Venezuela

Carlos Dominguez Hernandez and Yulena Sanchez-Hoet
Hoet Pelaez Castillo & Duque

Litigation

1 Court system

What is the structure of the civil court system?

The general structure of Venezuela's judicial system and the administration of justice are determined by the Organic Law of the Judiciary. The judicial system consists of the Supreme Court of Justice, high courts, first instance courts and municipal courts. The Supreme Court is at the head of the judicial system. Under certain conditions, the decisions of higher courts given in second instance have an extraordinary appeal before the Supreme Court of Justice.

The court system is divided by competence according to the matter: civil, mercantile and transit. In addition, among others there are special tax, criminal, labour, family and administrative courts.

In the civil court system in Caracas there are 25 municipal courts, 12 first instance courts and 10 high courts.

2 Judges and juries

What is the role of the judge and, where applicable, the jury in civil proceedings?

The judge is the director of the process and he/she should follow the procedure in accordance with the provisions established in the Civil Procedural Code and its Regulations. The parties, the plaintiff and the defendant are the owners of the process, but the judge is the conductor of the same. The scope of the inquisitorial role of the judge in the process is determined by the Civil Procedure Code and its Regulations.

Within civil proceedings there are no juries. Nevertheless, the parties can request the constitution of the court with associate judges. Each of the parties should present a list of three potential judges who meet the general requirements for being a judge. The parties then select one of the proposed judges from the opponent's list to sit as associated judge.

3 Limitation issues

What are the time limits for bringing civil claims?

The statute of limitations for bringing civil claims is determined by the applicable laws and regulations based on the nature of each one of the civil actions of the claim to be filed.

The Civil Code sets forth a general prescription regulation which shall be applied to those cases where there is no special applicable regulation. According to this provision, all real actions prescribe when 20 years have passed and personal actions after 10 years.

The parties can suspend time limits once the claim has been filed, the procedure initiated and the defendant has been summonsed. Before the filing of the claim, the statute of limitations to initiate a civil action cannot be suspended by the parties.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

There are no prior obligatory actions which, pursuant to the law, the parties must make before initiating a legal proceeding. However, in practice, the actions that the parties could take before initiating a procedure are related to the granting of the powers of attorney in favour of their legal representatives and to having all the necessary documentation deemed essential in support of the action.

The parties can also execute a pre-action procedure to gather evidence that might be used in the action to be initiated.

5 Starting proceedings

How are civil proceedings commenced?

A civil proceeding is commenced with the admission of the civil claim.

6 Timetable

What is the typical procedure and timetable for a civil claim?

Once the claim has been filed and the court verifies all the supporting documents and powers of attorney in addition to verifying that the action is not contrary to the interest of public order, morals and law, the claim is admitted.

Once admitted, the court should proceed to summons the defendant immediately as per the request of the plaintiff.

After the defendant has been summonsed the claim should be answered within a term of 20 working days of the court. The defendant can either answer the merits of the claim and/or file previous defence matters within that term.

Once the claim has been answered by the defendant, both the plaintiff and the defendant have a common term of 15 court working days to gather all the evidence in support of their rights.

After the term to gather the evidence has elapsed, the parties have an additional term of three court working days to oppose to the evidence filed by each one of them.

When the term to oppose to the evidence filed by each party has elapsed, there is a term of three court working days for the court to decide on the admissibility of the evidence filed by the parties.

Once the court has issued a decision on the admissibility of the evidence, the parties have a term of 30 days to file same

before the court.

After the term to file the evidence has elapsed, the parties should file on the 15th day, counted as of the elapsing of the previous term, their written report with the conclusion on their rights, facts and evidence filed during the process.

Once the written reports with the conclusions of the parties have been filed, the parties have a term of eight court working days to file their observations on the written reports filed by each one of them.

After these observations have been filed, the court has a term of 60 calendar days to issue a final decision in the first instance.

It is important to consider that, normally, the terms established in the Civil Procedures Code for the judge as director of the procedure are not observed and normally a civil procedure at first instance can last between one to three years on average.

7 Case management

Can the parties control the procedure and the timetable?

As explained above, the director of the procedure is the judge and the terms are established by law.

8 Evidence

What is the extent of pre-trial exchange of evidence? Is there a duty to preserve documents and other evidence pending trial? How is evidence presented at trial?

