

Doing Business in Chile

Guide 2025

ARBITRATION AND LITIGATION



ARBITRATION

EXECUTIVE SUMMARY

Arbitration serves as a significant alternative for resolving disputes, particularly in complex and technical areas.

This chapter outlines key aspects of Chilean arbitration law, including conventions and treaties Chile has ratified, jurisdiction, governing law for arbitration agreements, confidentiality, procedural rules, hearings, interim relief, and available remedies against arbitration awards.

In Chile, as in many other countries, parties to a dispute can waive their right to access traditional courts, choosing arbitration over a judge or jury decision. This and other characteristics of Chile's legal framework are examined in detail in this chapter

Under Chilean law, the primary requirement for an arbitration agreement or clause, whether for international commercial or domestic arbitration, is that it must be in writing.

The enforcement of arbitration agreements in Chile is governed by the Code of Civil Procedure (CPC) and the Code of Organization of the Courts (COT). International commercial arbitration is regulated by Law No. 19,971, known as the International Commercial Arbitration Law (ICA Law), which is based on United Nations Commission on International Trade Law (UNCITRAL) Model Law.

For international commercial arbitration, the agreement can be established through an exchange of correspondence, a statement in legal proceedings where one party claims the agreement and the other does not deny it, or a written reference to an arbitration clause in another document, provided the reference clearly incorporates the clause. The terms of the arbitration clause or agreement define the arbitrator's powers.

There are no significant differences between Chile's ICA Law and the UNCITRAL Model Law. In fact, the ICA Law closely follows this Model Law."



ENFORCEMENT IN CHILEAN COURTS

National courts have consistently respected and enforced arbitration agreements when they comply with the legal requirements given above.

RELEVANT CONVENTIONS AND TREATIES SUBSCRIBED BY CHILE

Chile has signed and ratified:

- ❖ The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in 1975.
- ❖ The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, on 25 January 1991 (ICSID).
- ❖ Chile is a party to bilateral investments treaties (BITs) with most western European countries including Germany, Spain, Denmark, and the UK, as well as with several Asian countries, the US, Canada and several Latin American countries.
- ❖ The International Private Code: Chile is a party to the code but made a reservation that in cases of conflict between foreign and Chilean law, Chilean law would prevail.
- ❖ The Inter-American Convention on International Commercial Arbitration of 1975 (Panama): Chile ratified the Panama Convention without reservations in 1976.
- ❖ Free trade agreements (FTAs) subscribed by Chile include or at least promote the creation of dispute resolution mechanisms (available at: <https://www.direcon.gob.cl/en/free-trade-agreements/>).
- ❖ Chile is a party to the Agreement of Cooperation and Jurisdictional Assistance in Civil, Commercial, Labour and Administrative Matters, together with the parties belonging to the “Mercosur” (a Common Market for Argentina, Brazil, Uruguay and Paraguay).



ARBITRATION CLAUSE

Key considerations arise when drafting an arbitration clause. Generally, a simple and clear clause can help prevent misunderstandings that could impede arbitration. The clause should state that arbitration is exclusive and binding on both parties and must clearly define its scope. If not, the state courts may intervene.

Other information, while not essential, can support a more efficient process. This includes specifying the number of arbitrators, the language of arbitration, and the governing law for the merits of the dispute. Although these points are not mandatory under Chilean law for validity, they merit consideration and are recognized under Chilean law.

Typically, the law governing the dispute is outlined in the contract. In addition to this substantive law, other factors, such as industry-specific trade practices, may also influence the arbitral court's decisions. Sometimes, parties may agree for the contract to be governed by principles like equity or *lex mercatoria*. When national law applies, parties should carefully select arbitrators familiar with the relevant legal system.

Finally, to ensure enforceability, the arbitration decision must meet the standards of the New York Convention and the laws of the seat. The arbitrator should consider both the laws of the seat and those of any jurisdiction where enforcement is anticipated.

ARBITRATOR'S RULING ON JURISDICTION

In domestic arbitration, the arbitrator rules on matters of local jurisdiction but is restricted by the scope set in the arbitration agreement. In contrast, in international commercial arbitration, the arbitrator is empowered to determine their own jurisdiction.

