cause reputational damage, undermine third-party confidence, and exacerbate the conflict.

- **Specialisation of arbitrators and arbitral institutions**. When national judges are not specialised in a field as complex as company law or when there are doubts about their suitability for other reasons, arbitration offers an undeniable advantage because it allows the parties to turn to arbitral institutions and appoint arbitrators who are experts in corporate matters, corporate governance, business valuation, accounting, and even the company's business sector.

- **Swift resolution of corporate legal uncertainty**. Challenges to certain corporate resolutions (for example, capital increases, mergers, and other structural modifications, and the removal or appointment of directors) and other disputes – such as those concerning ownership of shares or membership interests, the convening of a general meeting, or rights to information, attendance, and voting – require a swift resolution because subsequent corporate resolutions or measures may be adopted, the validity of which depends on how the earlier challenge or dispute is resolved. The goal is to resolve legal uncertainty surrounding these subsequent resolutions or measures – which may affect third parties not involved in the dispute, such as other shareholders, lenders, etc. – as soon as possible. Arbitral proceedings specifically designed for this type of dispute – even with very short maximum time limits – or emergency arbitration to obtain interim measures can resolve these situations more effectively than court proceedings. Although interim measures are also available in court proceedings, in most countries they tend to take a considerable amount of time to obtain.

5. Measures to promote corporate arbitration

5.1. Awareness-raising

Limited awareness of corporate arbitration and its advantages, and even the misgivings and prejudices it still arouses, can lead to it being ruled out as a matter of principle.

Therefore, the first step in promoting corporate arbitration is to publicise its advantages through effective communication, targeting all those who can influence its use and development, such as the companies themselves (their directors and executives, as well as their in-house and outside counsel), notaries and corporate or commercial registrars; entities that manage online company formation platforms; business associations and chambers of commerce; arbitral institutions; legislators and government agencies; judges responsible for appointing arbitrators or reviewing awards; and securities market regulatory and supervisory authorities, among others.

It is proposed that the CEIA, through its International Chapters and in collaboration with the aforementioned entities and individuals, promote awareness campaigns highlighting the advantages of corporate arbitration outlined in chapter 4, emphasising that it is a more appropriate and effective means of dispute resolution than the state courts.

The main objective is, of course, to increase the number of arbitration agreements in the articles of association; therefore, it is particularly important to promote awareness of corporate arbitration – and, specifically, of the model clauses referred to in section 5.5 – among those who can decide on or advise on the adoption of such agreements.

5.2. Specialised training

It is suggested that the CEIA and its International Chapters promote continuing training programmes on the specific features of corporate arbitration, model and *ad hoc* arbitration clauses, the most common corporate disputes identified in chapter 2, optimal management of the proceedings, etc.

5.3. Soft-law codes

The CEIA, in collaboration with arbitral institutions in various countries and with securities market regulatory and supervisory authorities, may propose codes of best practice, recommendations, or other soft-law instruments containing special corporate-arbitration rules on matters such as those mentioned in section 5.4 and the consistency among arbitration agreements in the articles of association, in the rules of the general meeting and the board, and shareholders' agreements.

In addition, the CEIA may advocate for the leading corporate governance codes to recognise arbitration as the preferred means of resolving corporate disputes.

5.4. Arbitration rules adapted to the specific features of corporate arbitration

It is proposed that the leading arbitral institutions in various countries review their arbitration rules, taking into account the specific features of corporate disputes, with a view to providing, where appropriate, special rules on matters such as the following:

- Establishment of multi-member tribunals to resolve complex corporate disputes.
- Appointment of arbitrators with experience in company law.
- Notification of the arbitration to shareholders who are not claimants when it may affect them, so that they have the opportunity to intervene and there is no doubt regarding the binding effect of the award on them.
- Consolidation of arbitral proceedings involving the same company that address related issues, with a view to avoiding the risk of conflicting awards.
- Expedited proceedings for corporate disputes requiring a swift resolution (challenges to certain corporate resolutions, deadlock situations, appointment of directors, etc.) and emergency arbitration to decide on particularly urgent matters (attendance and voting at a general meeting, temporary suspension of a notice of meeting, etc.).
- Notification to the commercial or business registries of requests for arbitration concerning challenges to corporate resolutions and of awards annulling those resolutions, so that the appropriate provisional annotations, registrations, and cancellations of entries may be made.
- Anonymised publication of awards unless any party expressly objects.

The corporate arbitration rules of certain arbitral institutions in Argentina[30], Brazil[31], and Portugal[32] may serve as inspiration.

5.5. Model clauses

It is suggested that arbitral institutions publish and disseminate model clauses for arbitration under the articles of association.

It appears that, at present, only in Argentina, Brazil, Colombia, Spain, and Portugal do arbitral institutions offer such model clauses, which are reproduced in Annex 3.

The clauses in the 2019 CEIA Code of Good Arbitration Practice and those of the *Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa*, for example, can serve as inspiration due to the breadth with which they define their personal and substantive scope, although it may be necessary to develop them further to adapt them to national specificities or to specifically address some of the types of disputes listed in chapter 2.

30 Centro de Mediación y Arbitraje Comercial (CEMARC).

31 Centro de Arbitragem da Câmara de Comércio Brasil-Canadá (CAM-CCBC).

32 Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa.

5.6. Legal reforms

It seems advisable to promote legal reforms so that the legal framework for arbitration in the various countries is not restrictive, uncertain, or discouraging of corporate arbitration. These reforms, which should aim to resolve the main problems and uncertainties outlined in chapter 3, will naturally depend on the current state of legislation, case law, and academic commentary in each country.

Some possible reforms are listed below.

5.6.1 Approval of the arbitration agreement in the articles of association by majority vote

In countries where the law requires the consent of all shareholders to adopt an arbitration agreement in the articles of association or where it is unclear whether unanimity is necessary[33], it may be appropriate to provide that the agreement may be approved by a majority of votes that is not excessively high –such as, for example, the majority required for other amendments to the articles of association.

5.6.2 No withdrawal right for dissenting or absent shareholders

In countries where a certain majority of votes is sufficient to approve an arbitration agreement in the articles of association, but the law recognises the right of dissenting or absent shareholders to withdraw from the company – or where it can be argued that they have such a right[34] – recognition of that right may be repealed or the law may expressly provide that they do not have such a right.

5.6.3 Personal scope of the agreement

In countries where an arbitration agreement in the articles of association is not binding – or, at least, it is doubtful whether it is binding – on dissenting or absent shareholders[35], new shareholders[36], directors, or liquidators[37], unless they expressly accept it or some other requirement is met, the agreement may bind them all without the need for their consent or any other condition.

33 Colombia, Ecuador, Guatemala (companies that are neither companies limited by shares nor limited partnerships with share capital), Mexico (general partnerships and limited partnerships), Panama, Paraguay (limited liability companies), Uruguay (limited liability companies with fewer than 21 shareholdersand simplified joint-stock companies), and Venezuela.

34 Bolivia, Brazil (companies limited by shares and limited liability companies), El Salvador (companies limited by shares and limited liability companies), Nicaragua, and Uruguay (limited liability companies with more than 20 shareholders and companies limited by shares).
In Guatemala (companies that are neither companies limited by shares nor limited partnerships with share capital) and in Mexico (general partnerships and limited partnerships), although the law requires unanimity, the constitutional documents may stipulate that a specific majority is sufficient; however, in such cases, dissenting shareholdersor partners, as applicable, have the right to withdraw from the company or partnership.

35 Mexico and Portugal.

36 Mexico, Paraguay, and Portugal.

37 Chile (except in cases and for companies where the law requires disputes with directors or liquidators to be submitted to mandatory arbitration), Ecuador, Mexico, Paraguay, Portugal, Uruguay, and Venezuela.

5.6.4 Substantive scope of the agreement

In countries where the law excludes, or case law or academic commentary (or at least some of it) rejects or disputes the arbitrability of certain corporate disputes[38], it is advisable to stipulate that the arbitration agreement in the articles of association covers all types of corporate disputes, without exception, unless the agreement provides otherwise.

5.6.5 Procedural effects of concurrent judicial and arbitral proceedings

It is advisable to regulate the procedural effects arising from the coexistence of judicial and arbitral proceedings concerning challenges to the same corporate resolution or liability actions based on the same conduct by directors, as this entails a risk of conflicting decisions – the arbitral award and the court judgment – both having the force of res judicata.

It is also advisable to provide for the stay of one of the proceedings until the other is resolved; staying the judicial proceeding until the award is rendered would avoid staying the arbitration for an extended period, given that judicial proceedings tend to take much longer.

5.6.6 Arbitration under the articles of association by default

It is worth considering establishing a legal requirement that the articles of association specify the method for resolving disputes and provide that, in the absence of a choice, the method shall be corporate arbitration, as is the case, for example, under the laws of some countries:

- Article 66 of the Salvadoran Commercial Code, which provides that the deed of incorporation of a general partnership, limited partnership, or limited liability company must specify whether disputes arising among the shareholders “regarding the interpretation of the constitutional document or in connection with the company’s business” are to be submitted to arbitration or to state courts and that, in the absence of such a provision, “it is understood that the shareholders agree to submit such disputes to an arbitral award” (a form of constructive consent in favour of arbitration).

- Article 110-11 of the Colombian Commercial Code, which provides that the articles of association of a commercial company must specify whether disputes between shareholders or between them and the company will be resolved through arbitration.

- Bill No. 4 of 2025 to reform the Brazilian Civil Code, which has not yet been approved, provides that all companies must expressly opt for judicial or arbitral resolution of corporate disputes in their constitutional document.

38 Argentina, Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Paraguay, Peru, and Venezuela.

5.6.7 Notification to all shareholders of requests for arbitration concerning challenges to corporate resolutions

It is worth considering establishing a requirement that directors notify all shareholders of any request for arbitration concerning a challenge to a corporate resolution, so that they may intervene in the arbitration if they so wish.

The same objective could be achieved if the rules of arbitral institutions provided for notification by the arbitral tribunal.

In Brazil, the *Centro de Arbitragem da Câmara de Comércio Brasil-Canadá* (CAM-CCBC) has corporate arbitration rules that apply to collective disputes that may affect shareholders or securities holders who are not parties to the proceedings, when a uniform solution is necessary for all those affected. The rules require those persons to be notified of the existence of the arbitration so that they may participate in it if they so wish.

APPENDIX 1

Appendices on corporate arbitration in various countries

CONTENTS

Argentina

1. Historical development of corporate arbitration

Corporate arbitration was mandatory in Argentina for over a century. The Commercial Code of 1862 required disputes between shareholders to be resolved through arbitration.

Case law, however, adopted a restrictive approach to the types of disputes that could be referred to arbitration, thereby limiting the scope of corporate arbitration. Furthermore, legal scholars did not regard arbitration as an efficient mechanism for resolving corporate disputes. The statutory requirement was repealed in 1972, although companies continued to include arbitration clauses in their articles of association.

Interest in corporate arbitration has revived in recent decades, driven by legal reforms that have modernised the regulatory framework. In particular, since 2001 the General Inspectorate of Justice ("IGJ") has expressly recognised the validity of corporate arbitration.

2. Current corporate arbitration regulation

The current Argentine legal framework is favourable to corporate arbitration.

The Civil and Commercial Code of 2015 contains a chapter dedicated to arbitration and expressly allows arbitration clauses to be included in a legal entity's articles of association (article 1650). In addition, in 2001 the IGJ approved a template arbitration clause for limited liability companies and public limited companies.

As regards simplified joint-stock companies, the Law on Support for Venture Capital (Law 27349/2017) provides that parties should "seek" to resolve corporate disputes amicably and requires entities to include "a dispute resolution system involving arbitrators" in their instrument of incorporation.

Furthermore, the Capital Markets Act (Law 26831/2012) requires "markets" (stock exchanges, self-regulatory bodies) to have permanent arbitration tribunals. Under article 46 of Law 26831/2012, companies whose shares are traded on such markets are required to submit disputes with shareholders and investors to those tribunals. This includes "disputes arising under Law 19550 on commercial companies", such as challenges to corporate resolutions, claims against directors (managers) or shareholders, and actions seeking to set aside provisions of a company's articles of association. The arbitration rules of the relevant market must, however, preserve the right of shareholders and investors to bring proceedings before the courts.

The International Commercial Arbitration Act (Law 27449/2018), which is based on the UNCITRAL Model Law, governs international commercial arbitration in accordance with modern arbitration principles (including the recognition of awards, limited judicial intervention and flexibility in the taking of evidence). The Act does not, however, specifically regulate corporate arbitration.

Taken together, the legislative reforms adopted in recent years (including the new National Civil and Commercial Code, the international arbitration law based on the UNCITRAL Model Law) have provided corporate arbitration in Argentina with a modern legal framework that is broadly aligned with international standards.

3. Recent reforms and trends

The most significant recent legal reforms in the field of corporate arbitration are those outlined in the previous section.

The Argentine Supreme Court has consistently upheld arbitration clauses as a valid expression of contractual autonomy. More broadly, Argentine courts generally adopt a pro-arbitration approach and give effect to arbitration agreements entered into by companies.

4. Arbitration agreements in articles of association and other agreements

Arbitration agreements may be included in a company's articles of association and in shareholders' agreements or other arrangements between shareholders.

Shareholders' agreements are valid under the principle of private autonomy, and Argentine case law recognises their binding effect on the parties to those agreements.

5. Required majorities

The quorums and majorities required for ordinary amendments to the articles of association apply to the incorporation, amendment or removal of a statutory arbitration clause.

In limited liability companies, approval requires the vote of shareholders representing three-quarters of the share capital, unless the articles of association establish a different majority, which must in any event exceed one half of the share capital.

In public limited companies, amendments to the articles of association must be approved by an extraordinary general meeting. The required quorum is 60% of the voting share capital on first call and 30% on second call. Approval requires an absolute majority of the votes cast, unless the articles of association require a higher majority.

In simplified public limited companies, ordinary amendments to the articles of association require the approval of shareholders representing two-thirds of the share capital, whereas exceptional amendments require unanimous approval.

6. Scope of arbitration agreements

An arbitration clause in the articles of association is binding on the company and all shareholders, including dissenting shareholders and future shareholders. Any person who acquires shares in the company is deemed to accept the rules governing its organisation and operation. The same applies to directors and liquidators.

7. Objective scope of arbitration agreements

The scope of disputes covered by the arbitration agreement depends on the wording of the clause in the articles of association, which should specify the matters to be referred to arbitration. The clause may be drafted broadly so as to encompass all corporate disputes to be defined broadly, or more narrowly so as to cover only specified categories of dispute.

The corporate disputes listed in Annex 2 may be submitted to arbitration.

However, some disputes may be non-arbitrable under mandatory rules and public policy provisions.

8. Standard arbitration agreement content

A corporate arbitration agreement will typically specify the disputes to be referred to arbitration (e.g. "any dispute arising out of the instrument of incorporation or articles of association"), the seat of arbitration, the governing law, the language of the proceedings, any pre-arbitration conciliation requirements (where applicable), the number of arbitrators and, in many cases, the administering institution.

IGJ Resolution 4/2001 introduced a model statutory clause providing for the resolution of disputes "by institutional arbitration" seated in Buenos Aires, to the exclusion of any other jurisdiction.

Some arbitration institutions, such as the Centre for Commercial Mediation and Arbitration (CEMARC), provide boilerplate corporate arbitration clauses:

> "Any dispute arising between the [company / association / entity] and its shareholders, between the governing bodies of the [company / association / entity], whatever their statutory structure, and its shareholders, or between any of the foregoing parties, or otherwise arising within the [company / association / entity] in connection with the same, and/or the [signatories / shareholders/] arising within the framework of their contractual, corporate or associative relationships, with implications regarding the exercise, fulfilment or breach of their rights and obligations arising from such status, whether or not such dispute affects other [shareholders / members / stakeholders] and/or their directors, must be definitively resolved by arbitration. The arbitration will be governed by the law administered by Centre for Commercial Mediation and Arbitration of the Argentine Chamber of Commerce (CEMARC) in accordance with the CEMARC Arbitration Rules and, in particular, the Corporate Arbitration Rules adopted under those Rules drawn up by the CEMARC Corporate Arbitration Commission (the "Rules"). The tribunal will be formed by one or three arbitrators appointed in accordance with the Corporate Arbitration Rules. The language of the arbitration will be Spanish, and the seat of the arbitration will be the Autonomous City of Buenos Aires. The parties expressly waive the right to appeal against decisions of the arbitral tribunal or CEMARC, except as expressly provided in the Rules. This arbitration agreement applies to any dispute, including disputes arising before this agreement is [signed / incorporated], provided that the request for arbitration is submitted after the date of its [execution / incorporation]. This arbitration clause is also binding on [directors / trustees / officers] of the [company / association / entity] to the extent provided in the Corporate Arbitration Rules."

9. Corporate arbitration at the law and in equity

In Argentina, corporate arbitration may be conducted either at law or in equity, depending on the parties' agreement, although arbitration at law is by far the most common approach.

In international arbitration, the tribunal may decide the dispute *ex aequo* or as *amiable compositeur* only where the arbitration agreement expressly so provides.

In domestic arbitration, the parties should expressly specify whether the arbitration is to be conducted by law or in equity, as the applicable default rules are not entirely clear.

Since 2024, CEMARC has had a dedicated set of corporate arbitration rules. Among other things, the rules require that awards be rendered in accordance with the law and provide for the consolidation of all arbitrations relating to the same company into a single proceeding before the same arbitral tribunal, "to the extent legally feasible".

10. Institutional and ad hoc corporate arbitration

Arbitration may be conducted on an institutional or *ad hoc* basis.

In practice, however, corporate arbitration is typically institutional because of the greater procedural structure and administrative support it provides (including the administration of time limits, the appointment of arbitrators and the application of uniform rules).

The Capital Markets Act requires stock exchanges to maintain permanent arbitral tribunals. In addition, IGJ Resolutions Nos. 4/2001 and 7/2005 required corporate disputes to be referred to institutional arbitration administered by a recognised arbitral institution.

11. Data on corporate arbitration and proceedings

There are no comprehensive statistics on the use of corporate arbitration. However, it is a popular choice among companies and partnerships, including small, medium-sized and large enterprises, both listed and unlisted.

The duration of arbitral proceedings varies, but arbitration is generally quicker than court litigation.

12. Setting aside corporate arbitration awards

The setting aside of a corporate arbitration award is governed by the general rules applicable to arbitration. Under Argentine law, an award may be challenged only by means of an application to set aside the award brought before the court of appeal with jurisdiction at the seat of the arbitration. Such applications may be made only on limited grounds, including the arbitral tribunal's lack of jurisdiction, the non-arbitrability of the dispute, or a violation of due process, fundamental rights or public policy.

The National Chamber of Appeals in Commercial Matters has issued a number of significant decisions in this area.

Bolivia

1. Historical development of corporate arbitration

Following the establishment of the Republic, the first procedural rules were enacted, culminating in the Code of Civil Procedure of 1832, which regulated arbitral proceedings and laid the foundations for arbitration agreements in civil and commercial matters.

The Commercial Code of 1834 introduced specific provisions governing corporate arbitration. Article 231, which set out the requirements for the formation of general partnerships, limited partnerships and joint-stock companies, required the deed of incorporation to include an arbitration clause providing for the submission of disputes to arbitration and specifying the method for appointing the arbitrators. In addition, article 306 provided that any dispute between shareholders was to be resolved by arbitration, even in the absence of an express provision in the articles of association. This reflected a clear legislative policy of promoting arbitration as the default mechanism for resolving disputes between partners.

Likewise, article 281 of the same Code provided that any dispute concerning the division of the company's assets was to be resolved by arbitration. Other provisions of the Code regulating in detail commercial arbitration procedure, including the effects of the arbitration agreement, the appointment of arbitrators, time limits, appeals, the setting aside of awards and their enforcement.

Throughout the 20th century, arbitration retained its place in the legal framework, although it was seldom used in practice.

In 1977, a new Commercial Code was enacted. Article 127(13) required the instrument of incorporation of commercial companies to contain an "agreement on arbitral jurisdiction, where applicable". Article 1480 further provided that the articles of association had to specify whether disputes between the shareholders, or between shareholders (or their heirs) and the company, were to be submitted to arbitration. In the absence of such a provision, submission to arbitration was presumed. However, article 1480 was repealed[1] by Law 1770 on Arbitration and Conciliation of 1997. That Law abolished the presumption of arbitration in the absence of an express provision in the articles of association and did not include any specific regulation of corporate arbitration.

2. Current corporate arbitration regulation

Arbitration is governed by Act 708 of 2015 on Conciliation and Arbitration, which repealed Act 1770 of 1997. This Act is modelled on the UNCITRAL Model Law and does not contain any specific provisions on corporate arbitration.

With regard to corporate arbitration in particular, as mentioned above, article 127(13) of the Commercial Code provides that the instrument of incorporation of commercial companies must contain, "where applicable", an "arbitration agreement", thereby allowing the

1 The Senate's Constitutional Committee appears to have overlooked the issue when proposing the list of repeals, inadvertently repealing a provision that had become an established feature of Bolivian corporate practice.

shareholders to agree to submit corporate disputes to arbitration; in the absence of such an agreement, there is no obligation to submit to arbitration.

3. Recent reforms and trends

Act 936 of 3 May 2017 is the latest amendment to Act 708 on arbitration and conciliation, but it has no bearing on corporate arbitration.

4. Arbitration agreements in articles of association and other agreements

In Bolivia, arbitration may be agreed in the articles of association, in shareholders' agreements or in contracts between shareholders, pursuant to the principle of freedom of contract recognised by Law 708 on Conciliation and Arbitration and the Commercial Code.

Arbitration agreements contained in shareholders' agreements or investment agreements outside the articles of association are fully valid and widely used. However, they are binding only on the shareholders who are party to them.

5. Required majorities

Bolivian law does not provide any special majority requirement for the adoption, amendment or removal of an arbitration clause in the instrument of incorporation of a limited liability company or in the articles of association of a joint-stock company.

Accordingly, the general rules governing amendments to the instrument of incorporation or articles of association apply. These require the approval of shareholders representing two-thirds of the share capital in both limited liability companies and joint-stock companies.

Dissenting shareholders are entitled to exercise a right of withdrawal.

Scope of arbitration agreements

Persons who are shareholders at the time the arbitration agreement is adopted are bound by it.

An arbitration clause may be included either in the instrument of incorporation or the original articles of association, pursuant to article 42 of Law 708, or may be adopted subsequently in accordance with article 43 of the same Law.

New shareholders are bound by a pre-existing arbitration agreement where it is incorporated into the instrument of incorporation or articles of association. This follows from the principle that persons joining the company accede to the memorandum of association in force at the time of their admission, as well as from the contractual nature of the company and the enforceability of its registered memorandum of association.

Bolivian legal scholars and arbitral practice recognise that former shareholders remain bound by an arbitration agreement that was in force during their membership, provided that the dispute arises out of relationships or circumstances existing during that period and falls within the scope of the arbitration agreement.

Directors also fall within the subjective scope of the arbitration agreement, as they accept office with full knowledge of the provisions of the articles of association.

Liquidators are likewise bound by the arbitration agreement where the dispute relates directly to the performance of their duties or to acts carried out in the course of the liquidation.

The company is bound by the arbitration agreement at all times.

In general, third parties are not bound by the arbitration agreement. However, legal scholars recognise certain exceptions:

1. **Group of companies**: where a company that is party to an arbitration agreement and its parent company or subsidiary, which is not a party to that agreement, operate as a single economic unit and share a common decision-making structure.

2. **Piercing the corporate veil**: where there is evidence that the corporate structure has been used fraudulently or abusively to evade the arbitration agreement.

These exceptions are interpreted narrowly and must be proved to the requisite standard, as they deviate from the fundamental principle that arbitration is based on consent.

6. Scope of arbitration agreements

As a general rule, any of the corporate disputes listed in Annex 2 may be submitted to arbitration.

However, disputes concerning non-arbitrable matters may not be referred to arbitration. These include, for example, proceedings relating to the nullity of the company's incorporation, the compulsory transfer of shares or equity interests, the dissolution and liquidation of the company on statutory grounds, the withdrawal or exclusion of shareholders on statutory grounds, and structural changes requiring administrative authorisation or affecting regulated sectors.

There is also some debate as to whether challenges to shareholders' resolutions are arbitrable, given that the Commercial Code establishes a judicial procedure for determining such disputes.

7. Standard arbitration agreement content

Broad arbitration clauses are commonly used, although arbitration clauses may also be drafted to address specific categories of corporate disputes.

The principal arbitral institutions in Bolivia do not provide boilerplate clauses for corporate arbitration.

8. Corporate arbitration at the law and in equity

Article 40 of Law 708 on Conciliation and Arbitration provides that the parties may agree for the arbitration to be conducted either at law or in equity. In the absence of such an agreement, the arbitration will be conducted at law.

In Bolivian practice, particularly in the corporate context, there is a clear preference for arbitration at law, both under institutional rules and in standard arbitration clauses.

