UNCITRAL Working Group II

Responses from States delegations

on the questionnaire on arbitral awards in electronic form

Note: responses are compiled in the language(s) received, with minor adjustments

Contents

Questionnaire

At its eightieth session, the Working Group requested the Secretariat to compile information received from member and observer States on the following two questions: 1) What is the status of foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law? 2) What is the status of domestic arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law? (A/CN.9/1193, para. 70).

Responses submitted by Argentina

1. *What is the status of foreign arbitral awards (a) in electronic form (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?*

In Argentina, the operating arbitral institutions are not quite familiar with electronic award formats. Given the lack of familiarity, the courts under jurisdiction of the Permanent Court of Arbitration (*Corte Permanente de Arbitraje, CPA*) for example, end up adopting the most demanding format: holographic signature on a printed copy of the arbitral award.

In the case of the Arbitration Chamber of Buenos Aires for Grain Exchange (*Cámara Arbitral de la Bolsa de Cereales de Buenos Aires*), no awards signed in electronic format and/or with a digital signature have been submitted for recognition. It can be assumed that, if a digital award is submitted by a country where regulations exist equating the digital signature to the holographic signature, said award should be accepted by Argentine courts. However, it is doubtful that an award in electronic format (meaning an award in pdf. format with a non-validated signature) will be accepted.

2. *What is the status of domestic arbitral awards (a) in electronic form (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?*

No such case has been observed or reported in Argentina.

3. *If any relevant judgements are available, we would be grateful if you could provide us with copies of any such judgements, preferably in English if possible.*

No such judgements have been recorded in Argentina.

Responses submitted by Australia

What is the status of domestic & foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

Under Australian law, there is no difference between the treatment of domestic and foreign arbitral awards in electronic form, or digitally signed. While there is no formal statutory regime governing electronic arbitral awards or digitally signed arbitral awards, in-principle there are no issues with their validity under Australian law, or barriers to their acceptance for enforcement by Australian courts.

Legislative framework of arbitral awards

Consistent with Australia's federal system of government, both the Commonwealth (federal) and State and Territory governments are empowered to create legislation. This often results in legislation dealing with similar subject matters across different levels of government. In Australia, international arbitrations (and accordingly foreign arbitral awards) are dealt with by Commonwealth legislation, under the *International Arbitration Act 1974* (Cth) (the IAA). By contrast, domestic arbitrations (and domestic arbitral awards) are dealt with at the State and Territory level, with each State and Territory having its own legislation governing arbitrations within its jurisdiction.[1] Each of the State and Territory legislative regimes are substantially similar. Both Commonwealth legislation concerning international arbitrations, and State and Territory legislation concerning domestic arbitrations, aim to promote the uniform treatment of arbitral awards in Australia, whether domestic or foreign.

The IAA and State and Territory legislation impose certain requirements on arbitral awards, for those awards to be enforceable. For example, the IAA requires an arbitral award to be 'authenticated', meaning that the award purports to have been authenticated by an arbitrator or tribunal officer, and there is no evidence to the contrary.[2]

Legislative framework of electronic communications

The status of electronic arbitral awards in electronic form, or arbitral awards signed by digital means is not directly addressed under Australia's arbitration legislation. Instead, in Australia, separate legislation both at the Commonwealth and State and Territory level deals with the legal status of electronic transactions in general. These pieces of legislation are often referred to as the Electronic Transaction Acts (ETAs). The Commonwealth ETA is the *Electronic Transactions Act 1999* (Cth). This Act applies to legal requirements imposed on documents and communications, under Commonwealth laws. Each Australian State and Territory also has its own equivalent legislation, which apply to the legal requirements on documents and communications imposed by the laws of each respective State or Territory.[3] The ETAs are based on the principle of 'functional equivalence' which means that paper-based and electronic-based transactions or communication are regarded as equally valid, subject to certain exemptions.

[1] See for example:*Commercial Arbitration Act 2010* (NSW) (CAA Act)
[2] *International Arbitration Act 1974* (Cth) (IAA Act), s 9(1)
[3] See for example:*Electronic Transaction Act 2000* (NSW) (*NSW ETA*)

In order to safeguard the integrity of electronic transactions, the ETAs prescribe the circumstances where a legal requirement imposed on a paper document is taken to be met by an electronic document or communication. These include:

- Where information must be given in 'written form', an electronic communication will satisfy this requirement where the information is readily accessible so as to be useable for subsequent reference.[4]
- Where there is a requirement for a document to be signed, the ETAs prescribe that a digital signature will meet this requirement if the signature used a method that identifies the person, and that method was either reliable as appropriate, or proved in fact to identify the person.[5]
- Where a person is required to produce a paper document, that requirement is met by the production of an electronic document where the method of generating the electronic document
    - provided a reliable means of assuring the maintenance of the integrity of the information contained in the document, and
    - the information contained in the electronic form is readily accessible so as to be used for subsequent reference.[6]

The ETAs also provide that, in the course of transmitting an electronic document, the integrity of information is taken to be maintained if the information has remained complete and unaltered apart from the addition of any endorsement (such as a certification of an electronic copy), or any immaterial change.[7] The ETAs do not require that electronic communications include a method to detect alterations, and do not require electronic documents to contain a time or date stamp, or to track alterations.

Accordingly, the validity of an electronic arbitral award or digitally signed award must be determined according to whether the ETAs provide functional equivalence to the relevant form requirements imposed on an arbitral award by the relevant arbitral legislation (such as signature or authentication), such that these actions are valid when done in electronic form. The Australian delegation has not identified any legal barriers to either domestic or foreign arbitral awards meeting these requirements.

The ETAs also exempt certain matters, including the practice and procedures of courts and tribunals.[8] This means that a court or tribunal cannot be required under the ETAs to accept electronic documents or communications for the purpose of procedure and evidence (though they may still choose to do so and in practice Australian courts are actively engaged in a number of digitalisation strategies). However, this does not affect the substantive legal validity of an electronic arbitral award.

Electronic awards in practice

The Australian delegation has not identified any relevant case law where an Australian court has considered the validity of an electronic or digitally-signed arbitral award, either domestic or foreign.

[4] *Electronic Transactions Act* (Cth) (*Cth ETA*), s 9 *NSW ETA* s 8
[5] Cth *ETA*, s 10 *NSW ETA*, s 9
[6] *Cth ETA*, s 11 *NSW ETA*, s 10
[7] *Cth ETA*, s 11(3) *NSW ETA*, s 10(3)
[8] *Cth ETA,* s 7B *NSW ETA*, s 18

The arbitration rules maintained by Australia's main industry group for international arbitration, the *Australian Centre for International Commercial Arbitration* (ACICA), which are the primary rules adopted in arbitrations administered by ACICA, permit the digital signature and transmission of arbitral awards. The *2021 ACICA Rules* provide:

> 42.4 An award shall be signed by the Arbitral Tribunal and it shall contain the date on which and the place (which shall be in conformity with Article 27.3) where the award was made. If any arbitrator refuses or fails to sign an award, the signatures of the majority or (failing a majority) of the Chairperson shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or Chairperson. **Unless the parties agree otherwise, or the Arbitral Tribunal or ACICA directs otherwise, any award may be signed electronically and/or in counterparts and assembled into a single instrument.**
>
> 42.5 The Arbitral Tribunal shall communicate copies of an award signed by the arbitrator(s) to the parties and ACICA. **Such transmission may be made by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form**. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.
>
> *(emphasis added)*

Australian arbitration practitioners have also reported some isolated instances where paper copies of Australian arbitration awards have been requested, for the purpose of recognition and enforcement of those awards in foreign courts.

Responses submitted by Austria

1. General remarks:

Austrian civil procedure laws do not contain a legal definition of an arbitral award.

In accordance with Article 31, Section 1, sentence 1 of the Model Law, Section 606, paragraph 1, first sentence of the Austrian Code of Civil Procedure (ZPO) requires that the award be issued in writing in the language of the proceedings (Article 596 of the ZPO) and that the award be signed by the arbitrator(s) personally and by hand. Exceptionally, the signature of the majority of the arbitrators is sufficient.

The written form is a requirement for an effective and binding arbitral award. According to Sec. 294 of the Code of Civil Procedure, the signature provides full proof that the arbitral award originates from the signatories.

According to Sec. 606 (6) ZPO, the chairperson shall, at the request of a party, confirm on a copy of the arbitral award that the arbitral award is final and binding and enforceable. This provision – as a special Austrian feature – takes into account that a legally binding and enforceable arbitral award constitutes an enforcement title pursuant to Sec. 1 of the Austrian Enforcement Code (EO).

As for the question of electronic arbitral awards and their enforceability, Austrian law is silent on this point. Although the law is technologically neutral, its wording and some legal commentaries suggest that at the time it was drafted only the paper form was envisaged.

On the other hand, however, it must be borne in mind that, nowadays, Austrian courts also issue judgements electronically and without a handwritten signature.

2. Domestic arbitral awards

Domestic arbitral awards are enforcement titles according to Sec. 1 para 16 of the EO. According to Sec. 54 (3) EO, a copy of the enforcement tile including the confirmation of enforceability must be attached to the application for enforcement.

In principle, it is also possible to file applications in enforcement proceedings electronically via the justice system's electronic communications system.

It is difficult to predict whether Austrian courts would apply stricter standards to ‘electronically converted arbitral awards’ because there is no case law on this specific point.

However, Austrian law does not preclude the arbitral award from being transmitted electronically by the arbitrators using a qualified electronic signature within the meaning of the Federal Act on Electronic Signatures and Trust Services for Electronic Transactions (SVG).

Pursuant to Sec. 4 (1) SVG, a qualified electronic signature fulfils the legal requirement of a handwritten signature, in particular the requirement of written form within the meaning of Sec. 886 of the Austrian Civil Code (ABGB), unless otherwise provided by law or agreement between the parties.

3. Foreign arbitral awards

Sec. 614 para. 1 first sentence ZPO refers to the Enforcement Code (EO) with regard to the recognition and declaration of enforceability of arbitral awards rendered abroad. However, the EO only regulates the procedure for the declaration of enforceability of foreign arbitral awards in Sec. 406 et seq. Form requirements are not included in the provisions of the EO.

However, Sec. 614 para. 1, first sentence ZPO and Sec. 416 (1) EO clarify that the provisions of public international law or legal acts of the European Union take precedence over Sec. 406 to 415 EO. The most important of these international instruments is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. The European Union has so far refrained from adopting legal acts on the recognition and enforcement of arbitral awards; the primacy of the New York Convention over the Brussels I Regulation was even emphasised at the time of the reform of the Brussels I Regulation.

Responses submitted by Bahrain

Bahrain has been a Contracting State to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) since 1988. Bahrain applies the Convention reciprocally, recognizing and enforcing awards made in the territory of another Contracting State and to differences considered as commercial under Bahraini law. Though Bahrain has not yet encountered a request to enforce an award in electronic form or one signed electronically, the following outlines how Bahrain would approach such a situation.

In Bahrain, the UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006 ("the Model Law"), is applicable. Bahrain issued its Arbitration Law via Decree No. 9 of 2015 adopting the Model Law *ad verbatim* to govern domestic and international arbitration proceedings in Bahrain.

The process for parties to enforce domestic or international arbitral awards in Bahrain involves submitting only the original award or a copy thereof to the competent court or authority. In Bahrain, the designated competent authority is the High Civil Court,[9] unless otherwise specified by other laws.[10]

While Bahrain has not adopted the UNCITRAL Model Law on Electronic Signatures, it has enacted the UNCITRAL Model Law on Electronic Commerce and the United Nations Convention on the Use of Electronic Communications in International Contracts.[11] Bahrain has also enacted Legislative Decree No. (28) of 2002 and its amendment concerning Electronic Transactions, which defines the scope of electronic transactions, including electronic signatures, across various sectors, such as the judicial system. Bahrain's judiciary has implemented technology in multiple regulations and orders, allowing electronic processes to cover the full litigation process, from filing a case to the issuance and execution of judgments, including claims at the Court of Cassation[12].

Electronic or electronically signed awards may be enforceable in Bahrain if permitted under the Model Law and/or the New York Convention.

Although Bahrain has enforced foreign electronic and electronically signed judgments, it has yet to encounter an award in electronic form or one signed electronically. Given Bahrain's advanced legislative and technical electronic framework, along with the judiciary's adoption of electronic processes, it is unlikely that courts would consider the electronic form or electronic signature of awards a reason for non-enforcement.

Responses submitted by Belgium

1. Responses to question no.1

The law of 28 March 2024 modified the provisions of the Belgian Judicial Code relating to arbitration in two aspects linked to the questions asked.

Firstly, it introduces the possibility for the arbitrator or arbitrators to sign the arbitral award electronically rather than handwritten.

[9] Article 3, Law No. (9) of 2015 promulgating the Arbitration Law: "The High Civil Court shall have the competence to perform the functions referred to under Article (6) of the attached Law."
[10] For instance, see Articles 23 and 24 of Legislative Decree No. 30 of 2009 with respect to the Bahrain Chamber for Economic, Financial and Investment Dispute Resolution, which provide that annulment or enforcement actions related to awards issued under the rules of the Bahrain Chamber for Dispute Resolution shall lie before the Court of Cassation or the High Court of Appeal respectively.
[11] Law No. (1) of 2020 regarding Approving the Accession of the Kingdom of Bahrain to the United Nations Convention on the Use of Electronic Communications in International Contracts.
[12] Decision No. (127) of 2019 regarding the Acceptance and Scope of Electronic Transactions, see https://services.bahrain.bh/wps/portal/courts_en

Article 1713, § 3, of the Judicial Code, as amended by this law, reads as follows (changes marked in bold) :

« § 3. La sentence arbitrale est rendue par écrit et **signée manuscritement ou, conformément à l'alinéa 2, par voie électronique, par l'arbitre ou les arbitres**. Dans une procédure arbitrale comprenant plusieurs arbitres, les signatures de la majorité des membres du tribunal arbitral suffisent, pourvu que soit mentionnée la raison de l'omission des autres.

Sauf opposition de l'une des parties, le tribunal arbitral peut rendre la sentence arbitrale sous forme électronique en la revêtant d'une signature électronique qualifiée telle que visée à l'article 3, 12°, du règlement (UE) n° 910/2014 du Parlement européen et du Conseil du 23 juillet 2014 sur l'identification électronique et les services de confiance pour les transactions électroniques au sein du marché intérieur et abrogeant la directive 1999/93/CE.

La date de la sentence est celle de la dernière signature. »

Unofficial translation :

"§ 3 The arbitral award shall be made in writing and **signed by hand or, in accordance with paragraph 2 below, by electronic means, by the arbitrator or arbitrators**. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

Unless one of the parties objects, the arbitral tribunal may make the arbitral award in electronic form by signing it with a qualified electronic signature as referred to in Article 3, 12°, of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

The date of the award shall be the date of the last signature."

Secondly, the law of 28 March 2024 provides that, in the context of a request concerning the recognition and enforcement of an arbitral award rendered in Belgium or abroad, the applicant may provide the award bearing a handwritten signature or an electronic signature.

Article 1720, § 4, of the Judicial Code, as amended by this law, reads as follows (changes marked in bold) :

« § 4. Le requérant doit fournir, soit l'original de la sentence arbitrale, **à savoir une sentence arbitrale revêtue d'une signature manuscrite des arbitres ou d'une signature électronique qualifiée visée à l'article 3, 12°, du règlement (UE) n° 910/2014 du Parlement européen et du Conseil du 23 juillet 2014 sur l'identification électronique et les services de confiance pour les transactions électroniques au sein du marché intérieur et abrogeant la directive 1999/93/CE,** soit une copie certifiée conforme de la sentence arbitrale. »

Unofficial translation :

"§ 4 The applicant shall enclose with his request either the original arbitral award, **i.e. an arbitral award bearing a handwritten signature of the arbitrators or a qualified electronic signature as referred to in Article 3, 12°, of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust**

services for electronic transactions in the internal market and repealing Directive 1999/93/EC, or a certified copy of the arbitral award."

These two legal modifications came into force on 8 April 2024.

We are not aware of any case law relating to the application of these new legal provisions to date.

2. Comments on questions

In addition to the answers above, the Belgian delegation would like to make a few comments on the questions as they were formulated.

a) A first comment relates to the distinction established by the questionnaire between arbitral awards "*in electronic form*" and arbitral awards "*with digital signature*".

This distinction seems to us questionable as, in our view, an arbitral award with digital signature is necessarily, by its very nature, an arbitral award in electronic form.