DISPUTING JURISDICTION AND COMPETENCE IN THE COURTS

Domestic Competence

If a law does not explicitly state that a type of dispute cannot be submitted to arbitration, the dispute is considered 'arbitrable.' Non-arbitrable matters include labour lawsuits, criminal cases, alimony disputes, conflicts between a legal representative and the represented party, family matters, and certain other issues. Thus, unless excluded by law, other disputes are deemed arbitrable, meaning they can be resolved through arbitration.

Additionally, some disputes are restricted from ordinary national courts and, absent an agreement between the parties, must be resolved exclusively through arbitration. These 'mandatory arbitration' matters include the



liquidation of certain companies or communities, partition of an estate, trials related to accounts rendered by a manager or liquidator, general account trials, disputes among shareholders in certain types of companies, and specific issues concerning water rights.

International Competence

In the case of international commercial arbitration, under ICA law either party may seek annulment of the award, which is the sole remedy available in such cases.

On matters of competence, the defending party may raise an objection to the arbitrator's competence when responding to the complaint.

Additionally, the Court of Appeal may review jurisdiction and competence issues during the annulment proceedings if either party submits a request to annul the award in an international commercial arbitration case."

INDIVIDUALS OR ENTITIES NOT BOUND BY AN ARBITRATION AGREEMENT

Chilean law does not permit an arbitral tribunal to exercise jurisdiction over matters involving individuals or entities that are not parties to the arbitration. The only exceptions are third parties who are successors or assignees of the parties involved in the arbitration, and third parties who share joint and several liability with them.

SELECTION

Parties are free to select any individual as their arbitrator. In domestic arbitration, however, the arbitrator must be at least 18 years old. For arbitration in matters of law, the arbitrator must also be a licensed attorney. In international commercial arbitration, there are no restrictions on the choice of arbitrator.

DEFAULT SELECTION PROCEDURES

In domestic arbitration, if the parties' chosen method for selecting an arbitrator fails, a national court will appoint the arbitrator. In international commercial arbitration, the president of the Court of Appeal in the jurisdiction where the hearing will occur is responsible for appointing the arbitrator.



INTERVENTION OF THE COURTS

A court may intervene in the selection of an arbitrator upon the request of one of the parties. This can occur if the parties have agreed to arbitrate but are unable to agree on an arbitrator or if their chosen selection method fails.

Requirements for independence, neutrality, and impartiality apply in both domestic and international commercial arbitration. The law provides specific grounds for challenging the appointment of an arbitrator to ensure their independence and impartiality. However, the parties may choose to waive this measure. The primary difference between domestic and international arbitration in this regard is that grounds for objection are defined more broadly in international commercial arbitration.

CONFIDENTIALITY

Under Chilean law, judicial procedures are public, while arbitration proceedings are generally confidential.

PROCEDURAL RULES

As previously mentioned, domestic arbitration in Chile is governed by the Code of Civil Procedure and the Code of Organization of the Courts. The latter defines three types of arbitrators:

- An Arbitrator at law (*árbitro de derecho*) is required to rule in strict accordance with the law and follow the same procedural rules applicable in national courts, depending on the nature of the lawsuit.
- An Arbitrator in equity (*árbitro arbitrador* or *ex aequo et bono*) who resolves disputes based on principles of fairness and personal judgment. During proceedings, the arbitrator adheres to any procedural rules agreed upon by the parties. In the absence of such rules, certain procedural provisions from the Code of Civil Procedure apply.
- A Mixed arbitrator (*árbitro mixto*) who follows procedural rules set by the parties but must issue the final award based on strict legal standards.

PROCEDURAL STEPS REQUIRED BY LAW

In domestic arbitration, the proceedings start when the arbitrator accepts the appointment and gives notice to the parties of the initial hearings.



In the case of domestic arbitration proceedings, a distinction must be made between arbitration at law and *ex aequo et bono* arbitration. For arbitration at law, the proceedings must follow the same rules as if the dispute was being conducted before a national court.

However, arbitrator's *ex aequo et bono* need only to comply with minimal procedural principles if the parties do not agree on the rules of procedure: to hear both parties and to require that the parties submit the necessary evidence to prove their respective allegations.

In international commercial arbitration, the arbitral proceedings officially start when one party notifies the other of its intention to submit the dispute to arbitration.