Although Bolivian law does not restrict the use of equity arbitration in corporate disputes, it is uncommon in practice owing to the legal complexity of such disputes and the legal consequences that they typically entail.

9. Institutional and ad hoc corporate arbitration

Law 708 on Conciliation and Arbitration expressly recognises both institutional and *ad hoc* arbitration.

The same applies in corporate matters. Bolivian law does not require disputes to be submitted exclusively to institutional arbitration and allows the parties to choose between institutional and ad hoc arbitration.

In practice, institutional arbitration predominates in corporate matters, owing to the security, procedural order, predictability and logistical support provided by the administering centres. A*d hoc* arbitration is less common, generally by companies with greater experience or resources to manage the process directly.

Among the arbitral institutions most frequently appointed to administer arbitrations concerning corporate disputes are the Arbitration and Conciliation Centre of the National Chamber of Commerce of La Paz (CAC), the Arbitration and Conciliation Centre of the Santa Cruz Chamber of Industry, Commerce, Services and Tourism (CAINCO) and the Arbitration and Conciliation Centre of the Cochabamba Chamber of Industry, Commerce and Services.

These institutions have their own rules, lists of arbitrators and specialised procedures, although they have not developed specific rules for corporate disputes.

10. Data on corporate arbitration and procedures

According to Bolivia's corporate registry authority, the Plurinational Commercial Registry Service (SEPREC), arbitration clauses are included in the vast majority of articles of association.

Corporate arbitration is common, particularly in limited liability companies, where the limited number of shareholders and the closely held nature of the company favour the use of arbitration to resolve internal disputes, especially disputes between shareholders and between shareholders and management. It is also commonly used in joint-stock companies.

There are no official statistics on the number, duration or outcomes of corporate arbitrations, as most proceedings are confidential, particularly those administered by private arbitral institutions such as the Arbitration and Conciliation Centres of the National Chamber of Commerce and the Departmental Chambers of Commerce. However, Law 708 on Conciliation and Arbitration establishes a clear procedural timetable for arbitral proceedings. On that basis, a corporate arbitration typically lasts between 11 and 14 months where the award is not appealed, and between 13 and 17 months where an application to set aside the award is made.

Emergency arbitration is available where expressly provided for in the arbitration agreement. It may be particularly useful in relation to urgent corporate disputes, such as the recognition of a shareholder's right to attend and vote at a general meeting, or the temporary suspension of the effects of a notice calling a meeting or of a corporate resolution.

11. Setting aside corporate arbitration awards

The sole means of challenging an arbitral award, including a corporate arbitral award, is an application for annulment under Law 708 on Conciliation and Arbitration.

The application must be filed with the arbitral tribunal that rendered the award. The tribunal must then refer the case file to the competent ordinary court in the jurisdiction where the arbitration was seated.

Article 112 of the Law provides that an award may be set aside on the following grounds:

1. The subject matter of the dispute is not capable of settlement by arbitration.
2. The award is contrary to public policy
3. Any of the following situations is established:
    a. The arbitration clause or agreement is null or voidable under the Civil Code.
    b. A violation of the right to be heard or of due process during the arbitration proceedings.
    c. The arbitral tribunal has manifestly exceeded its jurisdiction.
    d. The arbitral tribunal was improperly constituted.

The decision on the application for annulment is final and cannot be appealed.

Consequently, the Bolivian legal framework provides for only limited and exceptional judicial review of arbitral awards. This review is intended to safeguard fundamental procedural guarantees and public policy and does not allow the merits of the dispute to be reconsidered. This approach is consistent with the principles of finality, *res judicata* and enforceability that underpin arbitration generally.

Brazil

1. Historical development of corporate arbitration

Arbitration as a means of resolving corporate disputes is not new in Brazil. The Commercial Code of 1850 already provided for compulsory arbitration as a mechanism for resolving disputes between shareholders and the company, although Law 1350 of 1866 made arbitration voluntary.

Since its enactment, Law 6404/1976 (the Public Companies Act) has allowed parties to refer disputes to arbitration in the event of a deadlock at a general meeting. However, it does not contain a broader framework governing corporate arbitration.

Law 9307/1996 (the Arbitration Act) regulates arbitration generally but contains no specific provisions on corporate arbitration. Nevertheless, disputes between shareholders, between shareholders and the company, and between the company and its directors may be resolved by arbitration.

In 2001, the legislature expressly authorised corporate arbitration in public companies. In the same period, the Brazilian Stock Exchange (now B3) established the Câmara de Arbitragem do Mercado (CAM), which serves as the mandatory forum for the resolution of corporate disputes involving companies listed on the Novo Mercado, Level 2, Bovespa Mais and Bovespa Mais Level 2 segments.

2. Current corporate arbitration regulation

In Brazil, arbitration in general and corporate arbitration in particular are regulated primarily by the following legislation:

1. Law 9307/1996 on Arbitration (amended by Law 13129/2015): this sets out the basic principles of arbitration, such as the validity of the arbitration agreement, its autonomy and the applicable procedural rules. It is based on the UNCITRAL Model Law.

2. Law 6404/1976 on Public Limited Companies (amended by Laws 10303/2001 and 13129/2015): provides that "the articles of association may stipulate that disputes between shareholders and the company, or between controlling and minority shareholders, may be resolved by arbitration, on such terms as the parties may agree" (article 109) and that dissenting shareholders have the right to withdraw from the company (article 136-A).

3. The regulations governing the Novo Mercado, Corporate Governance Level 2, Bovespa Mais and Bovespa Mais Level 2 segments: these stipulate that companies wishing to be listed on these segments of the Brazilian stock exchange (B3) must include arbitration clauses in their articles of association for the resolution of corporate disputes affecting shareholders, directors or the company.

3. Recent reforms and trends

Bill 4 of 2025, which proposes reforms to the Civil Code, would require newly incorporated companies to specify whether disputes between shareholders, or between shareholders and the company, are to be resolved through arbitration. If enacted, the reform would require shareholders to choose, when the company is incorporated, between arbitration and the courts as the forum for resolving corporate disputes.

In addition, Bill 5662 of 2025 (originally introduced as Bill 2925 of 2023), which concerns the private enforcement of investors' rights in the securities market, regulates collective actions seeking to establish the liability of directors of publicly listed companies, controlling shareholders and the companies themselves, among others, for losses suffered by investors as a result of inaccurate information being disclosed to the market. The Bill provides that such claims may be resolved through arbitration and that collective arbitral proceedings must be public, subject to the conditions and limits established by regulations issued by the Securities and Exchange Commission.

The Bill also requires the publication of arbitral proceedings involving publicly listed companies where the dispute concerns: (i) the liability of directors, members of the fiscal council (a supervisory body established under articles 161 to 165-A of Law 6404 and distinct from the company's management bodies) or shareholders for losses caused to the company; (ii) matters that, by their nature, must be determined uniformly in respect of all shareholders; or (iii) disputes that otherwise affect the rights of shareholders who are not parties to the proceedings.

4. Statutory and non-statutory arbitration agreements

Arbitration may be provided for not only in the articles of association, but also in shareholders' agreements.

Under article 118 of Law 6.404, shareholders' agreements concerning the sale and purchase of their shares, pre-emptive rights to acquire them, the exercise of voting rights or the power of control must be "observed" by the company when they are "filed" at its registered office.

The main point of contention regarding arbitration in disputes arising from shareholders' agreements is whether the company is bound by the arbitration clause when it is not a party to the agreement.

Most legal scholars take the view that the fact that the company "files" the shareholders' agreement at its registered office and signs it as an intervening party merely means that it must ensure compliance with the terms and conditions thereof, but does not make it a party to the agreement or, consequently, the holder of rights and obligations. Consequently, the company is not obliged to participate in the arbitration proceedings, but it is understood that if it intervenes in the arbitration, it must comply with the terms of the award.

5. Required majorities

In public companies, articles 136 and 136-A of Law 6,404 provide that adopting, amending or removing an arbitration clause in the articles of association requires the approval of at least half of the votes of shareholders with voting rights. Only companies whose shares are neither listed on a stock exchange nor traded on the over-the-counter market may require a higher majority under their articles of association. Dissenting shareholders are entitled to withdraw from the company and receive payment for the value of their shares.

As with any amendment to the articles of association, a general meeting may be called on first call only if shareholders representing at least two-thirds of the votes of shareholders with voting rights are present. No quorum applies on second call.

In limited liability companies, articles 1071(V), 1076(II) and 1077 of the Civil Code provide that amending the articles of association, including adopting, amending or removing a statutory arbitration clause, requires the approval of shareholders representing more than half of the share capital. Dissenting shareholders are likewise entitled to exercise a withdrawal right.

6. Scope of arbitration agreements

A statutory arbitration clause is binding on all shareholders of the company, whether existing or future, as well as on the company itself.

Article 136-A of Law 6404 expressly recognises this principle stating that: “the approval of the inclusion of an arbitration clause in the articles of association, subject to the quorum set out in article 136, is binding on all shareholders”.

The arbitration clause in the articles of association is also binding on the directors of companies listed on the Novo Mercado, Level 2, Bovespa Mais and Bovespa Mais Level 2 segments, as the regulations governing those segments expressly provide.

There is some debate as to whether directors of other companies are likewise bound by an arbitration clause contained in the articles of association, given that articles 109 and 136-A of Law 6404 do not expressly refer to directors. Some legal commentators believe that no express reference to directors is required for them to be bound by the arbitration agreement, while others argue that such a reference is necessary.

7. Scope of arbitration agreements

Disputes relating to disposable property rights are subject to arbitration.

Law 6404 does not restrict the categories of corporate disputes that may be referred to arbitration. Instead, it allows the articles of association to provide that disputes between shareholders and the company, or between controlling and minority shareholders, are to be resolved by arbitration on the terms set out in the articles of association.

Accordingly, the corporate disputes listed in Annex 2 are arbitrable.

8. Standard arbitration agreement content

It is customary practice and generally recommended to include broad arbitration clauses in articles of association that refer to all corporate disputes. To avoid disputes concerning their interaction, it is also advisable to align such clauses with the arbitration provisions contained in shareholders' agreements.

The following template corporate arbitration clauses are worth highlighting:

1. Template clause for the articles of association of companies listed on the Brazilian stock exchange

    a. Novo Mercado

    "Article [¤] – The Company, its shareholders, directors and members of the audit committee, whether permanent or alternate, if any, undertake to submit to arbitration before the Market Arbitration Chamber, in accordance with its Rules, any dispute arising between them in connection with, or arising out of, their status as issuer, shareholder, director or member of the audit committee.

    This includes, in particular, disputes arising out of or relating to the provisions of Law 6385/1976, Law 6404/1976, the Company's articles of association, regulations issued by the National Monetary Council, the Central Bank of Brazil and the Securities and Exchange Commission, as well as any other rules applicable to the operation of the capital markets generally, including the Novo Mercado Regulations, other B3 regulations and the Novo Mercado Participation Agreement."

    b. Level 2 Corporate Governance

    "Article [¤] – The Company, its shareholders, directors and members of the Supervisory Board undertake to resolve, by arbitration before the Market Arbitration Chamber, any disputes or controversies arising between them in connection with, or arising out of, in particular, the application, validity, effectiveness, interpretation, breach or consequences of the provisions of the Corporations Act, the Company's articles of association, regulations issued by the National Monetary Council, the Central Bank of Brazil and the Securities and Exchange Commission, as well as any other rules applicable to the operation of the capital markets generally, including the Level 2 Regulations, the Arbitration Regulations, the Sanctions Regulations and the Level 2 Corporate Governance Participation Agreement."

2. CAM template clause for the articles of association of public limited companies (except for companies listed on the Novo Mercado, Level 2, Bovespa Mais and Bovespa Mais Level 2):

    "The Company, its shareholders, directors and members of the Audit Committee undertake to submit to arbitration, in accordance with the Arbitration Rules of the Market Arbitration Chamber, all disputes or controversies arising between them in connection with, or arising out of, in particular, the application, validity, effectiveness, interpretation, breach or consequences of the provisions of Law 6404/1976, the Company's articles of Association and, in the case of a public company, regulations issued by the Brazilian Securities and Exchange Commission."

3. CAM template clause for the articles of association of limited liability companies:

"The Company, its shareholders and directors undertake to submit to arbitration, in accordance with the Arbitration Rules of the Market Arbitration Chamber, all disputes or controversies arising between them in connection with, or arising out of, in particular, the application, validity, effectiveness, interpretation, breach or consequences of the provisions of the Company's articles of Association and the rules applicable to limited liability companies."

9. Corporate arbitration at the law and in equity

In Brazil, both institutional and ad hoc arbitration are available to resolve corporate disputes, although arbitration at law overwhelmingly prevails. Where the parties agree to arbitrate but do not specify whether the arbitration is to be conducted at law or in equity, the issue will be governed by the terms of the arbitration agreement entered into after the dispute has arisen. In the absence of such an agreement, the arbitration will be conducted at law pursuant to article 11(II) of Law 9307/1996.

10. Institutional and ad hoc corporate arbitration

Arbitration need not be institutional, although it is mandatory for companies listed on B3's special listing segments, for which arbitration must be administered by the Market Arbitration Chamber (CAM).

In 2023, the Arbitration and Mediation Centre of the Brazil–Canada Chamber of Commerce (CAM-CCBC) adopted Corporate Arbitration Rules applicable to collective corporate disputes capable of affecting all holders of shares or securities, including those who are not parties to the arbitration, where a uniform determination is required in respect of all affected persons. To fall within the scope of these Rules, the articles of association or instrument of incorporation must contain a clause providing for arbitration to be administered by CAM-CCBC in accordance with those Rules.

Among other things, the Rules provide for: (i) notice of the arbitration to affected third parties, such as holders of shares or securities, so that they can participate in the proceedings if they wish; and (ii) the consolidation of arbitrations involving related matters concerning the company or its shareholders.

11. Data on corporate arbitration and proceedings

Corporate arbitration is used primarily by medium-sized and large public companies, as well as by larger private companies and companies with more sophisticated governance structures.

According to CAM and CAM-CCBC, the principal arbitral institutions administering corporate disputes in Brazil, arbitral proceedings typically last between 12 and 23 months, depending on how complex the case is.

12. Setting aside corporate arbitration awards

The setting aside of arbitral awards is governed by article 32 of Law 9307/1996. An award may be challenged only on the grounds specified in that provision, including where the arbitration agreement is null; the award was rendered by a person who lacked the qualifications required to act as an arbitrator; the award does not comply with the requirements of the Law; the arbitral tribunal exceeded the scope of the arbitration agreement; the award was procured through prevarication, extortion or passive bribery; the award was rendered outside the prescribed time limit; or the principles of due process, equality of the parties, impartiality and the arbitrator's independent assessment of the evidence were violated.

The court hearing an application to set aside an award may not review the merits of the dispute.

There is debate as to whether the grounds listed in article 32 are exhaustive and, in particular, whether an award may also be set aside on the ground that it violates public policy. That view is held by a minority of legal scholars and has been supported by some case law.

Chile

1. Historical development of corporate arbitration

Chilean law has long recognised arbitration as a means of resolving corporate disputes, and arbitral awards in corporate matters are fully recognised and enforceable.

Indeed, a number of corporate disputes are subject to mandatory arbitration irrespective of the parties' wishes. This reflects a legislative policy of referring most significant corporate disputes to arbitration.

2. Current corporate arbitration regulation

In general, Chilean law distinguishes between matters subject to mandatory arbitration and matters that are non-arbitrable. Both categories are exceptional and require an express statutory basis. Although some commentators have criticised mandatory arbitration as being inconsistent with the fundamentally consensual nature of arbitration, it remains part of Chilean law.

Subject to the limited category of non-arbitrable matters, any dispute may be referred to arbitration if so provided in the articles of association or in any amendment to the same.

Mandatory arbitration is regulated by various statutes, depending on the type of company concerned.

In relation to civil-law partnerships, the law provides only that the winding-up of a general partnership or limited partnership is subject to mandatory arbitration (article 227 of the Basic Law on the court system).

The position is different for commercial companies, for which a number of statutory provisions establish mandatory arbitration.

Article 227 of the Basic Law on the court system provides that disputes between the partners of a commercial general partnership, a commercial limited partnership or a public company must be resolved by arbitration. The same provision further requires disputes arising from the rendering of accounts by the managing partner or by the liquidator of a commercial company, as well as all other proceedings relating to accounts, to be submitted to arbitration.

In addition, article 352(10) of the Commercial Code requires the partners of a commercial general partnership to specify in the partnership deed:

"Whether disputes arising between the partners during the partnership are to be submitted to arbitration and, if so, how the arbitrators are to be appointed."

Article 415 of the Commercial Code further provides that:

“If the provision referred to in article 352(10) has been omitted from the partnership deed, any disputes arising between the partners, whether during the partnership or after its dissolution, will be submitted to arbitration.”

Article 414 of the Commercial Code reinforces the rule in article 227 of the Basic Law on the court system by providing that:

“Disputes arising from the rendering of accounts by the managing partner or the liquidator must be submitted to arbitration.”

With regard to limited liability companies, Law 3918 refers to the rules governing commercial partnerships. Accordingly, the disputes described above are likewise subject to mandatory arbitration.

In the case of public companies, article 4(10) of Law 18046 extends the scope of mandatory arbitration by requiring the articles of association to specify:

“The nature of the arbitration to which disputes arising between shareholders in their capacity as such, or between shareholders and the company or its directors, must be submitted, whether during the life of the company or after its liquidation. In the absence of any provision, disputes will be submitted to an arbitrator acting in equity.”

Article 125 of the same Law, which constitutes the entirety of the chapter entitled “Arbitration”, first provides that:

“The articles of association must specify how the arbitrator or arbitrators who are to hear the disputes referred to in article 4(10) are to be appointed.”

It then adds that:

“The method of arbitration established in this Law applies without prejudice to the claimant’s right, in the event of a dispute, to withdraw the matter from arbitration and submit it to the courts of law.”

In 2009, the scope of that right was restricted by an amendment providing that it could not be exercised by the company’s directors, managers, administrators or senior executives. It may also not be exercised by shareholders who individually and directly or indirectly hold shares whose book or market value exceeds 5,000 *Unidades de Fomento* (an inflation-indexed unit of account whose value is adjusted daily).

The second point of article 125 means that, although arbitration was initially established as mandatory by article 4(10), it ultimately becomes optional for the claimant. The claimant may choose to bring proceedings before the courts of law, unless one of the exceptions set out in article 125 applies.

The situation is different for joint-stock companies, a corporate form that was introduced in 2007. Article 441 of the Commercial Code states the following:

"Disputes between shareholders, between shareholders and the company or its directors or liquidators, or between the company and its directors or liquidators, must be resolved by arbitration.

The articles of association must specify:

1. The type of arbitration and the number of members forming the arbitral tribunal. If this is not specified in the articles of association, disputes must be resolved by a single mixed arbitrator. This arbitrator will handle procedural matters and decide the dispute in accordance with the law.

2. The identity of the arbitrators and their substitutes, or the method by which they are appointed. If the articles of association do not provide for this, the arbitrators will be appointed by the court with jurisdiction over the company's registered office."

In summary, this is the situation regarding mandatory corporate arbitration:

Partnerships	
Mandatory arbitration	Winding up of a general partnership or limited partnership
Provision	Article 227 of the Basic Law on the court system
Commercial companies	
Compulsory arbitration	Matters arising from the submission of the liquidator's or manager's account
Provision	Article 227 of the Basic Law on the court system, in the case of general partnerships, and article 414 of the Commercial Code in respect of joint-stock companies
Commercial general partnership	
Compulsory arbitration	Disputes between partners
Provision	Article 227 of the Basic Law on the court system and articles 352.10 and 415 of the Commercial Code
Commercial limited liability company	
Compulsory arbitration	Disputes between partners
Provision	Article 227 of the Basic Law on the court system and article 352.10 of the Commercial Code
Commercial limited partnership	
Compulsory arbitration	Disputes between partners
Provision	Article 227 of the Basic Law on the court system

Public limited company	
Compulsory arbitration	Disputes between shareholders in their capacity as such and between them and the company or its directors
Provision	Article 227 of the Basic Law on the court system in respect of shareholders and article 4.10 of Law 18.046 in respect of them and the other disputes described, subject to the limitation set out in article 125 of the same Act, which entitles a shareholder whose shares represent a book or market value of less than five thousand unidades de fomento to remove the dispute from the jurisdiction of the arbitrators and submit it to the courts of law for a ruling
Public limited company	
Compulsory arbitration	Disputes between shareholders, between shareholders and the company or its directors or liquidators, and between the company and its directors or liquidators
Regulation	Article 441 of the Commercial Code

The fragmentation of the rules applicable to distinct types of companies, coupled with the establishment of matters subject to compulsory arbitration, creates uncertainty and can lead to delays in proceedings. These delays can begin with a dispute over whether the matter is subject to arbitration and can result in parallel arbitration and court proceedings.

3. Recent reforms and trends

Apart from the developments described above, there have been no recent legislative amendments affecting the rules governing corporate arbitration.

Two constitutional reform processes aimed at replacing the current Constitution addressed the issue of mandatory arbitration.

Article 320 of the 2022 Constitutional Proposal provided the following:

"Arbitration must always be voluntary. The law may not establish mandatory arbitration."

By contrast, the 2023 Constitutional Proposal retained the current constitutional text, which does not prevent the legislature from establishing matters subject to mandatory arbitration.

Neither proposal was adopted. Accordingly, the current constitutional framework remains in force, allowing the legislature to continue designating certain matters as subject to mandatory arbitration.

4. Statutory and non-statutory arbitration agreements

Articles of association typically include an arbitration clause.

An arbitration agreement contained in a shareholders' agreement is binding, in accordance with its terms, only on the parties to that agreement and on any person who subsequently adheres to it. It is not enforceable against non-parties, including the company itself.

5. Required majorities

In relation to corporate disputes that are subject by law to mandatory arbitration, the shareholders may not refer the dispute to the courts of law, even if they have unanimously agreed to.

In all other cases, the consent of all shareholders is required in order to include an arbitration agreement in the articles of association at the time the company is incorporated. Subsequently adopting, amending or removing an arbitration agreement is governed by the rules applicable to amendments to the articles of association generally, namely the requirements established by law for the type of company in question or, where applicable, by the articles of association themselves.

6. Scope of arbitration agreements

In the case of mandatory arbitration, the Basic Court Law provides that disputes between the partners of general partnerships, limited partnerships and limited liability companies must be resolved by arbitration.

Although the Code refers only to disputes between partners, some commentators argue that disputes between shareholders and the company are likewise subject to mandatory arbitration. Others argue that, because mandatory arbitration constitutes an exception to the general rule of consensual arbitration, this provision should be interpreted narrowly.

As regards disputes involving directors, the prevailing view is that such disputes may be referred to arbitration only where the directors are also company shareholders, unless the law provides otherwise. An exception is made for disputes concerning the rendering of accounts by the managing partner and proceedings relating to the auditing of accounts, both of which are subject to mandatory arbitration.

In the case of public companies, the law expressly provides that disputes between shareholders in their capacity as such, or between shareholders and the company or its directors, are subject to mandatory arbitration, subject to the exception set out in article 125 of Law 18046.

With regard to joint-stock companies, disputes involving liquidators must also be resolved by mandatory arbitration.

The position regarding the parties' ability to include broader arbitration clauses in the articles of association for mandatory arbitration, the position is less clear. While these clauses have been recognised in some cases, under Chilean law, arbitration clauses contained in the articles of association only bind those who have agreed to them.

7. Objective scope of the arbitration agreement

In Chile, any corporate dispute may be referred to arbitration.

Without prejudice to matters subject to mandatory arbitration, the objective scope of an arbitration agreement depends entirely on the parties' intentions. The parties are therefore free to include within the arbitration clause any corporate disputes they wish to submit to arbitration.

In particular, the corporate disputes listed in Annex 2 are arbitrable, although the list is not exhaustive and some of the categories do not correspond precisely to concepts under Chilean law.[2]

8. Standard arbitration agreement content

The parties are free to draft arbitration agreements as they consider appropriate, provided that the general validity requirements applicable to arbitration agreements are satisfied.

Chile's leading arbitral institution, the Arbitration and Mediation Centre of the Santiago Chamber of Commerce (CAM Santiago), publishes model arbitration clauses. Although these clauses are not specifically designed for inclusion in articles of association or for disputes particular to the corporate context, they are frequently used for those purposes in practice.

Nevertheless, given the fragmented nature of the legal framework governing corporate arbitration, particularly in relation to mandatory arbitration, the development of model clauses specifically tailored to corporate disputes would be desirable in order to reduce uncertainty as to their interpretation and scope.

9. Corporate arbitration under law and equity

Chilean law allows the parties to choose whether a dispute is to be decided by an arbitrator acting in accordance with the law or by an arbitrator acting in equity.

