The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Chile: Arbitration

This country-specific Q&A provides an overview of the legal framework and key issues surrounding arbitration law in the **Chile** including arbitration agreements, tribunals, proceedings as well as costs, awards and the hot topics concerning this country at present.

This Q&A is part of the global guide to Arbitration.

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1. **What legislation applies to arbitration? Are there any mandatory laws?**

   Chile has different legislations for domestic and international arbitration. Domestic arbitration regulation is contained in Articles 222 to 243 of the Code of Judicial Organization (CJO) and Articles 628 to 644 of the Code of Civil Procedure (CCP). For all the domestic arbitration matters that are not regulated in such statues, the general rules of civil procedure shall apply. Besides the said provisions of the CJO and the CCP, Chile does not have a law dedicated specifically to domestic arbitration.

   On the other hand, since September 2004 Chile counts with a specific law dedicated to international arbitration called the International Commercial Arbitration Law No 19.971 (ICAL), which is almost completely based in the UNCITRAL Model Law. However, Chile

has not adopted the 2006 amendments to the Model Law.

The CJO, the CCP and the ICAL are official laws of Chile, therefore they are mandatory statutes. Nevertheless, as the arbitration agreement is considered a contract under Article 1.545 of the Civil Code, the parties may adopt different rules to conduct the arbitration procedure, always in respect of public order.

2. **Is the country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

Chile signed and ratified with no reservations the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on September 4th 1975, which entered into force on December of the same year.

3. **What other arbitration-related treaties and conventions is the country a party to?**

Besides the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) adopted in 1975, Chile ratified in August 1976 the Inter-American Convention on International Commercial Arbitration (Panamá Convention), in 1991 the Convention on the Settlement of Investment Dispute between States and Nationals of other States (Washington or ICDIS Convention), and finally in April 2009 Chile promulgated the Agreement of Cooperation and Judicial Assistance on Civil, Commercial, Labour and Administrative Matters with Mercosur and Bolivia.

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

As stated in Section 1 above, international arbitration in Chile is regulated in the International Commercial Arbitration Law No 19.971 (ICAL), which was adopted on September 2004 and it presents no significant differences in respect of the UNCITRAL Model Law.

As the history of ICAL shows, the Chilean legislature deemed necessary to maintain as much as possible the original law redaction proposed by UNCITRAL, in order to promote the development of international arbitration in Chile. Therefore, the modifications made to ICAL in respect of the Model Law, are minimal and specifically related to the competence of the local courts.

5. Are there any impending plans to reform the arbitration laws?

In 2013 the Chilean Ministry of Justice formed a special commission for the elaboration of a draft bill in domestic arbitration. Its main purpose was to modernize the domestic arbitration regulation for it to resemble the provisions contained in the International Commercial Arbitration Law No 19.971 (ICAL). It was also taken into consideration the fact that the statues governing domestic arbitration are the Chilean Code of Judicial Organization and the Code of Civil Procedure (CCP), which date since the past century.

It must also be noted, that on March 2012, a bill project was submitted to the Chilean Congress in order to modify the CCP. This project did not propose any modifications to the domestic arbitration provisions contained in the CCP, for it was considered that such matters needed to be regulated in a separate special bill. The CCP´s reform started to enter into force progressively in Chile since December 2016.

The 2013 draft bill for domestic arbitration mainly stated for the strengthening of the parties autonomy, the reduction of the local courts intervention and the limitations for the challenge of the arbitral award. Regarding the latter, the draft bill establishes the motion to dismiss (annulment), under very specific requirements, as the only way to challenge an arbitral award, unless the parties reach a prior agreement in order to constitute an arbitral appeal tribunal. Another innovation of the said draft is that it includes a regulation for the institutions that may serve as arbitration centers.

Due to the change of the Administration that took place in Chile in 2014, the domestic arbitration draft bill has not yet been approved by the Congress. Therefore, currently domestic arbitration continues to be regulated only by the CJO and the CCP, while international arbitration is regulated by ICAL.

Under this scenario, more protection is brought to the parties under the international arbitration rules, than under domestic arbitration regulation, since in the former, the

motion to dismiss the award (annulment) may not be waived by them in advance in their arbitration agreement. On the contrary, under national arbitration regulation, parties may waive their right to all recourses against an arbitral award.