ARBITRATION HEARINGS

In domestic arbitration at law, hearings are bound to procedural rules established for national courts of law, which correspond mainly to a written procedure. As for domestic *ex aequo et bono* arbitration, the parties are free to choose the rules that govern the conduct of an arbitration hearing, as explained above. In mixed arbitrations, the parties may also modify the rules of the proceeding.

In the case of international commercial arbitration, the hearings are required to take place with sufficient notice to the parties.

PROCEDURAL ISSUES AND THE INTERVENTION OF THE NATIONAL COURTS

National courts have limited authority in addressing procedural issues that arise during arbitration, such as assisting the arbitrator in obtaining evidence.

When enforcing an arbitral decision requires coercive measures or impacts third parties not bound by the arbitration agreement, the courts must be called upon to enforce the decision. For example, an arbitrator lacks the power to enforce actions such as arrests, fines, forced entry, subpoenas, garnishments, attachments, or evictions.

INTERIM MEASURES ISSUED BY AN ARBITRATOR

Under Chilean law, arbitrators in domestic arbitration can grant interim relief, known as *medidas precautorias*, aimed at securing the outcome of proceedings.



These measures may include prohibiting certain actions or contracts, appointing an administrator, or attaching property. However, if enforcing these measures requires police assistance or impacts third parties not bound by the arbitration agreement, a court application is necessary.

While arbitrators lack coercive powers, this does not prevent them from issuing preventive measures, as the act of issuing such orders itself does not involve compulsion.

PRELIMINARY OR INTERIM RELIEF GRANTED BY A COURT

International commercial arbitration allows preliminary relief to be granted by a national court. The same occurs in domestic arbitration, when the arbitrator has not yet been appointed. Therefore, the courts are empowered to order preventive measures prior to the filing of a claim or the start of an arbitration process.

EVIDENTIARY MATTERS AND RULES

There are no special rules regarding arbitrators *ex aequo et bono*. Arbitration at law must apply the rules that govern national courts.

As for international commercial arbitration, the law grants ample authority, in the absence of an agreement of the parties in this respect, to determine the admissibility, relevance and value of evidence. The law further establishes rules for the appointment of experts and authorizes national courts to assist arbitral tribunals in evidentiary proceedings.

ISSUANCE OF AN AWARD

The legal requirements of an arbitral award in arbitration at law are:

- ❖ The full identification of the parties.
- ❖ A brief description of the claims and defences of the parties.
- ❖ The factual and legal grounds for the award.
- ❖ The decision regarding the dispute.

Arbitrators *ex aequo et bono* are subject to similar, though less formal, requirements, and the grounds for the decision may be principles of justice and fairness and not the strict application of the law.



Awards in international arbitration must be in writing and signed by the arbitrator(s). Furthermore, the grounds on which the decision was based must be stated, unless the parties agree otherwise, as well as the date and the place where the arbitration took place.

CHALLENGING AN AWARD

In domestic arbitration, if the parties have not waived the right to petition for a remedy in the arbitration at law, the parties are able to challenge the award, that is, file a remedy if this is admissible.

One alternative is an appeal. The basis for the appeal is the harm that the award causes to one of the parties or not obtaining what was requested in the first place. In addition, there are other remedies:

- Recurso de Casación en la Forma, where it is necessary to prove that the proceedings or the award did not comply with procedural rules. (It has been a matter of discussion whether this remedy may ever be waived).
- Recurso de Casación en el Fondo, when the award is issued in violation of substantive law.
- Recurso de Queja, which is applicable when the arbitrator, by issuing the award, committed an abuse of rights or major offense.

Regarding arbitrators *ex aequo et bono*, the parties are entitled to appeal when the arbitration clause or agreement specifically establishes this right. The Recurso de Casación en la Forma is applicable – and may be waived – but the Recurso de Casación en el Fondo is not applicable.

The parties cannot agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws.

ANNULMENT REMEDY IN INTERNATIONAL COMMERCIAL ARBITRATION

Under the ICA Law, each party may request annulment of an arbitral award from the relevant court of appeal, based exclusively on the following grounds:

- Incapacity of one party or invalidity of the arbitral agreement: Incapacity here refers to a party's lack of authority to bind itself to an obligation without others' authorization.
- Improper notice: One party did not receive proper notice of the commencement of proceedings.
- Ultrapetita: The award granted more than what was claimed by the plaintiff.