Where the parties do not specify whether the arbitration is to be conducted at law or in equity, the applicable default rule depends on whether the arbitration is mandatory or voluntary. In mandatory arbitration, the applicable default rule provided by law for the type of company in question applies (e.g. disputes involving public companies are referred to an arbitrator acting in equity). In the case of voluntary arbitration, article 235 of the Basic Law on the court system provides that the arbitration is to be conducted at law.

10. Institutional and ad hoc corporate arbitration

The law does not provide for institutional arbitration. Accordingly, unless the parties agree otherwise, arbitration will be conducted on an ad hoc basis.

2 Claims relating to directors' liability are not classified as "corporate" or "individual" claims. Likewise, Chilean law does not generally use the terms "right of first refusal" in relation to transfers of shares or equity interests, or "ancillary obligations". Instead, it refers to pre-emption rights and to the duties owed by shareholders to the company.

The arbitration agreement may, however, provide that the arbitration is to be administered in accordance with the rules of a specific arbitral institution.

11. Data on corporate arbitration and proceedings

In Chile, arbitration is widely used to resolve commercial and corporate disputes.

This is due in part to the fact that the law requires a broad range of corporate disputes to be resolved by arbitration, making arbitration the natural forum for resolving these disputes.

Accordingly, arbitration clauses are typically included in the articles of association of all types of companies, as well as in shareholders' agreements.

Institutional arbitration is more common than ad hoc arbitration, mainly because it gives the parties greater confidence that the arbitrator appointed will have appropriate expertise and experience, rather than being appointed by a court.

A further advantage of institutional arbitration is that arbitral institutions operate under established procedural rules, which generally provide for shorter time limits for rendering awards than those provided by article 232 of the Basic Law on the court system (two years unless otherwise agreed by the parties).

Of the 489 requests for arbitration filed with CAM Santiago in 2025, 39 concerned corporate disputes.

Domestic arbitrations in 2025 lasted on average 20 months from the date on which the arbitrators accepted their appointment.

The CAM Santiago Rules provide for emergency arbitration. In 2025, 27 applications were filed, of which 59% were granted in full and 14% in part.

Given the possibility of obtaining interim relief within a timeframe proportionate to the urgency of the application, emergency arbitration should therefore be considered in corporate disputes.

Emergency arbitration proceedings are generally much faster than court proceedings for interim relief. According to figures published by CAM Santiago, emergency arbitration proceedings in 2025 lasted on average 5.4 days from the date on which the emergency arbitrator accepted the appointment.

12. Setting aside corporate arbitration awards

In international arbitration, an award may be challenged only by means of an application to set aside the award. This remedy is provided for in article 34 of Law 19971, which is based on the UNCITRAL Model Law.

An application to set aside an award must be brought before the competent court of appeal. It is a limited exceptional remedy that is available only on the grounds expressly listed in article 34. Broadly speaking, those grounds relate to serious procedural defects in the arbitration proceedings, the award having determined matters not contemplated by the arbitration agreement or not capable of settlement by arbitration under Chilean law, or a breach of international public policy.

In domestic arbitration, the general rule is that an award may be challenged by appeal or cassation before the courts, unless those remedies have been waived by the parties. This follows from article 239 of the Basic Law on the court system.

However, the same provision provides that an appeal against an award rendered by an arbitrator acting in equity is available only where the parties have expressly provided for such an appeal in the arbitration agreement and have appointed arbitrators to hear it. No appeal in cassation on the merits is available.

Where the parties have agreed to institutional arbitration, the applicable institutional rules will often restrict the availability of appeals, typically through an express waiver.

Notwithstanding the above, appeals based on lack of jurisdiction or *ultra petita*, as well as disciplinary complaints against arbitrators, cannot be waived.

A challenge based on lack of jurisdiction may be brought where the award was rendered by an arbitrator who lacked jurisdiction to determine the dispute. This may arise, among other reasons, where there is no valid arbitration agreement, where the arbitrator has ruled on matters falling outside the scope of the arbitration agreement, or where the award was rendered after the agreed or statutory time limit expired. If the challenge succeeds, the court will determine the procedural consequences and order that the proceedings continue before the court or tribunal with jurisdiction.

An *ultra petita* challenge arises where the arbitrator grants relief beyond that sought by the parties, grants relief of a different nature from that sought, or decides matters that were not submitted for determination. If the challenge succeeds, the court will issue a replacement decision.

In the case of a disciplinary complaint, the court will determine, on a case-by-case basis, whether the arbitrator committed serious misconduct or abuse in rendering the award. Although the primary purpose of this remedy is disciplinary, the court may adopt any measures necessary to remedy the misconduct or abuse and, in doing so, may amend the award as it considers appropriate.

Colombia

1. Historical development of corporate arbitration

There is no specific regulation governing corporate arbitration in Colombia; consequently, arbitration proceedings are governed by the general rules contained in the National and International Arbitration Statute under Law 1.563 of 2012 (“**Arbitration Statute**”).

However, several articles of the Commercial Code refer to arbitration in the section relating to the articles of association.

For example, article 110-11 of the Commercial Code provides that the articles of association of a commercial company must specify whether disputes between shareholders or between shareholders and the company are to be resolved by arbitration.

Article 221 further provides that disputes arising out of the dissolution of companies may be resolved by arbitration, provided that the company is not subject to the supervision of the Superintendency of Companies, the autonomous public authority responsible for the inspection, supervision and oversight of commercial companies.

2. Current corporate arbitration regulation

There is no specific statutory regime governing corporate arbitration. Accordingly, corporate arbitrations are subject to the general procedural rules set out in the Arbitration Statute.

However, article 40 of Law 1258 of 2008, which governs simplified joint-stock companies, provides that:

“Disputes arising between shareholders, or between shareholders and the company or its directors, in connection with the application of the articles of association or a party’s unilateral action, including challenges to resolutions of the general meeting or the board of directors on any of the grounds provided by law, may be submitted to arbitration or to a panel of conciliators, provided that the articles of association so stipulate.”

3. Recent reforms and trends

Through Bill No. 9 of 2021, the Colombian Congress proposed a series of amendments to the Arbitration Statute, including reforms specifically addressing statutory arbitration agreements in corporate matters.

Reflecting an ongoing debate, the Bill proposed, among other things:

1. Requiring a supermajority representing 78% of the share capital to adopt, amend or revoke a statutory arbitration agreement, and providing that such an agreement would not be binding on absent or dissenting shareholders.

2. Providing that, unless otherwise agreed, an arbitration clause contained in the articles of association would be deemed to extend to all categories of corporate dispute.

The Bill was ultimately not enacted. It remains unclear whether similar proposals will be made again in the future.

4. Statutory and non-statutory arbitration agreements

An arbitration agreement may be included either in the articles of association or in a shareholders' agreement. However, in the latter case, it binds only those shareholders who have signed it.

5. Required majorities

In the case of simplified joint-stock companies, Law 1258 of 2008 has, since their introduction, required the unanimous consent of shareholders for the adoption, amendment or revocation of a statutory arbitration agreement.

For other types of company, such as limited liability companies and public companies, the law does not prescribe any special majority requirement. It was therefore traditionally understood that an absolute majority was sufficient, as is generally the case for amendments to the articles of association.

However, according to established Supreme Court case law since 2016, the adoption, amendment or removal of an arbitration clause in the articles of association requires the consent of all shareholders.

6. Subjective scope of the arbitration agreement

There is no statutory restriction on the subjective scope of an arbitration agreement in the corporate context. Accordingly, an arbitration agreement may bind both the shareholders and the directors of the company.

In 2016, the Supreme Court ruled that shareholders who acquired shares after an arbitration clause had been adopted were also bound by it. The Court based its decision on the Arbitration Statute, which states that an arbitration clause binds not only the parties who agreed to it, but also on their successors and assigns. Therefore, a person who acquires or subscribes for shares in a company is deemed to have accepted the arbitration agreement.

7. Objective scope of arbitration agreements

The scope of an arbitration agreement depends on its terms. Colombian law does not restrict the categories of corporate dispute that can be referred to arbitration.

In the case of simplified joint-stock companies, article 40 of Law 1258 of 2008 provides that:

"Disputes arising between shareholders, or between shareholders and the company or its directors, in connection with the implementation of the articles of association or a party's unilateral action, including challenges to resolutions of the general meeting or the board of directors on any of the grounds provided by law, may be submitted to arbitration."

No equivalent provision applies to other types of company.

Historically, judges specialising in company law took the view that challenges to corporate resolutions could not be referred to arbitration, and that position was endorsed by the Supreme Court. It is now widely accepted, however, that they are arbitrable.

Questions have occasionally arisen as to the scope of the concept of a corporate dispute. In particular, it has been debated whether the term is limited to disputes arising under the articles of association or whether it also extends to disputes between shareholders, such as those arising under share purchase agreements. The Supreme Court of Justice has held that disputes arising under both the articles of association and shareholders' agreements are corporate in nature.

It is generally accepted that the corporate disputes listed in Annex 2 are arbitrable, except for disputes concerning the dissolution of companies subject to the supervision of the Superintendency of Companies. Under article 221 of the Commercial Code, such disputes cannot be settled by arbitration.

8. Standard arbitration agreement content

Broad arbitration clauses are the norm. Rather than identifying specific categories of dispute, they typically refer to corporate disputes in general, thereby maximising the range of disputes that may be referred to arbitration.

The Centre for Business Conciliation and Arbitration of the Superintendency of Companies, which specialises in corporate arbitration, provides the following template arbitration clause:

"Any dispute arising between current or prospective shareholders, or between such shareholders and the company or its directors (the latter being bound by this arbitration clause upon accepting office), arising out of, in connection with, or relating to the articles of association or the unilateral act by which the company was incorporated, including challenges to corporate resolutions adopted by the general meeting or the board of directors, disputes arising under shareholders' agreements, the negotiation and transfer of shares, the withdrawal or exclusion of shareholders, usufruct and pledge agreements relating to shares, mergers and demergers, the disposal of all or substantially all of the company's assets, and any other corporate dispute, must be resolved by an arbitral tribunal constituted under the auspices of the Centre for Business Conciliation and Arbitration of the Superintendency of Companies, in accordance with the following rules:

1. At the request of either party, the Tribunal will be formed by one or three arbitrators, depending on the amount in dispute. The arbitrator or arbitrators will be appointed by parties or, if they are unable to reach an agreement, by the Centre for Business Conciliation and Arbitration of the Superintendency of Companies.

2. The Tribunal must decide the dispute in accordance with the law.

3. The proceedings are governed by the Rules of the Centre for Business Conciliation and Arbitration of the Superintendency of Companies and, otherwise, by the arbitration legislation in force at the time the claim is filed.

The arbitrators' fees and the costs of the arbitration will be determined in accordance with the schedule of fees established by the Centre."

9. Corporate arbitration in law and equity

Article 1 of the Arbitration Statute, which governs domestic arbitration, provides that an award may be rendered in law, in equity or on a technical basis. Article 3 further provides that the parties must specify the nature of the award in the arbitration agreement and that, in the absence of such specification, the award must be rendered in law.

10. Institutional and ad hoc corporate arbitration

Article 2 of the Arbitration Statute provides that corporate arbitration may be conducted either on an institutional basis or on an ad hoc basis, as agreed by the parties. If they are unable to reach an agreement, the arbitration will be institutional.

Although corporate disputes may be administered by any arbitral institution, two institutions have developed particular expertise in this field: the Centre for Business Conciliation and Arbitration of the Superintendency of Companies, established in 2012, and the Arbitration and Conciliation Centre of the Bogotá Chamber of Commerce, which has offered a specialised corporate arbitration service since 2022.

11. Facts about corporate arbitration and proceedings

Corporate arbitration is becoming increasingly common in Colombia.

In 2013, the first full year following the establishment of the specialised corporate jurisdiction within the Superintendency of Companies, 181 cases were brought before it. Ten years on, in 2023, that figure had risen to more than 500 cases. Not all disputes brought before that jurisdiction are strictly corporate in nature, however.

12. Setting aside corporate arbitration awards

articles 40 and 46 of the Arbitration Statute, which govern domestic arbitration, provide that an application to set aside an award must be filed with the arbitral tribunal and is to be decided by the Civil Chamber of the High Court of the Judicial District in which the arbitral tribunal had its seat.

Article 41 of the Arbitration Statute provides the following grounds for setting aside an award:

1. “The non-existence, invalidity or unenforceability of the arbitration agreement.

2. The extinction of the right of action, lack of jurisdiction or lack of competence.

3. The arbitral tribunal was not lawfully constituted.

4. The appellant was improperly represented or was not properly served, provided that the defect was not cured.

5. Refusing to admit evidence that has been requested or failing to take evidence that has been ordered, provided that this omission has been challenged by an application for reconsideration and could have affected the outcome of the proceedings.

6. The award, or the decision on its clarification, supplementation or correction, was rendered after the expiry of the time limit prescribed for the arbitration proceedings.

7. The award was rendered in equity when it should have been rendered in law, provided that this is evident from the face of the award.

8. The award contains contradictory provisions, arithmetical errors, omissions, or alterations to its wording, provided that these appear in, or affect, the operative part of the award and were raised before the arbitral tribunal in a timely manner.

The award determined matters that were not submitted to the arbitrators, granted relief beyond that sought by the parties, or failed to determine matters that were submitted to arbitration.”

Costa Rica

1. Historical development of corporate arbitration

Costa Rica does not have a well-established practice of corporate arbitration. Costa Rican law has never specifically regulated corporate arbitration and, in practice, it remains rare. As a result, there is virtually no case law on the subject providing guidance.

Several factors help to explain the limited use of arbitration clauses in articles of association. First, the provisions of the Commercial Code of 1964 governing companies make no reference to the possibility of resolving corporate disputes through arbitration. Secondly, Law 7727 of 1997 on Alternative Dispute Resolution and the Promotion of Social Peace, the chapter on arbitration of which was repealed in 2024, did not expressly provide for statutory arbitration. Law 8937 of 2011 on Arbitration, as amended in 2024, does not either. Thirdly, statutory arbitration has never become an established alternative to proceedings before the ordinary courts in Costa Rica.

2. Current corporate arbitration regulation

Article 179 of the Civil Code may raise questions as to the availability of corporate arbitration, as it provides that actions seeking the annulment of corporate resolutions fall within the jurisdiction of the courts at the company's registered office. However, the better view is that this provision does not preclude arbitration, but rather constitutes a procedural rule applicable in the absence of an arbitration agreement.

In addition, established commercial-law commentary maintains that paragraph 19 of article 18 of the Civil Code, which permits the inclusion in the instrument of incorporation of "any other agreement consented to by the founders", allows for the incorporation of an arbitration agreement into the articles of association.

Costa Rican case law has likewise recognised that arbitration and state court jurisdiction are not mutually exclusive but complementary. In Judgment 10352, delivered by the Constitutional Chamber at 2:58am on 22 November 2000, the Court stated that:

"The inalienable nature of Costa Rican jurisdiction cannot be understood as a prohibition on recourse to arbitration, because arbitration is a fundamental right."

3. Recent reforms and trends

There is currently no legislative initiative aimed at introducing specific reforms in this area. However, there is little doubt that the Arbitration Act encourages the use of arbitration in Costa Rica and allows corporate disputes to be arbitrated.

4. Statutory and non-statutory arbitration agreements

An arbitration agreement may be included in the instrument of incorporation or introduced at a later stage by means of an amendment.

It may also be incorporated into a shareholders' agreement, in which case it only binds the parties to that agreement.

5. Required majorities

In limited liability companies, unanimity is required for amendments to the articles of association that increase the members' liability. All other amendments to the articles of association require the approval of shareholders representing three-quarters of the share capital (article 97 of the Civil Code).

As an arbitration agreement does not alter the substantive rights and obligations of the shareholders but merely establishes a mechanism for the resolution of disputes, the adoption, amendment or removal of an arbitration clause in the articles of association is generally regarded as an ordinary amendment that does not increase the members' liability. Accordingly, the approval of shareholders representing three-quarters of the share capital is sufficient.

In public companies, the adoption, amendment or removal of an arbitration clause in the articles of association must be approved by an extraordinary general meeting. On first call, the meeting requires a quorum of shareholders representing at least three-quarters of the voting shares, and resolutions must be passed by a majority representing more than half of the shares present. On second call, the meeting is validly constituted regardless of the number of shares represented, and resolutions require the approval of more than half of the votes cast (articles 156(a), 170 and 171 of the Civil Code).

6. Scope of arbitration agreements

According to the prevailing view in the legal literature, a statutory arbitration agreement forms part of the articles of association and therefore constitutes one of the rules governing the company's operation. As a result, it binds not only those shareholders who were shareholders at the time of its adoption, whether upon incorporation or subsequently, but also on the company's governing bodies, including its management, decision-making and supervisory or audit bodies. It is likewise binding on new shareholders by virtue of the effects of registration, which are enforceable against them.

By acquiring shares or equity interests, shareholders become bound by the memorandum of association governing the company and, where those documents contain an arbitration clause, by the arbitration agreement itself.

Holders of rights in rem over shares or equity interests, such as usufructuaries and pledgees, are bound by the arbitration agreement to the extent that they are entitled and intend to exercise corporate rights against the company. Some commentators argue, however, that they are bound only where the articles of association confer on them not only economic rights but also governance rights, such as voting rights, information rights or the right to challenge corporate resolutions.

Directors are required to comply with, and give effect to, the company's articles of association and internal regulations with the diligence expected of an agent. Accordingly, they are bound by the arbitration clause contained in the articles of association from the moment they accept office, without the clause having to be expressly accepted.

Where the company enters liquidation, the directors assume the role of liquidators pursuant to article 210 of the Civil Code. They therefore remain bound by the arbitration agreement.

Auditors are bound by the arbitration agreement only where it expressly so provides.

The same applies to statutory auditors where the company has adopted the supervisory structure provided for in articles 193 and following of the Civil Code.

Bondholders, as third-party creditors of the company, are not bound by the arbitration agreement. It has nevertheless been argued that holders of bonds convertible into shares should be regarded as bound by the arbitration agreement because, as potential shareholders, they enjoy pre-emption rights and the right to challenge corporate resolutions.

7. Scope of arbitration agreements

In the absence of specific legislation governing corporate arbitration or relevant case law, it is difficult to define with certainty the scope of an arbitration clause contained in the articles of association. Nevertheless, the general principle that disputes involving pecuniary rights are arbitrable appears equally applicable in the corporate context. Accordingly, internal disputes between shareholders, disputes between shareholders and directors or other corporate bodies, and, more broadly, disputes concerning corporate matters that affect a shareholder's pecuniary interests are generally capable of settlement by arbitration.

It is therefore clear that challenges to resolutions adopted by the general meeting and claims relating to directors' liability may be referred to arbitration, provided that this is allowed by the articles of association. Arbitrators may not, however, disregard mandatory rules of law or make decisions that infringe the minimum rights conferred on shareholders by the Civil Code.

8. Standard arbitration agreement content

The scope of an arbitration clause depends on its wording, although a number of model clauses contained in articles of association serve as useful points of reference.

9. Corporate arbitration at the law and in equity

Arbitration may be conducted either at law or in equity. Pursuant to article 28 of the Arbitration Act, where the arbitration agreement is silent on this issue, the arbitration will be conducted at law.

Given the technical nature of corporate disputes and the existence of mandatory company law provisions, arbitration at law is typically preferable.

10. Institutional and ad hoc corporate arbitration

The parties enjoy considerable freedom to determine whether the arbitration is to be conducted on an institutional basis or on an ad hoc basis.

11. Data on corporate arbitration and proceedings

As mentioned, corporate arbitration remains extremely uncommon in Costa Rica. Consequently, no reliable data is available on its use.

12. Setting aside corporate arbitration awards

The setting aside of a corporate arbitral award is governed by the general rules applicable to arbitration. Under article 34 of the Arbitration Act, an award may be challenged only by applying for annulment to the First Chamber of the Supreme Court of Justice on one of the following grounds:

1. A party lacked legal capacity, or the arbitration agreement is invalid.

2. A party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case.

3. The award relates to a dispute not contemplated by the arbitration agreement or contains decisions that exceed the scope of the submission to arbitration.

4. The composition of the arbitral tribunal or the arbitral proceedings did not comply with the agreement of the parties.

5. The subject matter of the dispute is not capable of settlement by arbitration.

6. The award is contrary to public policy.

Ecuador

1. Historical development of corporate arbitration

Corporate arbitration was not expressly regulated in Ecuador until 2020. Under Ecuadorian law, any matter involving rights that are capable of settlement may be submitted to arbitration and, as a general rule, company law concerns rights of that nature.

2. Current corporate arbitration regulation

Arbitration is recognised by article 190 of the Constitution of the Republic as an alternative means of dispute resolution and is governed by the Arbitration and Mediation Law of 4 September 1997 and its implementing regulations of 26 August 2021.

Neither of those instruments, however, contains specific provisions governing or restricting corporate arbitration.

Article 137.2 of the Companies Law, introduced in 2020 and amended in 2023, provides that disputes between the shareholders of a limited liability company, between the shareholders and the company or its directors, or between the company and its directors, relating to "the existence or operation of the company [...], including challenges to resolutions of the general shareholders' meeting or the board of directors, as well as abuse of rights", may be resolved through mediation or other forms of alternative dispute resolution and, in particular, through arbitration, whether agreed in the articles of association or separately, for example in a shareholders' agreement.

Equivalent provisions apply to public companies (article 146.1) and simplified joint-stock companies.

Secondary legislation issued in 2020 by the Superintendency of Companies, Securities and Insurance provides that "the articles of association may include an arbitration clause as a mechanism for resolving fundamental disagreements between the shareholders of the company, provided that the dispute relates to a matter that is capable of being settled".

3. Recent reforms and trends

In February 2020, the Basic Law on Entrepreneurship and Innovation introduced the simplified joint-stock company into Ecuador's catalogue of types of company. The Law allows the articles of association of such companies to provide for the submission to arbitration of disputes between shareholders, directors and the company relating to the company's existence or operation.

The Law Modernising the Companies Law, published in December 2020, allowed the inclusion of arbitration clauses in the articles of association of limited liability companies and public companies. In relation to those companies, as well as simplified joint-stock companies, it further provides that, in the event of a transfer of shares or assignment of equity interests, "the transferee must be bound by the arbitration clause contained in the articles of association, unless expressly agreed otherwise".

The same Law amended other provisions governing arbitration clauses in the articles of association of simplified joint-stock companies. In particular, it requires the arbitration clause to be incorporated into the documentation relating to the appointment of directors and provides that directors must accept office subject to that clause in order to be bound by it. It also empowers arbitral tribunals to order the lifting of the corporate veil.

In March 2023, the Law Amending the Companies Law for Business Optimisation and Promotion and for the Promotion of Corporate Governance further amended the rules governing arbitration agreements in limited liability companies and public companies.

This Law clarifies that any agreement exempting a purchaser of shares or equity interests from the arbitration agreement must be entered into by the purchaser and all shareholders. It further provides that all the shareholders must unanimously approve the adoption, amendment or revocation of a statutory arbitration agreement and confirms that the provisions governing arbitration in simplified joint-stock companies apply to any matters not expressly regulated.

4. Statutory and non-statutory arbitration agreements

As noted above, the Companies Law permits corporate arbitration to be agreed either in the articles of association or separately.

If arbitration is agreed outside the articles of association, for instance in a shareholders' agreement, general contract law rules apply. As with any other contractual arrangement, the arbitration agreement only binds its signatories, unless it includes a recognised ground for extending its effects to non-signatories.

Unless the company has accepted a right or obligation arising under the shareholders' agreement, or may otherwise be regarded as a non-signatory party connected with that agreement – for example, because it played a decisive role in its negotiation, performance or implementation – an arbitration agreement that is not included in the articles of association is not binding on the company.

5. Required majorities

The Companies Law stipulates that the inclusion, amendment or removal of a statutory arbitration agreement requires the unanimous approval of all shareholders.

6. Scope of arbitration agreements

The arbitration agreement is binding on all shareholders of the company, whether current, former or future, as well as on the company itself, as expressly provided by the Companies Law.

It may also bind other companies within the same corporate group where their conduct demonstrates an intention to be bound by the arbitration agreement.

For an arbitration agreement to be binding on directors, the Companies Law requires that it be incorporated into the documentation relating to their appointment and that they accept office subject to those conditions. Nevertheless, it is reasonable to conclude that a director may also be bound by an arbitration agreement, whether statutory or otherwise, through tacit consent.

The position of liquidators depends on whether the liquidation is voluntary or compulsory. Where a liquidator is appointed by the authorities, the liquidator would appear not to be bound by the arbitration agreement, since the appointment does not derive from any company agreement or its shareholders.

7. Scope of arbitration agreements

Corporate disputes are generally arbitrable because they typically concern rights that are capable of settlement. Accordingly, the disputes listed in Annex 2 may be resolved by arbitration, with the exception of non-voluntary dissolutions and liquidations.

Some commentators question whether certain disputes are arbitrable on the basis that they involve matters of public policy, such as disputes concerning pre-emption rights. The better view, however, is that such disputes are arbitrable because they concern rights that are freely disposable and transferable. Exceptions include, for example, certain cases of dissolution or liquidation resulting from a decision of the supervisory authority and, more generally, claims seeking to challenge decisions of that authority, such as the intervention in a company.