6. What arbitral institutions (if any) exist? Have there been any amendments to their rules or are there any being considered?

The principal arbitral institution existing in Chile is the Santiago Arbitration and Mediation Center (CAM Santiago), founded in 1992 by the Santiago Chamber of Commerce. Since its installment, CAM Santiago has provided dispute resolution services for national arbitrations under its own Domestic Arbitration Rules.

Later, in 1998 is started to provide mediation services as a voluntary method for dispute resolution and finally in 2006 CAM Santiago created the International Arbitration Center with its own set of Rules of International Commercial Arbitration, in accordance with the international standards for these type or procedures.

At the present, CAM Santiago is considering to introduce during 2018 a series of amendments to the Domestic Arbitration Rules in order to reduce the duration of the arbitral proceedings. Specifically, the amendments pursue to expedite the arbitrator's appointment process and also to introduce a new and more expedite procedure for claims under certain value (USD $21.000 approximately), in which the time limits and the arbitrator's fees will be reduced in accordance with the value of the dispute.

7. What are the validity requirements for an arbitration agreement?

Arbitration agreements are considered to be contracts under Chilean law (Article 1.545 of the Chilean Civil Code). Therefore, they must comply with the general requirements for contracts, in order to be valid and enforceable, such as the consent and legal capacity of the contracting parties. Also, the subject matter of the agreement must comply with national public policy.

In domestic arbitration there are two types of arbitration agreements. If the parties do not designate the arbitrator, the agreement is known as an arbitration clause (cláusula

compromisoria) and if the parties do designate the arbitrator who will have to solve the dispute, the agreement is known as submission agreement (compromiso arbitral).

The Chilean Code of Judicial Organization (CJO) does not regulate the arbitration clause, but only the submission agreement. Under Article 234 of the CJO, the appointment of an arbitrator shall be made in written and the document in which such appointment is made, must contain the following: (i) the individualization of the parties on dispute, (ii) the individualization of the appointed arbitrator(s), (iii) the dispute that is being submitted to arbitration, and finally (iv) the powers that the parties grant to the arbitrator(s) and the place and period of time in which the arbitrator(s) must perform her or his functions.

As for the arbitration clause, it is considered a contract under Chilean law. Therefore, the contracting parties may only manifest their will to submit a future or existing dispute to the resolution of an arbitrator, with no further obligation to determine the arbitrator's individuality or to comply with specific formal requirements.

In international arbitration, the arbitration agreement is regulated in Chapter II of the International Commercial Arbitration Law No 19.971 (ICAL). Under Article 7(1) of ICAL, the arbitration agreement may be contained in a contract or in a separate agreement. Also, Article 7(2) states that such agreement must be written. Under such provision, an agreement is considered to be written when it is "contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another".

8. Are arbitration clauses considered separable from the main contract?

The doctrine of separability is not recognized in the Code of Judicial Organization, nor in the Code of Civil Procedure, being those two statutes the applicable laws to domestic arbitration. Nevertheless, in some cases Chilean courts have assign autonomy to the arbitration agreement in domestic arbitral procedures.

As for international arbitration, the doctrine of separability is recognized in Article 16(1) of the International Commercial Arbitration Law No 19.971, which states that “an arbitral clause that is contained in a contract will be considered as an independent agreement from the rest of the contract stipulations”. Therefore, under ICAL, the invalidity of a contract may not affect the validity of its arbitration clause.

9. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

Chile has no specific legislation neither in domestic nor international arbitration regarding multi-party or multi-contract arbitration. Nevertheless, the principle or parties’ autonomy empowers them to include the same arbitration agreement in related contracts.

10. **How is the law applicable to the substance determined?**

Under Article 223 of the Code of Judicial Organization, there are three different types of arbitration, on which will depend the applicable law to the substance of the arbitration. First, there is de jure or in law arbitration, in which the arbitrator shall apply Chilean law, both in substance and procedure. Second, there is the ex aequo et bono or arbitration in equity, where the arbitrator shall resolve the dispute in accordance with his o hers best judgment and equity, and apply the procedural rules determined by the parties. Finally, there is mixed arbitration, where the arbitrator shall decide the merits of the case based in Chilean substance law while acting as an ex aequo et bono arbitrator regarding the arbitral procedure.