This is precisely what the aforementioned Article 1713, § 3, of the Belgian Judicial Code indicates by stating that "*the arbitral tribunal may make the arbitral award in electronic form by signing it with a qualified electronic signature*".

b) In this regard, it is useful to refer to A/CN.9/1193, para. 69, which reflects the discussions held at the end of the session on 3 October 2024 afternoon and which reads as follows:

"69. *It was said that the definition of an "electronic award" was unclear because of the phrase "made of". It was also suggested that defining the term might not be necessary, as "electronic award" could be seen as not aligning with to UNCITRAL terminology. Therefore, it was recommended to speak of an "award in electronic form" rather than using the phrase "electronic award". The usefulness of the term "electronic" was also questioned, but it was said that it helped distinguish between awards issued in paper form and those created digitally. In this context, it was explained that an award issued as a PDF document could qualify as an original award in electronic form, but that a PDF created by scanning a paper arbitral award was usually an electronic copy of a paper-based award, rather than an original award made in electronic form. It was, however, also suggested that the scanned paper-based award could be considered the original award, if the will of the arbitral tribunal was to issue an award as such. It was explained that the veracity of the award was key, rather than the form. It was said that what mattered was whether the document, regardless of its form, could be trusted as a true and accurate representation of the arbitral decision. With regard to awards in electronic form, this required the use of reliable methods to fulfil functional equivalence requirements. Additionally, it was emphasised that an award should not be denied recognition and enforcement on the sole ground that it was in electronic form.*"

It is difficult, if not impossible, to draw a clear conclusion from the different views reported in this point.

One can only suppose that the words "arbitral awards in electronic form" which are used in the questionnaire are meant to take the place of the words "electronic arbitral awards" which were used in document WP. 238.

However, on the face of these two different wordings, we do not perceive a clear difference between them.

In any case, we fail to see how this point should lead to the conclusion that an arbitral award "with digital signature" would not be an arbitral award "in electronic form".

c) As to the notion of digital signature, this term does not appear in the UNCITRAL Model Law on Electronic Commerce nor in the UNCITRAL Model Law on Electronic Signatures.

However, it appears in the Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures, which explains that digital signatures are based on public-key cryptography and are to be distinguished from other forms of electronic signatures.

The question arises as to whether the questionnaire, by using the words "digital signature", wanted to exclude other forms of electronic signatures.

d) All this makes it difficult to understand the exact meaning of the questions asked.

In view of the above, the Belgian delegation can only repeat that it would have been extremely useful to take advantage of the Friday morning session to continue this discussion and try to reach a clearer conclusion.

Responses submitted by Canada

Background:

Canadian law generally permits electronic documents to be used in the place of paper ones when they are functionally equivalent. This includes permitting electronic signatures where they offer the same guarantees as a wet-ink signature. There exists slight variation between the different provincial regimes, yet all are based on the Uniform Law Commission of Canada's Uniform Electronic Commerce Act (Consolidation 2011) (ulcc-chlc.ca). That act was in turn based on the UNCITRAL Model Law on Electronic Commerce (MLEC).

It would thus be expected that e-arbitral awards or digitally signed arbitral awards, where they satisfy the requirements in the relevant provincial statute, would be treated as equivalent to paper versions. The federal statute is limited in its scope to specific listed statutes which do not include arbitral awards, so the status of e-arbitral awards in federal court would be less certain.

The laws listing the requirements in each jurisdiction are included in this table:

	Legislation on Functional Equivalency in Each Canadian Jurisdiction
Uniform Law Commission of Canada	Uniform Electronic Commerce Act (Consolidation 2011) (ulcc-chlc.ca)
Federally	Personal Information Protection and Electronic Documents Act, SC 2000, c 5, <https://canlii.ca/t/56ck6>

	Legislation on Functional Equivalency in Each Canadian Jurisdiction
Alberta	Electronic Transactions Act, SA 2001, c E-5.5, <https://canlii.ca/t/56129>
British-Columbia	Electronic Transactions Act, SBC 2001, c 10, <https://canlii.ca/t/5650z>
Manitoba	The Electronic Commerce and Information Act, CCSM c E55, <https://canlii.ca/t/55p97>
New-Brunswick	Electronic Transactions Act, RSNB 2011, c 145, <https://canlii.ca/t/lcjg>
Nova Scotia	Electronic Commerce Act, SNS 2000, c 26, <https://canlii.ca/t/jpr9>
Newfoundland and Labrador	Electronic Commerce Act, SNL 2001, c E-5.2, <https://canlii.ca/t/kzdf>
Ontario	Electronic Commerce Act, 2000, SO 2000, c 17, <https://canlii.ca/t/54bkh>
Prince Edward Island	Electronic Commerce Act, RSPEI 1988, c E-4.1, <https://canlii.ca/t/55327>
Quebec	Act to establish a legal framework for information technology, CQLR c C-1.1, <https://canlii.ca/t/55x83>
Saskatchewan	The Electronic Information and Documents Act, 2000, SS 2000, c E-7.22, <https://canlii.ca/t/55hcj>
North-west Territories	Electronic Transactions Act, SNWT 2011, c 13, <https://canlii.ca/t/52j0d>
Nunavut	Electronic Commerce Act, SNu 2004, c 7, <https://canlii.ca/t/khgg>
Yukon	Electronic Commerce Act, RSY 2002, c 66, <https://canlii.ca/t/kfsq>

UNCITRAL questions:

Canadian law largely does not differentiate between foreign and domestic arbitral awards in respect to their being permitted or not in electronic form. Consequently, the two questions will be answered together.

Regarding judicial decisions, there is little case law on this topic. Were the validity of an e-arbitral award that had been submitted to a provincial court challenged, we expect that the legislation on functional equivalency would apply.

For example, in Ontario, the *International Commercial Arbitration Act*, 2017, SO 2017, c 2, Sch 5, <https://canlii.ca/t/52wqs>, implements the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.

This statute provides, in article 3, that an application be made to superior court and requires in article 4 of the Convention:

> 1 To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

Similarly for domestic (Canadian) arbitral awards the *Arbitration Act*, 1991, SO 1991, c 17, https://canlii.ca/t/52wr5> requires, in article 50, an application to court be supported by the original award or a certified copy. The original award, according to article 38 of that act, must be in writing and be signed.

A Notice to the Public and Legal Profession updated in 2022, indicates that electronic filing through the Justice Services Online portal is permitted: csd_notice_to_public_and_profession_regarding_e-signatures_and_submissions_through_the_online_filing_portals_(april_27_2022).pdf

Original agreements and duly authenticated original awards would thus presumably be able to be submitted electronically as could signed documents. Consequently, an application to enforce a foreign or domestic commercial arbitral award and its supporting documentation could be submitted electronically through the Justice Services Online portal and would likely not be excluded by the court from recognition and enforcement solely because of its electronic form.

In Québec, the process would be similar as one may, per article 645 of the Code of Civil Procedure of Quebec, apply to a court for the homologation of an arbitral award. Awards must be in writing and be signed, and article 652 provides for the treatment of foreign arbitral awards:

> **652.** An arbitration award made outside Québec, whether or not confirmed by a competent authority, may be recognized and declared to have the same force and effect as a judgment of the court if the subject matter of the dispute is one which could be submitted to arbitration in Québec and if recognition and enforcement of the award are not contrary to public order. The same applies for a provisional or safeguard measure.

Québec's laws on functional equivalency would thus presumptively apply to both domestic and foreign arbitral awards and agreements and thereby permit electronic versions of these documents to be used. It is likely that documents could be filed electronically with the Greffe numérique judiciaire du Québec: GNJQ - Exclusions and inclusions.

Federally, the system is less certain. While the Commercial Arbitration Act, RSC 1985, c 17 (2nd Supp), <https://canlii.ca/t/56c79> and Federal Court Rules both instruct regarding enforcing arbitral awards and would allow for recognition and enforcement of both domestic and foreign commercial arbitral awards, the rules on functional equivalency do not apply to these statutes. Conversely, the Federal Court has an e-filing guide which gives direction on original documents and signatures: E-FILING GUIDE. It clearly states, "You can file an originating document electronically." Consequently, an application for recognition and enforcement of a foreign or domestic commercial arbitral award together with its supporting documentation including the original award in electronic form or with a digital signature could presumably be filed electronically using the Federal Court Electronic Filing System.

Responses submitted by Chile, Spanish version

Laudos arbitrales extranjeros

Antes de abordar las preguntas, es necesario explicar la normativa aplicable al reconocimiento y ejecución de laudos arbitrales extranjeros en Chile.

Pues bien, requieren del trámite del exequátur, que se tramita ante la Corte Suprema, y es un procedimiento judicial mediante el cual otorga reconocimiento y fuerza ejecutoria a una sentencia dictada por un tribunal extranjero para que pueda producir efectos legales en nuestro país. Es un mecanismo que asegura que las decisiones judiciales extranjeras cumplan con los principios del orden jurídico chileno antes de ser aplicadas por los tribunales.

Atendida la regulación del exequátur, el interesado debe impetrar una solicitud que de por iniciado el procedimiento, que, dependiendo del caso, será resuelta según lo dispuesto en el Código de Procedimiento Civil, en la Ley N° 19.971 sobre Arbitraje Comercial Internacional y las normas de la Convención de las Naciones Unidas, de 1958, sobre Reconocimiento y Ejecución de las Sentencias Arbitrales Extranjeras "Convención de Nueva York", y otros tratados ratificados por Chile.

Así, los laudos arbitrales extranjeros que no provengan de un arbitraje comercial internacional, deben ser reconocidos según lo disponen los artículos 242 y siguientes del Código de Procedimiento Civil; que señalan que se deberán aplicar los tratados respectivos; ante la falta, se estará a la reciprocidad internacional; y ante la falta de antecedentes sobre esta última, se les otorgará en Chile la misma fuerza que si se hubieran dictado por tribunales chilenos, con tal que reúnan las circunstancias siguientes:

a) Que no contengan nada contrario a las leyes de la República. Pero no se tomarán en consideración las leyes de procedimiento a que haya debido sujetarse en Chile la substanciación del juicio;
b) Que no se opongan a la jurisdicción nacional;
c) Que la parte en contra de la cual se invoca la sentencia haya sido debidamente notificada de la acción[13].
d) Que estén ejecutoriadas en conformidad a las leyes del país en que hayan sido pronunciadas.

Por su parte, los laudos arbitrales extranjeros emitidos en un arbitraje comercial internacional se encuentran regulados en los artículos 35 y 36 de la Ley N°19.971, que contienen normas especiales que priman respecto de las generales y que son similares a las de la Convención de Nueva York.

El artículo 35 establece, en síntesis, que un laudo arbitral, cualquiera que sea el país en que se haya dictado, será reconocido como vinculante y, tras la presentación por escrito al tribunal competente, será ejecutado en conformidad a la ley chilena.
Para tales efectos, la parte deberá presentar i) el laudo original debidamente autenticado o su copia debidamente certificada, y el original del acuerdo de arbitraje o su copia debidamente

[13] Con todo, ella tendrá a salvo la posibilidad de probar que, por otros motivos, estuvo impedida de hacer valer sus medios de defensa.

certificada; y ii) si el laudo o el acuerdo no estuviere redactado en un idioma oficial de Chile, deberá presentar una traducción debidamente certificada a ese idioma de dichos documentos.
El artículo 36 establece los motivos en base a los cuáles se podría rehusar el reconocimiento y ejecución de un laudo arbitral extranjero, ninguno de los cuales se refiere al formato en que la sentencia fue dictada, sino que atienden, en términos generales, a la posibilidad de ejercer el derecho a defensa, la validez del acuerdo de arbitraje y la competencia del arbitrador.

1ª PREGUNTA 1ª PARTE

Respecto a la situación de los laudos arbitrales extranjeros emitidos en formato electrónico o con firma digital.

La legislación chilena no contempla reglas especiales para su reconocimiento o ejecución.
Respecto a la jurisprudencia sobre la materia, se revisaron las 67 solicitudes de exequátur ingresadas durante los últimos 10 años, conocidas por la Corte Suprema. El análisis señalado permitió arribar a algunas conclusiones:
-20 correspondieron a solicitudes de reconocimiento de laudos arbitrales extranjeros, de las cuales 15 fueron acogidas, 1 rechazada y en 4 causas no se produjo pronunciamiento por haber concluido su tramitación anticipadamente por motivos procesales.
De la revisión de los antecedentes acompañados en el sistema de tramitación del Poder Judicial, en 19 el laudo arbitral extranjero cuyo reconocimiento se solicitó no fue emitido en formato electrónico o con firma digital. Respecto de 1, no fue posible acceder a los antecedentes por tratarse de una causa reservada.

Por lo tanto, no resulta posible dar cuenta de la práctica y la jurisprudencia pertinente sobra la materia, dado que la Corte Suprema no tuvo la oportunidad de pronunciarse sobre la procedencia de otorgar exequátur respecto de dicho tipo de laudos lo que, a su vez, implica que tampoco existen pronunciamientos acerca de su ejecución.

1ª PREGUNTA 2ª PARTE

En cuanto a la pregunta sobre la forma en que deben ser presentados los laudos arbitrales extranjeros para su reconocimiento y ejecución.

Se deben aplicar las reglas generales sobre tramitación electrónica contempladas en la Ley N° 20.886.

Por lo tanto, si se trata de un documento electrónico, deberá ser presentado a través del sistema de tramitación electrónica del Poder Judicial. En caso de que se trate de una copia física del laudo arbitral emitido en formato electrónico o con firma digital, también se deberá presentar en forma electrónica, salvo que la parte contraria formule objeción, en cuyo caso deberá ser presentado en forma material en el tribunal y quedará bajo custodia.

En casos excepcionales, cuando las circunstancias así lo requieran o se trate de una persona autorizada por el tribunal por carecer de los medios tecnológicos necesarios, la ley estipula que los escritos pueden presentarse al tribunal materialmente y en soporte papel por conducto del ministro de fe respectivo o del buzón especialmente habilitado al efecto. Considerando, eso sí, que los escritos presentados en formato papel serán digitalizados e ingresados a la carpeta electrónica inmediatamente.

Sobre la situación de las sentencias dictadas en formato electrónico por tribunales extranjeros
Despejada la situación de los laudos arbitrales extranjeros, podría resultar de interés dar cuenta que, de las restantes 47 causas de exequátur, en las cuales se solicitó el reconocimiento de sentencias dictadas por tribunales extranjeros:
-En 6 casos se pudo constatar que la sentencia objeto de la solicitud fue emitida en forma electrónica y suscrita con firma digital.
Si bien lo anterior no se refiere a laudos arbitrales extranjeros, porque se trata de sentencias dictadas por tribunales ordinarios, parece relevante señalar que la Corte Suprema concedió el exequátur, sin perjuicio de que hayan sido emitidas en forma electrónica y con firma digital.

Además, cabe destacar que:
a)En 2 (Causas Rol N° 3.545-2022 y 161.613-2023) la Corte Suprema resolvió de acuerdo a las disposiciones del "Acuerdo de Cooperación y Asistencia Jurisdiccional en materia Civil, Comercial, Laboral y Administrativa entre los Estados Partes del Mercosur y la República de Bolivia y la República de Chile".
b)En 5(Causas Rol N° 9067-2022, 43994-2022, 67467-2022, 79686-2023 y 87878-2023), la Corte Suprema aplicó el artículo 245 del Código de Procedimiento Civil, el cual dispone que ante falta de un tratado entre los Estados y de no existir antecedentes de reciprocidad, las resoluciones de tribunales extranjeros tendrán en Chile la misma fuerza que si se hubieran dictado por tribunales chilenos, con tal que reúnan determinados requisitos.
Estos antecedentes resultan importantes, en la medida de que las reglas del acuerdo de cooperación mencionado y del Código de Procedimiento Civil son aplicables también a los laudos arbitrales. Por lo mismo, en términos hipotéticos, constituyen un antecedente directo de que también sean aceptados en formato electrónico o con firma digital, en la medida de que, como vimos, se rigen por dichos cuerpos normativos.

II.Laudos arbitrales domésticos

Se entenderá por tales aquellos que fueron dictados en Chile, en contraposición a los dictados en el extranjero. A su vez, se entenderá que el concepto comprende a laudos dictados en arbitrajes comerciales y no comerciales, y arbitrajes de carácter nacional o internacional. Ello es relevante, dado que la normativa aplicable es diversa en cada caso, sin perjuicio de que resulta similar en diversos aspectos.

Pero, al igual que como ocurrió con los laudos arbitrales extranjeros, resulta necesario exponer brevemente la normativa básica aplicable a aquellos de carácter doméstico.
Como regla general, los laudos arbitrales dictados en Chile se rigen por las disposiciones contenidas en el Código de Procedimiento Civil.

Por su parte, respecto de aquellos laudos dictados en Chile en un arbitraje comercial internacional, será aplicable la Ley N°19.971; sin perjuicio, de los tratados bilaterales o multilaterales que puedan existir en la materia.