8. Standard arbitration agreement content

It is generally advisable for an arbitration agreement to state expressly that it is binding on the company, the shareholders (including future shareholders) and the directors. The agreement should also define its scope broadly, for example by providing that any dispute directly or indirectly connected with the company must be referred to arbitration.

It is also advisable to provide that the arbitration is to be conducted at law and administered by a reputable arbitral institution in Ecuador, such as the Arbitration and Mediation Centre of the Ecuadorian-American Chamber of Commerce, the Arbitration and Mediation Centre of the Quito Chamber of Commerce, or the Arbitration and Conciliation Centre of the Guayaquil Chamber of Commerce. The parties should also consider expressly incorporating provisions on emergency arbitration.

Ecuadorian arbitral institutions do not currently provide template clauses specifically designed for corporate arbitration.

9. Corporate arbitration under law and equity

Arbitration may be conducted either at law or in equity. Where the arbitration agreement is silent on this issue, the arbitration is deemed to be conducted in equity. In practice, however, arbitration at law is generally preferred.

Secondary legislation issued in 2020 by the Superintendency of Companies, Securities and Insurance appear to suggest that statutory arbitration may be conducted only at law. However, that restriction does not appear to have any basis in the applicable legislation.

10. Institutional and ad hoc corporate arbitration

The law allows the parties to choose between institutional and ad hoc arbitration. In practice, however, ad hoc arbitration is not comprehensively regulated in Ecuador. For that reason, corporate disputes are commonly submitted to institutional arbitration administered by one of the arbitral institutions referred to above.

11. Data on corporate arbitration and proceedings

Arbitration clauses are rarely included in articles of association, and no public data is available on the use of corporate arbitration.

12. Setting aside corporate arbitration awards

An award may be challenged only by means of an action to set aside on the grounds expressly provided by law. Those grounds relate principally to violations of due process, inconsistencies within the award, or failures to comply with the parties' agreement concerning the composition of the arbitral tribunal.

The action to set aside awards is determined by the President of the competent Provincial Court of Justice.

No special rules apply to awards rendered in corporate arbitration proceedings.

El Salvador

1. Historical development of corporate arbitration

Arbitration has deep roots in El Salvador, having been recognised since the first half of the nineteenth century. Article 23 of the Constitution recognises the right of individuals to resolve civil and commercial disputes "by settlement or arbitration". The modern development of arbitration began with the enactment of the Law on Mediation, Conciliation and Arbitration of 2002 (LMCA), which consolidated the rules governing alternative dispute resolution and replaced the previously dispersed provisions contained in the Commercial Code and the Civil Code.

Both legal scholars and case law have recognised corporate arbitration as a valid mechanism for resolving disputes between shareholders and disputes between shareholders and the company. Decisions of the Constitutional Chamber and the commercial courts have emphasised both the binding effect and the limits of arbitration agreements contained in the articles of association or in shareholders' agreements. The courts have consistently recognised the validity of such agreements, provided that they do not extend to matters governed by public policy or involving inalienable rights.

This recognition of party autonomy in corporate arbitration is reinforced by the pro-arbitration approach adopted in both case law and the academic literature, as a manifestation of the principle of party autonomy.

2. Current corporate arbitration regulation

Corporate arbitration is mainly governed by the following provisions:

1. **The Law on Mediation, Conciliation and Arbitration (LMCA)**, which applies to corporate arbitration although it does not contain any provisions specifically regulating it.

2. **Article 66 of the Commercial Code**, which provides that the articles of association of partnerships (general partnerships, limited partnerships and limited liability partnerships) must specify whether disputes arising between the shareholders "in connection with the interpretation of the partnership agreement or the conduct of the partnership's business" are to be resolved by arbitration or by the ordinary courts. In the absence of such a provision, "the shareholders are deemed to have agreed to submit such disputes to arbitration".

This rule does not apply to other categories of corporate dispute within partnerships, nor to corporate disputes within companies with a share capital (public companies and limited partnerships with a share capital), which are subject to arbitration only where the articles of association so provide.

Article 66 of the Commercial Code further prohibits submitting disputes concerning "the dissolution and liquidation of the partnership, amendments to the partnership agreement, the exclusion or withdrawal of partners, and the legal structure of the partnership" to arbitration, unless the arbitration agreement is entered into after the dispute has arisen.

3. Recent reforms and trends

The LMCA has been amended with a view to modernising arbitration and aligning the Salvadoran framework more closely with international standards.

The principal outstanding reform concerns the relationship between the LMCA and the Commercial Code. In particular, clarification is required as to the continued validity of the case law that restricts the arbitrability of certain corporate disputes, including disputes involving fraud, manifest illegality, the validity of acts governed by mandatory rules, or infringements of commercial public policy or the rights of third parties.

Addressing this issue is important if the Salvadoran regime is to align more closely with international practice, which generally favours the comprehensive resolution of corporate disputes in a single forum, thereby promoting greater procedural efficiency in the management of internal corporate disputes.

4. Statutory and non-statutory arbitration agreements

An arbitration agreement may be incorporated into the instrument of incorporation or articles of association of a commercial company, or included in a shareholders' agreement or other agreement between shareholders. In the latter case, it binds only the parties to that agreement.

Under Salvadoran law and practice, matters governed by shareholders' agreements are generally considered matters falling within the parties' contractual autonomy. As a result, arbitration agreements contained in shareholders' agreements provide an effective mechanism for resolving disputes and are subject to fewer limitations than arbitration agreements incorporated into the articles of association.

The relationship between statutory and non-statutory arbitration is governed by the general principles of commercial contract law, including the doctrine of the relativity of contractual effects, party autonomy and the ordinary rules of contractual interpretation.

5. Required majorities

The adoption, amendment or revocation of a statutory arbitration agreement requires an amendment to the articles of association and is therefore subject to the quorum and majority requirements that the Commercial Code prescribes for amendments to the articles of association generally.

In the case of companies with share capital (public companies and limited partnerships with share capital), articles 243 and 298 of the Commercial Code provide, unless the articles of association provide higher thresholds, for: (i) a quorum and approval by shareholders representing three-quarters of the share capital on first call; (ii) a quorum representing more than half of the share capital and approval by shareholders representing three-quarters of the capital present on second call; and (iii) approval by a simple majority of the capital represented at the meeting, regardless of the percentage of representation, on third call.

In the case of limited liability companies, article 121 of the Commercial Code requires the approval of shareholders representing three-quarters of the share capital for amendments to the articles of association. Unanimous approval is required where the amendment increases the obligations of the members. Strictly speaking, an arbitration agreement does not increase the members' obligations. Accordingly, we can reasonably presume that a three-quarters majority is sufficient for its adoption.

In both types of company, dissenting shareholders are entitled to withdraw from the company where a statutory arbitration agreement is adopted. Article 54 of the Commercial Code expressly recognises that right where the organisational structure of a partnership is amended (a limited liability company being a form of partnership), and the prevailing view in the legal literature extends that right to companies with share capital where the amendment consists of the adoption of an arbitration agreement.

6. Scope of the arbitration clause

The statutory arbitration agreement binds all members, including dissenting, absent and future members.

Both legal scholars and case law recognise that the arbitration agreement may also bind directors and liquidators, provided the dispute arises out of the articles of association or the corporate relationship.

7. Objective scope of arbitration agreements

Corporate disputes are generally arbitrable, including challenges to corporate resolutions, corporate and individual liability claims, and disputes between shareholders and directors.

However, the courts have held that corporate disputes are not arbitrable where they affect public policy, inalienable rights or the rights of third parties.

In addition, article 66 of the Commercial Code provides that, in the case of partnerships, disputes concerning "the dissolution and liquidation of the partnership, amendments to the partnership agreement, the exclusion or withdrawal of partners, and the legal structure of the partnership" may not be submitted to arbitration unless the arbitration agreement is entered into after the dispute has arisen.

Subject to those qualifications and exceptions, the corporate disputes listed in Annex 2 are arbitrable.

8. Standard arbitration agreement content

Statutory arbitration clauses typically provide for the submission to arbitration of disputes arising out of the articles of association, whether between shareholders, between shareholders and the company, or between shareholders and the company's directors.

Although such clauses are usually drafted in broad terms to encompass all such disputes, it is advisable to expressly exclude matters involving non-waivable rights under company law.

9. Corporate arbitration at law and in equity

The LMCA permits both arbitration at law and arbitration in equity. Pursuant to article 59 of the LMCA, where the arbitration agreement is silent on this issue, the arbitration is deemed to be conducted in equity. In the Salvadoran corporate context, however, arbitration at law is the prevailing model and is generally preferred in practice.

Company law contains numerous mandatory provisions governing the validity of corporate resolutions and the fiduciary duties of directors and officers. Resolving such disputes in equity may be regarded as offering less certainty that those mandatory rules will be applied and respected. As a result, it may increase the risk of an application for annulment on the ground that the award is incompatible with mandatory legal rules or public policy.

10. Institutional and ad hoc corporate arbitration

The law allows both institutional and ad hoc corporate arbitration.

Institutional arbitration is, however, strongly preferable. For example, parties frequently choose the Mediation and Arbitration Centre of the Chamber of Commerce and Industry. Institutional administration provides a clear procedural framework, establishes arbitration fees by reference to the value of the claim and, most importantly in the context of internal corporate disputes, ensures the appointment of specialised and impartial arbitrators in accordance with pre-established rules. This degree of procedural oversight reduces the risk of procedural irregularities that could give rise to an application for annulment.

11. Data on corporate arbitration and proceedings

Corporate arbitration remains relatively limited in quantitative terms, although its use is steadily increasing, particularly among private companies, limited liability companies and business structures involving foreign investment.

Institutional arbitration predominates in El Salvador, particularly arbitrations administered by the Chamber of Commerce and Industry.

12. Setting aside corporate arbitration awards

Challenges to corporate arbitral awards are governed by the general rules applicable to arbitration.

Pursuant to article 67 of the LMCA, an application to set aside an award may be brought before the civil court of second instance with territorial jurisdiction over the place where the award was rendered. The arbitration agreement may, however, provide for the application to be determined by a different arbitral tribunal.

The grounds for annulment are exhaustively set out in article 68 of the LMCA. They include an unlawful subject matter or cause of action, defects in the constitution of the arbitral tribunal, failure to provide notice in the manner prescribed by law, violations of the right to be heard, and cases where the award was rendered after the applicable time limit expired, granted relief beyond that sought by the parties, or determined matters not capable of arbitration or omitted to determine matters that were subject to arbitration.

In addition, article 66 of the LMCA provides that awards issued in arbitrations at law are subject to appeal, with suspensive effect, before the same judicial body. Whether that provision was constitutional was subject to considerable debate, but it was ultimately upheld by the Constitutional Chamber, which clarified that the parties may agree otherwise.

An appeal against an arbitral award does not constitute a full rehearing of the dispute. Rather, it is an enhanced review mechanism that the courts have interpreted restrictively so as to preserve the principles of party autonomy, efficiency and finality that underpin arbitration.

Spain

1. Historical development of corporate arbitration

Until the mid-twentieth century, Spain favoured corporate arbitration, dating back at least to the Commercial Code of 1829, which required corporate disputes to be resolved through arbitration.

Although the Commercial Code of 1885, which remains in force, made no express reference to corporate arbitration, the Supreme Court expressly recognised the possibility of submitting both actions for the nullity of general shareholders' meetings and challenges to corporate resolutions to arbitration.

The position changed when the Public Limited Companies Act 1951 (repealed in 1990) was enacted. It introduced a special judicial procedure for challenging corporate resolutions. Later, a significant body of legal scholars, together with the Supreme Court itself, took the view that challenges to corporate resolutions were not arbitrable, principally on the basis of the mandatory nature of the rules governing such matters.

Over time, however, support for submitting corporate resolution challenges to arbitration grew, giving rise to an intense legal debate between proponents and opponents of corporate arbitration.

The debate was ultimately settled by the Supreme Court's judgment of 18 April 1998. The Court held that "the possibility of including an arbitration clause in the articles of association of a commercial company [...] is beyond doubt, despite the fact that certain legal scholars have recently contested this". The Court also confirmed that challenges to corporate resolutions could be submitted to arbitration, "without prejudice to the fact that, if any matter lies outside the parties' power of disposition, the arbitrators may not rule on it, on pain of having their award set aside in whole or in part".

Following that judgment, the pro-arbitration approach clearly prevailed among both legal scholars and case law, and corporate arbitration gradually gained recognition in various provisions of the Spanish legal system.

However, corporate arbitration was not expressly addressed in the Arbitration Act (Law 60/2003) until it was amended by Law 11/2011, which introduced articles 11 *bis* and 11 *ter* to govern this form of arbitration.

2. Current corporate arbitration regulation

Article 11 *bis*. Statutory arbitration

1. Companies may submit internal disputes to arbitration.

2. Including a clause in the articles of association providing for submission to arbitration requires the favourable vote of at least two-thirds of the votes corresponding to the shares or holdings into which the share capital is divided.

3. The articles of association may stipulate that any challenge to corporate resolutions by shareholders or directors is to be decided by one or more arbitrators, and that the administration of the arbitration and the appointment of the arbitrators is to be entrusted to an arbitral institution.

Article 11 *ter* Annulment of registrable corporate resolutions by arbitral award

1. An arbitral award declaring a registrable resolution null must be registered with the Commercial Registry. An extract from the award must be published in the Official Gazette of the Commercial Registry.

2. If the contested resolution has already been registered with the Commercial Registry, the award must also order the cancellation of its registration, and any subsequent entries inconsistent with it.

3. Recent reforms and trends

No recent legislative reforms have been introduced specifically relating to corporate arbitration. However, a preliminary draft Commercial Code was published in May 2014, providing that: (i) the articles of association may stipulate that "any [...] disputes of a corporate nature" must be resolved by statutory arbitration administered by an arbitral institution (including disputes concerning the interpretation and application of the articles of association, challenges to corporate resolutions and corporate liability claims against directors or liquidators); (ii) a shareholder who votes against the adoption of a statutory arbitration agreement would be entitled to withdraw from the company; and (iii) statutory arbitration is not permitted in listed companies (articles 213–20 and 271–5).

The preliminary draft was never approved by the Council of Ministers and was therefore never submitted to the Congress of Deputies as a bill. Although it continues to appear on the General State Administration's transparency portal among the regulations under consideration, its legislative process appears to have been suspended in 2015.

The Spanish and Ibero-American Arbitration Club (CEIA) criticised the draft, stating that:

"for no apparent reason, the draft bill seeks to introduce regulations that contradict the subject matter, even going as far as prohibiting statutory arbitration in listed companies. But the most negative aspect is the brand-new measure that has never previously existed: if a company decides to include an arbitration clause in its articles of association, all shareholders will have the right to withdraw from the company and require it to buy back their shares".

Furthermore, Basic Law 1/2025 on measures to improve the efficiency of the public justice service was enacted in January 2025. This legislation states that parties must attempt one of the "appropriate means of dispute resolution" (MASC), including mediation, conciliation, an independent expert opinion or a confidential binding offer, before commencing court proceedings. Corporate disputes are not exempt from this requirement. This makes arbitration a more attractive dispute resolution mechanism because the law does not require recourse to ADR before arbitration proceedings begin.

4. Statutory and non-statutory arbitration agreements

Article 11 *bis* of the Arbitration Act only addresses statutory arbitration. However, arbitration can still be agreed in a shareholders' agreement.

A shareholders' agreement, and therefore any arbitration clause in it, only binds the parties to the agreement. It does not bind other shareholders and, according to the Supreme Court case law, does not bind the company itself where the company is not a signatory itself, even where all shareholders have executed the agreement (an agreement between all the parties).

5. Required majorities

An arbitration agreement may be incorporated into the company's articles of association either at the time of incorporation or subsequently by means of a shareholders' resolution approving the relevant amendment to the articles. Pursuant to article 11 *bis*.2 of the Arbitration Act, the amendment requires the approval of two-thirds of the share capital.

The question arises as to whether the majority required by article 11 *bis*.2 is also necessary to amend or remove an arbitration clause already included in the articles of association.

Although opinions differ, the prevailing view is that:

1. Removing an arbitration clause requires only the majorities and the constitutive quorums, where applicable, established in the Companies Law for amendments to the articles of association generally:

   (i) in limited liability companies, the favourable vote of more than half of the share capital; and

   (ii) in public limited companies, attendance by holders of at least one-half of the subscribed voting share capital on first call and one-quarter on second call, together with the approval of an absolute majority of the capital represented or, where less than one-half of the subscribed voting capital is represented, two-thirds of the capital present.

2. Any amendment to a statutory arbitration clause requires the two-thirds majority provided in article 11 *bis*.2 where the amendment is substantial. Where the amendment is not substantial, the ordinary majorities and, where applicable, quorums required for amendments to the articles of association are sufficient.

The above majorities and quorums in the articles of association may be higher (but not lower).

The Companies Law does not grant shareholders who vote against the adoption of a statutory arbitration clause the right to withdraw from the company. However, the articles of association may include such a right if all the shareholders unanimously consent.

6. Scope of arbitration agreements

The arbitration clause in the articles of association is legally binding and has the same legal effect as any other provision in the articles of association. It is therefore an organisational corporate rule that applies to the company itself, its shareholders (both current and future), its directors and its liquidators, where applicable.

All shareholders are bound by an arbitration agreement incorporated into the articles of association. This includes shareholders who were shareholders when the agreement was adopted, including those who voted against it and those who were not present, as well as those who subsequently acquire shares in the company.

The arbitration clause also binds directors. However, disputes between directors and the company or its shareholders (e.g. those relating to directors' liability, removal or remuneration, and challenges brought by directors against corporate resolutions) will only be subject to arbitration if they fall within the scope of the arbitration agreement.

This is clearly the case if the arbitration clause expressly refers to such disputes or if it refers more generally to all corporate disputes without limiting its subjective scope. Greater uncertainty arises where the clause refers only to disputes between shareholders or between shareholders and the company, without expressly mentioning directors. In such cases, the prevailing judicial view appears to be that disputes involving directors fall outside the scope of the arbitration agreement. However, some judgments have held otherwise where directors have not been expressly excluded.

Liquidators are bound by the statutory arbitration agreement for the same reasons and on the same basis as directors.

The statutory arbitration agreement does not bind creditors, bondholders, auditors, senior executives (who are employees rather than directors of the company) or, more generally, third parties. Nor does it bind such persons when they bring actions provided for under company law, such as claims against directors or challenges to resolutions adopted by the general shareholders' meeting.

7. Scope of arbitration agreements

Article 11 *bis*.1 of the Arbitration Act defines the scope of corporate arbitration in broad terms by providing that "companies may submit to arbitration any disputes arising within them".

This provision is generally understood to encompass all of the corporate disputes listed in Annex 2. In practice, however, the precise scope of corporate arbitration depends on the wording of the arbitration agreement.

Although some academic commentators and courts previously took a different view, it is now widely accepted that challenges to corporate resolutions based on an alleged breach of public policy may be submitted to arbitration. Public policy is not regarded as a limit on arbitrability itself, but rather as a limit on the arbitrators' decision-making powers.

Some commentators argue that articles 24(2) and 25(4) of the Brussels I *bis* Regulation, which confer exclusive jurisdiction on the courts of the Member State in which the company is domiciled in disputes concerning the "validity, nullity or dissolution" of a company and the "validity of the decisions of its organs", should also apply to arbitration. This view remains controversial.

8. Standard arbitration agreement content

Broadly drafted arbitration clauses covering all corporate disputes are common and advisable.

The following are examples of template clauses for corporate arbitration:

1. Spanish and Ibero-American Arbitration Club (CEIA) – 2019 Code of Good Arbitration Practice:

   "Any corporate dispute affecting the company, its shareholders and/or its directors (including, for example, challenges to corporate resolutions, corporate and individual liability claims against directors, and disputes relating to the convening of corporate bodies) must be referred to [one arbitrator / three arbitrators], with the administration of the arbitration and the appointment of the arbitrators entrusted to [the relevant arbitral institution], in accordance with its Statutes and Rules in force on the date of submission of the request for arbitration. The arbitration must be conducted in accordance with the law. The arbitration will be conducted in [specify language] in [city]."

2. Spanish Court of Arbitration (CEA) – Model articles of Association dated 1 September 2022:

The CEA recommends the same arbitration clause as the CEIA, designating the CEA as the arbitral institution.

3. Civil and Commercial Court of Arbitration (CIMA) – Extraordinary General Meeting of 5 July 2022:

   "Any corporate dispute affecting the company, its shareholders and/or its directors (including, for example, challenges to corporate resolutions, corporate and individual liability claims against directors, and disputes relating to the convening of corporate bodies) must be resolved by statutory arbitration administered by the Civil and Commercial Court of Arbitration (CIMA), in accordance with its articles of Association and Arbitration Rules in force on the date the request for arbitration is submitted. The arbitral tribunal will be formed by [...] arbitrator(s). The arbitration will be conducted in [seat of the arbitration] in [language]. The arbitration will be governed by [...]. The company undertakes promptly to pay any advance costs it is required to pay as a party to the proceedings, including the admission and administrative fees of the arbitral institution and the fees and expenses of the arbitrators."

4. Barcelona Arbitration Tribunal (TAB):

   "All corporate matters and disputes, and any disputes arising from them, that may arise between the company and its directors, liquidators, auditors or shareholders, or between any of them on corporate grounds, will be submitted to institutional arbitration before the Barcelona Arbitration Tribunal (TAB) of the Catalan Association for Arbitration. The TAB will appoint the arbitrator or arbitrators and administer the arbitration in accordance with its rules.

This includes, for example, disputes concerning the nullity of the company or of a structural modification, challenges to corporate resolutions, corporate and individual liability claims against directors, the removal or expulsion of shareholders, the dissolution and liquidation of the company, the suspension of its governing bodies, the determination of the value of shares for corporate purposes, and any disputes related to the above."

5. Court of Arbitration and Mediation of Aragón:

"Any corporate dispute or conflict between the company and its shareholders, between the company's governing bodies and its shareholders, or between any of them, must be finally resolved by arbitration at law by one or more arbitrators within the framework of the Court of Arbitration of Aragón, in accordance with its Rules of Procedure, to which the administration of the arbitration is entrusted."

9. Corporate arbitration at the law and in equity

Article 11 *bis* of the Arbitration Act does not address this issue.

Although there was previously some debate as to whether corporate disputes, particularly those governed by mandatory legal provisions, could be resolved through arbitration in equity, it is now widely accepted that corporate arbitration may be conducted either at law or in equity. It is therefore not uncommon to find articles of association that provide for arbitration in equity.

Both legal scholars and case law agree that arbitrators remain bound to apply mandatory legal rules, even in arbitrations conducted in equity.

10. Institutional and ad hoc corporate arbitration

Most corporate arbitration proceedings in Spain are institutional. This is largely because article 11 *bis*.3 of the Arbitration Act requires that arbitrations concerning challenges to corporate resolutions be administered by an arbitral institution.

Nevertheless, there is no legal impediment to using ad hoc arbitration for other types of corporate dispute.

11. Data on corporate arbitration and proceedings.

The use of corporate arbitration remains relatively limited in Spain. Most private limited companies do not include arbitration clauses in their articles of association.

As regards listed companies, as at 30 April 2026, only two of the 35 IBEX 35 companies (Grifols, S.A. and Mapfre, S.A.) and a small number of the 118 BME Growth companies (formerly the Alternative Stock Market) had arbitration clauses in their articles of association.

The Madrid Court of Arbitration publishes annual statistics on the arbitrations it administers, including information on the subject matter of disputes. However, it is difficult to determine the precise number of corporate arbitrations because these are grouped together with M&A disputes. Combined, these categories accounted for 46% of the 110 arbitrations administered in 2025.

The Barcelona Arbitration Tribunal also publishes annual statistics. In 2025, 37% of the arbitrations it administered concerned “company law”. However, we cannot assume that all such proceedings constituted corporate arbitrations. In 2023, when more detailed information was provided by category, only approximately half of the disputes classified as “corporate” fell within that definition.

Judicial decisions concerning statutory arbitration provide limited insight into the actual use of corporate arbitration in Spain. This is unsurprising, given the limited role of the courts in arbitral proceedings, which is generally confined to specific supervisory and ancillary functions, including granting interim measures, appointing arbitrators, and recognising and enforcing arbitral awards.

12. Setting aside corporate arbitration awards

The procedure for setting aside a corporate arbitration award is the same as the general regime applicable to arbitral awards under articles 8.5 and 40–43 of the Arbitration Act.

The grounds for annulment are limited to the following:

(i) the absence or invalidity of the arbitration agreement;

(ii) failure properly to notify a party of the appointment of the arbitrators or of the arbitral proceedings;

(iii) non-compliance with the arbitration agreement or the applicable law in relation to the appointment of the arbitrators or the conduct of the proceedings;

(iv) the arbitrators having ruled on matters not submitted to them or on matters incapable of settlement by arbitration; and

(v) the award being contrary to public policy.