In international arbitration, the applicable law to the substance is the one determined by the parties, as stated in Article 28(1) of the International Commercial Arbitration Law No. 19.971 (ICAL). In case the parties do not determine the law applicable to the substance of the arbitration, Article 28(2) of ICAL provides that “the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable”. Finally, Article 28(3) states that the arbitrators may act ex aequo et bono or as amiable compositeur, only in those cases where the parties have expressly authorize them to do so.

11. **Are any types of dispute considered non-arbitrable? Has there**

been any evolution in this regard in recent years?

Generally under Chilean law, matters that affect public policy and third parties rights are deemed as non-arbitrable.

As for more specific regulation, Articles 229 and 230 of the Code of Judicial Organization (CJO) refer to the main disputes that are considered non-arbitrable in domestic arbitration. Under such provisions, (i) alimony, (ii) partition of goods between husband and wife, (iii) criminal causes, (iv) matters of local police, (v) disputes between principal and agent and (vi) disputes in which the Fiscal Judicial must be heard, may not be referred to arbitration. Also, Article 5 of the Chilean Labour Code provides for labor matters as non-arbitrable.

Accordingly, Article 1(5) of the International Commercial Arbitration Law No 19.971 (ICAL) specifically states that the law does not change the domestic regulations on non-arbitrable matters. Furthermore, the legislative history of ICAL shows that matters of public policy shall not be resolved under international arbitration procedures.

Neither the CJO nor the ICAL provisions regarding the non-arbitrable matters have been subject to modification in the recent years.

12. Are there any restrictions in the appointment of arbitrators?

The Code of Judicial Organization (CJO) provides for some restrictions in the appointment of arbitrators. Specifically, Article 226 of such statue establishes as a general rule, that the parties or the judge who are involved in the dispute, may not be appointed as arbitrators. Also, Article 225 of the CJO states that arbitrators must be of legal age, legally capable of disposing of their assets, and that they must know how to read and write. This provision also states that only lawyers may be appointed as de jure arbitrators.

On the contrary, the International Commercial Arbitration Law No 19.971 does not impose specific restrictions for the appointment of arbitrators. Nevertheless, it does state that the nationality of an arbitrator shall not be an obstacle for her or his appointment, unless otherwise agreed by the parties (Article 11(1)) and it also recognizes indirectly in its arbitrators challenge provisions, that they must be impartial

and independent from the parties (Article 12).

13. Are there any default requirements as to the selection of a tribunal?

Accordingly to Article 10 of the International Commercial Arbitration Law No 19.971 (ICAL), parties may freely determine the number of arbitrators, and in case such agreement is not met, the arbitrators will be three.

Also, ICAL states that the parties are free to determine the arbitrators' appointment procedure (Article 11(2)). If parties fail to determine such procedure, ICAL provides in Article 11(3) for the appointment procedure that shall apply. For further information regarding this matter, refer to Section 14 below.

14. Can the local courts intervene in the selection of arbitrators? If so, how?

Local courts, and specifically the President of the Court of Appeals, may intervene in the selection of arbitrators, when the parties do not determine a selecting method for the arbitral tribunal or when the selecting method agreed on by them fails.

Article 11(3) of the International Commercial Arbitration Law No 19.971 (ICAL) provides for the arbitrators' selecting mechanism that shall apply in case the parties have not agreed on an appointment procedure. Specifically, Article 3(a) of ICAL, states that in case of a three member tribunal, each part will appoint an arbitrator, and those two arbitrators will be in charge of the appointment of the third arbitrator. If one of the parties fails to do so in a 30 day period starting upon the request of the other party, or if there is no agreement between the two chosen arbitrators to appoint the third arbitrator within a 30 day period from their own designations, the appointment will me made, upon party request, by the President of the Court of Appeals of the place of the arbitration.

Article 11(3)(b) of ICAL later states that for sole arbitrator cases, the President of the Court of Appeals will be entitled to designate the arbitrator when the parties fail to reach an agreement. This designation mechanism is also activated upon party request.