En lo que interesa, cabe resaltar que los arbitrajes llevados a cabo en Chile no se encuentran sujetos a las reglas de tramitación electrónica que contempla la Ley N°20.886, por no encontrarse dentro del ámbito de aplicación que fija su artículo 1°, por lo tanto, no concurre el requisito de que las resoluciones que se dicten en el arbitraje cuenten con formato electrónico y con firma digital.

Pero, por aplicación de las reglas generales, las partes del arbitraje acuerden que se desarrollará en forma electrónica, incluyendo la dictación de la sentencia, dada la libertad sobre la determinación de la forma de tramitación que otorga el Código de Procedimiento Civil y el Código Orgánico de Tribunales.

A una similar conclusión se puede arribar respecto del arbitraje comercial internacional, dado que la Ley N°19.971 dispone que las partes tendrán libertad para convenir el procedimiento a que se haya de ajustar el tribunal arbitral en sus actuaciones.
2ª Pregunta 1ª y 2ª Parte

En lo concerniente a los requisitos de forma que deben cumplir los laudos arbitrales depende del tipo de arbitraje del que se trate.
La Ley N°19.971 dispone en su artículo 31 que el laudo de un arbitraje comercial internacional se debe dictar por escrito, debe ser firmado por el o los árbitros y deberá indicar la fecha y el lugar del arbitraje.

Respecto de los arbitrajes que no tienen la calidad de comercial internacional, los requisitos del laudo dependerán del tipo de árbitro.

En la legislación nacional, se distingue entre: (i) el árbitro de derecho, que tramita y resuelve de acuerdo a la ley que regula la materia sobre la cual versa el conflicto; (ii) el árbitro arbitrador, que resuelve de acuerdo a su prudencia y equidad, y que tramita de acuerdo a lo que le indiquen las partes o por reglas mínimas de procedimiento fijadas en la ley; y (iii) el denominado árbitro mixto, que resuelve como árbitro de derecho y tramita como árbitro arbitrador.

Si se trata de un árbitro arbitrador o mixto, la sentencia expresará, además, la fecha y el lugar en que se expide, llevará al pie la firma del arbitrador, y será autorizada por un ministro de fe o por dos testigos en su defecto.

Si se trata de un árbitro de derecho, deberá expresar en letras la fecha y lugar en que se expida, y llevará al pie la firma del árbitro o árbitros que la dicten. Además, el laudo también debe ser firmado por el ministro de fe designado por el árbitro.

Por último, en cuanto a su ejecución, el artículo 635 del Código de Procedimiento Civil otorga a quien pida el cumplimiento la opción de ocurrir ante el árbitro que la dictó o ante el tribunal ordinario correspondiente, aplicándose en tales casos las reglas generales sobre ejecución de sentencias judiciales.

Sin embargo, en caso de que sean necesarios apremios o el empleo de otras medidas compulsivas o que el cumplimiento haya de afectar a terceros que no sean parte en el compromiso, deberá ocurrirse a la justicia ordinaria para la ejecución de lo resuelto.
Si se ocurre, para estos efectos, a los tribunales ordinarios aplica la ley N° 20886.
Situación de los laudos arbitrales domésticos emitidos en formato electrónico o con firma digital

Como se puede apreciar, al igual que en el caso de los laudos internacionales, la ley nacional no contempla reglas específicas para los laudos arbitrales domésticos emitidos en formato electrónico o con firma digital, tanto respecto de su dictación como de su cumplimiento.
Sin perjuicio de que el destino de una eventual ejecución dependerá de la forma en que el tribunal de la causa interprete y aplique la normativa vigente, existen antecedentes normativos

de los que se podría desprender la posibilidad de que los laudos arbitrales domésticos puedan ser dictados en formato electrónico y con firma digital.

Al respecto, el artículo 3° de la Ley N°19.799 "Sobre documentos electrónicos, firma electrónica y servicios de certificación de dicha firma", dispone que los actos otorgados por personas naturales suscritos por medio de firma electrónica serán válidos de la misma manera y producirán los mismos efectos que los otorgados por escrito y en soporte de papel. Por lo tanto, se reputarán como escritos y la firma electrónica, cualquiera sea su naturaleza, se mirará como firma manuscrita para todos los efectos legales.

Como excepción, el artículo 3° dispone que lo anterior no será aplicable a los actos en que la ley exige una solemnidad que no sea susceptible de cumplirse mediante documento electrónico, en que la ley requiera la concurrencia personal de alguna de las partes y en los relativos al derecho de familia, pero ninguna de esas limitaciones pareciera ser aplicables a los laudos arbitrales.

Por otro lado, la Ley N°19.799 distingue entre firma electrónica[14] y firma electrónica avanzada[15]. Esta última es la que brinda un mayor grado de seguridad, ya que permite detectar cualquier modificación posterior que se realiza al documento firmado, verificando la identidad del titular e impidiendo que desconozca la integridad del documento y su autoría.

En relación con ello, el artículo 4° señala que los documentos electrónicos que tengan la calidad de instrumento público deberán suscribirse mediante firma electrónica avanzada.

Si bien el punto no se encuentra expresamente resuelto en la ley y existe constancia en la doctrina de diversas posturas sobre si el laudo arbitral es un instrumento público o privado[16], la Corte Suprema ha considerado a laudos arbitrales extranjeros como instrumentos públicos[17]. Por ello, si se extiende la conclusión de la Corte Suprema a los laudos arbitrales domésticos y se les considera como instrumentos públicos, aquellos que sean emitidos en forma electrónica deberían contar con firma electrónica avanzada.

Conclusiones

No hay reglas específicas para el reconocimiento y ejecución de laudos arbitrales electrónicos o con firma digital —tanto en la normativa chilena como en la jurisprudencia de la Corte Suprema— lo que ha impedido el desarrollo de un cuerpo robusto de resoluciones que sienten precedentes claros en la materia. No obstante, se han observado casos de sentencias extranjeras emitidas digitalmente cuya ejecución ha sido concedida, lo que sugiere la posibilidad de que eventuales laudos arbitrales electrónicos reciban un trato equivalente en el futuro. Para ello, las disposiciones previstas en la Convención de Nueva York, la Ley N° 19.971 y el Código de

[14] Cualquier sonido, símbolo o proceso electrónico, que permite al receptor de un documento electrónico identificar al menos formalmente a su autor (literal f del artículo 2° de la Ley N° 19.799).

[15] Aquella certificada por un prestador acreditado, que ha sido creada usando medios que el titular mantiene bajo su exclusivo control, de manera que se vincule únicamente al mismo y a los datos a los que se refiere, permitiendo la detección posterior de cualquier modificación, verificando la identidad del titular e impidiendo que desconozca la integridad del documento y su autoría (literal g del artículo 2° de la Ley N° 19.799).

[16] Aylwin Azocar, Patricio. (2014). El juicio arbitral. 6ª edición actualizada y complementada por el profesor Eduardo Picand Albónico. Santiago: Legal Publishing Chile. pp. 502-503

[17] Causa Rol N° 82422-2016, sentencia de fecha 30 de noviembre de 2017, considerando 14°; Causa Rol N° 12710-2018, sentencia de fecha 9 de julio de 2019, considerando 8°; Causa Rol N° 71508-2022, sentencia de fecha 5 de octubre de 2023, considerando 6°.

Procedimiento Civil constituyen una base que, si bien no menciona expresamente el uso de medios digitales, tampoco los excluye.

En el ámbito nacional, la normativa señala que, por regla general, los tribunales y los árbitros no se encuentran sujetos a la Ley N° 20.886 de tramitación electrónica, al no ser parte formal del Poder Judicial. Sin embargo, la flexibilidad que otorga la Ley N° 19.799, al equiparar la firma electrónica a la manuscrita, abre un espacio para que los laudos puedan dictarse y firmarse de manera digital, respetando los requisitos de autenticidad que exige la ley. De igual modo, la posibilidad de recurrir a la justicia ordinaria para la ejecución de estos laudos confirma que el soporte en que hayan sido emitidos no es, en sí mismo, un impedimento legal, siempre y cuando se cumplan las formalidades esenciales exigidas por la legislación vigente.

Responses submitted by Chile, English version

I. Foreign Arbitral Awards

Before addressing the questions, it is necessary to briefly explain the rules applicable to the recognition and enforcement of foreign arbitral awards in Chile.

Foreign arbitral awards require an "*exequatur*" process, which is a special judicial procedure handled by the Supreme Court. This procedure that grants recognition and enforcement power to a decision made by a foreign court, allowing it to have legal effects in Chile. This mechanism ensures that foreign judicial decisions comply with Chilean legal principles before being applied by the courts.

Given the exequatur process, the party seeking recognition must submit a request to initiate the procedure, which will be resolved according to the Civil Procedure Code, Law No. 19,971 on International Commercial Arbitration, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the "New York Convention" of 1958, among other treaties ratified by Chile.

Thus, foreign arbitral awards that do not arise from international commercial arbitration, must be recognized under Articles 242 and subsequent provisions of the Civil Procedure Code. These articles state that applicable treaties should be first used; then, if none exist, international reciprocity applies; and if there is no information on reciprocity, the award will be treated as if issued by Chilean courts, provided it meets the following conditions:

e) It must not contain anything contrary to Chilean laws. Procedural laws that would have applied in Chile during the trial are not taken into consideration;
f) It must not conflict with national jurisdiction;
g) The party against whom the judgment is invoked must have been properly notified of the proceedings[18].
h) It must be final ("*ejecutoriada*") according to the laws of the country where it was issued.

[18] Nonetheless, she will retain the right to demonstrate that, for other reasons, she was unable to present her defense.

Foreign arbitral awards issued in international commercial arbitration re governed by Articles 35 and 36 of Law No. 19,971, which contain specific rules that take precedence over general ones and are similar to the New York Convention.

Article 35 essentially states that an arbitral award, regardless of the country in which it was made, will be recognized as binding and, upon written submission to the competent court, will be enforced according to Chilean law.

For this, the party must present:

i) The original arbitral award, duly authenticated, or a certified copy, and the original arbitration agreement or a certified copy; and; y ii) If the award or agreement is not in an official language of Chile, a certified translation must be provided.

Article 36 outlines the grounds for refusing recognition and enforcement of a foreign arbitral award, which generally concern the right to a defense, the validity of the arbitration agreement, and the arbitrator's authority, but do not pertain to the format in which the decision was issued.

1ST QUESTION, PART 1

Concerning foreign arbitral awards issued electronically or with a digital signature, Chilean law does not provide specific rules for their recognition or enforcement.

An analysis of 67 exequatur requests filed in the last 10 years, as reviewed by the Supreme Court, revealed the following:

- 20 involved requests for the recognition of foreign arbitral awards, of which 15 were granted, 1 was denied, and 4 were dismissed before awarded, on procedural grounds.

- Also, of the cases where recognition was sought, 19 involved awards not issued electronically or with a digital signature. In one case (1), information was unavailable due to confidentiality policies.

Therefore, it is not possible to determine the practice and relevant jurisprudence on this issue, as the Supreme Court has not yet had the opportunity to rule on the recognition of such awards, meaning there are no precedents regarding their enforcement.

1ST QUESTION, PART 2

As for how arbitral awards should be submitted for recognition and enforcement, the general rules for electronic procedures under Law No. 20,886 apply.

Thus, if the document is electronic, it must be submitted through the electronic filing system of the Judiciary. If it is a physical copy of an electronically issued or digitally signed award, it must also be submitted electronically, unless the opposing party objects, in which case it must be filed physically with the court and kept in Court custody.

In exceptional cases, if required by circumstances or if a person lacks the necessary technological means, the law allows documents to be physically filed with the court through

the appropriate certifying officer ("*ministro de fe*") or a designated drop box. However, such documents will be immediately digitized and entered into the electronic file.

On Judgments Issued Electronically by Foreign Courts

Apart from foreign arbitral awards, it is worth noting that among the 47 remaining exequatur cases involving foreign court judgments:

-In 6 cases, the judgment was issued electronically and signed digitally.

Although these are not arbitral awards, as they are decisions made by regular courts, it is relevant to note that the Supreme Court granted exequatur regardless of their electronic issuance and digital signature.

Additionally:

a) In two cases (Cases No. 3,545-2022 and 161,613-2023), the Supreme Court ruled in accordance with a treaty with Bolivia, titled: "*Acuerdo de Cooperación y Asistencia Jurisdiccional en materia Civil, Comercial, Laboral y Administrativa entre los Estados Partes del Mercosur y la República de Bolivia y la República de Chile*".

b) In 5 cases (Cases No. 9,067-2022, 43,994-2022, 67,467-2022, 79,686-2023, and 87,878-2023), the Supreme Court applied Article 245 of the Civil Procedure Code, which stipulates that in the absence of a treaty or reciprocity, foreign court decisions will be treated as if issued by Chilean courts, provided certain requirements are met.

These findings are significant because the rules from the aforementioned cooperation agreement and the Civil Procedure Code are also applicable to arbitral awards. Therefore, hypothetically, they may serve as a direct basis for accepting electronically issued or digitally signed arbitral awards, as they are governed by the same legal frameworks.

II. Domestic Arbitral Awards

Domestic arbitral awards are those made in Chile, as opposed to those made abroad. This includes awards from both commercial and non-commercial arbitration, as well as national or international arbitration conducted in Chile. This distinction is relevant because the applicable rules vary in each case, although they are similar in many aspects.

However, as with foreign arbitral awards, it is necessary to briefly outline the basic regulations applicable to domestic awards.

As a general rule, arbitral awards issued in Chile are governed by the provisions of the Code of Civil Procedure.
On the other hand, for awards issued in Chile within the framework of international commercial arbitration, Law No. 19,971 shall apply, without prejudice to any bilateral or multilateral treaties that may exist on the matter.

It is important to note that arbitrations conducted in Chile are not subject to the electronic processing rules under Law No. 20,886, as they do not fall within the scope defined by its

Article 1. Therefore, there is no requirement that arbitration decisions be issued electronically or with a digital signature.

However, general rules allow parties to agree that the arbitration will be conducted electronically, including the issuance of the award, given the procedural flexibility provided by the Civil Procedure Code and the Organic Code of Courts.

A similar conclusion applies to international commercial arbitration, as Law No. 19,971 allows parties to agree on the procedural rules the arbitral tribunal will follow.

2nd Question, Parts 1 and 2

The formal requirements for arbitral awards depend on the type of arbitration involved.

aw No. 19,971 stipulates in Article 31 that an award in an international commercial arbitration must be in writing, signed by the arbitrator(s), and include the date and place of arbitration.

For non-commercial arbitration, the requirements depend on the type of arbitrator.

In national legislation, a distinction is made between:

(i) A "legal arbitrator" resolves according to the law governing the dispute;
(ii) An "arbitrator-amiable compositeur" resolves based on equity and conducts proceedings as agreed by the parties or under minimal legal procedures;
(iii) A "mixed arbitrator" combines elements of both.

If the arbitrator is an arbitrator-amiable compositeur or mixed, the decision must also include the date and place of issuance, be signed by the arbitrator, and be certified by a certifying officer ("*ministro de fe*") or two witnesses if necessary.

If the arbitrator is a legal arbitrator, the award must include the date and place in writing and be signed by the arbitrator(s) and the designated certifying officer.

Regarding enforcement, Article 635 of the Civil Procedure Code allows the party seeking enforcement to choose between the arbitrator who issued the award or the relevant ordinary court, following the general rules for enforcing judicial decisions. However, if enforcement requires compelling measures or affects third parties, recourse to ordinary courts is necessary.

Domestic Arbitral Awards Issued Electronically or with Digital Signatures

As seen with international awards, Chilean law does not specifically regulate domestic arbitral awards issued electronically or with digital signatures, either in their issuance or enforcement.

Although the outcome of enforcement would depend on the court's interpretation of existing rules, there are legal precedents suggesting that domestic arbitral awards could be issued and signed digitally.

In this regard, Article 3 of Law No. 19,799, "*Sobre documentos electrónicos, firma electrónica y servicios de certificación de dicha firma*" provides that acts executed by natural persons and signed using electronic signatures shall be valid in the same manner and produce the same effects as those executed in writing on paper. Consequently, they shall be deemed as written documents, and the electronic signature, regardless of its nature, shall be regarded as equivalent to a handwritten signature for all legal purposes.

As an exception, Article 3 establishes that the aforementioned provision shall not apply to acts requiring a formality that cannot be fulfilled through an electronic document, acts where the law requires the personal presence of one of the parties, or those related to family law. However, none of these limitations appear to apply to arbitral awards.

Law No. 19,799 distinguishes between "electronic signatures"[19] and "advanced electronic signatures,"[20] the latter provides the highest degree of security, as it allows for the detection of any subsequent modifications made to the signed document, verifies the identity of the signatory, and prevents them from denying the document's integrity or authorship.