An application to set aside an award must be made to the High Court of Justice of the autonomous region in which the award was rendered. There is no right to appeal against the judgment delivered by that court.

Guatemala

1. Historical development of corporate arbitration

The earliest reference to arbitration dates from the Law on Proceedings in Commercial Matters and Cases, which was enacted in Spain in 1830 and applies in Guatemala. This legislation provided for arbitration as a means of resolving disputes. Arbitration was based on equity and an appeal on points of law could be brought against the award.

Subsequently, with the coming into force of the Guatemalan Code of Civil and Commercial Procedure of 1963 (Decree-Law 107), articles 2170–77 regulated arbitration. However, that regime proved inadequate and incompatible with modern arbitration practice.

Article 203 of the 1985 Constitution of the Republic of Guatemala states that "justice must be administered in accordance with the Constitution and the laws of the Republic" and that "judicial power is exercised exclusively by the Supreme Court of Justice and such other courts as may be established by law".

Article 3 of the 1995 Arbitration Act states that all matters "in respect of which the parties have full discretion in accordance with the law" may be submitted to arbitration.

The arbitrability of corporate matters has been questioned because articles 222, 227, 234, 238, 260 and 1039 of the 1970 Commercial Code refer to summary proceedings as the appropriate mechanism for resolving corporate disputes. However, article 1039 expressly provides an exception where "the parties have agreed to submit their differences to arbitration".

Accordingly, although summary proceedings are the established mechanism for resolving corporate and commercial disputes, the parties are free to submit their disputes to arbitration.

Nevertheless, in light of the inconsistent case law of the Constitutional Court discussed below, we cannot categorically state that all corporate disputes are arbitrable.

Following the 2018 amendment to article 1039 of the Commercial Code, however, there has been a growing trend in favour of recognising the arbitrability of corporate disputes.

Corporate arbitration has received relatively little attention by Guatemalan legal scholars.

2. Current corporate arbitration regulation

As mentioned, corporate arbitration in Guatemala is primarily governed by three legal instruments: the Constitution of the Republic of Guatemala, the Commercial Code and the Arbitration Act.

Article 1039 of the Commercial Code permits commercial disputes, including corporate disputes, to be resolved through arbitration. However, as there are no specific provisions governing corporate arbitration, it is subject to the general provisions of the Arbitration Act.

All forms of commercial company may submit disputes to arbitration. According to article 10 of the Commercial Code, these include general partnerships, limited partnerships, limited liability companies, public limited companies, limited partnerships with share capital and venture companies.

3. Recent reforms and trends

To address the uncertainty surrounding the arbitrability of corporate disputes, article 1,039 of the Commercial Code was amended in 2018. It now states that where an arbitration agreement exists, it "takes precedence over any judicial proceedings or remedies specifically provided for in this Code or in other commercial laws".

4. Statutory and non-statutory arbitration agreements

Arbitration can be agreed upon not only in the articles of association, but also in shareholders' agreements or contracts between shareholders. In the latter case, however, the arbitration agreement only binds those shareholders who are parties to it.

5. Required majorities

Arbitration agreements are most commonly included in the company's memorandum of association when they are incorporated. They may, however, be adopted, amended or revoked at a later date, in which case the quorums and majorities applicable to amendments of the instrument of incorporation will apply.

For companies limited by shares (public limited companies and limited partnerships with share capital), articles 135, 149, 150 and 196 of the Commercial Code require: (i) on first call, a quorum representing 60% of the voting share capital and the favourable vote of more than 50% of the voting shares, unless higher thresholds are established in the instrument of incorporation; and (ii) on second call, compliance with the requirements established in the instrument of incorporation and, in any event, the favourable vote of at least 35% of the voting shares.

For all other forms of company, article 16 of the Commercial Code requires unanimous consent unless the articles of association allow amendments by a specified majority. In such a case, dissenting shareholders are entitled to withdraw from the company.

6. Scope of arbitration agreements

A corporate arbitration agreement is binding on the company itself, its shareholders and its directors.

Whether the arbitration agreement is included in the instrument of incorporation from incorporation or introduced subsequently through an amendment, new shareholders and directors are generally deemed to have accepted and become bound by it.

7. Objective scope of arbitration agreements

In Pursuant to article 3 of the Arbitration Act, a corporate dispute may be resolved through arbitration only where it concerns matters that are entirely within the parties' power of disposition.

Articles 157 and 1039 of the Commercial Code provide, respectively, that actions challenging corporate resolutions are to be heard under the ordinary court procedure "unless otherwise agreed" and that all other actions arising under the Commercial Code must be resolved through summary proceedings where no alternative procedure is provided, "unless the parties have agreed to submit their differences to arbitration".

The Constitutional Court's case law on the arbitrability of corporate disputes has evolved significantly over time.

Initially, the Court held that certain corporate disputes, by reason of their nature, complexity and potential consequences, must be resolved through the courts in order to safeguard legal certainty, legal security, the right to a competent tribunal and effective judicial protection. Examples include:

1. The convening of a general meeting of shareholders.

2. The exclusion of shareholders for breach of obligations imposed by the articles of association or by law, or for alleged involvement in wilful or fraudulent acts against the company.

3. The acquisition by the company of its own shares.

4. Amendments to the type of administrative body established in the articles of association.

5. The appointment, confirmation or removal of the external auditor.

Over time, however, the Court has recognised the arbitrability of other corporate disputes, including:

1. The delivery of registered shares.

2. The recognition of the rights of shareholders who have not exchanged their shares.

3. The payment of dividends.

4. The declaration that a claim to dividends is time-barred.

In summary, the Constitutional Court has issued five judgments declaring that certain disputes concerning the validity of corporate legal acts are not non-arbitrable, all of which predate the 2018 amendment to article 1039 of the Commercial Code. In other cases, however, the Court has recognised the arbitrability of disputes between shareholders and purely economic disputes.

This suggests that corporate arbitration is likely to continue being recognised, particularly in light of the amendment to article 1039, which expressly allows commercial disputes, including corporate disputes, to be resolved through arbitration.

For these reasons, and despite the limited amount of Guatemalan legal literature on corporate arbitration, there is a growing support for corporate arbitration agreements as capable of encompassing any intra-corporate dispute, provided third-party rights are unaffected.

Accordingly, it could be argued that the corporate disputes listed in Annex 2 are arbitrable, subject to the abovementioned qualifications and exceptions.

8. Standard arbitration agreement content

None of the main arbitration institutions in Guatemala offers a standard corporate arbitration clause.

9. Corporate arbitration at the law and in equity

In the absence of specific provisions governing corporate arbitration, both arbitration at law and in equity are allowed. If the arbitration agreement is silent on this issue, arbitration must be conducted at law.

Given the legal nature of corporate disputes, arbitration in equity is generally not recommended.

10. Institutional and ad hoc corporate arbitration

Parties may submit corporate disputes to either institutional or ad hoc arbitration.

11. Data on corporate arbitration and proceedings

Although there are no publicly available statistics on corporate arbitration in Guatemala, legal scholars generally agree that arbitration is the preferred method of dispute resolution for private and family-owned companies, given its confidential nature.

12. Setting aside corporate arbitration awards

In the absence of specific provisions governing corporate arbitration, the procedure for challenging a corporate arbitration award is governed by the Arbitration Act.

According to article 43 of the Act, an award may only be challenged by means of an application for review, to be filed with the relevant court of appeal.

A distinctive feature of the review procedure is that the court has the power to confirm, set aside or amend the award.

The grounds for challenging an award are substantially equivalent to those set out in article V of the New York Convention.

Honduras

1. Historical development of corporate arbitration

The right of persons freely entitled to dispose of their property to resolve civil disputes through arbitration has been recognised in article 110 of the Constitution of the Republic since 1982. However, it was not until the enactment of the Conciliation and Arbitration Act by Decree 161-2000 that Honduras established a comprehensive legal framework for arbitration, covering domestic and international arbitration, as well as institutional and ad hoc arbitration.

The Act regulates arbitration generally, and Honduras does not have a specific statutory regime for corporate arbitration.

2. Current corporate arbitration regulation

Article 14 of the Commercial Code, which sets out the mandatory content of a company's articles of association, does not specify the method for resolving disputes.

However, for all types of companies, it is possible to include an arbitration clause or agreement in the articles of association as a means of resolving any disputes that may arise.

Article 29 of the Law on the Promotion and Protection of Investments, enacted by Decree 51-2011, provides that disputes between shareholders "must be resolved by arbitration, whether or not an arbitration agreement has been negotiated between the parties". Although this provision appears to oblige shareholders to resolve their disputes through arbitration, in practice it is common to resort to the courts.

Article 33 of the Law on Job Creation, Promotion of Entrepreneurship, Formalisation of Businesses and Protection of Investors' Rights, approved by Decree 284-2013, stipulates that judges must inform those bringing claims before the courts regarding disputes between shareholders of "their right to bring the matter before an arbitral tribunal as the primary means of resolving the dispute"; should the judge fail to inform the parties of this possibility, the court proceedings may be set aside at the request of a party.

3. Recent reforms and trends

The legal framework has evolved in a manner that promotes arbitration in corporate matters, principally through the enactment of the 2011 and 2013 statutes referred to above.

Those reforms sought to establish arbitration as the preferred mechanism for resolving corporate disputes and to reduce reliance on the courts.

Among larger companies, the preference for arbitration is clear. Shareholders generally favour a specialist and expeditious dispute-resolution mechanism that allows the company to continue operating without undue disruption.

In practice, however, it remains uncommon for articles of association to contain arbitration clauses. This may reflect a lack of awareness of arbitration as a means of resolving corporate disputes until relatively recently and, following the reforms of 2011 and 2013, the fact that shareholders may resort to arbitration even in the absence of such clauses.

4. Arbitration agreements in the articles of association and in shareholders' agreements

An arbitration agreement may be incorporated either into the articles of association or into a shareholders' agreement. Where it is contained in a shareholders' agreement, however, it is binding only on the parties to that agreement.

5. Required majorities

Corporate arbitration may be introduced either in the instrument of incorporation or by a subsequent amendment to it.

In a limited liability company, the adoption, amendment or revocation of an arbitration clause requires the approval of shareholders representing three-quarters of the share capital. In a public company, approval by shareholders representing more than half of the share capital is sufficient.

6. Scope of arbitration agreements

An arbitration clause incorporated into the instrument of incorporation is binding on the company and all of its members, including dissenting, absent and future members.

By acquiring shares or equity interests in the company, new shareholders become bound by the memorandum of association governing the company and, consequently, by any arbitration clause contained in them.

The statutory arbitration agreement also binds the directors of public companies, the managers of limited liability companies and the liquidators.

7. Scope of arbitration agreements

The scope of an arbitration agreement depends on its terms.

Disputes of a financial or economic nature may be referred to arbitration where the parties are free to dispose of, settle or waive the rights in question. In the corporate context, it is difficult to identify categories of dispute that would be excluded from arbitration on that basis.

Although articles 197 and 198 of the Commercial Code confer jurisdiction on the courts at the company's registered office to hear actions for nullity, annulment and the suspension of general meeting resolutions, nothing appears to prevent the submission of such disputes to arbitration.

Accordingly, the corporate disputes listed in Annex 2 are arbitrable.

8. Standard arbitration agreement content

None of the principal Honduran arbitral institutions provides model clauses specifically designed for corporate arbitration.

Arbitration clauses contained in articles of association often simply provide that "in the event of a dispute between the partners, shareholders or the company's management, the dispute must be submitted to arbitration". Such clauses frequently omit key elements, including the designation of the arbitral institution responsible for administering the proceedings, and may therefore be regarded as defective.

9. Corporate arbitration at the law and in equity

Arbitration may be conducted either at law or in equity. Where the arbitration agreement is silent on this issue, the arbitration will be conducted at law.

Given the specialised nature of corporate disputes and the prevalence of mandatory provisions of company law, arbitration at law is generally preferable.

10. Institutional and ad hoc corporate arbitration

The parties are free to choose between institutional and ad hoc arbitration, although institutional arbitration is more common in practice.

The principal arbitral institutions are the Arbitration and Conciliation Centre of the Tegucigalpa Chamber of Commerce and the Arbitration and Conciliation Centre of the Cortés Chamber of Commerce.

11. Data on corporate arbitration and proceedings

No publicly available statistics exist concerning corporate arbitration proceedings in Honduras.

12. Setting aside corporate arbitration awards

Corporate arbitral awards are subject to the same annulment procedure as arbitral awards generally.

Under the Conciliation and Arbitration Act, an application for annulment is decided by the Court of Appeal or, where the parties have so agreed or the arbitration clause so provides, by a separate arbitral tribunal constituted solely for the purpose of determining the application.

If the application is upheld on any of the grounds set out in paragraphs 1 to 6 below, the award will be declared null. If it is upheld on any of the remaining grounds, the court or tribunal must make the necessary corrections or additions to the award.

An application for annulment may be brought only on the following grounds:

"1. The arbitration agreement is null for having of an unlawful subject matter or unlawful cause. Any other ground of absolute or relative nullity may be relied upon only if it was raised during the arbitration proceedings and was neither remedied nor validated during those proceedings;

2. The arbitral tribunal was not lawfully constituted, provided that this ground was expressly raised at the outset of the arbitration proceedings;

3. Notice was not given in the manner prescribed by this Act, unless it is apparent from the record that the affected party knew, or ought to have known, of the relevant order;

4. Without legal justification, evidence duly requested was not admitted or the necessary steps to obtain such evidence were not taken, provided that the omission affected the outcome of the proceedings and that the affected party raised a timely and proper objection, except in the case provided for in article 62(5) of the Act [the arbitral tribunal may, by reasoned order, dispense with evidence that has not been taken if it considers itself sufficiently informed; no appeal lies against such an order];

5. The award was rendered after the expiry of the time limit prescribed for the arbitration proceedings, including any extension thereof;

6. The award was rendered in equity when it should have been rendered in law, provided that this is evident from the face of the award;

7. The operative part of the award contains arithmetical errors or contradictory provisions, provided that these were raised before the arbitral tribunal in a timely manner;

8. The award determined matters not submitted to the arbitrators or granted relief beyond that sought by the parties; and

9. The award failed to determine matters that were submitted to arbitration."

Mexico

1. Historical development of corporate arbitration

Arbitration has a long history in Mexico. As regards civil-law partnerships, article 2732 of the Federal Civil Code ("FCC"), in force since 1928, provides that disputes arising between shareholders in connection with the liquidation of the partnership may be resolved by arbitration. Beyond that provision, however, the FCC contains no specific reference to corporate arbitration.

In the commercial sphere, the Commercial Code ("CDC") has recognised party autonomy in dispute resolution since its original enactment in 1889. Article 1051 permitted the parties to agree on the means by which commercial and corporate disputes would be resolved. Article 1052 further allowed the parties either to adopt conventional judicial proceedings, under which they could agree procedural rules, or to submit their disputes to commercial arbitration.

Initially, the CDC contained only limited provisions governing both conventional proceedings and commercial arbitration. Over time, however, the regulation of those mechanisms became increasingly specialised and distinct. This process culminated in the introduction, in 1989, of a separate title devoted exclusively to commercial arbitration (Title IV of Book V of the CDC) and the subsequent incorporation of the UNCITRAL Model Law.

The General Law on Commercial Companies ("LGSM"), enacted in 1934 and still in force, contains no express provisions on arbitration. Indeed, certain provisions appear to assume that corporate disputes will be resolved by the courts. For example, articles 201 to 205 of the LGSM provide that shareholders in a public company may challenge resolutions adopted by the general meeting through judicial proceedings. Similarly, article 184 empowers the courts to convene a general meeting at the request of a minority shareholder.

In 1978, the Third Chamber of the Supreme Court of Justice of the Nation issued an isolated decision (*tesis aislada*) holding that resolutions adopted at shareholders' meetings could be challenged only through the courts.

The prevailing view today, however, is that corporate disputes are arbitrable unless expressly excluded by law. Nevertheless, some commentators continue to regard judicial proceedings as the most effective mechanism for resolving certain corporate disputes, particularly where interim judicial measures may be required, such as the suspension of corporate resolutions.

2. Current corporate arbitration regulation

Corporate arbitration is not governed by any specific legislation. It is therefore subject to the general provisions on commercial arbitration contained in Title IV of Book V of the Commercial Code (articles 1415–1480).

3. Recent reforms and trends

The modern trend in Mexico is to promote alternative dispute resolution mechanisms, including arbitration, as the preferred means of resolving disputes between shareholders and other corporate stakeholders.

One example is the reform of the LGSM of 14 March 2016 introducing the simplified joint-stock company. Article 270 provides:

"Unless otherwise agreed, priority will be given to the alternative dispute resolution mechanisms provided for in the Commercial Code for resolving disputes arising between shareholders, as well as between shareholders and third parties."

The meaning of article 270 remains uncertain. Neither the legislative history of the reform nor the case law provides clear guidance on its interpretation.

One possible reading is that the provision requires shareholders in a simplified joint-stock company to submit their disputes to mediation or arbitration unless they agree otherwise. Such an interpretation, however, sits uneasily with the consensual nature of those mechanisms.

A more persuasive interpretation, supported by the limited academic commentary on the provision, is that article 270 does not impose a legal obligation but rather expresses a legislative preference for the use of mediation and arbitration as a matter of corporate governance best practice.

The same trend is reflected in the Business Coordination Council's 2025 Code of Principles and Best Practices on Corporate Governance. Although the Code is not legally binding, it recommends prioritising alternative dispute resolution mechanisms in the corporate context:

"BEST PRACTICE 10. Procedures for the prevention and resolution of disputes

[...]

Companies should establish procedures for the identification, prevention, management and effective resolution of conflicts between shareholders, directors and members of management, including within the company's various organisational structures where appropriate, giving priority to alternative dispute resolution mechanisms and fostering such a culture throughout the organisation."

A further development has been the judicial reform adopted in September 2024. The reform replaced the traditional judicial career system with the popular election of judges at all levels of the judiciary. The reform has generated significant concern among both domestic and international businesses and has contributed to increased interest in alternative dispute resolution mechanisms, including arbitration.

4. Arbitration agreements in articles of association and other agreements

Shareholders are free to enter into an arbitration agreement either through the articles of association or by means of a separate shareholders' agreement.

Where the arbitration agreement is contained in a shareholders' agreement, it is binding only on the parties to that agreement. If the company is not itself a party, the arbitration agreement is not binding on it, even where all shareholders are parties to the agreement.

5. Required majorities

The adoption, amendment or revocation of a statutory arbitration agreement is subject to the same quorum and majority requirements as any other amendment to the articles of association.

The applicable requirements are as follows:

1. Public company: a quorum representing three-quarters of the share capital and the approval of shareholders representing at least half of the share capital.

2. Limited liability company: approval by shareholders representing three-quarters of the share capital.

3. General partnership and limited partnership: unanimous consent of the partners, unless otherwise agreed. Dissenting shareholders are entitled to withdraw from the partnership.

4. Simplified joint-stock company: approval by a simple majority of the votes cast.

6. Scope of arbitration agreements

An arbitration agreement contained in the original articles of association is binding on all founding shareholders or partners.

If shareholders adopt the arbitration agreement after incorporation, article 200 of the LGSM provides that resolutions validly adopted by the general meeting are binding on absent and dissenting shareholders of a public company. No equivalent provision exists for other company forms.

Whether an arbitration agreement is binding on future shareholders remains open to debate. Article 1423 of the Commercial Code requires an arbitration agreement to be in writing and signed by all parties. To minimise uncertainty, it is therefore advisable to refer expressly to the arbitration agreement in share certificates or certificates representing partnership interests and to record the express consent of new shareholders or partners, whether in the relevant corporate resolution or in the acquisition or subscription documentation.

The same principle applies to persons exercising management or liquidation functions. Where directors or liquidators are not themselves shareholders, they should expressly accede to the arbitration agreement upon appointment if it is intended to bind them.

Particular issues arise in relation to bondholders. Public companies are the only corporate form authorised to issue bonds, including bonds convertible into shares.

Because the bond issue deed constitutes a legal instrument distinct from the articles of association, bondholders cannot ordinarily rely on a statutory arbitration clause to commence arbitration against the issuing company, nor may the company rely on that clause against bondholders, unless the issue deed incorporates or refers to the arbitration agreement. If disputes involving bondholders are intended to be subject to arbitration, the issue deed should therefore expressly incorporate the arbitration agreement or refer to it.

The same considerations apply to agreements creating rights in rem over shares or partnership interests.

7. Scope of arbitration agreements

The scope of an arbitration agreement depends on its terms.

The corporate disputes listed in Annex 2 are generally arbitrable. Some commentators continue to question whether challenges to resolutions of the general meeting may be referred to arbitration, but this view appears increasingly difficult to sustain in light of the modern pro-arbitration approach adopted in Mexican law and practice.

8. Standard arbitration agreement content

Mexico has several well-established arbitral institutions, including the Mediation and Arbitration Centre of the National Chamber of Commerce, Services and Tourism (CANACO) and the Mexican Arbitration Centre (CAM), in addition to international arbitral institutions operating in the country.

None of these institutions provides model clauses specifically designed for corporate arbitration.

The preferred approach is to use broadly drafted arbitration clauses referring generally to all disputes arising out of or in connection with the company, rather than attempting to identify specific categories of corporate dispute.

9. Corporate arbitration under law and equity

Following the UNCITRAL Model Law, the Commercial Code permits arbitrators to decide disputes ex aequo et bono only where the parties have expressly authorised them to do so.

In the absence of such authorisation, arbitrations, including corporate arbitrations, are conducted at law.

10. Institutional and ad hoc corporate arbitration

Mexican arbitration law does not favour either institutional or ad hoc arbitration.

In practice, however, legal scholars and professional practice generally favour institutional arbitration because it offers greater procedural certainty, administrative support and predictability, particularly in complex disputes.

No Mexican arbitral institution currently maintains a separate set of rules specifically governing corporate arbitration.

11. Statistics on corporate arbitration and proceedings

Corporate arbitration has grown significantly since the early 2000s.

Corporate disputes referred to arbitration vary considerably in both subject matter and complexity. Nevertheless, no publicly available statistics exist concerning corporate arbitration proceedings in Mexico.

The confidential nature of arbitration makes it difficult to determine the relative prevalence of institutional and ad hoc proceedings. Institutional arbitration nevertheless appears to be significantly more common.

Both CAM and CANACO provide emergency arbitration procedures for urgent interim relief. Although some uncertainty remains as to whether certain corporate claims – particularly challenges to shareholders' resolutions – fall within the exclusive jurisdiction of the courts, emergency arbitration may provide an effective mechanism for obtaining urgent interim measures, including the temporary suspension of the effects of corporate resolutions.

12. Setting aside corporate arbitration awards

The Commercial Code does not establish a special procedure for the setting aside of corporate arbitral awards. Such awards are therefore subject to the general annulment regime contained in articles 1457 to 1459 of the Commercial Code.

An application for annulment must be brought before the federal or state court of first instance with jurisdiction over the place where the arbitration was seated.

Article 1457 of the Commercial Code closely follows article 34 of the UNCITRAL Model Law and sets out, exhaustively, the grounds on which an arbitral award may be annulled

Nicaragua

1. Historical development of corporate arbitration

In Nicaragua, corporate arbitration has developed steadily in terms of its regulatory framework, case law and academic opinion.

From a regulatory perspective, the formal starting point was the enactment of Law 540 on Mediation and Arbitration of 2005, which governs commercial arbitration in general, including corporate arbitration in the private sector. The law recognises the autonomy of the parties, the confidentiality of the proceedings and the enforceability of the award as key principles.

The judiciary has taken a favourable stance towards arbitration as an alternative means of dispute resolution and has upheld party autonomy where there is a valid arbitration agreement.

Although case law on corporate arbitration is still limited compared with other areas, certain judgments of the Court of Appeal and the Supreme Court have confirmed the validity and enforceability of statutory arbitration agreements.

2. Current corporate arbitration regulation

Arbitration is primarily governed by two sets of legislation that do not specifically refer to corporate arbitration:

1. Law 540 on Mediation and Arbitration, which provides that any dispute relating to enforceable rights may be submitted to arbitration and regulates the arbitral procedure, the appointment of arbitrators, awards, grounds for their nullity and their judicial enforcement.

2. The Commercial Code, which recognises the autonomy of shareholders to include agreements in the articles of association (which must be understood to include arbitration clauses) and sets out the majorities required for amending the articles of association (applicable to the adoption, amendment or removal of an arbitration agreement).

Both sets of rules operate in a complementary manner, enabling commercial companies to use arbitration as an effective means of resolving internal disputes.

3. Recent reforms and trends

There have been no recent legislative reforms concerning corporate arbitration in Nicaragua. However, there is a general trend, both in the business sector and in academia, towards promoting arbitration as a more accessible, specialised and efficient means of dispute resolution. This trend is reflected in the increased use of arbitration clauses in the articles of association of commercial companies, particularly in private or family-owned companies, where internal conflicts can hinder the smooth running of the business.