Finally, the President of the Court of Appeals is also entitled to intervene in the arbitrators' appointment (a) when one of the parties' does not comply with the agreed method; (b) when, following a specific proceeding drafted by the parties, there is no agreement between them to appoint the arbitrators or between the two appointed arbitrators to designate the third arbitrator; and (c) when a third party, including an arbitral institution, does not comply with the rules previously agreed on by the parties for the arbitrators' appointments. (Article 11(4)(a)(b)(c) of ICAL.)

15. Can the appointment of an arbitrator be challenged? What is the procedure for such challenge? Has there been an increase in number of challenges in your jurisdiction?

The International Commercial Arbitration Law No 19.971 (ICAL) regulates the grounds to challenge an appointed arbitrator in Article 12(2). Under such provision "an arbitrator may be challenged only if there are circumstances that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the qualifications agreed on by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons known to the party after the appointment has been made".

The procedure for challenge is regulated in Article 13 of ICAL. Under section 13(1), the parties may freely agree on the arbitrators' challenge procedure. If such agreement is not reached, the party who wants to challenge an arbitrator shall send to the arbitral tribunal, within 15 days after becoming aware of the arbitral tribunal's constitution, or of the circumstances stated in Article 12(2) of ICAL, a written statement explaining the grounds for challenge. Unless the challenged arbitrator resigns to her or his appointment, or the other party agrees on the challenge, the arbitral tribunal shall rule on such challenge (Article 13(2) of ICAL).

If the challenge procedures under Articles 13(1) and 13(2) fail to succeed, the challenging party may request to the President of the Court of Appeal of the place of the arbitration, within a 30 day period upon the notification of the challenge rejection, to make a final ruling on the matter. Such decision will be final and while the resolution of the President of the Court of Appeals is pending, the arbitral tribunal, including the challenged arbitrator, may proceed to conduct the arbitration and render an award (Article 13(3) of ICAL).

The recent Chilean Court of Appeals' jurisprudence does not reveal an increase in the number of challenges against arbitrators under the rules of ICAL.

16. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

In domestic arbitration an appointed arbitrator may only cease in its functions in four cases specifically regulated in Article 240 of the Code of Judicial Organization. Such are when (i) the parties agree to recur to a local court or another arbitral tribunal for the resolution of the dispute, (ii) the arbitrators are mistreated or injured by one of the parties, (iii) the arbitrators become ill with a disease that prevents them from fulfilling her or his duty, and finally when (iv) the arbitrators must abandon the place of the arbitration.

If the affected arbitrator was appointed in virtue of a submission agreement, and such agreement does not provide for a substitute arbitrator, the agreement will become invalid. On the contrary, arbitration clauses allow for the appointment of a new arbitrator to continue the proceeding, in cases where the arbitrator originally designated is impeded to fulfill his or her duty.

The International Commercial Arbitration Law No 19.971 (ICAL) states in Article 14(1) that an arbitrator may resign or be removed by the parties if he or she is impeded to perform their functions by de jure o de facto reasons, or if the arbitrator fails to perform their duties within a reasonable period of time.

Under Article 15 of ICAL, in case of an arbitrators' recusal, resignation or removal, the procedure applicable to the appointment of the substitute arbitrator shall be the same that was applied to the designation of the former arbitrator.

Finally, the Rules of International Commercial Arbitration of the Santiago Arbitration and Mediation Center (CAM Santiago) contain in Article 15 a substitution procedure for arbitrators that leave office for reasons such as recusal, resignation, incapacity or parties agreement. According to the said provision, the substitute arbitrator shall be appointed in accordance to the Rules of International Commercial Arbitration of CAM Santiago that were applicable to the appointment of the arbitrator being substituted, unless such

institution decides as its own discretion, on the pertinence for applying a different procedure. As for the continuance of the procedure, Article 15(3) states that “a change in the composition of the arbitral tribunal does not invalidate by that mere fact the resolutions rendered by the arbitral tribunal prior to the substitution of an arbitrator”.

17. Are arbitrators immune from liability?

In domestic arbitration, an arbitrator may be held liable if a party challenges its final award by filing a recourse of complaint (recurso de queja) before the Court of Appeals. As stated in Article 545 of the Code of Judicial Organization (CJO), the recourse of complaint purpose is to correct faults and serious abuses committed in the rendering of the final award, which may also be set aside by the local court. According to Article 548 of the CJO, parties have 5 business days from the notice of the final award to file the recourse of complaint. Also, parties may seek for an arbitrators’ liability by filing against them a disciplinary complaint before local courts (queja).

