

The Arbitration Agreement

Law 131 of 2013 (“Law of Arbitration”), which regulates domestic and international commercial arbitration in Panama, defines the arbitration agreement as “one by which the parties decide to submit to arbitration all disputes or certain disputes that have arisen or may arise between them with respect to a particular legal, contractual or non-contractual relationship” (Article 15 of the Arbitration Law).

From this definition, we extract that arbitration is based on the parties’ freedom of contract, whereby the parties stipulate that arbitration will resolve disputes for all or certain disputes that arise between them in a given relationship. However, it is essential to note that, although the arbitration agreement is contractual in nature and is therefore governed by the general principles of contracts, in arbitration, it is possible to extend the effects of the agreement to third parties not signatories to the arbitration agreement, determination to be made on a case-by-case basis and depending on the circumstances.

It is important to note that the arbitration agreement must be in writing. Generally, the arbitration agreement takes the form of a compromissory clause. However, it may be a separate agreement where the parties state their wish to submit to arbitration. In addition, a party may initiate an arbitration proceeding without a prior compromissory clause. Subsequently, the other party may join the proceedings, thereby expressing its willingness to submit to the arbitral jurisdiction.

The content of the arbitration agreement will depend on the parties and may include, but is not limited to, the following:

- The rules under which the arbitral proceedings shall be settled and the arbitration center;
- The substantive law applicable to the dispute;
- The composition of the arbitral tribunal and the method of choosing the arbitrators;
- The seat of the arbitration;
- The language of the arbitration.



The arbitration agreement, according to the Law of Arbitration, has substantive and procedural effects. On the one hand, the substantive effect is that the parties are obliged to resort to an arbitration proceeding when a dispute arises between them within the relationship where the compromissory clause or arbitration agreement is agreed as a mechanism to resolve the dispute, seeking the best development and completion of the arbitration process. On the other hand, the procedural effect consists in declining to exercise jurisdiction (*declinación de competencia*) that a judicial court must make in favor of the arbitral tribunal in the event that a claim is presented to it that must be submitted to arbitration, for which it must inhibit to hear the process, reject the claim outright and direct the parties back to arbitration. In the event that the court is not notified of the existence of an arbitration agreement, and therefore admits the proceeding to court, the opposing party will have the opportunity to assert this right by means of a petition to annul (*incidente de nulidad*) proving the existence of the arbitration agreement.