In this regard, Article 4 states that electronic documents classified as public instruments must be signed using an advanced electronic signature.

Although this issue is not explicitly addressed in the law and there are various positions in legal doctrine regarding whether an arbitral award is a public or private instrument,[21] the Supreme Court has classified foreign arbitral awards as public instruments.[22]

Therefore, if the Supreme Court's reasoning is extended to domestic arbitral awards and they are considered public instruments, those issued electronically should include an advanced electronic signature.

Conclusions

There are no specific rules for the recognition and enforcement of electronic arbitral awards or those with digital signatures—neither in Chilean regulations nor in the Supreme Court's jurisprudence. This absence has hindered the development of a robust body of rulings that could establish clear precedents on the matter.

However, cases involving digitally issued foreign judgments whose enforcement was granted have been observed, suggesting the possibility that electronic arbitral awards might receive similar treatment in the future. In this regard, the provisions of the New York Convention, Law No. 19,971, and the Code of Civil Procedure provide a foundation that, while not explicitly mentioning digital means, does not exclude them either.

---

[19] Any sound, symbol, or electronic process that allows the recipient of an electronic document to formally identify its author (literal f of Article 2 of Law No. 19,799).

[20] One certified by an accredited provider, created using means that the holder maintains under their exclusive control, such that it is uniquely linked to the holder and the data it refers to, allowing the detection of any subsequent modifications, verifying the holder's identity, and preventing the denial of the document's integrity and authorship (literal g of Article 2 of Law No. 19,799).

[21] Aylwin Azocar, Patricio. (2014). *El juicio arbitral*. 6th edition, updated and supplemented by Professor Eduardo Picand Albónico. Santiago: Legal Publishing Chile. pp. 502-503.

[22] Case No. 82422-2016, judgment dated November 30, 2017, consideration 14; Case No. 12710-2018, judgment dated July 9, 2019, consideration 8; Case No. 71508-2022, judgment dated October 5, 2023, consideration 6.

At the national level, regulations generally state that courts and arbitrators are not subject to Law No. 20,886 on electronic case processing, as they are not formally part of the Judiciary. However, the flexibility provided by Law No. 19,799, which equates electronic signatures to handwritten ones, creates an opportunity for awards to be issued and signed digitally, as long as the authenticity requirements set forth by law are met. Similarly, the ability to resort to ordinary courts for the enforcement of such awards confirms that the medium in which they are issued is not, in itself, a legal obstacle, provided that the essential formalities required by current legislation are fulfilled.

Responses submitted by Czechia

(1) What is the status of foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

Arbitral awards are generally enforced in the Czech Republic through enforcement proceedings. This procedure is carried out on the basis of an executory title. In the case of domestic arbitration proceedings, the executory title is the award itself. In the case of foreign arbitral awards, depending on the legal basis for recognition and enforcement, the Czech court must generally recognize arbitral award first and then order its enforcement.

In order to meet these requirements, a submission will be made, which can and in most cases will be made electronically. It is important to point out, that the form of the arbitral award (electronic or paper) is left to the will of the parties and if the award or related documents are in paper form, they may be converted into digital form at the contact points of the public administration (CzechPoint) with the certification of their authenticity. These documents would later be submitted to the court which would decide on their enforceability.

The standard way and primary method of making electronic submissions and communication between the Czech public administration, legal entities or individuals doing business (eg. freelancers) is the system of so-called "data boxes". The submissions within this system have the same effect as if they were hand-signed in paper form. This effect does not derive from the electronic certificate but from the integrity of the system as such and the linkage of each box to an individual person in the government database. Data boxes can also be established by persons who are not registered in the Czech Republic but abroad. It is therefore conceivable that an entity registered abroad would deliver an award to a Czech party via this system.

If the documents can’t be submitted through a data box, they may also be delivered to another electronic address of the institution (eg. a court), provided that the submission meets the prescribed requirements. Where electronic signatures are required, they may be used provided that they are recognised (e.g. domestic or within the EU). If the submission requires an electronic signature and such signature is not used, it may be added by other means within the time limit (eg. to the protocol).

(2) What is the status of domestic arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law? If any relevant judgments are available, we would be grateful if you could provide us with copies of any such judgments, preferably in English if possible.

Domestic arbitral awards are executory titles by themselves and do not require further court activity. The submission for enforcement may, similarly to the case in the first question, be made through a data box or other electronic address, provided that all the requirements are met.

There are judgments (in the Czech language) that may be remotely related to this topic, but we are not aware of any that addresses this topic specifically.

Responses submitted by Finland

The Finnish Arbitration Act 23 October1992 (967/92) provides:

Section 36
1. The award shall be made in writing and signed by the arbitrators.
2. The arbitral award shall state its date and the place of arbitration as agreed or determined.

Section 37
A copy of the award signed by the arbitrators shall be given to each party at the session of the arbitral tribunal or delivered to them in another verifiable way.

Section 40
2. However, the absence of the signature of one or more arbitrators shall not make the award null and void if it has been signed by a majority of all members of the arbitral tribunal provided that they on the award have stated the reason why an arbitrator who has participated in the arbitration has not signed the arbitral award.

Section 54
1. An arbitral award which has been made in a foreign State and which under this Act shall be recognised in Finland shall be enforced here upon request. An application for enforcement shall be submitted to the court of first instance.
2. The application shall be accompanied by the original arbitration agreement or by a provision referred to in section 4 and by the *original award, or certified copies* (italics added) thereof. A document drawn up in any other language than Finnish or Swedish shall, furthermore, be accompanied by a certified translation into either of these languages, unless the court grants an exemption.

There is no provision in Finnish legislation and no authoritative case law as to the status of foreign or domestic arbitral awards in electronic form or with digital signature for enforcement by courts. There is no reason to believe that the status of an arbitral award (a) in electronic form or (b) with digital signature be differently submitted to and treated by courts, including relevant practice and case law, simply depending on the fact whether it is foreign or domestic.

There is no authoritative case law as to the question whether an award in electronic form or with digital signature fulfills the requirements of Section 36, Section 37 and Section 54 of the Arbitration Act.

There is however one decision from the Helsinki Court of Appeal of 18 June 2024 (S23/1909) number 947 as to the question from which date the time-limit to bring an action for setting aside an award shall be counted if the party, who wants to bring an action for setting aside an award, has first got an electronic copy of the award and later a paper-based award. In other words: Shall the time-limit to bring the action start to run from the date the party got an

electronic copy of the award or from the later date the party got a paper-based (hard) copy of the award?[23] The Court of Appeal found that the time-limit started to run from the date the party got an electronic copy of the award and that the action therefore had been brought too late.

This decision has, however, not yet become final since the party, who brings the action, has requested leave to appeal from the Supreme Court. According to the information I have got from the Supreme Court, the Court will probably decide before the end of this year whether it will grant leave to appeal or not. If the Court decides not to grant leave to appeal, the decision of the Helsinki Court of Appeal becomes final. If the Supreme Court decides to grant leave to appeal, its decision of the case can be expected at the earliest in late spring or early summer 2025 but probably even later. After having served almost 18 years as a Supreme Court judge I would be very surprised if leave to appeal is not granted in this case. This is due to the fact that it seems important to have this case decided by the Supreme Court with regard to the application of the law in other similar cases.

When the case has been finally decided, I can, if you so wish, send you a copy of the decision with a translation of the relevant parts of it into English.

In legal literature it has been submitted that the requirement that the award shall be made in writing is fulfilled also if the award is in electronic form and that the requirement that the award shall be signed is fulfilled also if the signature is digital (See Risto Koulu, Välimieslainkäytön oikeudellinen kontrolli (2007) p. 268 and Mika Hemmo, Välimiesmenettely (2022) p. 937). However, these are just statements by two academics. Those statements have of course as such no binding effect in practice.

Responses submitted by France

1. **Statut des sentences arbitrales étrangères (a) rendues sous forme électronique ou (b) signées électroniquement_s'agissant de leur reconnaissance et exécution par les juridictions étatiques. Comment sont-elles présentées aux et traitées par les juridictions étatiques, y compris dans le cadre de la pratique et dans la jurisprudence ?**

Les sentences arbitrales rendues à l'étranger ne peuvent être reconnues ou exécutées, d'un point de vue formel, uniquement si leur existence est établie par celui qui s'en prévaut (article 1514 du code de procédure civile). La preuve de l'existence de la sentence est établie par la production de l'original de cette sentence, accompagné de la convention d'arbitrage, ou des copies de ces documents réunissant les conditions requises pour leur authenticité (article 1515 du code de procédure civile).

L'original de la sentence peut être matérialisé en papier ou bien électroniquement. En effet, l'écrit électronique a la même force probante que l'écrit sur support papier en application de l'article 1366 du code civil, sous réserve que puisse être dûment identifiée la personne dont il émane et qu'il soit établi et conservé dans des conditions de nature à en garantir l'intégrité. Une sentence arbitrale peut donc être nativement numérique. L'existence de sentence arbitrale dont l'original est électronique a d'ailleurs été explicitement reconnue au second alinéa de l'article

[23] A party shall bring his action for setting aside an arbitral award within three months of the date on which he received a copy of the award. (Section 41.3 of the Arbitrstion Act)

4-2 de la loi n° 2016-1547 du 18 novembre 2016 de modernisation de la justice du XXIe siècle s'agissant des services d'arbitrage en ligne.

La **copie** de la sentence doit répondre aux exigences et conditions de fiabilité établies par le décret n° 2016-1673 du 5 décembre 2016 relatif à la fiabilité des copies et pris pour l'application de l'article 1379 du code civil. A ce titre, la copie de la sentence arbitrale peut être une copie papier ou une copie électronique. Elle est considérée comme fiable jusqu'à preuve du contraire, au sens de l'article 1379 du code civil, si elle résulte d'une reproduction à l'identique de la forme et du contenu de l'acte et si son intégrité est garantie dans le temps par un procédé conforme à des conditions fixées par décret en Conseil d'État.

Le décret n° 2016-1673 du 5 décembre 2016 précité précise les conditions techniques relatives au procédé de reproduction.

S'agissant de l'exécution des sentences rendues à l'étranger, l'article 1516 du code de procédure civile dispose qu'elle n'est possible qu'en vertu d'une ordonnance d'exequatur émanant du tribunal judiciaire de Paris, délivrée sur requête de la partie la plus diligente au greffe de la juridiction accompagnée de l'original de la sentence et d'un exemplaire de la convention d'arbitrage ou de leurs copies réunissant les conditions requises pour leur authenticité, conformément aux textes précités.

La signature de la sentence arbitrale[24] peut être électronique dans la mesure où le procédé utilisé garantit l'identification du signataire et l'intégrité de l'acte dans les conditions visées à l'article 1367 du code civil et du décret n° 2017-1416 du 28 septembre 2017 relatif à la signature électronique.

En revanche, une difficulté se pose puisque l'article 1517 du code de procédure civile dispose que l'exequatur est apposé sur l'original ou, si celui-ci n'est pas produit, sur la copie de la sentence arbitrale ; or, l'exequatur consiste pour le moment en l'apposition de la formule exécutoire sur le document soumis (original ou copie). Bien que la signature électronique d'une décision -par exemple d'exequatur- soit techniquement possible, faute de disposer à ce jour d'un minutier électronique (système de conservation numérique des décisions de justice) généralisé, toutes les juridictions, dont le tribunal judiciaire de Paris, n'ont pas la possibilité de conserver électroniquement des décisions natives numériques[25]. En l'absence d'un tel dispositif, l'exequatur doit donc être apposé au format papier. En pratique, la reconnaissance et l'exécution d'une sentence arbitrale étrangère nécessite donc toujours un original « papier » ou une copie de la sentence numérique matérialisée dans un document papier. A terme, le déploiement d'un minutier électronique permettra d'apposer électroniquement l'exequatur sur une sentence arbitrale rendue à l'étranger nativement numérique.

2. Statut des <u>sentences arbitrales rendues en France</u> (a) sous forme électronique ou (b) signées électroniquement s'agissant de leur exécution par les juridictions étatiques.

[24] L'article 1513 du code de procédure civile dispose qu'en matière d'arbitrage international, la sentence est signée par tous les arbitres. Toutefois, si une minorité d'entre eux refuse de la signer, les autres en font mention dans la sentence. A défaut de majorité, le président du tribunal arbitral statue seul. En cas de refus de signature des autres arbitres, le président en fait mention dans la sentence qu'il signe alors seul. La sentence rendue dans les conditions prévues à l'un ou l'autre des deux alinéas précédents produit les mêmes effets que si elle avait été signée par tous les arbitres ou rendue à la majorité des voix.

[25] Actuellement, la France a déployé le minutier électronique à titre expérimental dans certaines juridictions (Versailles, Chartres, Melun, Sens). A terme, le minutier électronique sera déployé dans toutes les juridictions.

Comment sont-elles présentées aux et traitées par les juridictions étatiques, y compris dans le cadre de la pratique et dans la jurisprudence ?

S'agissant des sentences arbitrales rendues en France, si elles sont rendues dans le cadre d'un arbitrage international[26], le régime est le même que celui applicable pour les sentences arbitrales rendues à l'étranger et décrit ci-dessus[27].

Si elles sont rendues dans le cadre d'un arbitrage interne, les règles applicables à la reconnaissance et à l'exécution des sentences arbitrales domestiques rendues sous forme électronique sont substantiellement similaires aux règles applicables à la reconnaissance et à l'exécution des sentences arbitrales étrangères rendues sous forme électronique.

En effet, l'article 1487 du code de procédure civile dispose que la sentence arbitrale n'est susceptible d'exécution forcée qu'en vertu d'une ordonnance d'exequatur émanant du tribunal judiciaire dans le ressort duquel cette sentence a été rendue. La requête est déposée par la partie la plus diligente au greffe de la juridiction accompagnée de l'original de la sentence et d'un exemplaire de la convention d'arbitrage ou de leurs copies réunissant les conditions requises pour leur authenticité. Ces conditions sont également prévues en application des articles 1366 et 1379 du code civil précités. Tant l'original que la copie de la sentence arbitrale peuvent être électroniques.

De même, la sentence doit être signée[28] et, en application de l'article 1367 du code civil, la signature peut également être électronique.

Enfin, l'article 1487 du code de procédure civile dispose que l'exequatur est apposé sur l'original ou, si celui-ci n'est pas produit, sur la copie de la sentence arbitrale. Les mêmes réflexions relatives à la numérisation de la procédure d'exequatur sont transposables au cas des sentences arbitrales domestiques internes.

3. Jurisprudence française en la matière

Il n'existe pas de jurisprudence française concernant les sentences arbitrales rendues sous forme électronique, ce qui laisse penser qu'en pratique les parties sollicitent la reconnaissance et l'exécution de sentences arbitrales rendues sous forme papier.

Responses submitted by Germany[29]

1. What is the status of **foreign** arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

a) Awards in electronic form

[26] Article 1504 du code de procédure civile : « Est international l'arbitrage qui met en cause des intérêts du commerce international ».
[27] S'agissant de l'exécution des sentences arbitrales rendues en France mais dans le cadre d'un arbitrage international, l'article 1516 du code de procédure civile dispose qu'elle n'est possible qu'en vertu d'une ordonnance d'exequatur émanant du tribunal judiciaire dans le ressort duquel la sentence a été rendue.
[28] L'article 1480 du code de procédure civile dispose que la sentence arbitrale est rendue à la majorité des voix. Elle est signée par tous les arbitres. Si une minorité d'entre eux refuse de la signer, la sentence en fait mention et celle-ci produit le même effet que si elle avait été signée par tous les arbitres.
[29] Responses submitted by the German Federal Ministry of Justice jointly with the German Arbitration Institute (DIS)

German law allows for the recognition and enforcement of foreign arbitral awards. It is clear that under sect. 1061 of the German Code of Civil Procedure and the New York Convention any award that meets the requirements under German law can be recognized and enforced as an arbitral award (for the applicable standard, see below sub 2 a). German law presumably also allows for the recognition and enforcement of a foreign award as long as it meets the autonomous standards for an award under the New York Convention. No case law exists as to how these autonomous standards define electronic form.

b) Awards with digital signatures

A foreign award that meets the form requirements for a domestic award, i.e. bears qualified electronic signatures as defined under Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (eIDAS Regulation) (below sub 2 b), can be recognized in Germany. German law presumably also allows for the recognition and enforcement of a foreign award as long as it meets the autonomous standards for an award under the New York Convention, but no case law exists as to how these autonomous standards define digital signatures.

c) Submission to court

Awards in electronic form can be submitted to court as electronic documents (sect. 130a of the German Code of Civil Procedure). Such submission is normally done via the special electronic mailbox that every lawyer admitted to the German bar must maintain. No case law on these questions is known.

