A. GENERAL

SOURCES & SCOPE: Venezuela adopted its Arbitration Law in 1998 (Ley de Arbitraje Comercial). It applies to all commercial arbitration procedures, domestic and international, that take place in Venezuela, including all disputes arising out of contracts or relations of commercial nature.

The LAC is an adaptation of the UNCITRAL model Law, with influence from Colombian laws and additions made by Congress. UNCITRAL: definition of the scope of the law, determination of arbitral jurisdiction, place and language of arbitration, rules regarding forms of the awards, interpretation and correction of awards, setting aside of awards, and recognition of foreign awards. Colombian Arbitration Law: ad hoc arbitration, removal of negligent arbitrators, the length of arbitral proceedings, rules regarding institutional arbitration, payment of fees in ad hoc arbitration, and the obligation to give notification of dissenting opinions.

The arbitrability of a dispute is determined by the rules of the country where the arbitration takes place (domicile of the parties and place of performance of the contract are irrelevant). Applicable law may be chosen by the parties, or failing this, decided by the arbitral tribunal.

B. ARBITRATION AGREEMENTS

1. BINDING NATURE: The LAC defines the agreement to arbitrate as “that by which the parties agree to submit to arbitration some or all of the controversies or disputes that have arisen or will arise with respect to a contractual or non-contractual relationship. It can be included in a contract or exist separately. The arbitration agreement “is exclusive of and excludes ordinary jurisdiction” (Art. 5 LAC).

2. SEPARABILITY: The binding nature of agreements is endorsed by giving to arbitral tribunals powers to decide their own jurisdiction (Kompetenz-Kompetenz). Arbitration agreements inserted in contracts are to be considered independent of the provisions of the contract.

3. FORM: The arbitration agreement must be in writing and give a clear indication of the parties’ intention to refer disputes to arbitration. Reference made in a contract to a document that contains an arbitration clause constitutes an agreement to arbitrate as long as the contract is in writing and the reference implies that the arbitration clause forms part of the contract. In contracts of adhesion and general contracts (printed contracts and prerecorded terms of contract) the intention of the parties to submit to arbitration must be express and independent.

4. STATE ENTITIES: Any company in which the State or local government has a holding of 50% or more (“Public Company”) can submit to arbitration only if the arbitration agreement specifies the type of arbitration (legal arbitrations as opposed to equitable ones) and the number of arbitrators (not less than three). The agreement requires the prior
approval of a competent corporate body of the Public Company as well as that of the relevant government minister.

C. INSTITUTIONAL ARBITRATION

Defined in the LAC as “that done within an arbitration center”. Arbitration centers may be set up by chambers of commerce, international bodies, organizations involved in economic and industrial activities, or any alternative dispute resolution provider. They must draw up rules of procedure covering at least notification of the parties, creation of the arbitration tribunal and removal of arbitrators. Arbitration centers must have an appointed director, whose responsibilities are defined in its rules, and a list of at least 20 arbitrators. Moreover, Arbitration centers must have a tariff and a procedure for the advance of costs and fees, and a permanent office is required.

D. AD HOC ARBITRATION

An ad hoc arbitration will follow the procedure agreed upon by the parties or, failing this, that laid down in the LAC.

1. APPOINTMENT OF ARBITRATORS: The arbitrators are appointed by the parties. There shall be an odd number of them. The arbitrators are required to give the parties written acceptance of their appointment; if not, they are deemed not to have accepted the appointment.

2. CONSTITUTION OF THE ARBITRAL TRIBUNAL: The arbitral tribunal is formally established by the so-called “Installation Act”. The parties must be notified when this happens. The date of this act marks the start of the six-month period allowed for the arbitral tribunal to render its awards.

3. AGREEMENT ON FEES: After the “Installation Act”, the parties have five days to object and suggest alternative fees. If a majority of arbitrators rejects this objection, then the tribunal will be deprived of jurisdiction and it will cease to function.

4. INITIAL HEARING: Once formed, the arbitral tribunal must notify the parties of the first hearing with at least ten working days. The tribunal shall present a signed document stating the claims submitted, the issues, and a reasonable estimation of the amounts in dispute. It is a form of terms of reference.

5. CHALLENGE AND REMOVAL OF ARBITRATORS: The challenge of an arbitrator shall be decided by the majority of the arbitral tribunal. Failing this, it is decided by the Court of First Instance with jurisdiction over the territory where the tribunal operates.

6. PLACE AND LANGUAGE OF ARBITRATION: Both may be fixed by the parties. Failing this, the arbitral tribunal will decide. The award must be given in the language of the arbitration. If this is not Spanish, it will need to be translated into Spanish for the purposes of enforcement in Venezuela. The award must state the date on which it was made.

7. TERMINATION OF ARBITRAL JURISDICTION: Jurisdiction ceases once the award has been rendered. Failure to render it within the time limits set by the law has a similar
8. **TIME LIMIT FOR RENDERING THE AWARD:** Arbitrators have a maximum term of six months from the formation of the arbitral tribunal to render the award. This term can be extended, either by a decision of the tribunal itself, or at the request of any of the parties. It can also be extended if the arbitration proceedings have been interrupted for legal or other reasons.

E. **AWARDS**

The award must be in writing and signed by the arbitrators. If there is more than one arbitrator, the award is valid if signed by the majority, with an explanation why the other signatures are missing. If a dissenting opinion as presented to the tribunal this must be indicated. Awards are binding once each party has been notified and given a signed copy (they do not have to be registered).

1. **CORRECTION AND CLARIFICATION OF AWARDS:** The arbitral tribunal may, upon its own initiative or at request of any of the parties, clarify, correct or complement the award. Clarification must be requested within 15 working days of the issue of the award.

2. **AWARDS BY CONSENT:** The LAC has no rules regarding a settlement reached after the arbitration procedure has commenced.

3. **REASONS:** The award must state the reasons upon which it was based, unless the parties agree otherwise.

4. **DISSenting OPINIONS:** Mention must be made of the existence of a dissenting opinion presented prior to the award being given.

F. **VACATING AWARDS**

An award is final and not subject to appeal before any court of ordinary jurisdiction. However, arbitral awards may be vacated. To do so a party must file an application within five working days of notification of the award or correction of the award. It must be made to the competent appellate court at the place where the award was rendered. No stay of execution ensues automatically; for this parties must show cause and post a bond. The grounds upon which an award may be set aside the following: incapacity of one of the parties at the time entering into arbitration agreement, failure to serve notification of the appointment of an arbitrator or of the arbitral proceeding, non-compliance with the LAC with respect to the formation of the arbitral tribunal or the arbitral proceedings in general, awards made with ultra petita, or in violation of public policy, and non-arbitrability of the dispute.

G. **RECOGNITION OF FOREIGN AWARDS**

An arbitral award, irrespective of the country in which it was given, shall be recognized and binding and shall be enforced without the need for exequatur upon written application to a Court. The party relying on an award or requesting its enforcement must submit as part of
its application a certified copy of the award together with a translation into Spanish, if necessary.