As for international arbitration, the International Commercial Arbitration Law No 19.971 does not contains specific provision regarding arbitrators’ liability and the Santiago Arbitration and Mediation Center (CAM Santiago) Rules of International Commercial Arbitration, exclude in Article 4 the arbitral tribunal’s liability for “acts or failures relating to the arbitral process they are conducting”.

Finally, arbitrators may be liable under Chilean criminal law for acts that are crime constitutive for judges, such as the crime of prevarication.

18. Is the principle of competence-competence recognised? What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

International Commercial Arbitration Law No 19.971 (ICAL) does recognize the principle of competence-competence, as its Article 16(1) states that the arbitral tribunal may decide on its own competence, even about the exceptions that may arose in regard of the existence or validity of the arbitration agreement. This principle is also found in Article 16 of the Rules of International Commercial Arbitration of the Santiago Arbitration and Mediation Center, in the same terms as in the ICAL.

Consequently, in case a party commences an arbitral proceeding in apparent breach of an arbitration agreement, the matter shall be submitted to the decision of the arbitral tribunal, since such tribunal is the authority entitled by law to rule on its own competence.

19. How are arbitral proceedings commenced? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The International Commercial Arbitration Rules of the Santiago Arbitration and Mediation Center (CAM Santiago), state that an arbitral proceeding commences upon the sending by the claimant of the request of arbitration to both the respondent and CAM Santiago. The claimant shall also accompany the payment of the advance or proof thereof, of part of the administrative fees of CAM Santiago (Articles 5(1) and 5(2)).

Under the International Commercial Arbitration Law No 19.971, the arbitration proceeding commences on the date the respondent receives the claimant's request of arbitration, unless otherwise agreed by the parties (Article 21).

As for the limitation periods, parties shall comply with the statues of limitations established in the law applicable to the substance of the dispute.

20. What happens when a respondent fails to participate in the arbitration? Can the local courts compel parties to arbitrate? Can they order third parties to participate in arbitration proceedings?

If the respondent fails to participate in arbitration, and the arbitral tribunal has not yet been constituted, both national and international regulations allow the local courts to appoint the arbitrator(s) in order to commence the arbitration procedure. For national arbitration, Article 232 of the Code of Judicial Organization states as a general rule, that the appointment of the arbitrator shall be upon unanimous parties' agreement. Nevertheless, if such agreement is not met, the ordinary judicature shall appoint a sole arbitrator, who must be a different individual of the first to options indicated by the parties. If such procedure is not possible due to the failure of one of the parties to

participate, the ordinary judicature shall appoint the arbitrator under the Code of Civil Procedure rules for the appointment of legal experts.

Regarding of international arbitration, Article 11 of the International Commercial Arbitration Law No 19.971 provides for arbitrators appointment procedures to be applicable when a party fails to participate in the arbitration, as previously explained in Sections 13 and 14 above.

These procedures allow the arbitration to move forward, despite the respondents default and also allow the arbitration procedure to move forward without the need of compelling by local courts.

As for the participation of third parties in the arbitral proceeding, it must be noted that in Chile arbitration agreements are deemed to be contracts, and that under Chilean contractual law, contracts are only binding for the contracting parties. Therefore, local courts can not order third parties to participate in an arbitration proceeding in which they have not subscribe the arbitration clause.

21. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Under the Chilean Constitution, the law must authorize all of the state acts as well of the acts of its entities (Principio de legalidad). This means that, if the state or one of its entities wants to participate in an arbitration proceeding, there must be a law that specifically allows them to enter into arbitration.

In foreign investment matters, Chile has signed several Free Trade Agreements as well as Agreements on Promotion and Protection of Investments, all of which provide for international arbitration as the dispute resolution system, whether it may be an institutional or ad hoc arbitral tribunal.

Chile also has a specific law that regulates the international contracts celebrated by the public sector (Decreto Ley No 2.349, dated October 1978). Under such statue, the Chilean state or one of its entities may agree on an arbitral clause in the international

contracts celebrated between them and a foreign organization, institution or company. The international contract's main purpose shall be the regulation of business relations or economical or financial matters between the parties.