2. What is the status of **domestic** arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

a) Awards in electronic form

Under sect. 1054(1) of the German Code of Civil Procedure, an adoption of Article 31(1) of the Model Law, the award must be made in writing. The German provision on delivery of the award to the parties (sect. 1054(4) of the German Code of Civil Procedure, an adoption of Article 31(4) of the Model Law), however, was amended in 2005 in order to allow for electronic transmission of awards (Government bill, Bundestag printed paper 15/4067, p. 36), which implies that the award can also be made in electronic form. Under sect. 126(3) of the German Civil Code, written form can be replaced by electronic form. Electronic form, in turn, requires the issuer to add their name to their declaration and to sign the document with a qualified electronic signature (as defined under the eIDAS Regulation).

b) Awards with digital signatures

According to the prevailing opinion, digital signatures suffice if they are qualified electronic signatures as defined under the eIDAS Regulation. This is also clarified by the German Draft

Bill on the Modernization of the Arbitration Law which includes a new provision on electronic awards.

c) Submission to court

Awards in electronic form can be submitted to court as electronic documents (sect. 130a of the German Code of Civil Procedure). Such submission is normally done via the special electronic mailbox that every lawyer admitted to the German bar must maintain. No case law on these questions is known.

Responses submitted by Guatemala, Spanish version

1. ¿Cuál es el estado de los laudos arbitrales extranjeros para su ejecución ante los tribunales?

En la práctica guatemalteca y al momento de esta investigación, aun no se ha identificado un caso en el que se haya pretendido la ejecución de un laudo extranjero con estas características. Por lo tanto, a continuación, se realizará una integración de los instrumentos normativos vigentes en Guatemala que lidian con la ejecución de laudos extranjeros y que podrían fungir como el fundamento para lograr el reconocimiento y ejecución de un laudo en formato electrónico y/o con firma electrónica.

a. En formato electrónico

Guatemala es un Estado Contratante de la Convención de Nueva York sobre el Reconocimiento y la Ejecución de las Sentencias Arbitrales Extranjeras (en adelante "CNY"). Esta convención pretende regular de manera uniforme los requisitos necesarios para obtener el reconocimiento y ejecución de un laudo arbitral extranjero.

En este respecto, el artículo IV de la CNY establece que, para obtener el reconocimiento y ejecución de un laudo extranjero se requiere:

a) El original del laudo debidamente autenticado o una copia del original que reúna las condiciones requeridas para su autenticidad

b) El original del acuerdo de arbitraje o una copia que reúna las condiciones requeridas para su autenticidad

Además, el mismo artículo señala que, de dictar el laudo en un idioma distinto a los oficiales del país en el que se pretende ejecutar, la solicitud de ejecución debe estar acompañada de una traducción al idioma oficial del país. Dicha traducción debe ser certificada por un traductor oficial o jurado, o bien, por un agente diplomático o consular. El idioma oficial en Guatemala es el español, por lo que, si el laudo no fue dictado en ese idioma, deberá ser traducido con las especificaciones antes mencionadas.

Esta regulación es conteste con los requisitos plasmados en la Ley de Arbitraje de Guatemala (en adelante, "LAG"). Consecuentemente, la Ley para el Reconocimiento de las Comunicaciones y Firmas Electrónicas (en adelante, LRCFE) también puede ser

utilizada para interpretar qué se debe entender por "escrito", "firma" y "original" del laudo. En tal sentido, se considerará que un laudo en formato digital y/o con firma electrónica es original, consta por escrito y está firmado por el o los árbitros cuando reúna los requisitos de los artículos 7, 8 y 9 de la LRCFE. Cada requisito se desarrolla de manera más extensiva en los siguientes apartados.

b. Con firma digital

En cuanto a este apartado, es pertinente destacar que el artículo 39 de la LRCFE establece que cualquier firma electrónica creada o utilizada en el extranjero producirá los mismos efectos jurídicos que aquellas expedidas dentro del territorio nacional. En este sentido, la misma normativa dispone que no se tomará en consideración ni el lugar donde se encuentre el firmante ni el lugar de emisión de la firma. Por consiguiente, los laudos arbitrales provenientes de cualquier jurisdicción del mundo gozarán de la misma validez que aquellos que se emitan y firmen dentro del territorio nacional.

Sobre esa base, en el apartado 2(b) de este escrito, relativo al estado jurídico de los laudos arbitrales nacionales, se aborda de manera expresa lo referente a que la firma electrónica del árbitro o de los árbitros debe permitir no solo la identificación inequívoca de la persona que suscribe, sino también la manifestación clara de su voluntad para emitir la resolución correspondiente. Considerando que el tratamiento jurídico de dichas firmas electrónicas es equivalente, se desarrollará el análisis correspondiente en el apartado antes mencionado, con el fin de garantizar la uniformidad en la interpretación y aplicación de este precepto.

2. ¿Cuál es el estado de los laudos arbitrales nacionales para su ejecución ante los tribunales?

Nuevamente, en la práctica guatemalteca a la fecha aun no se ha identificado algún precedente en el que se haya pretendido la ejecución de un laudo nacional con estas características. Por lo tanto, a continuación, se realizará una integración de las leyes guatemaltecas aplicables en esta materia que podrían fungir como el fundamento para lograr el reconocimiento y ejecución de un laudo en formato electrónico y/o con firma electrónica.

a. En formato electrónico

Como la mayoría de las leyes de arbitraje basadas en la Ley Modelo de la Comisión de las Naciones Unidas para el Derecho Mercantil Internacional (en adelante, "CNUDMI"), el artículo 40 de la LAG establece los requisitos que deben contener los laudos arbitrales. En lo concerniente al formato del laudo, dicha norma indica que debe ser dictado por escrito.

El artículo 7 de la LRCFE establece que cualquier comunicación electrónica cumple con el requisito de constar por escrito siempre que "*la información consignada en su texto* [sea] *accesible para su ulterior consulta*". En este respecto, uno de los grupos de trabajo de la CNUDMI, han concluido que el requisito de forma escrita se ve cumplido con la equivalencia funcional prevista para la firma electrónica. En ese sentido, se considera que un laudo cumple

con el requisito de estar "*por escrito*" si se presenta en formato electrónico y es posible acceder a la información contenida en él para su ulterior consulta.[1]

Por lo tanto, para que un laudo nacional que conste en formato electrónico pueda considerarse como "escrito" según la legislación guatemalteca, el texto del laudo debe poder ser consultado de manera indefinida incluso después de que este es compartido por medios electrónicos.

Además, el artículo 46 de la LAG indica que la solicitud de reconocimiento y ejecución del laudo debe estar acompañada por, ya sea, el laudo original debidamente autenticado, o bien, una copia debidamente certificada de este. También se debe adjuntar el original del acuerdo de arbitraje o una copia debidamente certificada de este.

En el contexto de la ejecución de laudos digitales y/o con firmas electrónicas, la LRCFE también prevé una solución. Específicamente el artículo 9 indica que una comunicación por escrito se considerará en su formato original siempre que:

a) Exista alguna garantía fiable de la integridad de la información que contiene, a partir del momento en el que se generó por primera vez en su forma definitiva, tanto en comunicación electrónica como de otra índole y

b) En los casos en que se exija proporcionar la información que contiene, esta puede exhibirse a la persona a la que se ha de proporcionar. En el caso de un laudo electrónico y/o con firmas electrónicas, se trata del tribunal ante el que se pretende solicitar la ejecución del laudo.

b. Con firma digital

Además de establecer que el laudo debe constar por escrito, el artículo 40 de la LAG indica que este debe ser firmado por el o los árbitros. El artículo 8 de la LRCFE prevé que una comunicación electrónica cumplirá con el requisito de estar firmada si:

a) Se utiliza un medio para determinar la identidad de la parte firmante y para indicar la voluntad que tiene respecto de la información consignada en la comunicación electrónica; y

b) El método empleado

   i) Es fiable y resulta apropiado para los fines que se generó o transmitió la comunicación electrónica, atendidas todas las circunstancias del caso, inclusive todo acuerdo aplicable o

   ii) Se ha demostrado en la práctica que, por sí solo o con el respaldo de otras pruebas, dicho método cumple las funciones enunciadas anteriormente.

[1] Grupo de Trabajo II (Solución de Controversias) Comisión de las Naciones Unidas para el Derecho Mercantil Internacional. *Reconocimiento y ejecución de laudos arbitrales electrónicos*. Viena, julio 2024.

Esto quiere decir que de la firma electrónica del árbitro o de los árbitros se debe poder determinar su identidad y su voluntad de emitir la resolución que está firmando.

Además, el árbitro puede valerse de una firma electrónica o de una firma electrónica avanzada. Según el artículo 2 de la LRCFE, una firma electrónica se define como:

> "[L]*os datos en forma electrónica consignados en una comunicación electrónica, o adjuntados o lógicamente asociados al mismo, que puedan ser utilizados para identificar al firmante con relación a la comunicación electrónica e indicar que el firmante aprueba la información recogida en la comunicación electrónica*".

El mismo artículo define a la firma electrónica avanzada como aquella que cumple los siguientes requisitos:

a) Estar vinculada al firmante de manera única

b) Permitir la identificación del firmante

c) Haber sido creada utilizando los medios que el firmante puede mantener bajo su exclusivo control

d) Estar vinculada a los datos a que se refiere, de modo que cualquier cambio ulterior de los mismos sea detectable

3. ¿Cómo serían presentados y tratados por los tribunales, incluidas la práctica relevante y la jurisprudencia aplicable?

Los laudos son presentados mediante certificación extendida por el centro que administró el arbitraje en el que hace constar su autenticidad o bien mediante una copia autenticada por notario de la impresión del laudo cuando es electrónico. Con ambas alternativas, los tribunales judiciales dan por cumplido el requisito contenido en el artículo 46 2) de la Ley de Arbitraje Guatemalteca.

Responses submitted by Guatemala, English version

1. What is the status of foreign arbitral awards for enforcement before the courts?

In Guatemalan practice and at the time of this research, a case has not yet been identified in which the enforcement of a foreign award with these characteristics has been sought. Therefore, below, an integration of the regulatory instruments in force in Guatemala that deal with the enforcement of foreign awards and that could serve as the basis for achieving the recognition and enforcement of an award in electronic format and/or with an electronic signature will be carried out.

a. In electronic format

Guatemala is a Contracting State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter "CNY"). This convention aims to regulate in a uniform manner the requirements necessary to obtain the recognition and enforcement of a foreign arbitral award.

In this regard, Article IV of the CNY provides that, in order to obtain the recognition and enforcement of a foreign award, the following is required:

c) The original of the award duly authenticated or a copy of the original that meets the conditions required for its authenticity

d) The original of the arbitration agreement or a copy that meets the conditions required for authenticity

In addition, the same article states that, if the award is issued in a language other than the official languages of the country in which it is intended to be enforced, the application for enforcement must be accompanied by a translation into the official language of the country. This translation must be certified by an official or sworn translator, or by a diplomatic or consular agent. The official language in Guatemala is Spanish, so if the award was not issued in that language, it must be translated with the aforementioned specifications. **This regulation is in accordance with the requirements set forth in the Guatemalan Arbitration Law (hereinafter, "LAG"). Consequently, the Law for the Recognition of Electronic Communications and Signatures (hereinafter, LRCFE) can also be used to interpret what should be understood by "writing", "signature" and "original" of the award. In this sense, an award in digital format and/or with an electronic signature will be considered to be original, in writing and signed by the arbitrator(s) when it meets the requirements of articles 7, 8 and 9 of the LRCFE. Each requirement is developed more extensively in the following sections**.

b. With digital signature

With regard to this section, it is pertinent to note that Article 39 of the LRCFE establishes that any electronic signature created or used abroad will produce the same legal effects as those issued within the national territory. In this regard, the same regulations provide that neither the place where the signatory is located nor the place of issuance of the signature shall be taken into consideration. Consequently, arbitral awards from any jurisdiction in the world shall enjoy the same validity as those issued and signed within the national territory.

On this basis, in section 2(b) of this document, regarding the legal status of national arbitral awards, it is expressly addressed that the electronic signature of the arbitrator or arbitrators must allow not only the unequivocal identification of the person who subscribes, but also the clear manifestation of his or her willingness to issue the corresponding decision. Considering that the legal treatment of such electronic signatures is equivalent, the corresponding analysis will be developed in the aforementioned section, in order to guarantee uniformity in the interpretation and application of this precept.

What is the status of national arbitral awards for enforcement before the courts?

Again, in Guatemalan practice to date, no precedent has yet been identified in which the enforcement of a national award with these characteristics has been sought. Therefore, below, an integration of the Guatemalan laws applicable in this area will be carried out, which could serve as the basis for achieving the recognition and enforcement of an award in electronic format and/or with an electronic signature.

a. In electronic format

Like most arbitration laws based on the Model Law of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL"), Article 40 of the LAG sets out the requirements that arbitral awards must contain. With regard to the format of the award, this rule indicates that it must be issued in writing.

Article 7 of the LRCFE establishes that any electronic communication complies with the requirement of being in writing provided that "the information contained in its text [is] accessible for subsequent consultation". In this regard, one of the UNCITRAL working groups has concluded that the requirement of written form is met with the functional equivalence provided for electronic signatures. In this sense, an award is considered to meet the requirement of being "in writing" if it is submitted in electronic format and the information contained therein is accessible for subsequent reference. [1]

Therefore, in order for a national award in electronic format to be considered "written" under Guatemalan law, the text of the award must be searchable indefinitely even after it is shared electronically.

In addition, Article 46 of the LAG indicates that the application for recognition and enforcement of the award must be accompanied by either the original duly authenticated award, or a duly certified copy of it. The original of the arbitration agreement or a duly certified copy of it must also be attached.

In the context of the enforcement of digital and/or electronically signed awards, the LRCFE also provides for a solution. Specifically, Article 9 indicates that a written communication shall be considered in its original format provided that:

c) There is some reliable guarantee of the integrity of the information it contains, from the time it was first generated in its final form, whether in electronic or other communication, and

d) Where the information contained therein is required to be provided, it may be exhibited to the person to whom it is to be provided. In the case of an electronic and/or electronically signed award, this is the court before which enforcement of the award is sought.

b. With digital signature

[1] Working Group II (Dispute Settlement), United Nations Commission on International Trade Law.*Recognition and enforcement of electronic arbitration awards*. Vienna, July 2024.

In addition to establishing that the award must be in writing, Article 40 of the LAG indicates that it must be signed by the arbitrator(s). Article 8 of the LRCFE provides that an electronic communication shall meet the requirement of being signed if:

> c. A means is used to determine the identity of the signatory and to indicate the will it has with respect to the information contained in the electronic communication; and
>
> d. The method used
>
> i. Is reliable and appropriate for the purposes for which the electronic communication was generated or transmitted, taking into account all the circumstances of the case, including any applicable or
>
> ii. It has been demonstrated in practice that, on its own or with the support of other evidence, this method fulfils the functions set out above.

This means that the electronic signature of the arbitrator or arbitrators must be able to determine their identity and their willingness to issue the resolution they are signing.

In addition, the arbitrator may use an electronic signature or an advanced electronic signature. According to Article 2 of the LRCFE, an electronic signature is defined as:

> "[T]*he data in electronic form contained in, attached to or logically associated with, an electronic communication that can be used to identify the signatory in relation to the electronic communication and to indicate that the signatory approves the information contained in the electronic communication*."

The same article defines an advanced electronic signature as one that meets the following requirements:

> e. Be uniquely linked to the signatory
>
> f. Allow signer identification
>
> g. Have been created using the means that the signatory can keep under his or her sole control
>
> h. Be linked to the data to which it relates, so that any subsequent changes to the data are detectable.

How would they be presented and dealt with by the courts, including relevant practice and applicable case law?

Awards are presented by means of a certification issued by the centre that administered the arbitration in which their authenticity is recorded or by means of a notarised copy of the imprint of the award when it is electronic. With both alternatives, the courts consider the requirement contained in article 46 (2) of the Guatemalan Arbitration Law to be fulfilled.

Responses submitted by Iraq

1- There are no practical applications worth mentioning before Iraqi courts in which arbitration decisions were submitted electronically, whether they were local or foreign arbitration decisions, for the purpose of implementation.

2- There are no practical applications worth mentioning before Iraqi courts in which arbitration decisions bearing an official signature were submitted, whether they were local or foreign arbitration decisions, for the purpose of implementation.

3- In the event that arbitration decisions are submitted before Iraqi courts of both types, there is no legal impediment to adopting them if the opponent acknowledges their validity, and in the event of their denial by one of the opponents, the judge requests a paper copy bearing a live signature for the purpose of adopting and implementing them.