There is no pre-trial exchange of evidence between the parties. As explained above, the parties can gather evidence in advance to be used at trial. This evidence can be used both as an essential element of the claim and in such case it is filed as in support of the claim and/or it is just presented as evidence and is gathered and filed within the term established in the procedure.

When a document is essential to support the claim, the interested party can ask the court to preserve the document in custody during the trial.

As explained above, evidence is gathered during the term established to do so by each of the parties and is also filed during the term established for such purpose during the trial. The party interested in presenting the evidence is in charge of bringing the witnesses, experts and providing any public documents and/or any other evidence that might be deemed important.

9 Interim remedies

What interim remedies are available?

In accordance with the Civil Procedure Law, there are standard and special interim remedies. Within the standard interim remedies there are attachment, seizure and prohibition of disposal of real estate. Within the special remedies there are a variety of remedies that can be requested from the court depending on the nature of the claim and the controversy.

10 Remedies

What substantive remedies are available?

In accordance with the Civil Procedure Law, damages are available and on a monetary judgment the interested party can claim for the payment of interest as well as the monetary correction as a result of inflation and/or devaluation depending on the nature of the claim.

11 Enforcement

What means of enforcement are available? What sanctions are available in the event a court order is disobeyed?

If a decision is not obeyed, the interested party can request the execution of the decision with the support of the public force. If it is a money judgment, the interested party can request the attachment of assets to cover the amount to be paid in his/her favour.

12 Inter partes costs

Does the court have power to order costs?

The court has the power to order costs and same are calculated on the value of the claim; the maximum amount is 30 per cent of the value of the claim. Costs are decided through the final decision and if the costs are not paid by the losing party, the favoured party has different remedies to proceed before court to collect such costs.

13 Fee arrangements

Are 'no win, no fee' agreements or other types of contingency fee arrangements available to parties?

In Venezuela, there is the possibility that fees are agreed on 'a contingency', that is to say that the amount to be charged due to professional fees depends on the results of the legal proceeding. There may also be a possibility in which parties reach a 'no win, no fee' agreement.

However, Article 1482 of the Civil Code prohibits the entering into of so-called 'cuotalitis agreements'. This regulation prohibits lawyers to execute agreements with their clients on the object of the litigation of the case. Therefore, it is not permitted to agree with the client, as professional fees, a portion of the results of the claim.

By virtue of the above, although the lawyers fees may depend on the results of the proceeding, a portion of what has been won in the legal proceeding may not be established as professional fees.

14 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Within civil proceedings, all claims have the right to appeal before a higher court. Extraordinary appeal before the Supreme Court of Justice is limited to cases exceeding 3,000 tax units in value, which is currently equivalent to US$41,023.

15 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Any judgment or order given by a foreign court would be recognised and accepted by the courts of Venezuela without retrial or re-examination of the merits of the case provided that all of the the following requirements are met:

- that the judgment is not rendered on property rights over real estate located in the territory of the Bolivarian Republic of Venezuela or that the exclusive jurisdiction to judge the transaction that could correspond to Venezuela has not been seized away;
- that the foreign court has jurisdiction in accordance with general jurisdiction principles;
- the judgment has to be final (res judicata) in the jurisdiction where rendered;
- the judgment in question is rendered on civil or commercial

matters;
- the service of process has been properly carried out by a person qualified for that purpose;
- the judgment does not conflict with a judgment issued by Venezuelan courts; and the judgment does not contradict public policy provisions of Venezuela.

In order to domesticate a foreign judgment the following procedure must be followed:
- filing the request of exequatur along with the judgment to be enforced in Venezuela identifying the parties of the trial (all documentation must be duly authenticated, notarised and translated into Spanish);
- the defendant will be served the notification as stated in the Civil Procedure Code;
- the process will continue under the provisions of the procedure to enforce foreign judgments.

16 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The procedures to obtain evidence for use in civil proceedings in other jurisdictions are done through a letter rogatory that must be issued by the foreign court requesting a competent Venezuelan court to issue the evidence. Letters rogatory are requested in accordance with the procedures established in the Civil Procedure Code and international treaties ratified by Venezuela.