Finally, the International Commercial Arbitration Law No 19.971 (ICAL) states in its Article 1(1) that such statue shall apply without prejudice of any multilateral of bilateral treaty in force in Chile, and its Article 1(5) states that it shall not affect any other law by virtue of which certain matters may only be submitted to arbitration under other statues different than ICAL.

Consequently, and accordingly to all of the above mentioned laws and regulations, the Chilean state or one of its entities, may invoke state immunity for the commencement of an arbitration proceeding, when they have not specifically agreed on arbitration in an international contract or an international treaty celebrated with a foreign state or entity.

22. In what instances can third parties or non-signatories be bound by an arbitration agreement or award?

The general rule under Chilean law is that third parties or non-signatories to an arbitration agreement or to the contract that contains the arbitration agreement, are not bound by such agreement or by the award issued in the arbitration proceeding. A third party may only be part of an arbitration prior its consent and the consent of the actual parties of the agreement.

However, there are some exceptions to this rule. A third party may be bound by an arbitration agreement that has been assigned to it by law, as it occurs in legal subrogation and succession cases. Another exception are the cases where the corporate veil or alter ego theory is applicable.

23. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Even though Article 17 of the International Commercial Arbitration Law No 19.971 (ICAL) allows the arbitral tribunals to grant interim measures upon parties' request, there is a lack of regulation regarding the types of preliminary relief available, since Chile has not

yet subscribed the 2006 Model Law modifications. Furthermore, the arbitral tribunals lack of the compulsory power necessary to enforce those interim measures, therefore, parties recur to local courts in search of preliminary relief, in accordance to Article 9 of ICAL.

Local courts may also grant interim measures while the constitution of the arbitral tribunal is still pending. When the interim relief is granted by a local court, the Code of Civil Procedure shall apply.

24. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence?

Under Article 19(2) of the International Commercial Arbitration Law No 19.971 (ICAL), unless parties can reach an agreement, the arbitral tribunal may direct the arbitration in the way it considers appropriate, having the power to determine the admissibility, relevance and weight of the evidence. However, parties tend to apply in international arbitration procedures the IBA Rules on the Taking of Evidence.

The Rules of International Commercial Arbitration of the Santiago Arbitration and Mediation Center also contain certain provisions regarding evidence, specifically in Article 24 sections 1 to 4. Those provisions refer to matters such as the burden of proof, and the power of the arbitral tribunal to request the parties for additional evidence, among others.

Also, under Article 27 of ICAL, the arbitral tribunal and the parties, previous authorization of the former, may recur to the local courts for assistance on the taking of evidence. The requested local court may execute the request within its competence and according to its rules on taking evidence.

25. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings?

There are no mandatory codes of ethics that apply to all of the counsels and arbitrators conducting proceedings in Chile.

The Chilean Bar has its own Code of Ethics since August 2011 and it provides guidelines regarding the counsel-client relation, counsel's confidentiality duty and conflict of interest. As to arbitrators, it provides restrictions in order to avoid conflict of interests and it also regulates the determination of arbitration fees. Notwithstanding, the membership to the Chilean Bar is not mandatory.

26. How are the costs of arbitration proceedings estimated and allocated?

Under Article 37(1) of the Rules of International Commercial Arbitration of the Santiago Arbitration and Mediation Center (CAM Santiago) the costs of arbitration proceedings shall be allocated to the losing party as a general rule, unless the arbitral tribunal deems necessary to prorate them between the parties given the specific circumstances of the case. The arbitral tribunal shall determine the costs and expenses of the arbitration in its final award (Article 36(2)).

Under CAM Santiago Rules of International Commercial Arbitration, costs may include the fees of the arbitral tribunal, traveling expenses incurred by the arbitral tribunal, fees and expenses of the expert appointed by the tribunal, fees and expenses of the witnesses approved by the arbitral tribunal, expenses that were reasonable incurred by the winning party and claimed in the arbitration procedure and finally the fees for CAM Santiago's administrative services.

The International Commercial Arbitration Law No 19.971 does not contain specific regulation on this matter.