Responses submitted by Israel

<u>Background – Electronic Signatures</u>

Admissibility of Electronic Signatures Under the Electronic Signature Law

Provisions of the Law and Definitions

The *Electronic Signature Law, 2001* (hereinafter: *"the Law"*) governs the legal status of electronic signature tools. The Privacy Protection Authority, acting as the Registrar of Certifying Authorities under Section 9 of the Law, serves as the regulatory body responsible for registration, oversight, and enforcement of the Law's provisions.

Article 1 of the Law defines three types of electronic signatures according to their strength and reliability:

1. **Electronic Signature** – Information or an electronic mark attached to or associated with an electronic message.
2. **Secure Electronic Signature** – An electronic signature meeting all of the following criteria:
    - It is unique to the owner of the signature tool.
    - It allows for the identification of the signature tool's owner.
    - It is generated by a signing tool under the exclusive control of its owner.
    - It enables detection of changes made to the electronic message after the time of signing.
3. **Certified Electronic Signature** – A secure electronic signature supported by a certified electronic certificate issued by a body authorized by the Israel Privacy Protection Authority (an Authorizes Body).

Legal Admissibility of Electronic Signatures

Section 3(a) of the Law stipulates that the admissibility of a signature shall not be denied solely because it is an electronic signature. Furthermore, Section 3(b) of the law provides that an electronic message signed with a secure electronic signature shall be admissible in any legal proceeding and shall serve as prima facie evidence of the following:

1. The electronic message has not been altered after the time of signing;
2. The electronic message was signed using a signature method that is identified by the means of signature verification included in the electronic certificate attached to the electronic message, if attached;
3. In the case of an electronic message signed with an authorized electronic signature – that the electronic message was signed by the holder of the signature method.

It should be noted that Section 3(b) is also relevant to the issue of an authorized electronic signature, as an authorized electronic signature is a secure electronic signature issued by an Authorized Body.

Submission of Documents in Court Files

As a general rule, there are no provisions requiring the submission of original documents or documents with digital signatures. Court files are maintained digitally through an electronic system, and all documents are submitted electronically to that system.

The court retains inherent authority to order a litigant to submit an original document to the case file. However, such an order is exceptional and to our understanding there are no specific regulatory provisions governing this matter.

UNCITRAL Questions

(1) What is the status of foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law ?

Israeli law does not explicitly address the question of enforcement of foreign arbitral awards in electronic form or with digital signatures.

The formal requirements in respect of arbitration awards rendered in accordance with the New York Convention, are outlined in Article 3 of the Regulations for the Implementation of the New York Convention (Foreign Arbitration), 1978, as follows (we are currently working on regulations for the 2024 International Commercial Arbitration Law which might impact the 1978 regulations):

A. A party requesting the court to approve a foreign arbitration award shall attach to the request:
    1. The original arbitration award, authenticated in accordance with Israeli law, or a certified copy thereof.
    2. The original arbitration agreement or a certified copy thereof, authenticated in accordance with Israeli law.
B. Any document mentioned in subsection (1) not written in Hebrew, Arabic, English, or French must be accompanied by a translation into one of these languages. The translation must be authenticated by a person authorized to certify translations under Israeli law or by a diplomatic or consular representative of the country in which the document was created.

In order to authenticate an arbitration agreement as a certified copy, in accordance with Article 3(A)(2) of the Regulations for the Implementation of the New York Convention, the procedure is set forth in Article 30 of the Evidence Ordinance:

30. Power of attorney or any other written document that was prepared or issued outside the territory governed by the laws of the State of Israel may, in any civil case or matter, and subject to any justified exception, be proven by the approval of the parties who issued

it, or by a written declaration from one of the authentication witnesses, that it was delivered as it appears before one of the following:

(1) An Israeli diplomatic or consular representative, and is completed in writing, signed by them, with their seal on the document or its appendix;

(2) A public notary, and is completed in writing, signed by them, with the notarial seal, and authenticated in writing by an Israeli diplomatic or consular representative, with their official seal on the document or its appendix.

Similar to any other type of documents (see above), arbitration awards are generally submitted to the electronic court system in electronic form together with the necessary authentication (foreign awards can be authenticated by Apostille or by an Israeli foreign consul (as part of the legalization process). This would presumably be the case both for awards with scanned signatures and awards with digital signatures.

We are not aware of any reported cases in Israel where the issue of the enforcement of foreign or domestic arbitral awards in electronic form or with digital signatures has been explicitly addressed by the courts. According to our understanding, foreign arbitration awards enforced in Israel are not commonly signed by a digital signature.

(2) What is the status of domestic arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law ?

The submission of arbitral awards to for court approval is regulated by Article 8 to the Regulations on Rules of Procedure on Arbitration (1968). According to this Article, the arbitral award must be signed by the arbitrator.

If a party raises objections regarding the status or "authenticity" of an arbitration award, such objections should be brought within the framework of the legal proceedings, and the court will address them accordingly.

In 2020, an Israeli court addressed the issue of an arbitration award rendered in an electronic form. The question was whether the delivery of an arbitral award via email or the subsequent physical delivery was considered a legally valid delivery. In this case, it was established that the parties had previously communicated decisions and rulings via email. The court ruled that the email delivery of the signed arbitral award was the legally valid delivery, regardless of the later physical delivery that occurred several months later. The court emphasized that even if a physical copy of the award was later sent, or if there were further email exchanges between the parties, the initial email delivery constituted the formal and final delivery of the arbitral award. As a result, the deadline for challenging the award was determined based on the email delivery date, and the date of the subsequent physical delivery was held to be irrelevant.[30]

In another case from 2009, the dispute revolved around the validity of an unsigned and undated arbitration award.[31] The petitioners argued that the decision issued in February 2008 was a draft and not a binding award because it lacked a signature and date. The court

[30] Small Claims Court (Hadera District) 24670-03-20 Kibbutz Yagur - Cooperative Society v. Erez Avni (Nevo, July 5, 2020).
[31] BR"A (District Court Nazareth) 192/08, A. Levy Development and Sewerage Works Ltd. v. Meir Peretz (March 18, 2009)

noted that "There is no disagreement, and the lower court also ruled that for the arbitral award to be valid, it must be signed and dated, as these are essential and constitutive requirements that cannot be waived, in accordance with the provisions of the Arbitration Law." Ultimately, the court decided that the February 2008 decision was valid for other reasons. But this case demonstrates the importance for Israeli courts that the signature of the arbitration award will be accompanied by a date of the signature.

Responses submitted by Italy

Legal framework about the recognition and enforcement of arbitral awards issued in electronic form in Italy

In our country, the process of arbitration is undergoing digital transformation, with various forms of digitalization emerging at different stages. These include the conclusion of the arbitration agreement, the proceedings themselves, and the formation of the award.

The flexibility of the procedural requirements of arbitration allowed for the exploration of digitalized dispute management models, prior to the advent of the telematic process and the impact of the global pandemic Covid-19, which led legislators to pursue solutions enabling remote proceedings before the court.

Notwithstanding the Code of Civil Procedure's exclusive reference to "teletransmitted documents" (Article 807) in regulating the formal requirements of the arbitration agreement, the Digital Administration Code (Legislative Decree No. 82/2005, as amended; so-called “CAD”) appears to permit the arbitration agreement to be contained in a computer document that is not transmitted digitally between the parties.

The Digital Administration Code ensures compliance with the written form when, for example, the arbitration agreement is included in the text of a certified e-mail (PEC).

Pursuant to Section 20, paragraph1 bis of the Digital Administration Code, in fact, a computer document signed with an advanced, qualified or digital electronic signature, such as to ensure the identifiability of the author, the integrity and not modifiability of the document, has the same effectiveness as a private contract. This means, in other words, that also the arbitration agreement contained in a computer document with a 'strong' digital signature will be fully valid and effective, similarly to the one signed by hand on paper.

Arbitration proceedings may be conducted (in their entirety) by telematics. This generally includes both arbitrations in which the parties and the arbitrators are able to exchange and submit documents and papers by telematic means, and arbitrations that are conducted -at least in principle- entirely at a distance.

Both types of tele-arbitration seem to be fully admissible under articles 816, last paragraph, and 816 bis of the Italian Code of Civil Procedure, notwithstanding the absence of explicit provisions such as those provided for the telematic proceedings before ordinary courts.

Article 823 of the Italian Code of Civil Procedure permits arbitrators to deliberate remotely; however, it is uncertain whether they are obliged to sign a hard copy of the award. The aforementioned doubt may arise, at least in the context of ritual arbitration, due to the provision set forth in Article 824 of the Italian Code of Civil Procedure, which requires that arbitrators

prepare at least one original of the award and communicate it to the parties. This could lead to the conclusion that it is necessary to have at least a "physical" original of the arbitral award.

Subsequently, the electronic document containing the award may be filed electronically with the competent court to homologate it by the party with an interest in enforcing it, as provided for by Article 825 of the Italian Code of Civil Procedure. The homologation decree issued by the court pursuant to that rule confers enforceability on domestic arbitration awards.

As to the recognition or enforcement of a foreign award in Italy, Art. 840 of the Italian Code of Civil Procedure specifies that such recognition or enforcement is refused by the court of appeal if in the opposition proceedings the party against whom the award is invoked proves the existence of one of the following circumstances:

> (1) the parties to the arbitration agreement were incompetent under the law applicable to them or the arbitration agreement was invalid under the law to which the parties submitted it or, in the absence of any indication to that effect, under the law of the State where the award was issued;
>
> (2) the party against whom the award is invoked was not informed of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to assert its defense in those proceedings;
>
> (3) the award concerns a dispute not covered by the arbitration agreement or arbitration clause, or outside the limits of the arbitration agreement or arbitration clause; however, if the award that concern matters subject to arbitration can be separated from those that concern matters not subject to arbitration, the former may be recognized and declared enforceable;
>
> (4) the constitution of the arbitration panel or the arbitration proceedings were not made in accordance with the agreement of the parties or, in the absence of such agreement, with the law of the seat of the arbitration;
>
> (5) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the State in which, or under the law of which, it was issued.
>
> Paragraphs no. 3 and 4 of Art. 840 of the Italian Code of Civil Procedure thus cover infringements of the procedural rules of the State in which the award was issued, and these rules obviously include the rules governing the signing of the award.

A possible irregularity in the signature of the foreign award, to be examined according to the laws of the place (foreign country) where the proceedings took place, would be grounds for refusal of recognition and enforcement of the award by our courts of appeal, unless the award has not already acquired binding force in the country of origin, pursuant to paragraphs no. 3 and 5 of Article 840 of the Italian Code of Civil Procedure. This means that even an award without signature or with an irregular signature that has not been challenged in the prescribed form is not affected by nullity, differently from what it is provided for the judgment, which is affected by irremediable nullity and always detectable ex officio, based on Art. 161 par. 2 of the Italian Code of Civil Procedure, if the signature of the judge is lacking.

In any event, the hypotheses of nullity of the award envisaged by art. 829 of the Italian Code of Civil Procedure do not include the signature of the award.

Legislative Decree No. 82 of 2005 (as modified by Legislative Decree No. 179 of 2016, which implemented EU Regulation No. 910/2014) officially recognizes the validity of electronic signatures in Italy. Such signatures are now considered fully equivalent to handwritten signatures. The Decree and the EU Regulation No. 910/2014 specify the requirements that an electronic signature must meet to be deemed valid. A signature that has been inserted using encrypted electronic keys authenticated by a third-party certificate bears full legal recognition.

However, inserting the image of a signature (e.g., by scanning a model signature and copying pasting it in a document) may not be recognized as a valid signature according to Italian or European law (Legislative Decree no. 82/2005, Article 24; EU Regulation No. 910/2014, Articles 2, 25, 26 and Annex 1).

According to Article 25 paragraph no.3 of the EU Regulation No. 910/2014, a Member State is obliged to recognize the validity of an electronic signature that has been issued in another Member State, in accordance with the technical requirements set forth in the Regulation.

Hence, while to the best of our knowledge there is no case law on the matter, an arbitral award that has been electronically signed in compliance with the provisions of Legislative Decree No. 82/2005 or EU Regulation No. 910/2014 should be considered an original for the purposes of recognition and enforcement in Italy.

Responses submitted by Japan

(1) What is the status of foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

The status of foreign arbitral awards (arbitral awards issued with foreign countries as the seat of arbitration) is as follows:

(1)-1. Validity of arbitral awards in electronic form and digital signature for enforcement by courts

Formal requirements of arbitral awards issued with foreign countries as the seat of arbitration are subject to the law in the country.

In determining the validity of foreign arbitral awards, possibly the interpretation of article 39 of Japan’s Arbitration Act (as referred to in the answer to the question (2)-1) can be referred to.

(1)-2. submission to courts

The Arbitration Act was amended in 2023 and is yet to come into effect.

The current Arbitration Act provides that a party seeking to enforce arbitral awards may file a petition for an enforceability order by submitting the copy of the arbitral award.

When the 2023 amendment comes into effect, it will be possible to file a petition for an enforceability order by submitting an electronic record containing what is written in the arbitral award under article 48, paragraph 2 of the amended Arbitration Act.

(1)-3. reference to relevant practice and case law

It appears that no cases have been reported so far in that regard.

(2) What is the status of domestic arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including with reference to relevant practice and case law?

The status of domestic arbitral awards (arbitral awards issued with Japan as the seat of arbitration) is as follows:

(2)-1. Validity of arbitral awards in electronic form and digital signature for enforcement by courts.

The relevant provision is article 39 of the Arbitration Act, paragraph 1, providing that "For an arbitral award to be made, a written arbitral award must be prepared and signed by the arbitrators". This article has been generally interpreted as requiring written form and a signature by the arbitrators thereon.

With the premise of this interpretation, it naturally follows that an arbitral award made in an electronic manner does not satisfy the form requirement under the Arbitration Act and therefore cannot be enforced.

(2)-2. submission to courts

The arbitration Act was amended in 2023 and is yet to come into effect.

The current Arbitration Act provides that a party seeking to enforce arbitral awards may file a petition for an enforceability order by submitting the copy of the arbitral award.

When the 2023 amendment comes into effect, it will be possible to file a petition for an enforceability order by submitting an electronic record containing what written is in the arbitral award under article 48, paragraph 2 of the amended Arbitration Act.

(2)-3. reference to relevant practice and case law

It appears that no cases have been reported so far in that regard.

Responses submitted by Mexico

Based on Mexican legislation on arbitration and electronic commerce, an arbitral award in electronic form or with a digital signature should receive the same legal treatment as an arbitral award with an ink signature or in physical format.

Mexican legislation draws no distinction in the treatment of a domestic and a foreign arbitral award. Mexico adopted the 1985 UNCITRAL Model Law on International Commercial Arbitration in 1993, by incorporation into the Fourth Title of the Fifth Book of the Commerce Code, which is the fundamental federal statute of commercial law. Mexico's Arbitration Law applies to both domestic and international arbitration when the seat of arbitration is located in Mexico. The Commerce Code provides as follows:

> "**Article 1415.** The provisions of this Title shall apply to domestic commercial arbitration, and to international arbitration when the place of arbitration is within Mexican territory, except as provided in international treaties to which Mexico is a party or in other laws that establish a different procedure or provide that certain disputes are not subject to arbitration."

In 2000, Mexico enacted the UNCITRAL Model Law on Electronic Commerce (1996) as part of its Commerce Code. Furthermore, in 2003, Mexico also enacted legislation based on the UNCITRAL Model Law on Electronic Signatures (2001). Therefore, Mexican legislation expressly incorporates the principles of technological neutrality, international compatibility, and functional equivalence between the information documented in electronic and non-electronic means and between the electronic signature and an ink signature. Article 89 of the Commerce Code states the following:

> "[…] The activities regulated by this Title shall be subject in their interpretation and application to the principles of technological neutrality, autonomy of will, international compatibility and functional equivalence of the Data Message in relation to the information documented in non-electronic media and of the Electronic Signature in relation to the autographic signature.".

Article 1461 of the Commerce Code sets forth the requirements that a party seeking recognition and enforcement of an award must meet. Following the 1985 UNCITRAL Model Law on International Commercial Arbitration, filing a "duly authenticated" original or certified copy of the award is among these requirements. Article 1461 provides as follows:

> "**Article 1461.** An arbitral award, regardless of the country in which it was rendered, shall be recognized as binding and, after submission of a written request to the court, shall be enforced in accordance with the provisions of this chapter.
> The party invoking an award or requesting its enforcement shall submit the original of the award duly authenticated or a certified copy thereof, and the

> original of the arbitration agreement referred to in Articles 1416 section I and 1423 or a certified copy thereof. If the award or the agreement is not drafted in Spanish, the party invoking it must submit a translation into Spanish of such documents, made by an official expert."