4. Statutory and non-statutory arbitration agreements

An arbitration agreement may be incorporated either into the articles of association (statutory arbitration agreement) or into shareholders' agreements or contracts between shareholders (extra-statutory arbitration agreement).

An extra-statutory arbitration agreement is binding only on those who have signed it and has no regulatory force for the company, unless the company has expressly accepted it.

The interaction between these two types of agreements has been recognised in domestic academic opinion, which suggests that they may coexist and complement one another, although the statutory agreement takes precedence.

5. Required majorities

To adopt, amend or revoke a statutory arbitration agreement, the quorums and majorities required for amending the articles of association applicable to the type of company in question must be met.

In public limited companies, unless the articles of association provide otherwise, the presence at the general meeting of three-quarters of the share capital and the favourable vote of half of the share capital are required, in accordance with article 262 of the Commercial Code.

If the adoption or amendment of the arbitration agreement constitutes a material modification of a shareholder's rights, this may be invoked as just cause for exercising the right of withdrawal.

6. Scope of arbitration agreements

The arbitration agreement laid down in the articles of association is binding on all shareholders. New shareholders, upon acquiring their shares or holdings, are deemed to accept the articles of association in force, including the arbitration clause.

Former shareholders may be bound in respect of events that occurred while they were shareholders if the arbitration agreement was in force at that time.

Directors and liquidators may be bound if the articles of association or individual agreements expressly provide.

7. Scope of arbitration agreements

The corporate disputes listed in Annex 2 are subject to arbitration.

However, as Law 540 permits arbitration only in respect of enforceable rights, matters of public policy, such as compulsory judicial dissolution, are not arbitrable.

8. Standard arbitration agreement content

A corporate arbitration agreement typically specifies the corporate disputes to be referred to arbitration, the seat of arbitration, the language, the number of arbitrators (usually one or three) and the method of their appointment, the rules applicable to the proceedings, and whether the arbitration will be institutional or *ad hoc*, and whether it will be based on law or equity.

None of the arbitration institutions in Nicaragua provide template clauses for corporate arbitration.

9. Corporate arbitration under the law or in equity

Law 540 allows the parties to opt for arbitration in accordance with the law or in accordance with equity.

In the corporate context, arbitration in accordance with the law is frequently chosen to ensure the strict application of legal rules, particularly in complex companies.

However, in private or family-run companies, arbitration in equity may be agreed, allowing the arbitrator to decide in accordance with criteria of natural justice, good business practice and commercial equity.

The choice of one or the other must be expressly stated in the arbitration agreement; otherwise, it is presumed that arbitration in accordance with the law was agreed.

10. Institutional and ad hoc corporate arbitration

Nicaraguan law does not require the use of institutional arbitration; therefore, both institutional and *ad hoc* arbitration are permitted.

However, in practice, many companies opt for institutional arbitration for the following reasons:

1. Greater legal certainty due to the existence of pre-established procedural rules.

2. Ease of appointing arbitrators.

3. Logistical and administrative support from the institution.

Nevertheless, *ad hoc* arbitration may be preferred in companies with prior experience or with more flexible structures.

11. Data on corporate arbitration and proceedings

In Nicaragua, it is common for companies to have arbitration clauses in their articles of association. Corporate arbitration mainly arises in:

1. Companies with share capital (particularly public limited companies) and private companies.

2. Family-run businesses or those with few partners, where the aim is to preserve confidentiality and resolve disputes without affecting business continuity.

3. Medium-sized and large companies with complex corporate structures.

Institutional arbitration is the predominant form.

The duration of proceedings depends on the complexity of the dispute, but generally ranges from six months to a year.

Disputes frequently arise in relation to the challenging of corporate resolutions, the exclusion of shareholders, the interpretation of the articles of association and the distribution of profits.

12. Setting aside corporate arbitration awards

Act 540 provides that an award may only be set aside by a court order at the request of an interested party, which must be lodged with the Civil Chamber of the relevant Court of Appeal. The grounds for setting aside an award are exhaustive:

1. Non-existence or invalidity of the arbitration agreement.

2. Failure to give notice or to afford the opportunity to defend.

3. Failure to constitute the arbitral tribunal.

4. The award deals with matters not subject to arbitration.

5. The award is contrary to public policy.

Case law has taken a restrictive approach to interpreting these grounds, in order to protect the legal certainty of the award and prevent its review on the merits.

Panama

1. Historical development of corporate arbitration

Until 1999, arbitration in Panama lacked autonomy, as it was regulated by the Judicial Code and depended to a large extent on the intervention of judges, who could give effect to the arbitration agreement, intervene in the constitution of the tribunal, determine the procedure and resolve procedural issues.

The first notable change came with Decree-Law 5 of 1999, which separated arbitration from ordinary procedural law and granted it its own regime. However, the transition was not immediate; during the early years, tensions persisted between the ordinary courts and the arbitral tribunals, particularly regarding the autonomy of arbitrators and their power to rule on their own jurisdiction.

This tension was partially resolved by the 2004 constitutional reform, which expressly recognised arbitral jurisdiction and enshrined the principle of "competence-competence", allowing arbitral tribunals to decide for themselves on the scope of their own jurisdiction.

Finally, Act 131 of 2013 consolidated the modern arbitration model in Panama. This legislation strengthened the legal certainty of arbitration, clarified its relationship with the ordinary courts and fostered a more harmonious coexistence between the two means of dispute resolution.

2. Current corporate arbitration regulation

Domestic and international arbitration is governed by Act 131 of 31 December 2013, but there is no specific legislation governing corporate arbitration.

Article 4 of this (monist) Act sets out the matters subject to arbitration as follows: "Disputes concerning matters over which the parties have full discretion in accordance with the law, as well as those authorised by law or by international treaties or agreements, may be submitted to arbitration."

Given the commercial nature of corporate disputes, it is understood that these relate to matters over which the parties have full discretion and are arbitrable. The courts have not questioned their arbitrability.

Arbitration clauses have increasingly been included in the articles of association of Panamanian companies as a means of resolving corporate disputes.

3. Recent reforms and trends

There have been no recent reforms to arbitration legislation, but the trend towards favouring corporate arbitration is growing.

4. Statutory and non-statutory arbitration agreements

Panama's commercial and company law is governed by the principle of freedom of contract and the parties' freedom to establish the terms and conditions they deem appropriate to govern their corporate relationships. Consequently, arbitration may be agreed not only in the articles of association but also in shareholders' agreements or contracts between shareholders.

In fact, arbitration clauses are common in both articles of association and shareholders' agreements. In the latter case, they are binding only on the signatories and not on the company itself.

There is no case law that has addressed this issue.

5. Required majorities

The law does not establish any special majorities for the adoption, amendment or revocation of a statutory arbitration agreement.

While the Commercial Code recognises the supreme authority of the general meeting of shareholders, it also provides that majority decisions may not be imposed where they affect the "acquired rights" of shareholders, in which case unanimity is required. The law does not define such rights, and some legal scholars consider them to be those rights which the shareholder held at the time of acquiring shares or equity interests. Given that, in the absence of an arbitration clause, corporate disputes will be resolved before the state courts, it is reasonable to conclude that the introduction of an arbitration clause affects that right to jurisdiction and therefore requires unanimous approval.

6. Subjective scope of the arbitration agreement

The arbitration agreement incorporated into the articles of association is binding on current, former (if the arbitration clause existed when they acquired their shares) and future shareholders, including dissenting and absent shareholders.

It also binds the directors, the liquidators and the company.

7. Objective scope of arbitration agreements

Depending on the terms of the arbitration agreement, it may apply to all types of disputes arising from the corporate relationship, given that such disputes, due to the commercial nature of the company, are considered arbitrable as they are subject to free disposition.

Thus, the corporate disputes listed in Annex 2 are arbitrable.

8. Standard arbitration agreement content

The arbitration clause may provide that all corporate disputes in general are to be resolved by arbitration.

Neither Panama's arbitration law nor the country's existing arbitration institutions provide a template clause for corporate arbitration.

9. Corporate arbitration at the law and in equity

Arbitration may be conducted in accordance with the law or in equity; if the arbitration agreement is silent on this matter, the arbitration will be conducted in accordance with the law. Given the predominantly legal nature of corporate disputes, corporate arbitration proceedings are usually conducted in accordance with the law.

10. Institutional and ad hoc corporate arbitration

The parties are free to choose either type of arbitration.

Corporate arbitration proceedings are usually institutional.

In Panama, arbitration proceedings are administered by the Centre for Conflict Resolution (CESCON), attached to the Panamanian Chamber of Construction (CAPAC), and the Panama Centre for Conciliation and Arbitration (CECAP), attached to the Panamanian Chamber of Commerce, Industry and Agriculture.

The rules of these centres do not contain any special provisions for corporate disputes.

11. Data on corporate arbitration and proceedings

As these are private arbitrations, there are no public statistics on corporate arbitrations conducted in Panama.

Neither Panama's Arbitration Act nor the rules of the arbitration centres in Panama provide for emergency arbitration.

12. Setting aside corporate arbitration awards

An application for annulment, governed by articles 66 to 68 of the Panamanian Arbitration Act, is the only means of challenging an award. This application must be lodged with the Fourth Chamber for General Civil Matters of the Supreme Court of Justice on any of the following grounds:

"1. That one of the parties to the arbitration agreement [...] was under a legal incapacity, or that the agreement is invalid under the law to which the parties have submitted it or, if no such law has been specified, under Panamanian law; or

2. That the party has not been duly notified of the appointment of an arbitrator or of the arbitral proceedings, or has been unable, for any other reason, to assert its rights; or

3. That the award relates to a dispute not covered by the arbitration agreement or contains decisions exceeding the terms of the arbitration agreement; provided, however, that if the provisions of the award relating to the matters submitted to arbitration can be separated from those not so submitted, only the latter may be set aside; or

4. That the appointment of the arbitral tribunal or the arbitral proceedings did not comply with the agreement between the parties, unless that agreement was in conflict with a provision of this Act from which the parties could not derogate, or, in the absence of such an agreement, that they did not comply with this Act; or

5. That the arbitrators have ruled on matters not subject to arbitration; or

6. That the international award is contrary to international public policy. In the case of a domestic award, the public policy to be taken into account will be Panamanian public policy".

No appeal or action of any kind may be brought against the judgment rendered.

Paraguay

1. Historical development of corporate arbitration

The Code of Civil Procedure of 1883 and the Civil Procedure Code of 1989 contained provisions relating to arbitration in general, but Paraguay did not have legislation that established arbitration as a method of dispute resolution until the enactment of Law 1.879/2002 on Arbitration and Mediation. With the exception of Title II, relating to mediation, which remains in force, this Act was repealed and replaced by the Arbitration Act 7.561/2025.

For this reason, arbitration proceedings in Paraguay remained uncommon until 2002.

2. Current corporate arbitration regulation

With the exception mentioned below, Paraguay has no specific legislation governing corporate arbitration.

Article 2 of the Arbitration Act 7561/2025 provides that "any matter of a pecuniary nature and capable of settlement may be submitted to arbitration", except for "disputes relating to individual employment relationships".

The principle of party autonomy enshrined in article 669 of the Paraguayan Civil Code, which provides that "the parties may freely regulate their rights by means of contracts", confirms that corporate disputes are arbitrable.

Only Law 6.480/2020 , which establishes the Simplified Joint-Stock Company ("EAS"), refers to corporate arbitration, stipulating in article 41 that disputes arising between shareholders, or between shareholders and the company itself or its directors, in the performance of the articles of association or the "unilateral act" establishing the EAS, including challenges to decisions taken by its administrative or governing bodies, may be submitted to arbitration "if so agreed in the articles of association or if so agreed at any time by the shareholders and/or the company, as the case may be".

3. Recent reforms and trends

On 23 December 2025, the Arbitration Act 7561/2025 was passed; this Act substantially reformed the regulation of arbitration in general, but does not contain any specific provisions on corporate arbitration.

The enactment of Act 6480/2020 constitutes the most recent reform of corporate arbitration.

4. Statutory and non-statutory arbitration agreements

Act 6480/2020 recognises the right of shareholders in EASs to provide for arbitration as a method of resolving corporate disputes, either by "stipulating it in the articles of association" or by "agreeing to it at any time".

In general, and as with other types of companies, in accordance with the principle of freedom of contract set out in article 669 of the Civil Code, there is nothing to prevent shareholders from agreeing to resolve their disputes through arbitration, whether in the articles of association or in a shareholders' agreement.

5. Required majorities

As regards EASs, pursuant to articles 21, 23 and 30 of Law 6.480/2020, the shareholders' meeting is their governing body and its decisions, including amendments to the articles of association, must be adopted by a majority of the shares present at the meeting, unless otherwise provided for in the articles of association. This is the majority required to adopt, amend or revoke a statutory arbitration agreement in these companies.

In other companies, the majority required to amend the articles of association applies, in accordance with the rules applicable to each type of company.

In public limited companies, amendments to the articles of association must be agreed at an extraordinary general meeting (article 1080 of the Civil Code) and require a constitutive quorum of 60% of the shares with voting rights at the first notice of meeting and 50% at the second, unless a higher quorum has been established in the articles of association (article 1090), and an absolute majority of the votes cast, unless the articles of association require a higher majority (article 1089).

In limited liability companies, decisions are taken by a majority vote of the share capital, although the law provides that any amendment to the articles of association that increases the liabilities of the shareholders requires unanimous approval (Article 1177 of the Civil Code), which allows for the validity of a majority-approved amendment to the articles of association providing for arbitration as a means of resolving corporate disputes to be challenged.

6. Scope of arbitration agreements

The arbitration clause set out in the articles of association is binding on all shareholders, whether it was originally included in the articles of association or adopted subsequently (Article 1.078 of the Civil Code).

The extension of the arbitration clause to shareholders who join the company after the agreement has been incorporated into the articles of association may be contested on the grounds that the new shareholder did not expressly consent to arbitration; to avoid this dispute, it is advisable for the share certificates to refer to the arbitration clause in the articles of association. In this regard, article 11 of the Arbitration Act 7561/2025 provides that "a reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement [...] provided that such reference implies that that clause forms part of the contract".

As regards the bodies and individuals acting in a representative capacity for the company, to avoid disputes regarding the extension of the arbitration clause to them, it is recommended that their consent be recorded in a contract with them or in a declaration in which they state that they are aware of and accept the provisions of the articles of association.

One argument for extending the arbitration agreement to the company's statutory representatives is the provision in article 13 of the Arbitration Act 7561/2025, which stipulates that, exceptionally and by decision of the arbitral tribunal, the arbitration agreement extends to non-signatories whose consent to submit to arbitration, in good faith, results from their active and decisive participation in the negotiation, conclusion, performance or termination of the contract in question, or from their intention to derive rights or benefits from that contract, in accordance with its terms.

7. Scope of arbitration agreements

In general, corporate disputes may be submitted to arbitration, except for those that are not subject to settlement, are not of a pecuniary nature, or must be resolved by applying a rule of public policy.

Although there is no academic opinion or case law defining the scope of corporate arbitration, any matter relating to a shareholder's membership rights (for example, information and voting rights) or to the principle of equal treatment of shareholders may be considered non-arbitrable as it does not involve a pecuniary interest.

On the other hand, the right of withdrawal (separation) may be regarded as a rule of public policy under article 1.092 of the Civil Code, pursuant to which any provision that excludes the right of withdrawal or imposes more onerous conditions on its exercise is null.

However, it may be argued that arbitration in itself does not in any way prevent the exercise of such a right and that certain aspects linked to the right of withdrawal are, strictly speaking, arbitrable, such as the valuation of the withdrawing shareholder's shares, given their clearly pecuniary nature.

Consequently, the corporate disputes listed in Annex 2 are arbitrable, subject to the aforementioned exceptions.

With regard to EASs, article 41 of Law 6.480/2020 defines the scope of corporate arbitration in the following terms: "Disputes arising between various members of the EAS amongst themselves, or between them and the company or its directors, in the course of the contract or a unilateral action, including the challenge to decisions of the governing or administrative bodies".

8. Standard arbitration agreement content

The Paraguayan Centre for Arbitration and Mediation (CAMP) of the Paraguayan Chamber of Commerce and Services provides a model general arbitration clause, but not one specifically for corporate arbitration.

9. Corporate arbitration under law and equity

Article 41 of Arbitration Act 7561/2025 provides that the arbitral tribunal must decide in accordance with the law unless the parties have expressly authorised it to do so in equity.

10. Institutional and ad hoc corporate arbitration

Paraguayan legislation does not require corporate arbitration to be conducted under the administration of an institution; therefore, both *ad hoc* and institutional arbitration are permissible. Institutional arbitration is more common.

11. Data on corporate arbitration and proceedings

Confidentiality limits the availability of data on corporate arbitration.

The use of arbitration in Paraguay, although growing, remains limited, particularly in the corporate sphere. Corporate disputes are usually brought before the courts, primarily in order to obtain interim measures (for example, the intervention of the company) that can be swiftly enforced.

12. Setting aside corporate arbitration awards

The setting aside of a corporate arbitration award is governed by the general rules set out in articles 52 to 57 of the Arbitration Act 7561/2025.

The award may be challenged by bringing an action for annulment before the Civil and Commercial Courts of Appeal in Asunción.

The grounds for annulment are limited:

“a) That one of the parties to the arbitration agreement was under a legal incapacity, or that the agreement is invalid under the law to which the parties have submitted it, or, if no such law has been specified, under Paraguayan law.

b) That one of the parties:

   i) Has not been duly notified of the appointment of an arbitrator.

   ii) Has not been duly notified of the arbitral proceedings.

   iii) Has been unable, for any other reason, to assert its rights.

(c) That the appointment of the arbitrators, the composition of the arbitral tribunal, or the arbitral proceedings have not complied with the agreement between the parties or the applicable arbitration rules, unless such agreement or provision was in conflict with a provision of this Act from which the parties could not derogate or, in the absence of such an agreement or rules, that they have not complied with the provisions of this Act.

d) That the arbitral tribunal has ruled on matters not submitted to its decision, or has exceeded the terms of the arbitration agreement.

e) That the arbitral tribunal has ruled on matters that are not subject to arbitration.

f) That the award is contrary to Paraguayan public policy, or to international public policy in the case of international arbitration.

g) That the dispute has been decided outside the time limit agreed by the parties or that provided for in the applicable arbitration rules, provided that the parties, or the relevant rules, have expressly agreed or included the late delivery of the award as a ground for nullity, in accordance with the provisions of article 44 of this Act."

Peru

1. Historical development of corporate arbitration

Arbitration in Peru dates back to the colonial era, with references in the Code of Santa Cruz of 1836 and the Code of Civil Procedure of 1852. However, it did not begin to establish itself as an institution until the Civil Code of 1984, undergoing significant regulatory development in 1996 with the former General Arbitration Act 26,572.

In the corporate sphere, in particular, arbitration took on its modern form and became firmly established from 2008 onwards, with the enactment of the current Arbitration Act (Legislative Decree 1071), which expressly permits arbitration clauses in companies' articles of association and establishes a modern regulatory framework aligned with international standards, such as the UNCITRAL Model Law.

2. Current corporate arbitration regulation

Corporate arbitration is governed primarily by two pieces of legislation:

1. The Arbitration Act of 2008, which provides for statutory arbitration in its sixth supplementary provision.

2. The General Companies Act 26,887 of 1997, which regulates corporate arbitration agreements in article 48 (introduced by the third amending provision of the Arbitration Act of 2008):

   "Shareholders may, in the instrument of incorporation or the articles of association, adopt an arbitration agreement to resolve any disputes the company may have with its members, shareholders, directors, managers and representatives, including those arising between them regarding their rights or obligations, those relating to compliance with the articles of association or the validity of resolutions, and any other situation provided for in this Act.

   The arbitration agreement applies to partners, shareholders, directors, managers and representatives who join the company, as well as to those who, at the time the dispute arises, have ceased to hold such positions.

   The arbitration agreement does not apply to notices convening meetings of shareholders."

3. Recent reforms and trends

There have been no recent reforms to corporate arbitration.

4. Arbitration agreements in articles of association and other agreements

An arbitration agreement may be incorporated into the articles of association, in accordance with article 48 of the General Companies Act, or into shareholders' agreements between all or some of the members.

In accordance with article 8 of the General Companies Act, shareholders' agreements are binding on the company "from the moment they are duly notified to it", although, in the event of a "contradiction" between these and the instrument of incorporation (deed of incorporation) or the articles of association, "the latter will prevail, without prejudice to the relationship that the agreement may establish between the parties who entered into it".

5. Required majorities

The majorities required for the adoption, amendment or revocation of a statutory arbitration agreement are the same as those for any amendment to the articles of association:

1. Public limited companies and open public limited companies: two-thirds of the voting capital represented at the general meeting.

2. Private limited companies: the same majority, unless the articles of association provide for a different one.

3. Limited liability companies: two-thirds of the total share capital.

The General Companies Act does not recognise the right of shareholders who do not vote in favour of adopting a statutory arbitration agreement to withdraw from the company; however, this does not prevent such a right from being recognised in the articles of association with the consent of all shareholders.

6. Subject matter of the arbitration agreement

In accordance with article 48 of the General Companies Act, an arbitration agreement included in the instrument of incorporation (deed of incorporation) or in the articles of association is binding on the company and its shareholders, directors, representatives and officers, including those who ceased to hold such positions before the dispute "arose", provided that the dispute relates to the period during which they were part of the company.

The General Companies Act does not specifically refer to absent or dissenting shareholders, to whom it does not grant a right of withdrawal; this has led some legal scholars to question whether they are bound by the agreement; however, this argument does not appear sufficient to exclude them from the scope of the arbitration agreement, as the aforementioned shareholders know, or ought to know, that Peruvian law permits the inclusion of statutory arbitration in the articles of association by a specified majority and does not recognise the right of withdrawal for absent or dissenting shareholders.

As regards directors, representatives and officers who joined the company prior to the adoption of the arbitration agreement, it is theoretically open to question whether they are bound by it; it may argued that they tacitly accept it by continuing to hold office, but it may also be argued that there is no acceptance because the agreement did not exist when they accepted the position. However, the most reasonable approach is to consider them bound by it, particularly given that the law refers to “directors, representatives and senior managers” in general terms.

7. Scope of arbitration agreements

In accordance with article 2 of the Arbitration Act, disputes concerning matters over which the parties have full discretion may be submitted to arbitration.

Article 48 of the General Companies Act defines the scope of the arbitration agreement broadly: “disputes that the company may have with its members, shareholders, directors, administrators and representatives; those arising between them regarding their rights or obligations; those relating to compliance with the articles of association or the validity of resolutions; and any other situation provided for in this Act”, except for disputes concerning “notices convening shareholders’ meetings”.

Consequently, any corporate disputes, including those listed in Annex 2, may be submitted to arbitration, except for those relating to the convening of meetings, which must be resolved through court proceedings.

8. Standard arbitration agreement content

The Arbitration Centre of the Lima Chamber of Commerce, the Centre for Conflict Analysis and Resolution at the Pontifical Catholic University of Peru and the International Arbitration Centre of AmCham Peru offer model arbitration clauses, but not specifically for corporate arbitration.

9. Corporate arbitration at law and in equity

In accordance with article 57 of the Arbitration Act, arbitration must be conducted in accordance with the law, unless the parties have expressly agreed that it should be conducted in equity.

However, where the dispute concerns matters to which mandatory rules or public policy apply, the arbitration must be resolved in accordance with the law.

10. Institutional and ad hoc corporate arbitration

The parties have considerable freedom to decide whether corporate arbitration is to be administered by an arbitral institution or on an *ad hoc basis*.

11. Data on corporate arbitration and proceedings

There are no publicly available statistics on corporate arbitration.

12. Setting aside corporate arbitration awards

There are no specific rules on the setting aside of a corporate arbitration award; instead, articles 62 to 66 of the Arbitration Act, relating to the setting aside of any award, apply.

Awards may be challenged by means of an application for setting aside, which must be based on one of the following grounds: (i) the non-existence, nullity or invalidity of the arbitration agreement, (ii) failure to notify one of the parties of the arbitral proceedings, (iii) irregularities in the composition of the arbitral tribunal or in the proceedings, (iv) the tribunal's ruling on matters not submitted to its decision or which are not arbitrable, (v) a breach of international public policy, in the case of international arbitration, and (vi) the award being issued outside the time limit set out in the arbitration agreement.

An application for setting aside must be brought before the competent High Court. If the High Court refuses to set aside the award, its decision is final and not subject to further appeal. However, if it sets aside the award in whole or in part, an appeal on a point of law may be lodged with the Supreme Court.

Furthermore, where there is a "manifest injustice" that infringes a constitutional right, an application for amparo may be lodged against the decision of the High Court confirming the award or, if it sets aside the award and an appeal on points of law is lodged, against the decision of the Supreme Court.