- Improper arbitrator selection: The procedure for selecting the arbitrator did not align with the parties' agreement or the law.
- Non-arbitrable dispute: The dispute was not arbitrable under the law.
- Contrary to Chilean public policy: The award conflicts with Chilean public order or policy.

The prevailing view is that the right to seek annulment cannot be waived, nor can the parties agree to eliminate this right by adding grounds for challenge in advance.

Complaint to the Court

A complaint may be lodged if the arbitrator, in issuing the award, committed an abuse of rights or serious offense against a party. This remedy cannot be waived.

However, a complaint can only be filed if no other motion exists to alter or amend the judgment. Therefore, it is inadmissible in international commercial arbitration, as the law permits only one type of motion against an award—annulment. In line with this, the Supreme Court recently dismissed a complaint appeal against an international arbitral award issued in Chile, reinforcing Chilean courts' support for international commercial arbitration

ENFORCEMENT OF AN AWARD

Chile signed and ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1975, without the need for implementing national legislation.

Arbitral awards and their enforcement are not subject to taxation

THE NATIONAL COURTS AND THE ENFORCEMENT OF ARBITRATION AWARDS

Chilean courts consistently enforce arbitration awards, provided they meet the stipulated requirements and do not contain decisions that conflict with Chilean public policy.

There are limited grounds under which a foreign award may be excluded from recognition or enforcement in Chile. However, in most cases, an award issued abroad will be recognized, binding, and enforceable in Chile.

Financial judgments, however, are enforceable.



PRECEDENTS OF THE SUPREME COURT REGARDING EXEQUATUR

To enforce a foreign judgment or award in Chile, it must first be recognized by the Supreme Court through a procedure known as Exequatur. This process is governed by the Chilean Code of Civil Procedure, which establishes that international treaties take precedence over the Code's stipulations.

For international commercial arbitration, the Supreme Court has consistently recognized foreign arbitral awards that comply with the ICA Law and international treaties signed and ratified by Chile, provided they do not conflict with Chilean public policy. Court precedents affirm the priority of law and international treaties over procedural rules in the Chilean Code of Civil Procedure.

The law assumes the validity of a foreign arbitral award, placing the burden on the opposing party to provide evidence to challenge the Exequatur.

EFFECT OF AN ARBITRATION AWARD IN TERMS OF 'RES JUDICATA'

An arbitration award holds the same *res judicata* effect as a national court decision. This means that once a dispute is finally resolved by an arbitral tribunal, it cannot be re-opened in court, provided that the parties, grounds, and object of the dispute remain the same.

DAMAGES / INTEREST / COSTS

There are no restrictions on the types of damages available in arbitration. However, in arbitration at law, the arbitrator must adhere to Chilean law, which does not recognize punitive or indirect damages unless specified in a penalty clause agreed upon by the parties.

Regarding interest, the arbitral tribunal may set this, provided that, for judgments in Chilean currency, the rate does not exceed one and a half times the average interest charged by Chilean banks, as determined by the La Comisión para el Mercado Financiero (CMF).

Typically, arbitrators decide that costs and fees should be shared by the parties. However, they may order one party to cover all costs and legal fees if the losing party lacked plausible grounds for litigation and was entirely defeated.



ABOUT THE CHILEAN ARBITRATION AND MEDIATION CENTER

The Chilean Arbitration and Mediation Center, known as Centro de Arbitrajes y Mediación (CAM) in Spanish, is a non-profit institution founded in 1992 by the Chilean Chamber of Commerce. CAM offers services in domestic arbitration (since 1992) and international arbitration (since 2006) and is recognized for its reliable, efficient solutions to the business and legal communities, establishing itself as a primary reference for dispute resolution in Chile. With over 3,320 cases managed, CAM Santiago stands as a leading organization specializing in arbitration, mediation, and dispute boards.

In 2021, CAM Santiago introduced a new procedure to align with international standards, emphasizing procedural efficiency, expedited processing, technology use, procedural integrity, and conflict-of-interest management. This development underscores CAM's commitment to innovation and the integration of new technologies in arbitration to ensure effective dispute resolution.

Since September 1, 2023, CAM Santiago has also offered an "Emergency Arbitration" service, allowing users to request pre-judgment measures through CAM or the ordinary courts. This service enables the swift installation of an arbitration tribunal for urgent precautionary measures, further enhancing the confidentiality and efficiency of the arbitration process.