Arbitration

17 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Venezuelan Law of Commercial Arbitration (the LCA), enacted on 7 April 1998, reflects to a large extent the provisions of the UNCITRAL Model Law. It is applicable to both domestic and international commercial arbitrations.

The LCA provides that all disputes that can be resolved and arise or have arisen between individuals or entities capable of transacting may be submitted to arbitration. That is, that the object of the dispute can be 'disposed of' by the parties, and, by virtue of the law, the parties have legal capacity for the disposition of their assets and rights.

The only disputes that cannot be resolved through arbitration are: (i) those dealing with matters contrary to rules of public policy or subject to criminal law (except for the amount of the civil liability, provided that it has not been fixed by a final judgment); (ii) matters concerning the powers or functions of the state or persons or entities of public law; the status or civil capacity of individuals; properties or rights of legally disabled persons without prior judicial authorisation; and those disputes which are the object of a final judgment, except for the property consequences that may arise from their enforcement insofar as they concern exclusively the parties to the proceedings and have not been determined by a final judgment.

The LCA establishes that arbitration can be institutional or independent (ad hoc). Institutional arbitration is that which is performed through arbitration centres referred to by the LCA, or those created by other laws. Independent arbitration is that which is regulated by the parties without the intervention of arbitration centres.

18 Arbitration Agreements

What are the formal requirements for an enforceable arbitration agreement?

The LCA establishes that an arbitration agreement is a reciprocal statement of will whereby the parties submit to arbitration all or any of the controversies that have arisen or may arise between them with respect to a legal relationship, either contractual or non-contractual. The arbitration agreement can be contained in a clause which is part of a larger agreement or can arise out of a separate arbitration agreement.

By virtue of the arbitration, the parties oblige themselves to submit their controversies to the decision of arbitrators and waive any rights to bring claims before domestic courts. The arbitration agreement is exclusive and excludes the jurisdiction of local courts.

The arbitration agreement must be evidenced in writing by any document or set of documents that demonstrate(s) the consent of the parties to resort to arbitration. The reference made in a contract to a document containing an arbitration clause will be considered as an arbitration agreement, provided that the contract was made in writing and the reference entails that the clause is part of the contract.

The arbitration agreement should state (a) the nature of the arbitration (either institutional or independent); (b) the matter or elements of the contract submitted to arbitration; (c) the language in which the arbitration is to be conducted; (d) the number of arbitrators that will form the arbitration tribunal and its nature (either of law or equity); (e) the applicable law; (f) any necessary information so that proper notices can be given to the parties; and also (g) any further procedural aspects that the parties agreed in order to resolve a potential dispute between them in the most expeditious way.

When an arbitration agreement is part of a contract it is considered as a separate independent agreement – separate and different to the remaining provisions of the contract. The decision of the arbitration tribunal on the nullity of the contract does not necessarily entail the nullity of the arbitration agreement.

In ancillary contracts, the arbitration agreement must be made expressly and independently of the main contract.

19 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If there is no agreement as to the number of arbitrators, the tribunal will consist of three arbitrators. If the parties fail to agree on the selection of the arbitrators, each party will choose one, and the two arbitrators will select a third arbitrator, who will be the chairman of the arbitration tribunal.

If any of the parties are reluctant to appoint their arbitrator, or if the two arbitrators cannot agree on the appointment of the third, either party can request from a competent first instance judge the appointment of the arbitrator (ad hoc arbitrations) or can ask the general secretary of the arbitration centre to do so (institutional arbitrations).

The arbitrators can be challenged and can disqualify themselves pursuant to the grounds for challenge and self-disqualification provided for in the Civil Procedural Code.

When all the arbitrators or the majority of them have disqualified themselves or have been successfully challenged, the arbitration tribunal will declare its duties at an end, and the parties will be free to resort to the courts of the republic or restart the arbitration proceedings.

In the case of challenge or self-disqualification of the arbitrators, the LCA establishes that the arbitration proceedings will be suspended as from the moment when the arbitrator declares his/her self-disqualification, accepts the challenge, or if the proceedings for any of these actions are initiated. The suspension will be in place until the issue is resolved, and it will not affect the validity of any acts previously performed.

20 Procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

In accordance with the LCA, the parties are free to select the rules of the arbitral procedure. If no express provision is made in the arbitration agreement (ie submission to institutional rules), LCA general procedural rules will be applicable.