27. Can pre- and post-award interest be included on the principal claim and costs incurred?

The Rules of International Commercial Arbitration of the Santiago Arbitration and Mediation Center contain only one provision regarding interests, according to which "the arbitration award may order the payment of simple or compound interest, including interest prior or subsequent to the award". Parties shall make such payment after the parties have fulfilled the arbitral award (Article 33(7)).

Parties are also entitled under Chilean law, to agree on an interest rate in the contract binding them. Nevertheless, such interest cannot exceed the 50% of the legal interest rate. If parties do not specify the interest rate applicable to their agreement, current interest rate shall apply.

28. What legal requirements are there for the recognition of an award?

Articles 35 and 36 of the International Commercial Arbitration Law No 19.971 (ICAL) provide for the recognition and enforcement of international awards regulation. Under Article 35 of ICAL an arbitral award shall be considered as binding, irrespective of the country in which such award was issued.

The opinions regarding the recognition and enforcement of international awards in Chile are divided. Some jurists consider that a foreign international arbitral award may only be enforced in Chile prior the filing of an exequatur request before the Supreme Court, as stated in Article 247 of the Code of Civil Procedure (CCP). This may be considered as the most conservative approach. Nevertheless, there is no uniform jurisprudence on this issue.

Article 35(2) of ICAL, imposes on the party seeking the recognition or enforcement of an international arbitral award, the obligation of presenting to the Supreme Court the authenticated original or a certified copy of the award and the arbitration agreement. Accordingly to the same provision, if the award or the arbitration agreement were written in a language that is not considered official in Chile, the party seeking for the recognition or enforcement will also have to submit to the Supreme Court a properly certificated translation of such documents.

The Supreme Court shall notify the exequatur request to the party against whom the enforcement is being presented, which will have 15 to 18 days to present its observations (Article 248 in relation to Articles 258 and 259 of the CCP). Whether the requested party responds or not, the Supreme Court shall decide if the exequatur is granted, prior hearing of the Fiscal Judicial. If the Supreme Court deems it necessary in order to make its ruling, an 8 days evidentiary stage may take place.

As stated in Article 251 of the CCP, the enforcement of the international arbitral award shall be submitted to the local court that should have decided on the matter, if it had been discussed in Chile, under the rules of “procedimiento ejecutivo” (Articles 434 and following of the CCP).
An exequatur proceeding takes approximately two years while an enforcement proceeding takes approximately one year or less.

In case the international arbitral award was render in Chile, there is no need for exequatur. Therefore, the enforcement stage may commence directly and oppositions may be presented under Article 36 of ICAL.

29. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

Under Chilean law, an arbitral tribunal is empowered to grant to a party in its award effective damage, loss of profit and moral damages. The latter even in cases of contract breaching as the national case law has evolved in this matter during the last decades. Monetary awards may include interests.

The arbitral tribunal may also order the specific performance or termination of a contract, in both cases with damages, as stated in Article 1.489 of the Chilean Civil Code.

Nevertheless, the arbitrators may not grant punitive damages, since they are not recognized under Chilean law.

30. Can arbitration proceedings and awards be appealed or challenged in local courts? What are the grounds and procedure?

International arbitration proceedings and awards may not be appeal under Chilean Law, because it is not possible to review the merits of a case. As stated in Article 34 of the International Commercial Arbitration Law No 19.971 (ICAL), the motion to dismiss (annulment) is the only recourse that parties may try against an arbitral award. Such recourse must be presented before the Court of Appeals within three months since the notification of the final award.

Accordingly, Article 33(2) of the Rules of International Commercial Arbitration of the Santiago Arbitration and Mediation Center states that the arbitral award “will be final, not appealable and binding upon the parties”.

31. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

International arbitration awards are not subject to appeal, as stated in Section 30 above. Furthermore, Article 34 of the International Commercial Arbitration Law No 19.971 provides that the only recourse against an international award is the motion to set aside. Such recourse cannot be waived by the parties for it is deemed to be a public policy matter.

32. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

As a general rule, the Chilean state and its entities are subject to immunity from execution. Nevertheless, the state and its entities may waive such immunity in some cases. Specifically, Decreto Ley No 2.349 which regulates the international contracts for the public sector, states in its Article 2 that the state and its organizations, institutions and companies, may renounce to its immunity from execution. It must be noted that this renounce has a restricted scope, since it will be limited to the execution of awards rendered in proceedings directly related to the international contracts that contains such renounce.