It is even possible to bring an application for amparo directly against the award, provided that none of the grounds for an application for annulment apply, in the following circumstances: (i) breach of binding precedents of the Constitutional Court, (ii) improper exercise of "diffuse control" over constitutional provisions, and (iii) direct and manifest infringement of the fundamental rights of third parties.

An appeal may be lodged against the judgment ruling on the application for amparo. Only if the appeal judgment confirms that the application for amparo is inadmissible or unfounded may an appeal on grounds of "constitutional grievance" be lodged with the Constitutional Court.

Portugal

1. Historical development of corporate arbitration

Corporate arbitration in Portugal was first regulated by the Commercial Code of 1833 (known as *the Ferreira Borges Commercial Code*), which established a system of compulsory arbitration in corporate matters modelled on French law.

In the second half of the 19th century, as in other European states, compulsory arbitration was abandoned, although voluntary arbitration continued to be permitted as a means of resolving corporate disputes. The Commercial Code of 1888 (*the Veiga Beirão Commercial Code*) did not include any special rules on corporate arbitration.

Throughout the 20th century, the use of (voluntary) corporate arbitration gave rise to various problems stemming from the lack of specific regulation and the various changes in company law. Legal uncertainty and a legislative vacuum meant that this means of resolving disputes was rarely used.

The first national law on voluntary arbitration dates from 1986, but it too failed to include rules on corporate arbitration, thereby perpetuating the uncertainties that hindered its widespread adoption.

The current law (the 2011 *Lei de Arbitragem Voluntária* ("LAV")) remained silent on the matter, but the amendment to the criterion of arbitrability has facilitated the use of arbitration in corporate disputes; the requirement for the "disputed legal situation to be arbitrable" – which had raised doubts as to which corporate matters could be arbitrated – is no longer necessary; instead, the sole requirement is that the "claim must be of a pecuniary nature".

In general, it is understood that corporate claims are always of a pecuniary nature, including shareholders' participation rights (such as voting rights), and are therefore arbitrable.

2. Current corporate arbitration regulation

In Portugal, there are no specific rules on corporate arbitration, neither in the LAV nor in the Commercial Code nor in the *Código das Sociedades Comerciais* (CSC). Consequently, corporate arbitration is governed by the general provisions of the LAV.

The absence of specific rules has given rise to difficulties and challenges, both substantive and organisational-procedural in nature, arising from the need to reconcile company law with arbitration law; in particular, the following:

1. In the absence of specific statutory provisions, the question has arisen as to whether corporate disputes are arbitrable, taking into account both the nature of the subject matter (objective arbitrability) and the parties involved (subjective arbitrability). As regards objective arbitrability, legal scholars argue that, to the extent that pecuniary interests are at stake, company disputes are arbitrable (Article 1 of the LAV).

   The issue of subjective arbitrability is discussed in section 6.

2. The organisational and procedural requirements for an award to have the force of res judicata against all shareholders, the company and the members of its governing bodies have been discussed.

   It is argued that the safeguards for parties affected by res judicata must be, at the very least, identical to those in judicial proceedings and that, therefore:

   a. Any party who may be affected by the extended res judicata must be able to participate in the arbitration proceedings under conditions equivalent to those under which they could participate if the corporate dispute were heard and decided in the courts.

   b. Given that the possibility of these parties participating effectively depends on their being aware of the existence of the proceedings, the arbitration proceedings must be publicised to the same extent as court proceedings.

   c. In order for these parties to be effectively aware of the proceedings (and not merely of their existence), they must have access to specific information about the arbitration and its progress, so that, where appropriate, they may make an informed decision regarding their participation in the arbitration.

   d. To prevent a proliferation of arbitration proceedings concerning the same subject matter with potentially conflicting outcomes (particularly regarding the validity of resolutions passed by corporate bodies), all arbitration proceedings relating to the same subject matter must be consolidated (Article 60(2) of the CSC).

   e. All parties affected by the extended effect of res judicata must have the opportunity to participate, on an equal footing, in the process of constituting the arbitral tribunal.

   f. The award that brings the dispute to an end must be given the same publicity as judgments of the state courts, bearing in mind the extra-partes effect intended to be conferred upon it.

3. Recent reforms and trends

There have been no recent reforms concerning corporate arbitration.

The general regime for voluntary arbitration was reformed in 2011 with the adoption of the LAV, but did not include any special provisions on corporate arbitration. This regime has not been amended to date, despite the proposals put forward.

However, the Corporate Arbitration Rules adopted in 2021 by the *Commercial Arbitration Centre* ("CAC") of the *Portuguese Chamber of Commerce and Industry*, where applicable in accordance with the arbitration clause included in the company's articles of association, make it possible to resolve some of the uncertainties arising from the absence of specific statutory provisions.

4. Statutory and non-statutory arbitration agreements

The arbitration clause may be included in the company's articles of association or in another (written) contract; however, in the latter case, it will only be binding on the shareholders who enter into it and will not be binding on the company or other present or future shareholders, unless they accede to the agreement.

There is debate among legal scholars as to whether multilateral shareholders' agreements are also binding on the company. For clarity, the arbitration clause should be included in the articles of association.

The aforementioned CAC 2021 Corporate Arbitration Rules provide that, for the company to be a party to the arbitration, the arbitration clause must be set out in the articles of association.

5. Required majorities

The adoption, amendment or deletion of an arbitration clause in the articles of association is subject to the specific rules governing amendments to the articles of association for each type of company. In the case of a limited liability company, it must be approved by a three-quarters majority of the share capital. In the case of a *public limited company*, it must be approved by a two-thirds majority of the votes cast.

6. Scope of arbitration agreements

The arbitration clause included in the articles of association is binding on the company and its members.

Legal scholars debate whether a clause introduced through an amendment to the articles of association is binding on shareholders who did not vote in favour of the amendment and on those who acquire their shares after the amendment, as article 2 of the LAV requires unequivocal written consent.

The debate also extends to whether members of the company's governing bodies who have not given their unequivocal written consent to the arbitration clause are bound by it. Generally, it is understood that, by accepting the position, a director tacitly accepts the arbitration agreement; however, some authors consider a written document of acceptance to be necessary. The same applies to liquidators.

Legal scholars have not opined on holders of rights in rem over shares (including shares) and convertible bonds. Nevertheless, it may be argued that the arbitration clause included in the articles of association does not bind them until, through the exercise of their rights, they assume the status of shareholders.

7. Material scope of the arbitration agreement

The subject matter of the agreement depends on what it stipulates.

The corporate disputes listed in Annex 2 are subject to arbitration.

8. Standard arbitration agreement content

The content of a corporate arbitration agreement may be structured in several ways, depending on the parties' wishes. However, there are template clauses, such as that recommended by the CAC:

"1. All disputes between the company and its shareholders, or between the shareholders themselves, arising in the course of the exercise of their corporate rights, whether arising from law or the articles of association, or between the company or the shareholders and the members of the governing bodies in their official capacity, will be referred for decision to an arbitral tribunal constituted under the auspices of the Arbitration Centre of the Portuguese Chamber of Commerce and Industry, also known as the Commercial Arbitration Centre.

Note: The scope of the arbitration agreement may be narrower.

2. Acceptance of a position on a corporate governing body also constitutes acceptance of this arbitration clause, which remains binding even after the expiry of the term of office.

Note: This paragraph should be included if the arbitration agreement covers disputes between members of the governing bodies and the company or the shareholders.

3. Unless otherwise agreed by the parties, the arbitration will take place in [city and/or country] and in [language of the arbitration].

4. Without prejudice to the provisions of the following paragraph, the arbitral tribunal will be formed by a single arbitrator, who will be appointed by the parties [or by (specify independent body)].

OR

4. Without prejudice to the provisions of the following paragraph, the arbitral tribunal will be formed of three arbitrators, with each party appointing one arbitrator, and the third arbitrator being appointed by the other two [or by (specify independent body)].

5. In proceedings for annulment, a declaration of nullity and other proceedings in which the decision rendered has effect both against and in favour of all shareholders and corporate bodies, the President of the Centre will appoint the arbitrators.

6. The 2021 Corporate Arbitration Rules of *the Commercial Arbitration Centre* of the *Chamber of Commerce and Industry*, or any other rules replacing them, will apply to the arbitration.

7. The arbitrator or arbitrators must decide the case in accordance with the law, unless the nature of the dispute permits the application of other criteria. [This does not affect their ability to apply other criteria to as appropriate or to speed up the proceedings if the dispute in question requires so].

Note: The text in brackets is intended to enable the arbitral tribunal to rule also in so-called non-contentious proceedings, which would otherwise, given the criteria for ruling in such proceedings, be excluded from the scope of the arbitration agreement.

Note: The arbitration clause must be included in the articles of association".

9. Corporate arbitration under law and equity

According to article 39 of the LAV, arbitrators decide the case in equity where the parties so agree; if the arbitration agreement is silent on this point, the arbitration will be conducted in accordance with the law.

Academic opinion states that where interests at stake transcend those of the individual parties and, moreover, the application of mandatory legal rules is not possible, recourse cannot be had to equity, but only to the law.

10. Institutional and ad hoc corporate arbitration

In Portugal, there is no requirement for corporate arbitration to be institutional. However, although the parties may opt for *ad hoc* arbitration, it is advisable that they choose an institution with rules governing corporate arbitration.

Of particular note is the CAC, which in 2021 adopted special arbitration rules for "corporate disputes, whether between the company and its shareholders, or between shareholders in the exercise of their statutory rights, or between the company or shareholders and members of the governing bodies in that capacity". Where these rules apply:

1. The arbitration clause must be included in the articles of association (Article 3.1).

2. It is always the responsibility of the Centre's president to appoint the arbitrators in proceedings for the declaration of nullity or voidability of a corporate resolution and in all proceedings where the decision has the force of res judicata vis-à-vis all shareholders, whether or not they have been parties to the proceedings (Article 5.2).

3. The appointment of arbitrators by the President of the Centre is subject to the prior registration of the proceedings in the Commercial Register.

4. Where there is a conflict of interest between the company and the members of its governing body, the President of the Centre will appoint a special company representative to bring the proceedings at the request of any of the parties and after hearing the others.

5. The President of the Centre may decide to consolidate pending proceedings at the request of any of the parties or, where required by law, on his or her own initiative.

6. Until the arbitral tribunal is constituted, the parties may request the adoption of urgent interim measures by an emergency arbitrator appointed by the President of the Centre, including the suspension of corporate deliberations[3] .

3 In accordance with Article 7 of the LAV, the parties also have the right to apply to a state court for interim relief, either before or during the arbitration proceedings.

11. Information on corporate arbitration and proceedings

There are no publicly available figures on *ad hoc* corporate arbitration, but there are figures on institutional arbitration at the CAC between 2021 and 2024, although the proceedings identified as "corporate arbitration" relate to shareholders' agreements.

Year	Number of concluded proceedings	Number of "corporate proceedings"
2021	31	6
2022	35	9
2023	31	5
2024	39	8

Arbitration is not yet widely used to resolve corporate disputes is not a widespread practice, neither amongst small businesses nor amongst large companies, including listed companies[4] .

Requests for emergency arbitrators are uncommon in commercial arbitration in general and even less so in corporate arbitration, despite their potential to secure swift rulings on matters such as the exercise of attendance and voting rights at a general shareholders' meeting.

12. Setting aside corporate arbitration awards

The procedure for setting aside an award, whether corporate or otherwise, is set out in article 46 of the LAV. Unless the parties have agreed otherwise, an award may only be challenged by means of an application for setting aside, which must be lodged with the competent state court.

The court may set aside the award on the following grounds, amongst others:

1. Incapacity of one of the parties or invalidity of the arbitration agreement.

2. Breach of fundamental principles of arbitration, having a decisive influence on the award.

3. The award deals with matters not covered by the arbitration agreement or exceeds its scope.

4. The composition of the tribunal or the procedure did not comply with the parties' agreement or the law, and this had a decisive influence on the decision.

4 The following listed companies include an arbitration clause in their articles of association: (*i*) Banco Comercial Português, S.A.; (*ii*) Corticeira Amorim, SGPS, S.A.; (*iii*) Estoril Sol, SGPS, S.A.; and (*iv*) Teixeira Duarte, S.A. In the first two examples, institutional arbitration has been chosen, whilst in the latter two, *ad hoc* arbitration has been opted for. See Rui Pereira Dias / Rui Cardinal Carvalho, "Arbitration and corporate litigation in Portugal – the state of play in 2024", op. cit., 830.

The court may stay the proceedings for a specified period to allow the arbitral tribunal to resolve or take measures to remove the grounds for setting aside the award.

The tribunal setting aside the award may not review the merits of the matter decided in the arbitration.

Dominican Republic

1. Historical development of corporate arbitration

In the Dominican Republic, the development of corporate arbitration has been gradual and has become firmly established over the last two decades.

The initial legal foundations of corporate arbitration are set out in Law 50-87, which regulates the Chambers of Commerce and Production and empowers them to establish dispute resolution centres. Subsequently, with the enactment of Law 479-08 on Commercial Companies and Individual Limited Liability Companies and its amendment by Law 31–11, the possibility of including arbitration clauses in articles of association was expressly provided for.

On the basis of these provisions, corporate arbitration gained acceptance over court proceedings as an efficient, confidential and specialised alternative means of dispute resolution. Although its practical application has been gradual, over the last decade it has attracted growing interest among legal scholars and case law, with particular emphasis on its advantages in preserving corporate governance and resolving corporate disputes in a less confrontational manner.

2. Current corporate arbitration regulation

Law 489-08 on Commercial Arbitration does not specifically regulate to corporate arbitration nor, therefore, distinguish it from general commercial arbitration.

Corporate arbitration is primarily regulated by Law 479-08 on Commercial Companies and Sole Proprietorships with Limited Liability, as amended by Law 31-11, which expressly authorises the inclusion of arbitration clauses in the articles of association for the resolution of disputes arising between shareholders or between them and the directors or the company, as well as matters relating to the functioning of the corporate bodies.

This provision is in line with the principle of corporate autonomy and allows arbitration to be established as a mandatory means of dispute resolution, either at the time of the company's incorporation or through an amendment to the articles of association.

3. Recent reforms and trends

There have been no recent legislative reforms concerning corporate arbitration, nor are there any specific regulatory provisions distinguishing this form of arbitration from general commercial arbitration as provided for in Law 489-08 on Commercial Arbitration.

However, there is a growing interest, both among legal scholars and in case law, in statutory arbitration, particularly for limited liability companies, as an alternative to court proceedings.

4. Arbitration agreements in articles of association and other agreements

Dominican legislation and case law have recognised the validity of arbitration agreements set out in the articles of association (statutory arbitration agreements) and in shareholders' agreements or contracts between shareholders (extra-statutory arbitration agreements).

Shareholders' agreements entered into between several shareholders outside the articles of association—and, specifically, the arbitration clauses contained therein—are binding only on the signatory parties; they do not bind the other shareholders or the company.

However, if the shareholders' agreement is omnilateral (signed by all existing shareholders), its practical effects are similar to those of a provision in the articles of association, particularly where the company acts in accordance with that agreement or does not object to its application. Even so, for the company to be formally bound, the agreement must be incorporated into the articles of association and registered, in order to ensure its enforceability against third parties and to give it full corporate effect.

5. Required majorities

The adoption, amendment or deletion of an arbitration clause in the articles of association must be approved at an extraordinary general meeting and is subject to the majority requirements applicable to amendments to the articles of association, which depend on the type of company and the provisions of the articles of association.

6. Scope of arbitration agreements

Dominican law does not expressly regulate the subjective scope of the statutory arbitration agreement. Consequently, recourse must be had to the general principles of company and arbitration law and, in particular, to the binding force of the articles of association and to the implied consent arising from adherence to the statutory regime upon joining (or remaining in) the company.

Current and future shareholders, and the company itself, are bound by the statutory arbitration agreement registered in the commercial register, which gives it public status and enforceability.

As regards directors and liquidators, there is an interesting legal debate, given that, unlike shareholders, they are not party to the articles of association; therefore, for them to be bound, the arbitration agreement must expressly mention them.

Holders of rights in rem (such as usufruct or a pledge) over shares or equity interests may be indirectly affected by the arbitration agreement if they exercise rights arising from their position (such as voting or receiving dividends), but they are not automatically bound, unless the articles of association expressly provide for this or they have participated in the disputed corporate act.

Holders of convertible debentures, as they are not yet shareholders, are not subject to the statutory arbitration agreement, unless they formally accept that they are bound by converting their debentures into shares by subscribing to the articles of association or by express declaration.

7. Scope of arbitration agreements

The scope of the statutory arbitration agreement covers internal disputes arising from the company's affairs as defined therein, subject to the limitations set out in Law 489-08, which provides that disputes concerning inalienable rights or matters of public policy are not arbitrable.

Therefore, arbitration clauses in the articles of association may cover the corporate disputes listed in Annex 2.

8. Standard arbitration agreement content

Statutory arbitration agreements must be drafted with particular precision, given their internal regulatory nature and their impact on the resolution of corporate disputes.

As regards their typical content, although Dominican practice is still in its infancy, statutory arbitration agreements usually include the designation of an arbitral institution (such as the Court of Arbitration of the Chamber of Commerce and Production of Santo Domingo), the determination of the applicable rules of arbitration, the number of arbitrators and the method for their appointment, the applicable substantive law, as well as the seat and language of the arbitration.

The use of open-ended or broad arbitration clauses is relatively common (for example, those which submit "all corporate disputes" to arbitration without distinction).

9. Corporate arbitration at the law and in equity

The Dominican legal system recognises both arbitration in accordance with the law and arbitration in equity; however, in the corporate sphere, arbitration in accordance with the law predominates, given the need to apply precise legal rules and to ensure legal certainty amongst shareholders.

Where the parties do not specify whether the arbitration is to be at law or in equity, it is understood, in accordance with national and international arbitration practice and the principle of strict interpretation of the arbitration agreement, that the arbitration will be at law, unless the context clearly indicates otherwise.

10. Institutional and ad hoc corporate arbitration

In the corporate sphere, arbitration administered by specialised institutions—primarily the Chambers of Commerce and Production, in accordance with Law 50-87 (as amended by Law 36-23)—is the predominant form, and is governed by pre-established regulations. The Court of Arbitration and Alternative Dispute Resolution ( ) of the Santo Domingo Chamber of Commerce and Production is the most widely used arbitral institution, including in corporate disputes.

Ad hoc arbitration, although legally permitted, is rare.

For practical reasons and to ensure legal certainty, it is advisable for corporate arbitration agreements to provide for institutional arbitration, expressly naming the administering institution, its rules and the basic conditions of the proceedings, in order to avoid gaps or conflicts of interpretation in the event of a dispute.

11. Data on corporate arbitration and proceedings

Corporate arbitration is used primarily by public limited companies and limited liability companies.

According to data provided by the Court of Arbitration and Alternative Dispute Resolution of the Santo Domingo Chamber of Commerce and Production—which is the main administrative body for corporate arbitration and arbitration in general—over the last five years it has administered eight corporate arbitrations concerning disputes relating to the nullity of general meetings, the nullity of share subscription agreements, the breach or termination of shareholders' agreements, the right to information, irregular management, and the option to purchase shares or membership interests.

12. Setting aside corporate arbitration award

The procedure for setting aside any award, including those in corporate arbitrations, is governed by articles 39 and 40 of Law 489-08 on Commercial Arbitration, which allow the award to be challenged before the Court of Appeal of the department corresponding to the place where the award was made on the following grounds:

1. That a party was under a legal incapacity or that the arbitration agreement is invalid.

2. That the right to a fair hearing has been infringed as a result of a failure to observe due process.

3. That the award relates to a dispute not provided for in the arbitration agreement or exceeds the scope of the agreement.

4. That the composition of the arbitral tribunal or the arbitral proceedings did not comply with the agreement between the parties.

5. That the dispute is not arbitrable.

6. That the award is contrary to public policy.

Uruguay

1. Historical development of corporate arbitration

Following the end of the colonial era, the first significant milestone in the history of corporate arbitration in Uruguay was the adoption of the Commercial Code in 1865.

Article 511 of the Uruguayan Code stipulated that all disputes between shareholders arising during the existence of the company, its liquidation or division, were to be resolved by arbitrators, even where the articles of association had not provided for this. The following article regulated the procedure for appointing arbitrators, who, in the absence of an agreement between the parties, would be appointed by the court ex officio and must be suitable and impartial persons.

This regime remained in force for over a century, until 1975, when Decree-Law 14,476 repealed all provisions establishing compulsory arbitration in civil and commercial matters. Since then, arbitration has become voluntary, subject to the general provisions of civil procedure.

The current absence of specific regulations governing corporate arbitration does not mean that it is prohibited. On the contrary, its viability is underpinned by the general rules on arbitration and, crucially, by the principle of contractual freedom, the cornerstone of Uruguayan private law.

In 2019, the Law on the Promotion of Entrepreneurship No. 19820, which introduced the concept of the Simplified Joint-Stock Company ("SAS"), went on to expressly mention corporate arbitration. Article 44 provides that disputes between shareholders, as well as between shareholders and the company or its governing bodies, may be referred to arbitration, provided this has been agreed in the articles of association; this includes, amongst others, disputes arising from the company's operations and challenges to corporate resolutions.

In summary, following the repeal of compulsory arbitration in 1975, corporate disputes may be submitted to arbitration if the parties so agree, within the limits established by the legal system. In the absence of specific legislation (except in the case of SAS companies), the general principle of arbitrability set out in the General Code of Civil Procedure applies. Arbitration is therefore a valid and effective means of resolving disputes in the Uruguayan corporate sphere.

2. Current corporate arbitration regulation

Corporate arbitration is expressly regulated only for SASs under Act 19.820 of 2019. For all other types of companies, the general principles of arbitrability and the Commercial Companies Act 16.060 of 1989 apply; while it does not specifically regulate corporate arbitration, it does not prohibit it either.

Article 44 of the aforementioned Act 19820 of 2019 expressly permits corporate disputes involving SASs to be resolved through arbitration. Under the heading "Resolution of corporate disputes", it provides:

> "Disputes arising between shareholders; between any such shareholder and the company, its directors, liquidators or shareholders of the internal control body; between the company and its directors, liquidators or members of the internal control body, arising from the company's constituent business or its operations, including challenges to resolutions of the general meeting or the board of directors, may be submitted to arbitration, if so agreed in the articles of association".

3. Recent reforms and trends

The most recent development has been the aforementioned Act 19820 of 2019 concerning SAS companies.

Bill 166.264 is currently under parliamentary debate; it seeks to amend the Commercial Companies Act 16060 to provide an express legal basis for corporate arbitration across all types of companies, as Law 19.820 of 2019 already does in relation to SASs.

This bill was tabled on 22 June 2021 and, following the change of legislature in March 2025, the bill was taken up again with a cross-party agreement to ensure its "expedited processing".

The bill proposes the following wording for article 18 of Act 16060:

> "ARTICLE 18. (Dispute resolution, procedural rules and limitation periods). Disputes arising between shareholders; between any of the latter and the company, its directors, liquidators or members of the internal control body; between the company and its directors, liquidators or members of the internal control body, arising from the instrument of incorporation or the articles of association or from the functioning of the corporate bodies, including challenges to resolutions of general meetings or meetings of shareholders or of the board of directors, may be submitted to arbitration, if so agreed in the instrument of incorporation or the articles of association".

4. Arbitration agreements provided for in the articles of association and those not provided for therein

Legal scholars argue that not only is statutory arbitration permissible, but that all or some shareholders may agree to submit their disputes to arbitration in a shareholders' agreement, in accordance with the general principles of the arbitrability of corporate disputes and the autonomy of the parties' will.

Arbitration agreements included in shareholders' agreements are binding only on the shareholders who have signed them. For the agreement to be enforceable against the company, it is necessary for the company to be a party to it or for the requirements of article 331 of Law 16.060 to be met:

1. A copy bearing notarised signatures must be delivered to the company.
2. A copy must be registered with the National Commercial Register.
3. It must be recorded on the share certificates or entered in the Register of Book-Entry Shares.

5. Required majorities

With regard to SASs, article 35, paragraph 2, of Law 19.820 requires a "unanimous vote of 100% of the paid-up capital" to amend the clause governing "matters relating to" the "resolution of corporate disputes", which, according to article 44, may provide for arbitration. Unanimity is required both to include an arbitration clause in the articles of association and to amend or remove it.

As regards other types of companies, it is considered that there is no reason to treat the arbitration clause differently from any other provision in the articles of association. Therefore, unless otherwise agreed, in any type of company where the articles of association may be amended by a majority vote, there is no obstacle to the adoption, amendment or removal of an arbitration clause being decided by that same majority.

In public limited companies, amendments to the articles of association are generally approved by a simple majority at an extraordinary general meeting (articles 343 and 356), except in certain exceptional cases which require an absolute majority (Article 362).

In limited liability companies, amendments require unanimity if there are up to twenty shareholders and an absolute majority if there are more than twenty (Article 240).

In both cases, the law grants dissenting shareholders the right of withdrawal (separation).