Note: Recently, the Mexican Supreme Court of Justice ruled that the requirement of submitting a "duly authenticated" version of the award is unnecessarily formalistic and therefore, unconstitutional.

Based on functional equivalence, there should be no difference in the treatment of an award in electronic form or with a digital signature and an award with an ink signature. The Mexican commercial law recognizes the validity and effectiveness of electronic documents. Article 89 provides the following:

> "[…] In commercial acts and in their formation, electronic, optical or any other technology may be used. […]".

Not surprisingly (given the current legal framework), no case law or public relevant precedent in Mexico has dealt with enforcing an arbitral award in electronic form or with a digital signature; nor have any issues of enforcement being reported due to the electronic form of an arbitral award.

Considering the existing legal framework in Mexico, the principle of functional equivalence between the information documented in electronic and non-electronic means and between the electronic signature and an ink signature should, in principle, also apply to awards.

In recent years and specially after the COVID pandemic, Federal courts and some Local courts (including the courts in Mexico City) have already implemented full digitalization of court procedures. The digital dockets usually contain (i) documents and information created electronically; and (ii) scanned versions of documents originally submitted in physical format. However, a physical version of the docket is also kept by the courts, including the information originally submitted in paper and printed versions of documents generated electronically.

Notwithstanding the Mexican legal framework summarized above, judicial practice in Mexico is still highly formalistic. For instance, it is not uncommon to encounter parties supplementing the submission of data messages with an expert opinion attesting to the compliance of Mexican legal requirements for electronic commerce; especially when the other party questions the reliability or authenticity of the information, in which case it is also common to encounter notary publics attesting to those issues as well. Therefore, litigators usually seek to avoid risks and prefer to satisfy traditional methods to document information, including awards. Thus, litigators typically ask for and file original physical versions of awards, with ink signatures, for recognition and enforcement by Mexican courts.

In any case, there is nothing in the law, court precedents or current litigation practices that would suggest that an electronic award would not be suitable for enforcement by Mexican

Courts, either through the Code of Commerce (for domestic awards) or the New York Convention (for foreign awards).

Responses submitted by Netherlands (Kingdom of the)

Question 1.

Foreign arbitral awards to which a recognition or enforcement treaty applies may be recognized and enforced in the Netherlands upon application by one of the parties (Article 1075 DCCP1[32]). As far as the application is based on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (hereinafter: NYC), the request including the application must be accompanied by "the duly authenticated original award or a duly certified copy thereof" (Article IV (1) under (a) NYC). The application is almost always based on that convention. As far as the application is based on another recognition or enforcement treaty, which is very seldom the case, the request must be accompanied by an authenticated copy of the award (Article 1075 (2) and Article 986 (2) DCCP), unless that convention provides otherwise.

In published court decisions, we did not find any cases in which the Dutch court was satisfied with the submission of a foreign arbitral award (a) in electronic form or (b) with a digital signature. Nor have we found any discussion of this issue in the published court decisions.

In addition to the examination of published court decisions, we have also contacted some judges in the Netherlands who recently were relatively frequently involved in applications for recognition or enforcement of foreign arbitral awards to which a recognition or enforcement treaty applied, judges working either at the District Court of Amsterdam, The Hague or Rotterdam, or at the Court of Appeal of Amsterdam or The Hague. We asked them about their experience in practice, since by no means all court decisions are published. Their findings do not differ from our findings based on published court decisions. It should be added, however, that the findings of the district courts regarding foreign arbitral awards are quite limited because, since the entry into force of the Arbitration Act 2015, the applications for recognition and enforcement of foreign arbitral awards are dealt with by the courts of appeal acting as courts of first instance.

Foreign arbitral awards to which no recognition and enforcement treaty applies, may also be recognized and enforced in the Netherlands upon request of either party (Article 1076 DCCP). The request must be accompanied by an authenticated copy of the award (Article 1076 (6) and Article 986 (2) DCCP).

For the rest, it can simply be referred to what has been said above about arbitral awards to which a recognition or enforcement treaty applies.

In addition, it can be confirmed that applicants are allowed to base their request for recognition or enforcement of a treaty based foreign award both on Article 1075 DCCP and on Article 1076 DCCP. Sometimes the route via Article 1076 DCCP is less onerous.

[32] DCCP = Dutch Code of Civil Procedure (in Dutch: *Wetboek van Burgerlijke Rechtsvordering*).

Question 2.

Dutch law on requirements for recognition and enforcement accepts domestic arbitral awards (a) in electronic form or (b) with a digital signature, subject to the requirement that such an award be provided with a qualified signature as referred to in Article 3(12) of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ 2014, L 257 (Article 1072b (3) DCCP). This possibility is hardly ever used in practice. This can be partly explained by the fact that the requirement of a qualified signature recognized under EU law is quite burdensome. Another explanation may be that if the parties/lawyers and arbitrators are located within the Netherlands, there is not much need for a domestic arbitral award (a) in electronic form or (b) with a digital signature. Yet another possible explanation: because it is not clear in advance in which country the arbitral award should be recognized or enforced, it can be risky for the arbitrators to suffice with an arbitral award in electronic form or with a digital signature, due to the possibility that the judge of the foreign country does not accept such an award.

The published court decisions indicate that Dutch courts have no difficulty in accepting such an award; nor have we found any published judgment in which the judge mentioned any objection to this. In the relatively few cases we found, however, leave to enforce was refused for other reasons, except in one case where leave to enforce was otherwise not used because of a settlement between the parties.[33] As to the moment at which an electronic award is deemed to have been rendered in order to determine the time limit for a claim for annulment of the arbitral award, the Court of Appeal in Amsterdam rendered an interesting judgment: also an arbitral award sent by email, electronic or otherwise, is deemed to have been sent if four weeks have elapsed from the date of the award (Article 1058 (2) DCCP); the time limit for a claim for annulment therefore begins to run from that date on (Article 1064a (2) DCCP).[34]

Also, with respect to these arbitral awards, we have found that the findings of the contacted judges in their practice do not differ from our findings based on the published court decisions. As we have been informed, the judiciary is still considering the possibility of digital access to the courts for arbitral awards in electronic form or with a digital signature.

Responses submitted by Panama, Spanish version

(1) ¿Cuál es el estado de los laudos arbitrales extranjeros (a) en forma electrónica o (b) con firma digital para su ejecución por los tribunales? ¿Cómo serían sometidas y tratadas por los tribunales, incluidas las prácticas y la jurisprudencia pertinentes?

El procedimiento relativo al reconocimiento y ejecución de laudos arbitrales extranjeros en la República de Panamá está regulado en los artículos 70, 71, 72 y 73 de la ley 131 de 31 de 2013 sobre arbitraje comercial nacional e internacional. La ley estipula que los laudos arbitrales internacionales pueden ser presentados con una copia autenticada (apostillada o autenticada por un cónsul de Panamá en el extranjero), la cual debe traducirse si está en idioma distinto al español.

[33] District Court of Amsterdam January 30, 2018, ECLI:NL:RBAMS:2018:419 (https://uitspraken.rechtspraak.nl/).
[34] Court of Appeal Amsterdam 25 june 2024, ECLI:NL:GHAMS:2024:1744.

Dicho esto, los laudos que fueron emitidos de forma electrónica y posteriormente impresos son válidos. De igual forma aquellos laudos arbitrales que hayan sido firmados de mediante firma digital tienen validez siempre que sé que cumplen con los requisitos de la Ley 131 de 2013.

En Panamá, los documentos privados firmados mediante firma electrónica son válidos bajo el amparo de la ley 51 de 2008 que regula la firma electrónica en Panamá. Según el artículo 51, los documentos firmados o almacenados de forma digital serán válidos, pero requieren estar apostillados o autenticados por un cónsul de la República de Panamá en el país de origen.

Para la ejecución de los laudos arbitrales internacionales estos deben ser presentados ante la Sala Cuarta de Negocios Generales de la Corte Suprema de Justicia para poder proceder con su reconocimiento y ejecución, cumpliendo con las formalidades de la ley 131 de 2013.

(2) ¿Cuál es la situación de los laudos arbitrales nacionales a) en forma electrónica o b) con firma digital para su ejecución por los tribunales? ¿Cómo serían sometidas y tratadas por los tribunales, incluidas las prácticas y la jurisprudencia pertinentes?

Bajo la Ley 131 de 2013, los laudos de arbitraje domésticos se denominan "laudos nacionales". Los laudos arbitrales nacionales, para poder ser ejecutados, deben ser presentados ante el Tribunal de Circuito Civil correspondiente, como si se tratara de una sentencia emitida por un tribunal judicial, y debe incluirse una copia autenticada (notariada) del laudo correspondiente.

En la práctica, los laudos arbitrales emitidos son firmados digitalmente por los miembros del tribunal de arbitraje. La Ley 51 de 2008, en sus artículos 8 y 9, garantiza la validez de los documentos con firma digital que tienen carácter de privado. Las instituciones arbitrales siguen esta práctica, particularmente tras la pandemia de covid-19, para facilitar el trámite y gestión electrónica de los expedientes. Esta práctica es además concordante con las prácticas internacionales y uso de las tecnologías los procedimientos de arbitraje.

Responses submitted by Panama, English version

(1) What is the status of foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

The recognition and enforcement of foreign arbitral awards in the Republic of Panama is regulated by articles 70, 71, 72, and 73 of Law 131 of 2013[35] on national and international commercial arbitration. According to Law 131, international arbitral awards may be submitted with an authenticated copy (apostilled or authenticated by a Panamanian consul abroad), which must be translated if its original language is other than Spanish.

This being said awards that were issued electronically and subsequently printed are valid. Similarly, arbitral awards with a digital signature are valid as long as they comply with the authentication requirements.

In Panama, private documents signed electronically are valid under Law 51 of 2008[36] that regulates electronic documents and electronic signatures in Panama. Pursuant to article 51 of

[35] https://cecap.com.pa/wp-content/uploads/2019/05/ley131.pdf
[36] https://www.gacetaoficial.gob.pa/pdfTemp/26090/GacetaNo_26090_20080724.pdf

Law 51, documents signed or stored abroad digitally will always be valid, but they need to be apostilled or attested to by a consul of the Republic of Panama in the country of origin.

For the execution of international arbitral awards, the petitioner must file a request before the Fourth Chamber of General Business of the Supreme Court of Justice in order to proceed with the recognition and execution of the award and be in compliance with the formalities of Law 131 of 2013.

(2) What is the status of domestic arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

Under Law 131 of 2013, domestic awards are commonly known or referred to as "national awards". To be enforced, national awards must be filed with the corresponding Civil Circuit Court, as if it were a judgment issued by a public court, including an authenticated (notarized) copy of the corresponding award.

In practice, arbitral awards are issued in a digital format and are digitally signed by the members of the arbitral tribunal. Law 51 of 2008 warrants, in its articles 8 and 9, the validity of private documents with digital signatures. Arbitral institutions in Panama follows this practice, particularly after the COVID-19 pandemic, to facilitate the processing and electronic management of files. This practice is also consistent with international practices and the use of technology in the arbitral proceedings.

Responses submitted by Poland

(1) What is the status of foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

Pursuant to Article 1213 § 1 of the Act of the CIVIL PROCEDURE CODE of November 17, 1964 (Journal of Laws of 2024, item 1568), hereinafter: “the Code of Civil Procedure.” The court shall decide on the recognition or declaration of enforceability of a judgment of an arbitral court or a settlement before such court upon the application of a party. A party is required to attach to the application the original or a copy certified by the arbitration court of its judgment or settlement before it, as well as the original arbitration clause or an officially certified copy thereof.

A judgment signed with an electronic qualified signature should be considered to meet the requirements as to form (Article 1197 of the Code of Civil Procedure, in conjunction with Article 25(2) of REGULATION (EU) No. 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC).

Currently, it is not possible to file an application for enforcement of an arbitral award in electoral form. For this reason, the electoral arbitral award would have to be printed or scanned. The printout or scan should then be certified by the arbitrator.

(2) What is the status of domestic arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

According to Article 1197.1 of the Civil Procedure Code, an arbitral award should be in writing and signed by the arbitrators who issued it. If the award is issued by an arbitral tribunal hearing the case in a panel of three or more arbitrators, the signatures of the majority of the arbitrators shall suffice, stating the reason for the absence of the other signatures.

A judgment signed with an electronic qualified signature should be considered to meet the requirements as to form (Article 1197 of the Code of Civil Procedure, in conjunction with Article 25(2) of REGULATION (EU) No. 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC).

Currently, it is not possible to file an application for enforcement of an arbitral award in electoral form. For this reason, the electoral arbitral award would have to be printed or scanned. The printout or scan should then be certified by the arbitrator.

Responses submitted by the Republic of Korea

What is the status of arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

- *How would they be submitted to courts :* The Judiciary of Republic of Korea is equipped with an electronic information processing system in accordance with the Act on the Use of Electronic Documents in Civil Litigations. Consequently, documents required to be submitted to the courts in civil proceedings can be presented in electronic format. Currently, the extensions of files that can be submitted through the court's electronic information processing system in the Republic of Korea are as follows: PDF, HWP, DOC, DOCX, TXT, XLS, XLSX, BMP, JPG, JPEG, GIF, TIF, TIFF, PNG, AVI, WMV, MP4, MPG, MPEG, ASF, MP3, WMA, MOV, PPT, PPTX, M4A. Therefore, provided that an arbitral award is formatted as an electronic file in any of the aforementioned formats, I believe there would be no issue regarding its submission.

- *How would they be treated by courts :* Based on my personal investigation, I was unable to find any explicit rulings or cases addressing the validity and enforcement of arbitration awards in electronic form or those bearing electronic signatures. In other words, it appears that there have been no instances in which Korean courts have expressed a position on electronic arbitration awards.

- The above response applies to both domestic and foreign arbitration awards.

Responses submitted by Saudi Arabia

All requests for enforcement orders of local and foreign arbitral awards are submitted in a digital format through the MOJ's dedicated electronic platform (Najiz). The competent court accepts these requests without requiring a physical, paper-based version of the award.

At the same time, and to date, no arbitral award has utilized digital signature formats, such as barcode verification or code-based authentication. However, awards with scanned handwritten signatures, as mentioned above, have been submitted and are accepted by the competent courts.

Additionally, the MOJ has indicated that there are no legal obstacles preventing the competent courts from considering any form of electronic signature in the enforcement phase, provided it complies with relevant regulations.

Regarding the second part of the first question, if the award is issued outside the Kingdom, all stamps and signatures on the award must be validated by the Kingdom's Ministry of Foreign Affairs and the MOJ. Once approved and authenticated, the competent court should accept the enforcement of the award, regardless of whether the signature is electronic or physical.

Responses submitted by Singapore

Under Singapore law, a foreign or domestic arbitral award may be enforced, with the permission of the court, in the same manner as a judgment or order of court (see s 46(1) of the Arbitration Act 2001 ("AA") and ss 19 and 29 of the International Arbitration Act 1994 ("IAA")). An application to enforce an arbitral award ("Enforcement Application") that falls within the scope of the AA ("domestic award") or the IAA ("IAA award"), is to be made by way of an originating application without notice, supported by an affidavit (see Order 34 Rule 14 of the Rules of Court 2021 ("Rules") for domestic awards, and Order 48 Rule 6 of the Rules and Order 23 Rule 10 of the Singapore International Commercial Court Rules ("SICC Rules") for IAA awards).

The procedural requirements that apply to Enforcement Applications are mainly set out in the Rules and the SICC Rules. Among other things, Enforcement Applications must be electronically, filed, served and delivered through the electronic filing service used in Singapore i.e. eLitigation (see Order 28 Rule 8(1) of the Rules and Order 27 Rule 10(1) of the SICC Rules). The Rules specify (at Order 34 Rule 14(1)(a) and Order 48 Rule 6(1)(a) of the Rules and Order 23 Rule 10(1)(a) of the SICC Rules) that the supporting affidavit for an Enforcement Application must exhibit the (a) "original award" or a "copy of the award", in the context of a domestic award; or (b) a "duly authenticated original award" or "a duly certified copy of the award", in the context of an IAA award. The Rules do not draw a distinction between an arbitral award that is physically signed or digitally signed, as long as it is an original award or a copy of such an award. That said, the arbitral award exhibited in the supporting affidavit is often a certified true copy of the award, as permitted under the Rules. The supporting affidavit must further be sworn or affirmed by the deponent (see Order 15 Rule 18 of the Rules and Order 13 Rule 11 of the SICC Rules) and likewise filed via the electronic filing service.

Responses submitted by Spain, Spanish version

La Delegación del Reino de España ante el GTII se complace en facilitar a la Secretaría de la CNUDMI información relativa a la ejecución de los laudos electrónicos en España.