21 Court intervention

On what grounds can the court intervene during an arbitration?

There is minimal intervention by courts in the arbitral process. However, they can provide assistance with certain procedural matters.

The arbitration tribunal or any of the parties, with the approval of the tribunal, can ask for assistance from the courts for the furnishing of the necessary evidence and the enforcement of precautionary measures and the arbitral award in the case that the losing party does not voluntarily comply with it.

22 Interim relief

Do arbitrators have powers to grant interim or conservatory relief?

Yes. Except as otherwise agreed by the parties, the arbitration tribunal can order any interim or conservatory measures deemed necessary in respect of the litigated matter.

The arbitration tribunal can demand sufficient guarantees from the requesting party.

23 Award

When and in what form must the award be delivered?

The LCA provides that awards have to be issued in writing and signed by the arbitrator or arbitrators forming the arbitration tribunal. Awards can be issued at any time during the arbitral procedure (mostly after evidence and final conclusions have been produced by the parties).

In arbitration proceedings with more than one arbitrator, the signatures of the majority of the arbitrators suffice.

Unless the parties otherwise agree, the award must set out the ratio decidendi and also provide the date of issue and place of the arbitration. The award will be deemed to have been issued in the seat of arbitration.

24 Appeal

On what grounds can an award be appealed to the court?

In accordance with the LCA, the only possible remedy against arbitral awards is the appeal for annulment.

The appeal for nullity must be filed in writing before a competent court of appeal of the place where the arbitral award was issued. Clearly, if the award is granted overseas, the nullity of the award will be governed by the legislation of the country where the award has been produced.

Pursuant to the LCA, the appeal for nullity must be filed within five working days following the notice of the award or any further activities by the arbitration tribunal to correct, clarify or supplement the award.

The filing of an appeal for nullity does not prevent or suspend enforcement proceedings of the arbitral award. This is unless upon request by a petitioner, a higher court grants a staying order subject to the prior posting of a bond by the petitioner to guarantee the enforcement of the award and any possible damages should that petition be dismissed.

An arbitral award can be declared null and void when:

- the party against whom it is invoked proves that one of the parties was affected by an inability at the time of entering into the arbitration agreement;
- the party against whom it is invoked had not been given proper notice of the appointment of an arbitrator or of the arbitration proceedings being initiated, or by any reason was not able to assert his/her rights;
- the constitution of the arbitration tribunal or the arbitration proceedings did not conform to the LCA;
- the arbitral award deals with a controversy not provided for in the arbitration agreement or contains decisions exceeding the agreement itself;
- the party against whom the arbitral award is invoked proves that the award is not binding on the parties or has been previously annulled or suspended according to the terms agreed by the parties for the arbitration proceedings; or
- the court before which the nullity of the award is requested proves that, as a matter of law, the object of the dispute is not capable of being resolved by arbitration, or that its subject-matter is contrary to public policy rules.

25 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

The LCA establishes that, regardless of the country where the award has been issued, it must be recognised by the Venezuelan courts as final and binding.

It further provides that, upon filing of a written petition before a court of first instance, the award will be enforced by the court without having to follow the exequatur procedure established in the Venezuelan Civil Procedural Code.

The law imposes on the Venezuelan courts the obligation to recognise arbitral awards, both domestic and foreign. However, although recognition proceedings do not amount to a formal exequatur, judges have the obligation to examine, in light of the principles of the exequatur, the legality of awards and the proceedings that produced them.

The party that invokes an award or requests its enforcement must file, along with the petition, a copy of the award certified by the arbitral tribunal, with a translation into Spanish if necessary.

The enforcement of an award must be made in the same way as the enforcement of a court judgment.

The recognition or enforcement of arbitral awards, regardless of the country where they were issued, can be denied only when:

- the party against whom the arbitral award is invoked proves that one of the parties was affected by an inability at the time of entering into the arbitration agreement;
- the party against whom the arbitral award is invoked had not been given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or that he/she was not able to assert his/her rights;

- the constitution of the arbitration tribunal or the arbitration proceedings did not conform to the law of the country where the arbitration was performed;
- the arbitral award deals with a controversy not provided for in the arbitration agreement or contains decisions exceeding the agreement itself;
- the party against whom the arbitral award is invoked proves that the award is not binding on the parties or has been previously annulled or suspended by an authority with jurisdiction according to the terms agreed by the parties for the arbitration proceedings;
- the court before which the recognition or enforcement of the arbitral award is requested proves that, as a matter of law, or the object of the controversy is not capable of being resolved by arbitration, that the subject-matter is contrary to public policy rules; or
- the arbitration agreement is not valid pursuant to the law to which the parties have submitted it.