33. To what extent might a third party challenge the recognition of an award?

National and international arbitral awards in Chile only produce effects between the parties of the dispute. Therefore, third parties may not challenge the recognition of an arbitral award.

Have there been any significant developments with regard to third party funding recently?

Third party funding has no regulation in Chile. Nevertheless, the Chilean Civil Code (CCC) does regulate the assignment of litigious rights, whether by exchange or sale. Under Article 1.913 of the CCC, the debtor shall be obliged to pay to the assignee only the amount paid by the latter for the right assigned, plus interest from the date the assignment was notified to the debtor. Although there is no specific regulation as to the way in which the litigious rights shall be transferred, the national doctrine and case law estimate that the CCC rules for the transfer of personal credits are to be applicable.

35. Is emergency arbitrator relief available? Is this frequently used?

Emergency arbitrator relief is not available in Chile. Thus, if the arbitral tribunal has not yet been constituted, the only alternative to the party seeking interim relief is to resort to the ordinary jurisdiction, as stated in Article 9 of the International Commercial Arbitration Law No 19.971. In such cases, the interim measures requirement will be regulated under the rules of the Chilean Code of Civil Procedure.

36. Are there arbitral laws or arbitration institutional rules providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Neither the International Commercial Arbitration Law No 19.971 nor the Rules of International Commercial Arbitration of the Santiago Arbitration and Mediation Center provide for simplified procedures for claims under a certain value.

Nevertheless, Article 21(2) of the Rules of International Commercial Arbitration of CAM Santiago, allows the arbitral tribunal to “direct the procedure in the manner it deems appropriate as to avoid unnecessary delays and expenses and ensure efficient and fair means as to archive a final settlement of the dispute”, always subject to the provisions of the said statue.

34. As for the Domestic Rules of Arbitration, CAM Santiago plans to introduce in such statue during 2018, a new simplified procedure for claims under certain value (USD $21.000 approximately). As explained in Section 6 above, the new procedure pretends to shorten

the time limits of the arbitration and to decrease the arbitrator's fees for them to adjust the value of the dispute.

37. Have measures been taken by arbitral institutions to promote transparency in arbitration?

At the time, the Santiago Arbitration and Mediation Center (CAM Santiago), as the principal arbitration institution in Chile, is not promoting any specific policy related to transparency in arbitration. As a matter of fact, neither its Domestic Arbitration Rules nor its International Rules of Arbitration provide for specific regulation in relation to the confidentiality of the arbitral proceedings.

Nevertheless, in practice, all of the arbitral proceedings being substantiated before CAM Santiago are confidential, as only the parties and arbitrators involved in the dispute may access the case file and any information related to the arbitration.

As for the arbitral award, Article 33(8) of the Rules of International Commercial Arbitration of CAM Santiago states that the award will be confidential, unless the parties agree otherwise or if "disclosure thereof is required for a challenge procedure, fulfillment or enforcement of the award, or the law or any judicial authority requires disclosure". Although there is no similar provision in the Domestic Arbitration Rules, the domestic award will become part of the public record if it is challenged before a local court, as stated in Article 9 of the Code of Judicial Organization.

Finally, over the past years CAM Santiago has been publishing domestic and international awards rendered by its arbitrators, always maintaining the identity of the parties as confidential.

38. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted? If so, how?

Diversity in the choice of arbitrators and counsel is not actively promoted in Chilean arbitration laws. Nevertheless, the International Commercial Arbitration Law No 19.971 establishes through different provision the autonomy of the parties to select arbitrators. For example, Article 10(1) states that parties can freely determine the number of

arbitrators and Article 11(1) states as a general rule that the nationality of a person will not be an obstacle to his or her appointment as an arbitrator, unless otherwise agreed by the parties.

39. Have there been any developments regarding mediation?

In Chile there have been no recent developments regarding mediation. Furthermore, the mediation regulation provided by the Santiago Arbitration and Mediation Center, dates from 2000 and there are no current projects to its modification.

40. Have there been any recent court decisions considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There is no recent case law in Chile regarding the setting aside of an award that has been enforce in another jurisdiction or vice versa.