2. ¿Cuál es la situación de los **laudos arbitrales nacionales** (a) en formato electrónico o (b) con firma digital para su ejecución por los tribunales? ¿Cómo serían presentados y tratados por los tribunales, incluyendo la práctica y jurisprudencia relevante?

El artículo 37.3 párrafo segundo de la Ley 60/2003, de 23 de diciembre, de Arbitraje (*BOE* de 26.12.2003), en su versión de 2011, admite la posibilidad de un laudo arbitral en formato electrónico. El precepto establece que: "*3. El laudo se dictará por escrito y será firmado por los árbitros, quienes podrán añadir su opinión discrepante. Cuando haya más de un árbitro, bastará la firma de la mayoría de todos los miembros del colegio arbitral o la de su presidente, siempre que se haga constar el motivo de la omisión de la firma.*

A los efectos del párrafo anterior, se entenderá que el laudo se ha dictado por escrito cuando su contenido y firmas consten y sean accesibles para su consulta en soporte electrónico, óptico o de cualquier otro tipo".

El precepto, que no ha generado controversia doctrinal ni jurisprudencial, establece la doble condición de que quede constancia del contenido del laudo y que éste sea accesible para su posterior consulta.

La aceptación del formato electrónica de las decisiones arbitrales se ve además respaldada, por analogía, por el reciente Real Decreto-ley 6/2023, de 19 de diciembre, por el que se aprueban medidas urgentes para la ejecución del Plan de recuperación, transformación y resiliencia en los ámbitos de la función pública de justicia, función pública, régimen local y mecenazgo (*BOE* de 23.12.2023) que en su artículo 57. 1 admite la posibilidad de disponer de "*un borrador total o parcial de un documento complejo basado en datos, que puede ser producido por algoritmos, y puede constituir la base o soporte de una decisión judicial o procesal, sujeto a su validación y firma por la autoridad"*, de acuerdo con el artículo 57.3.

1. ¿Cuál es la situación de los **laudos arbitrales extranjeros** (a) en formato electrónico o (b) con firma digital para su ejecución por los tribunales? ¿Cómo serían presentados y tratados por los tribunales, incluyendo la práctica y jurisprudencia relevantes?

No hay constancia de práctica judicial en relación con el reconocimiento y ejecución de laudos arbitrales extranjeros electrónicos. Sin embargo, la posición flexible mantenida por la legislación española en relación con los laudos electrónicos nacionales y las resoluciones judiciales electrónicas sugiere que la práctica no debería ser problemática.

Responses submitted by Spain, English version

The Delegation of the Kingdom of Spain to the WGII is pleased to provide the Secretariat of UNCITRAL with information as regards the enforcement of electronic awards in Spain.

2. What is the status of **domestic arbitral awards** (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

Article 37.3 second paragraph of the Arbitration Act 60/2003 of 2003 of 23 December 2003 (*OJ* of 12.26.2003), in its 2011 version, admits the possibility of an arbitration award in electronic format. The provision states that: "*3. The award shall be made in writing and shall be signed by the arbitrators, who may add any dissenting opinion. Where there is more than one arbitrator, the signatures of the majority of all members of the arbitral panel or that of its presiding arbitrator alone shall suffice, provided that the reason for any omitted signature is stated.*

For the purposes of the previous paragraph, the award shall be deemed made in writing when its content and signatures are recorded and accessible for consultation in an electronic, optical or other type of format".

The provision, which has not generated doctrinal or jurisprudential controversy, stipulates the double condition that the content of the award must be recorded and that it must be accessible for subsequent consultation.

The electronic dimension of arbitration decisions is further supported, by analogy, by the recent Royal Decree-Law 6/2023, of 19 December 2023, approving urgent measures for the execution of the Recovery, Transformation and Resilience Plan in the areas of public service of justice, civil service, local regime and patronage (*OJ* of 12.23.2023) which in its article 57.1 admits the possibility to have "*a total or partial draft of a complex document based on data, which may be produced by algorithms, and may constitute the basis or support of a judicial or procedural decision, subject to its validation and signature by the authority*", in accordance to article 57.3.

1. What is the status of **foreign arbitral awards** (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

There is no record of court practice regarding the recognition and enforcement of foreign electronic arbitral awards. However, the flexible position maintained by Spanish law in relation to domestic electronic awards and electronic court decisions suggests that the practice should not be problematic.

Responses submitted by Switzerland

Question 1: Status of foreign arbitral awards in electronic form or with digital signatures

The enforcement in Switzerland of "foreign" arbitral awards, i.e. awards rendered by arbitral tribunals seated outside of Switzerland, is governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**NYC**"). This is expressly stated in article 194 of the Swiss Federal Act on Private International Law ("**PILA**"),[37] which provides that:

> *"The recognition and enforcement of foreign arbitral awards is governed by the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards."*

Swiss courts have not addressed the question whether a foreign arbitral award in an electronic form or with digital signature is valid and enforceable in Switzerland under the NYC.

That said, the Swiss Supreme Court has in the past rejected an overly formalistic application of the form requirements of article IV NYC, which it concluded would run counter to the very

[37] Classified Compilation No. 291, accessible on the Swiss publication platform for federal law ("**Fedlex**") at the following address: https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/en (last accessed on 02.11.2024).

purpose of the NYC, which is to facilitate the enforcement of arbitral awards.[38] Applying this principle, the Supreme Court has confirmed that the duly authenticated original award or duly certified copy thereof required by article IV(1)(a) is not required where the authenticity of the arbitral award is not contested.[39] Similarly, the Court has also held that the certified translation into an official language of the country in which the award is relied upon required by article IV(2) NYC should not be strictly applied and does not in each case require a translation of the full award.[40]

In 2016, Switzerland adopted the Federal Law on the Electronic Signature.[41] The purpose of this law is to give the same effect to electronically signed documents as their wet ink counterparts, it being specified that electronic signatures within the meaning of this law are limited to encrypted electronic keys authenticated by a third-party vetted by Swiss authorities.[42] There are however no Swiss court decisions addressing the question of whether such qualified electronic signatures may be used for foreign arbitral awards.

Question 2: Status of domestic arbitral awards in electronic form or with digital signatures

The enforcement in Switzerland of domestic awards, i.e. awards rendered by arbitral tribunals seated in Switzerland, is governed by different legislation depending on whether the relevant arbitration was "international" or "national". According to the definition provided by the PILA, an arbitration is considered international where at the time the arbitration agreement was concluded, at least one of the parties did not have its domicile, its habitual residence or its seat in Switzerland.[43] All other cases are considered "national".[44]

"International" Domestic Awards

International arbitrations seated in Switzerland are governed by the PILA. Article 189 PILA grants the parties autonomy to decide on the procedure and form in which arbitral awards are to be rendered. It provides as follows regarding the required content and form of arbitral awards:

[38] Swiss Supreme Court Decision 4A_124/2010 of 4 October 2010, para. 4.2 ("*There exists general consensus that the form requirements of article IV NYC are not to be strictly applied given that the Convention aims to facilitate the enforcement of arbitral awards*"), accessible at the following address: https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza%3A%2F%2F04-10-2010-4A_124-2010&lang=de&type=show_document&zoom=YES& (last accessed on 02.11.2024); Swiss Supreme Court Decision 5A_754/2011 of 2 July 2012, para. 5.4 (confirming the need for a "*generous interpretation*" of article IV(2) NYC generally and applying a "*flexible, pragmatic, and non-formalistic understanding of article IV(2)*" in the case at hand, confirming that a narrow interpretation would be contrary to the "*recognition- and enforcement-friendly spirit and purpose*" of the NYC), accessible at the following address: https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza%3A%2F%2F02-07-2012-5A_754-2011&lang=de&type=show_document&zoom=YES& (last accessed on 02.11.2024).

[39] Swiss Supreme Court Decision 4A_124/2010 of 4 October 2010, para. 4.2 ("*denying enforcement based solely on the wording of article IV… in circumstances in which the authenticity of the award has not been challenged, would run squarely counter to the purpose of the New York Convention, which is to facilitate the enforcement of arbitral awards*"), accessible at the following address: https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza%3A%2F%2F04-10-2010-4A_124-2010&lang=de&type=show_document&zoom=YES& (last accessed on 02.11.2024).

[40] Swiss Supreme Court Decision 5A_754/2011 of 2 July 2012, para. 5.4 , accessible at the following address: https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza%3A%2F%2F02-07-2012-5A_754-2011&lang=de&type=show_document&zoom=YES& (last accessed on 02.11.2024).

[41] Classified Compilation No. 943.03, accessible on Fedlex at the following address: https://www.fedlex.admin.ch/eli/cc/2016/752/fr (last accessed on 02.11.2024).

[42] For a list of such third-parties vetted by Swiss authorities, see the related webpage by the Swiss government: https://www.sas.admin.ch/sas/en/home/akkreditiertestellen/akkrstellensuchesas/pki1.html (last accessed on 02.11.2024).

[43] Article 176(1) PILA.

[44] Article 176 PILA and article 353 Swiss Code of Civil Procedure (Classified Compilation No. 272, accessible on Fedlex at the following address: https://www.fedlex.admin.ch/eli/cc/2010/262/en; last accessed on 02.11.2024).

"1. The arbitral award shall be rendered in conformity with the procedure and form agreed by the parties.

2. In the absence of such an agreement, the award shall be made by a majority decision or, in the absence of a majority, by the chairperson. It shall be in writing, reasoned, dated and signed. The signature of the chairperson suffices."

While there are no decisions of the Swiss courts specifically addressing the question of whether international arbitral awards in electronic form or digitally signed by a Swiss-seated arbitral tribunal are enforceable, it follows from article 189(1) PILA that they would be in circumstances in which the parties so-agreed.

In the absence of an agreement by the parties that the award shall be rendered in electronic form or with a digital signature, article 189(2) applies. article 189(2) requires that the award be in writing, reasoned, and "signed".

There is no case law addressing whether arbitral awards in electronic form or digitally signed fulfil this requirement. As in the case of foreign arbitral awards discussed above, there is also no case law addressing whether electronic signatures as provided for in the 2016 Federal Law on Electronic Signatures may be used in arbitral awards rendered by Tribunals seated in Switzerland. This is different in Swiss state court proceedings, where article 139 of the Swiss Code of Civil Procedure ("**SCCP**")[45] allows that decisions may validly be served with a qualified electronic signature in accordance with the 2016 Federal Law on Electronic Signatures in circumstances in which the relevant party agrees.[46]

"National" Domestic Awards

"**National" arbitrations** are governed by the SCCP, article 384(2) of which states as follows regarding the required content and form of awards.

"The award must be signed; the signature of the chairperson suffices."

Article 386(1) SCCP further provides that each party must be served an original of the award.

Although not expressly stated in the SCCP or addressed in any case law to date, commentators consider that the same principles of party autonomy as to the form of the award apply to domestic arbitration as well.

With respect to what qualifies as a "signed" award in the sense of article 384(2) SCCP, we refer to what is stated above with respect to the requirements of article 189(2) PILA.

[45] Classified Compilation No. 272, accessible on Fedlex at the following address: https://www.fedlex.admin.ch/eli/cc/2010/262/en (last accessed on 02.11.2024).
[46] See also article 14(2bis) of the Swiss Code of Obligations which confirms the equivalence of wet ink signatures and qualified electronic signatures in Swiss contract law (Classified Compilation No. 220, accessible on Fedlex at the following address: https://www.fedlex.admin.ch/eli/cc/27/317_321_377/en; last accessed on 02.11.2024).

Responses submitted by the United States of America

By way of background, the Electronic Signatures in Global and National Commerce Act (Public Law 106-229)[47] also known as the E-Sign Act, is a U.S. federal law enacted on June 30, 2000, and gives the same effect to electronically signed documents as their wet ink counterparts.

Under the E-Sign Act, Section 101, "…with respect to any transaction in or affecting interstate or foreign commerce—

(1) a signature, contract, **or other record relating to such transaction** may not be denied legal effect, validity, or enforcement solely because it is in electronic form; and
(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was use in its formation." (Emphasis added.)

On the U.S. state level, the Uniform Electronic Transactions Act (UETA) establishes the legal equivalence of electronic signatures and records with paper-based documents.[48] The UETA was published in 1999 by the Uniform Law Commission (ULC) and has been adopted by 49 U.S. states, the District of Columbia, Puerto Rico, and the Virgin Islands.

The UETA's main purpose is to promote consistency and legal certainty in electronic transactions. It does this by:

- Establishing a framework for the use of electronic signatures and records in commerce
- Giving electronic signatures the same legal weight as handwritten signatures
- Placing electronic commerce and paper-based commerce on the same legal footing

The UETA applies to certain types of transactions and only when the parties have agreed to conduct the transaction electronically. Electronic signatures are recognized as valid if they meet certain criteria, including: the intent to sign, consent to conduct business electronically, association of the signature with the record, and proper record retention.

Specifically with regard to arbitration, echoing Article 7 of the UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006, several U.S. states have enacted legislation featuring the following or similar content:

> The arbitration agreement shall be in writing. An agreement is in writing if 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.[49]

UNCITRAL Questions

[47] Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001-7002, is available at: https://www.govinfo.gov/app/details/PLAW-106publ229 (last visited 28 October 2024).
[48] Uniform Electronic Transactions Act (UETA) is available at: https://www.uniformlaws.org/viewdocument/final-act-21?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034&tab=librarydocuments (last visited 28 October 2024).
[49] Conn. Gen. Stat. §50a-107; Tex. Civ Prac & Rem § 172.032 (a); LA Rev Stat § 9:4247; Or. Rev. Stat. Ann. § 36.466; Cal. Civ. Pro. § 1297.73 amended by 2024 Cal. Legis. Serv. Ch. 90 (A.B.1903) (The 2024 California amendment specified that an "arbitration agreement is in writing if its content is recorded in any form, including, but not limited to…electronic mail, or other means of telecommunication accessible for subsequent reference that provides a record of the agreement.").

With regard to question 1, we have been unable to find any U.S. caselaw in which the recognition and enforcement of a *foreign* arbitral award rendered in electronic form or with a digital signature was challenged on the basis of that electronic form or digital signature. If such a matter were to come before a U.S. court, we would expect that the E-Sign Act and the corresponding U.S. state law would be cited by the party seeking recognition and enforcement.

With regarding to question 2, there is little relevant U.S. caselaw. For example, a U.S. federal court decision regarding the recognition and enforcement of a domestic arbitral award in electronic form and with electronic signatures is *Kalish v. Morgan Stanley & Co., LLC.* In this employment matter, the United States District Court for the Northern District of Ohio refused to vacate an arbitration award on the basis that it was concluded electronically. *Kalish v. Morgan Stanley & Co., LLC*, No. 1:22-cv-01412, 2023 WL 8018928, at *4 (N.D. Ohio 2023). In *Kalish*, the plaintiff sued his former employer in an effort to overturn an arbitration award on the basis that it was imperfectly executed by not using a wet signature. *Id.* The court affirmed the award and reasoned that the purpose of the E-Sign act is to "protect transactions from legal challenges that are solely based on the electronic form of the agreement." *Kalish*, No. 1:22-cv-01412, 2023 WL 8018928, at *4 (N.D. Ohio 2023). The *Kalish* court found that the use of electronic signatures on the award was additionally valid under Ohio law, noting Ohio's Unified Electronic Transaction Act (UETA), Ohio Rev. Code Section 1306.06(A) ("A record or signature may not be denied legal effect or enforceability solely because it is in electronic form. … (C) If a law requires a record to be in writing, an electronic record satisfies the law.") It also found that use of electronic signatures is not grounds for vacating the arbitral award. *Kalish* at *5.

In *Matter of MTA Bus Co. v. ACE USA*, 36 Misc. 3d 1204(A) *; 957 N.Y.S.2d 265 **; 2012 N.Y. Misc. LEXIS 3047, the signature issue related to a contention by the party seeking to vacate the arbitral award that its petition to challenge the award was not untimely because the award was unsigned. However, the Supreme Court of New York, New York County, rejected that argument noting that there was evidence that indicated that the award was electronically signed and therefore valid. Accordingly, the application to vacate the award was dismissed as untimely.

In *Consulting Group Int'l LLC v. Cavalli*, 2006 Cal. App. Unpub. LEXIS 1691 *; 2006 WL 466584, the Court of Appeal of California upheld the finding of the trial court that the award had been signed validly. It pointed to section 1633.7 of the California Civil Code, as well as the course of conduct of the parties throughout the arbitral process that demonstrated their agreement to receive electronically signed documents and the fact that the party seeking to vacate the award had not shown how the form of the signature and the electronic delivery of the award had prejudiced him.