6. Scope of arbitration agreements

Where arbitration is provided for in the articles of association, it is binding on the shareholders (whether founders or those who joined subsequently). It may also be binding on directors and representatives to the extent that, by accepting their appointment, they have undertaken to comply with the provisions of the articles of association, including the arbitration clause.

The commitment to submit to arbitration is binding on those who, at the time the dispute arises, no longer hold office or retain the status of members, directors or representatives, provided that the arbitration clause was in force while they maintained their connection with the company.

7. Scope of arbitration agreements

In general, the scope of corporate arbitration is not limited and depends on the terms set out in the arbitration agreement.

However, in 1999, the 6th Civil Court of Appeal held that corporate disputes concerning matters governed by public policy provisions were not arbitrable, thereby precluding the arbitration of the exercise of the right of withdrawal. This position has not been endorsed by legal scholars or case law. The authors argue that a distinction must be drawn between mandatory rules and the exercise of the rights they govern. Thus, for example, while the right of withdrawal cannot be set aside, the determination of the value of the withdrawing shareholder's shares may be submitted to arbitration.

With regard to SASs, article 44 of Law 19.820 establishes a broad scope of application, as has already been mentioned. The decisive factor is that the disputes must relate to the "business for which the company was incorporated" or its "operations", encompassing even matters such as the "challenging of resolutions passed by the general meeting or the administrative body".

The scope of corporate arbitration is therefore the same as that of arbitration in general under Uruguayan law; in accordance with article 476 of the General Code of Civil Procedure, the only matters excluded from arbitration are those "in respect of which a settlement is prohibited".

Since corporate disputes generally concern enforceable rights and there is no provision expressly prohibiting their settlement, then it must be accepted that all such disputes may be subject to arbitration, and current academic opinion and case law recognise this.

Thus, the corporate disputes listed in Annex 2 are subject to arbitration.

8. Standard arbitration agreement content

None of the major arbitration institutions provides template clauses for corporate arbitration.

9. Corporate arbitration under law and equity

There is no specific regulation regarding corporate arbitration at law or in equity. However, legal commentators hold that an arbitration clause included in a contract or in a company's articles of association may provide for both types of arbitration.

In relation to domestic or international arbitrations seated in Uruguay, article 477 of Law 20257 of 2024 (amending the General Code of Civil Procedure) provides that, "unless the parties have agreed otherwise, arbitrations must be conducted in accordance with the law. Any agreement authorising the tribunal to decide in equity must be expressly established".

10. Institutional and ad hoc corporate arbitration

Uruguayan law lacks regulatory provisions imposing specific legal requirements for the conduct of corporate arbitration, whether institutional or *ad hoc*, and none of the national arbitral institutions has adopted special rules for corporate disputes. In practice, both types of corporate arbitration (*ad hoc* and institutional) are observed, with no clear predominance of one over the other.

11. Data on corporate arbitration and proceedings

There are no publicly available statistics on corporate arbitration in Uruguay.

12. Setting aside of corporate arbitration awards

The rules governing the setting aside of a corporate arbitration award are the same as those applicable to any award. Consequently, the grounds for setting aside set out in Law 20.257 (amending the General Code of Civil Procedure) apply to domestic arbitrations, while those in the International Commercial Arbitration Act 19636 of 2018, modelled on the UNCITRAL Model Law, apply to international arbitrations.

Article 499 of the General Code of Civil Procedure, as amended by Law 20.257, provides that an application for annulment of domestic arbitration awards may only be brought on specific grounds:

1. Having been rendered after the time limit had expired.
2. They have ruled on matters not included in the arbitration.
3. Failure to rule on all matters submitted to arbitration.
4. The arbitrators having refused to admit essential and decisive evidence.
5. No attempt has been made at conciliation.
6. To resolve a matter which cannot legally be referred to arbitration.
7. Contradicting a previous judgment or award that has the force of res judicata.

This appeal must be lodged with the court that would have had jurisdiction at second instance had there been no arbitration.

As regards international arbitration, article 39 of the Arbitration Act (Law 19636) allows for an application to set aside the award if it is proven that:

1. The incapacity of a party or the invalidity of the arbitration agreement.
2. Failure to give notice or inability to defend.
3. The award deals with matters not provided for in the agreement.
4. The arbitral tribunal or the proceedings did not comply with the parties' agreement or the law.

The award may also be set aside if the dispute is not arbitrable or if the award contravenes international public policy.

The application must be made to the court which would have had jurisdiction at second instance had there been no arbitration. The court may stay the annulment proceedings if it considers that the arbitral tribunal is able to remedy the problem.

Venezuela

1. Historical development of corporate arbitration

Venezuela does not have specific legislation governing corporate arbitration. However, arbitration has been part of Venezuela's history since the 1830 Constitution, which enshrined the right to resolve disputes through arbitration (Article 190). Arbitration is so important in Venezuela that in 1832 the heirs of Simón Bolívar used this means of dispute resolution to settle one of their many inheritance disputes.

Article 190 of the 1830 Constitution was reproduced verbatim in the 1857 Constitution. However, in 1858, arbitration disappeared from the Venezuelan Constitution until the 1999 Constitution came into force.

According to academic opinion, the development of arbitration in its initial stages can be described as "timid", since in that historical context (the late 19th century) Venezuela was an agricultural country in which disputes were normally settled by *mutual* agreement *between the parties*. Subsequently, from 1930 onwards, arbitration was confined almost exclusively to contracts in the oil industry, with its use in resolving commercial disputes being limited.

In 1998, the Commercial Arbitration Act ("LAC") was enacted, drawing inspiration from the UNCITRAL Model Law. From that point onwards, the history of arbitration changed significantly in Venezuela, as the 1999 Constitution recognised alternative dispute resolution methods, including arbitration, as part of the "justice system" (Article 253).

2. Current corporate arbitration regulation

The LAC governs all matters relating to commercial arbitration, regardless of whether it is corporate or not. Article 3 states that all disputes "capable to settlement" may be submitted to arbitration, with the exception, amongst others, of "disputes that are contrary to public policy or relate to criminal offences or misdemeanours, except in respect of the amount of civil liability, provided that this has not been determined by a final and binding judgment".

The expression "disputes that are contrary to public policy" must be understood to refer to disputes concerning matters governed by rules of public policy.

3. Recent reforms and trends

Although there have been no reforms to the Venezuelan legal system, the Constitutional Chamber of the Supreme Court of Justice recently handed down a judgment (No. 1196 of 4 December 2024) in which it reaffirmed the relationship of cooperation and collaboration between the judiciary and arbitration as follows:

> "That judgment repeatedly made it clear that arbitration has been regarded by this Chamber as an integral part of the justice system, not in a relationship of subordination – as the Civil Cassation Chamber of this supreme court had suggested – but in a

> collaborative relationship with the judiciary, which offers the opportunity to relieve or alleviate the burden on the justice system by handling the various cases falling within its remit, provided that this is the means chosen by the parties to resolve their disputes over conflicting interests, given that its very nature makes it an alternative means of dispute resolution and, therefore, arbitration constitutes an alternative jurisdiction, while ordinary jurisdiction is the very manifestation of submission to the judicial process (see Judgment 702 of 18 October 2018, case: "Arbitration Centre of the Caracas Chamber")".

This judgment does not refer specifically to corporate arbitration; however, by confirming the relationship between the judiciary and arbitration, as well as the integration of arbitration into the Venezuelan justice system, it demonstrates the possibility of resolving any type of corporate dispute through arbitration.

4. Statutory and non-statutory arbitration agreements

There is no express regulation on this matter. By virtue of the parties' freedom of contract, arbitration may be agreed not only in the articles of association but also in shareholders' agreements or contracts between shareholders. However, shareholders' agreements only bind those parties who have expressly consented to them.

5. Required majorities

To include the arbitration agreement in the instrument of incorporation of a public limited company or a limited partnership with share capital, article 257 of the Venezuelan Commercial Code provides that "the attendance of half of the subscribers and the consent of an absolute majority of those present will suffice". The same applies to limited liability companies, in accordance with article 336.

With regard to the subsequent inclusion, amendment or removal of the arbitration agreement, there is no settled view. Some maintain that it must be the result of a unanimous decision; others take the view that a supermajority of two-thirds of the share capital is required and that a dissenting shareholder must be granted the right to withdraw; while others, in short, hold the view—which appears to be the correct one—that neither unanimity nor a supermajority is required, but rather the majority provided for in the articles of association themselves for any amendment to the articles of association or, failing that, a majority of the capital present.

6. Scope of arbitration agreements

There is no unanimous view among legal scholars, but it is reasonable to state that the arbitration agreement laid down in the articles of association is binding on the members, the directors, auditors (who are responsible for inspecting and supervising the company's operations) and the liquidators, since if the arbitration clause or agreement is contained in the articles of association, it becomes a rule governing the company's operation that is binding on all shareholders and the corporate bodies, but not on third parties.

With regard to new shareholders of a company that already has an arbitration clause in its articles of association, some legal scholars consider that the provisions governing standard-form contracts apply (that is, the requirement for their express and independent consent); however, this is not a standard-form contract, and therefore an express and independent declaration by the new partner or shareholder does not appear to be necessary for the arbitration clause to be binding on them.

7. Scope of arbitration agreements

In accordance with article 3 of the LAC, all disputes "capable of settlement" may be submitted to arbitration, with the exclusion, amongst others, of "disputes that are contrary to public policy or relate to criminal offences or misdemeanours, except in respect of the amount of civil liability, provided that this has not been determined by a final and binding judgment".

Matters of public policy cannot be submitted to arbitration. Case law has consistently held that disputes concerning such matters may be settled by arbitration. Constitutional Chamber (Judgment 1541 of 17 October 2008) held the following:

> "In Venezuela, this Chamber notes that the inclusion of arbitration within the justice system put an end to the apparent contradiction which, from a doctrinal and case-law perspective, arose between arbitration, public policy, mandatory rules and the protective principle of special legislation in "sensitive" areas such as labour, tenancy, consumer affairs and property transactions, amongst others.
>
> […] Consequently, since public policy affects or impacts the substantive essence of legal relationships, this implies that it is the special legislation—and no other substantive rule—that arbitrators must apply, while alternative dispute resolution mechanisms, as they form part of the justice system, cannot disregard special substantive provisions of public policy, just as the Judiciary could not breach them."

Consequently, the corporate disputes listed in Annex 2 are arbitrable, although some legal scholars consider that those relating to the dissolution and liquidation of a company are not.

8. Standard arbitration agreement content

None of the main arbitration institutions in Venezuela offers specific template clauses for corporate arbitration.

9. Corporate arbitration at the law and in equity

There is no specific legislation governing this matter. The arbitration agreement may stipulate that the arbitrators are to decide in accordance with equity or the law. However, if the disputes relate to matters to which public policy rules apply, the arbitration must be conducted in accordance with the law.

In any event, given the predominantly legal nature of intra-company disputes, it is advisable to opt for arbitration in accordance with the law. In accordance with article 8 of the LAC, "if the parties have not specified the nature of the arbitrators, they will be deemed to have to decide as arbitrators in accordance with the law".

10. Institutional and ad hoc corporate arbitration

There is no express regulation on this matter. By virtue of the parties' freedom of contract, they may decide to submit their dispute to institutional or *ad hoc* arbitration.

In Venezuela, there are two main arbitration centres: the Business Centre for Conciliation and Arbitration (CEDCA) and the Arbitration Centre of the Caracas Chamber of Commerce.

11. Data on corporate arbitration and proceedings

According to information provided by the Caracas Chamber of Commerce Arbitration Centre and the Business Centre for Conciliation and Arbitration (CEDCA), there is no record of any strictly corporate arbitration proceedings having been conducted at these arbitration institutions.

12. Setting aside of corporate arbitration awards

There are no specific regulations governing the setting aside of corporate arbitration awards. In Venezuela, the only available remedy is an application for a declaration of nullity against an award, which must be brought before the High Court of the place where the award was made.

Awards may only be set aside on the grounds set out in article 43 of the LEC, namely where (a) "the party against whom the award is invoked demonstrates that one of the parties was under a legal incapacity at the time the arbitration agreement was concluded", (b) "the party against whom the award is invoked was not duly notified of the appointment of an arbitrator or of the arbitral proceedings warranting such notification, or was unable, for any reason, to assert its rights", (c) "the composition of the arbitral tribunal or the arbitral proceedings did not comply with this Act", (d) "the award relates to a dispute not covered by the arbitration agreement, or contains decisions that go beyond the scope of the agreement itself", (e) "the party against whom the award is invoked demonstrates that the award is not yet binding on the parties or has previously been set aside or suspended, in accordance with what the parties agreed for the arbitration proceedings" or (f) "the tribunal before which the nullity of the award is raised finds that, under the Act, the subject-matter of the dispute is not arbitrable or that the matter to which it relates is contrary to public policy".

The Civil Cassation Chamber, in judgment 342 of 12 August 2022, has held that no appeal on points of law may be lodged against a judgment ruling on an application for the annulment of an award, but that this "does not preclude the admissibility of other means of judicial review which, by virtue of the Constitution or other special laws, subject any judicial decision to the scrutiny of the competent bodies within the Judiciary, as is the case with constitutional amparo (i.e. (a constitutional remedy for the protection of fundamental rights) or a request for constitutional review".

APPENDIX 2

Non-exhaustive list of common corporate disputes

The following corporate disputes may be referred to arbitration:

1. Challenges to resolutions of the general shareholders meeting concerning:

    a. General matters.

    b. Approval of the annual accounts or the distribution of profits.

    c. Amendments to the articles of association.

    d. Increases or reductions in share capital, including pre-emptive rights to issue new shares and the disapplication of such rights.

    e. Convening and holding general meetings.

2. Challenges to resolutions of the board of directors.

3. Disputes relating to the transfer of shares:

    a. Restrictions on transferability (e.g. rights of first refusal).

    b. Valuation of shares.

4. Dissolution and winding-up of the company.

5. Exercise of shareholders' rights (rights to information, voting rights and rights to profits).

6. Equal treatment of shareholders.

7. Shareholders' ancillary obligations.

8. Withdrawal and expulsion of shareholders, including the valuation of the shares of the withdrawing or expelled shareholder.

9. A shareholder's obligation to indemnify the company or other shareholders for breaches of the duty of loyalty or abuse of rights.

10. Appointment, removal and remuneration of directors.

11. Directors' liability:

    a. For loss caused to the company (a corporate claim, brought by the company itself pursuant to a resolution of the general meeting of shareholders, or by a qualifying minority of shareholders).

    b. For loss caused directly to a shareholder (an individual claim brought by the affected shareholder).

12. Structural changes (e.g. mergers and demergers).

APPENDIX 3

Model corporate arbitration clauses

Argentina

Centre for Commercial Mediation and Arbitration (CEMARC)

“Any matter or dispute arising between the [company / association / entity] and its shareholders, between the governing bodies of the [company / association / entity], regardless of its legal form and framework, and its shareholders, or among any of the foregoing, or within the [company / association / entity] affecting it, and/or the [signatories / shareholders] arising within the framework of their contractual, corporate or membership relationships and concerning the exercise, performance or breach of the rights and obligations deriving from such status, whether or not affecting the other [partners / shareholders / stakeholders] and/or their directors, must be finally resolved by arbitration at law and administered by the Centre for Commercial Mediation and Arbitration of the Argentine Chamber of Commerce, CEMARC, in accordance with the CEMARC Arbitration Rules and, in particular, its Corporate Arbitration Rules, drawn up by the CEMARC Corporate Arbitration Commission (“Rules”), by one or three arbitrators appointed in accordance with the provisions of the Corporate Arbitration Rules. The arbitration is to be conducted in Spanish in the Autonomous City of Buenos Aires. The parties expressly waive the right to challenge the awards of the arbitral tribunal or of CEMARC, except for challenges expressly set out in the Rules. This arbitration agreement will apply to any matter or dispute, even if it arose prior to the [execution of this agreement / incorporation of the entity], provided that the request for arbitration is submitted after such date. This arbitration clause also applies to [directors / trustees / officers] to the extent provided for in the Rules.”

Brazil

Market Arbitration Chamber (CAM)

- Model clause for the articles of association of companies listed on the Brazilian stock exchange:

a. Novo Mercado:

"Art. [=] – The Company, its shareholders, directors, and members of the audit committee, both permanent and alternate, if any, undertake to submit to arbitration before the Market Arbitration Chamber, in accordance with its rules, any dispute that may arise between them and that relates to or arises from their status as issuer, shareholders, directors or members of the Audit Committee, particularly disputes arising from the provisions of Law 6385/76, Law 6404/76, the Company's articles of association, regulations issued by the National Monetary Council, the Central Bank of Brazil and the Securities and Exchange Commission, as well as any other rules applicable to how the capital markets operate in general, including the Novo Mercado Regulations, other B3 regulations and the Novo Mercado Participation Agreement.

Art. [=] – The assumption of office by directors and members of the Audit Committee, whether permanent or alternate, is subject to the execution of a certificate of appointment containing their express submission to the arbitration clause referred to in Article [=]."

b. Level 2 of Corporate Governance:

"Art. [=] – The Company, its shareholders, directors and the members of the Supervisory Board [a statutory supervisory body, and not a management body, responsible for overseeing the management of directors as provided for in articles 161 to 165-A of Law 6.404] undertake to resolve, by arbitration before the Market Arbitration Chamber, any and all disputes or controversies that may arise between them and that relate to or arise from, in particular, the application, validity, effectiveness, interpretation, breach and consequences of the provisions set out in the Companies Law, the Company's articles of association, the regulations issued by the National Monetary Council, the Central Bank of Brazil and the Securities and Exchange Commission, as well as other regulations applicable to how the capital markets operate in general, including the Level 2 Regulations, the Arbitration Regulations, the Sanctions Regulations and the Level 2 Corporate Governance Participation Agreement."

• Model clause for the articles of association of public limited companies (except for companies listed on the Novo Mercado, Level 2, Bovespa Mais and Bovespa Mais Level 2):

> "The company, its shareholders, directors and members of the Audit Committee undertake to resolve, by arbitration, in accordance with the Arbitration Rules of the Market Arbitration Chamber, any and all disputes or controversies that may arise between them and that relate to or arise from, in particular, the application, validity, effectiveness, interpretation, breach and consequences of the provisions contained in Law 6.404/76, the company's articles of association, and the regulations issued by the Brazilian Securities and Exchange Commission (in the case of a public company)."

• Model/Standard clause for the articles of association of limited liability companies:

> "The company, its shareholders and directors undertake to resolve, by arbitration in accordance with the Rules of Arbitration of the Market Arbitration Chamber, any and all disputes or controversies that may arise between them and relate to or arise from, in particular, the application, validity, effectiveness, interpretation, breach and consequences of the provisions contained in the company's articles of association and in the regulations applicable to limited liability companies."

Colombia

Centre for Business Conciliation and Arbitration of the Superintendency of Companies

"Any dispute arising between shareholders, whether current or prospective, or between such shareholders and the company or its directors – bearing in mind that the latter will be bound by this arbitration clause upon accepting their position – arising from or in connection with the performance or application of the articles of association or the unilateral act by which the company was incorporated, including challenges to corporate resolutions of the highest governing body or the board of directors, disputes relating to shareholders' agreements, the negotiation and transfer of equity interests, the withdrawal or exclusion of shareholders, contracts concerning the usufruct or pledge of equity interests, the merger or demerger of the company, the disposal of substantially all of the company's assets, among other disputes, or arising from the activities carried out by the company, will be settled by an Arbitration Tribunal convened by the Centre for Business Conciliation and Arbitration of the Superintendency of Companies, in accordance with the following rules:

1. At the request of either party, the Tribunal will be formed by one or three arbitrators, depending on the amount in dispute. The arbitrator or arbitrators will be appointed by the parties or, if they are unable to reach an agreement, by the Centre for Business Conciliation and Arbitration of the Superintendency of Companies, which the parties authorise to make such appointment.

2. The arbitral tribunal must rule in accordance with the law.

3. The proceedings and the functioning of the arbitral tribunal must be governed by the Rules of the Centre for Business Conciliation and Arbitration of the Superintendency of Companies and, for matters not regulated therein, by the arbitration legislation in force when a request for arbitration is made.

4. The arbitrators' fees and costs of the arbitration will be determined in accordance with the schedule of fees established by the aforementioned Centre".

Spain

Spanish and Ibero-American Arbitration Club (CEIA)

"Any corporate dispute affecting the company, its shareholders and/or its directors (including, by way of example, challenges to corporate resolutions, corporate and individual liability claims against directors, and disputes relating to the convening of corporate body meetings), must be submitted and finally resolved by [one arbitrator / three arbitrators]. The arbitration will be administered by, and the arbitrator(s) will be appointed by, [the relevant arbitral institution] in accordance with its Statutes and Rules in force on the date of submission of the request for arbitration. The arbitration must be conducted in accordance with the law. The arbitration will be conducted in [specify language] and in [city]".

Spanish Court of Arbitration (CEA)

Recommends the same arbitration clause as the CEIA, with the CEA mentioned in the space provided for indicating the arbitral institution.

Civil and Commercial Court of Arbitration (CIMA)

"Any corporate dispute affecting the company, its shareholders and/or its directors (including, by way of example, challenges to corporate resolutions, corporate and individual liability claims against directors, and disputes relating to the convening of corporate body meetings) must be finally resolved by arbitration at law, administered by the Civil and Commercial Court of Arbitration (CIMA), in accordance with its articles of association and its Rules of Arbitration in force on the date of submission of the request for arbitration. The arbitral tribunal appointed for this purpose will be formed by [...] arbitrator(s), the arbitration will be conducted in [language] and in [seat of the arbitration]. The governing law will be [...]. The company undertakes to pay any advance on costs that it is required to pay, as a party to the proceedings, to cover the administrative fees and the arbitrators' fees and expenses".

Barcelona Arbitration Tribunal (TAB)

"All corporate matters and disputes, and any issues arising from them, that may arise between the company and its directors, liquidators, auditors or shareholders, or between any of them on corporate grounds, must be submitted to institutional arbitration before the Barcelona Arbitration Tribunal (TAB) of the Catalan Association for Arbitration, which will appoint the arbitrator or arbitrators and conduct the arbitration in accordance with its Rules.

For example, this includes all disputes relating to the nullity of the company or a structural modification (i.e. a corporate restructuring transaction), the challenge of corporate resolutions, corporate and individual liability claims against directors, the withdrawal and expulsion of shareholders, as well as the dissolution and liquidation of the company, the suspension of corporate bodies, the determination of the value of shareholders' shares or interests for any corporate purpose, as well as any disputes arising therefrom".

Court of Arbitration and Mediation of Aragón

“Any dispute or conflict of a corporate nature, between the company and its shareholders, between the company’s governing bodies and its shareholders, or among any of the foregoing, must be finally resolved by arbitration at law administered by the Court of Arbitration of Aragón, in accordance with its Rules, by one or more arbitrators”.

Portugal

Commercial Arbitration Centre (CAC) of the Portuguese Chamber of Commerce and Industry

"1. All disputes between the company and its shareholders, or between the shareholders, within the scope of their corporate rights, whether arising from law or the Articles of Association, or between the company or the shareholders, and the members of the corporate bodies, in that capacity, shall be submitted for decision to an arbitral tribunal constituted under the aegis of/at the Arbitration Centre of the Portuguese Chamber of Commerce and Industry, also known as the Commercial Arbitration Centre.

Note: *The objective scope of the arbitration agreement may be narrower.*

2. Acceptance of a position in a corporate body also constitutes acceptance of this arbitration clause, which shall continue to be binding even after the end of the term of office.

Note: *This paragraph should be included if the arbitration agreement covers disputes between members of the governing bodies and the company or shareholders.*

3. Unless otherwise agreed between the parties, the arbitration will take place in [city and/or country] and the language of arbitration shall be [...].

4. Subject to the provisions of the following paragraph, the arbitral tribunal shall consist of one arbitrator to be appointed by agreement of the parties [or by (specify independent body)].

OR

4. Subject to the following paragraph, the arbitral tribunal shall consist of three arbitrators, one being appointed by each of the parties and the third arbitrator being appointed by the other two [or by (specify independent entity)].

5. In actions for annulment, declaration of nullity and in other actions where the decision given is effective against and in favour of all shareholders and corporate bodies, the President of the Centre shall appoint the arbitrators.

6. The Corporate Arbitration Rules 2021 of the Commercial Arbitration Centre of the Chamber of Commerce and Industry or any other that may replace it shall apply to the arbitration.

7. The arbitrator(s) shall decide according to the law established, unless the subject matter of the dispute allows the application of other criteria. [without prejudice to the possibility of applying criteria of opportunity and convenience according to the specific dispute in question].

Note: *The part in brackets aims to allow the arbitration tribunal to also decide in so-called voluntary jurisdiction proceedings, which otherwise, given the criteria for decision-making in these proceedings, would be excluded from the scope of the arbitration agreement.*

Note: *The arbitration clause must be included in the company's Articles of Association*".

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