26 Costs

Can a successful party recover its costs?

Unless otherwise agreed, the arbitration costs will be fixed by the arbitration tribunal in the arbitral award. The arbitral award will state the proportion in which the costs will be covered by the parties.

Alternative Dispute Resolution

27 Obligatory ADR

Is there a requirement for the parties to litigation or arbitration to consider alternative dispute resolution before or during proceedings?

No, there is not. Unless otherwise agreed by the parties, they are not obliged to consider ADR before or during litigation or arbitration proceedings.

It should be noted that the terms 'conciliation' and 'mediation' have been indistinctly used in the Venezuelan legislation. These two terms are understood as the same ADR mechanism. The term conciliation has been traditionally applied to proceedings conducted by a public officer (ie judges, superintendents, labour inspectors, etc). The term mediation has more frequently been used by private institutions dedicated to ADR (ie the Arbitration Centre of the Chamber of Commerce of Caracas, the CACCC) where mediation is not necessarily conducted by a public officer.

The most important arbitration and mediation centres in Venezuela, the CACCC and the Business Centre for Arbitration and Conciliation of the Venezuelan-American Chamber (the CEDCA), include, within their respective rules, mediation proceedings with the following features:

- Confidentiality, unless disclosure is authorised by those involved in the mediation process
- Mediation proceedings are voluntary; parties are not obliged to reach an agreement, and are also entitled to terminate the proceedings at any time
- Although there are guidelines, the proceedings are informal and flexible
- There is no need for the parties to be assisted by an attorney – the mediator, whether a lawyer or not, does not provide legal or technical opinions, even though under certain circumstances, he/she may recommend the parties to seek legal advice if they have not done so in advance
- Unless otherwise agreed by the parties, the appointment of the mediator is made by mediation centres, taking into account the type of dispute

Miscellaneous

28 Specific features

Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

If the duration of the arbitration proceedings is not stated in the arbitration agreement, this period will be six months, as from the constitution of the arbitration tribunal. This period can be extended by the tribunal one or more times, ex officio or upon request of one of the parties or their attorneys-in-fact with express power to do so. The days when the proceedings are suspended or interrupted for legal reasons will be counted for the purposes of the six-month period.

The arbitration tribunal is empowered to decide on its own

Hoet Pelaez Castillo & Duque

Litigation and arbitration and alternative dispute resolution practice area

Contacts:

Fernando Peláez-Pier	**fpelaez@hpcd.com**
Luis Botaro-Lupi	**lbotaro@hpcd.com**
Jorge Acedo	**jacedo@hpcd.com**
Carlos Domínguez-Hernandez	**cdominguez@hpcd.com**
Jairo Ching	**jching@hpcd.com**
Yulena Sánchez-Hoet	**ysanchez@hpcd.com**

Centro San Ignacio, Torre Kepler
Av. Blandín, La Castellana
Caracas
Venezuela

Tel:+58 212 201 8517 / 212 263 6644
Fax: +58 212 263 7744
infolaw@hpcd.com
Website: www.hpcd.com

jurisdiction, including the exceptions concerning the existence or validity of an arbitration agreement.

The arbitration tribunal will conduct any hearings it considers necessary, with or without the participation of the parties, and will decide whether to hold evidentiary hearings or hearings for oral allegations, or even whether the issue is to be decided based on the documents only and/or other evidence produced.

The arbitral award may be clarified, corrected, and/or supplemented by the arbitration tribunal, ex officio or upon request of one of the parties, within 15 working days following the issuance of the award.

The arbitration tribunal will cease its duties: when the fees provided for by the LCA or the applicable regulation are not paid in a timely manner; by the will of the parties; by the issuance of the award or the ruling correcting or supplementing it; and by the expiry of the period set for the proceedings or any extension thereof.