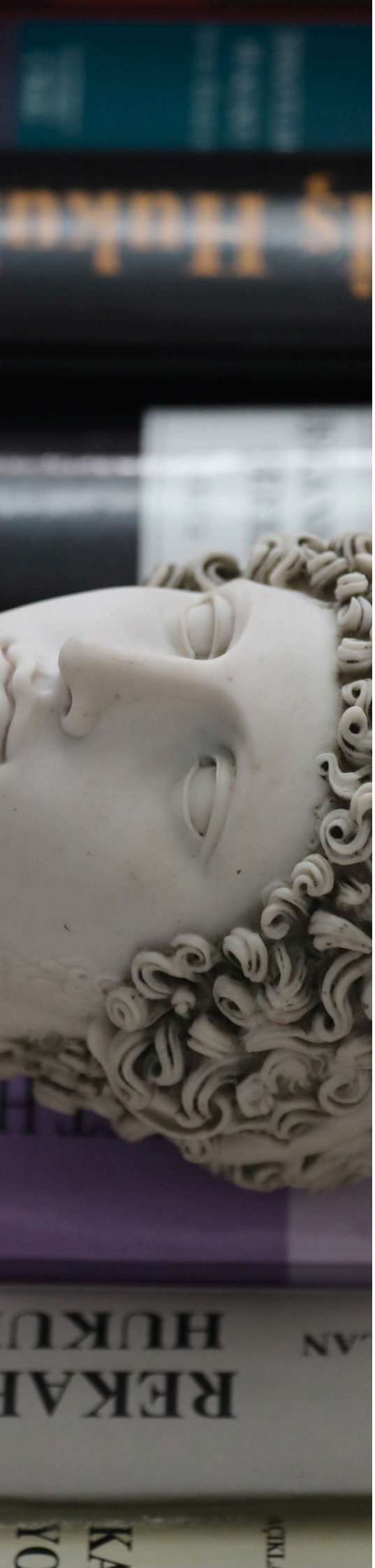


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Requirements for the Validity of the Arbitration Agreement

October, 2025



The arbitration agreement—also referred to as the agreement to arbitrate—constitutes the cornerstone of arbitral proceedings. Its existence and validity vest the arbitrators with authority to decide and delineate the bounds of their jurisdiction.

Accordingly, it is essential to examine the requirements that determine the validity of the arbitration agreement under Venezuelan law, in light of the Commercial Arbitration Law (1998) and the jurisprudence of the Supreme Tribunal of Justice (TSJ). This analysis shows that validity hinges on three fundamental dimensions: (i) the formal dimension, requiring that the agreement be in writing; (ii) the material dimension, concerning subject-matter arbitrability; and (iii) the subjective dimension, concerning the legal capacity of persons to be bound.

For the sake of completeness, with respect to the formal dimension, it is pertinent to note De Jesús's analysis of Article 6 of the Commercial Arbitration Law, in which he argues that the requirement that the arbitration agreement be in writing does not per se require that the document bear the signatures of the signatories. This formal requirement serves primarily an evidentiary function (ad probationem), intended to verify the existence of a clear and mutual expression of intent to submit disputes to arbitration as an alternative dispute resolution (ADR) mechanism[1].

In other words, the formal validity of the arbitration agreement is ultimately limited to verifying that the persons have expressed their consent freely and knowingly, in accordance with the general principles of contract law, and that no vitiating factor affects the consent manifested [2].

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[1] Alfredo De Jesús O., Validity and Effectiveness of the Arbitration Agreement in Venezuelan Law, in: Domestic and International Commercial Arbitration: Theoretical Reflections and Practical Experiences, Caracas, Academy of Political and Social Sciences, 2005, Event Series 18, pp. 55–131.

[2] Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 1541, 17 October 2008 (Application for Interpretation filed by the Republic): "In this regard, the Chamber has categorically stated that '…arbitration, as an alternative means of dispute resolution, rests upon a fundamental pillar that is a substantive prerequisite for the validity of the arbitration agreement: the principle of autonomy of the will. Thus, no person may be subjected to arbitral proceedings without having expressed consent to that effect; therefore, a prior, express, and written manifestation of the will to submit to arbitration is always indispensable…'." Available at: https://bit.ly/3vHX6F3

[1] Araque Benzo, Luis Alfredo, The ABCs of Commercial Arbitration, in: Journal of the Caracas Chamber, 2020, No. 13. Available at: https://bit.ly/3OHIxds



Second, the material validity of the arbitration agreement concerns the nature of the subject matter of the disputes the contracting signatories agree to submit to arbitration—that is, its arbitrability. As a general rule, arbitration may encompass rights and obligations over which the contracting parties may freely dispose or which they may freely settle; excluded are only those matters expressly prohibited by law or involving non-disposable subject matter[3].

It should be noted that when non-arbitrable matters are said to include those deemed contrary to public policy, this does not mean that every dispute in which a public interest is present is excluded from arbitration. Indeed, Venezuelan law permits recourse to arbitration even in areas where such an interest is acknowledged, as in certain labor matters. To deny that possibility would run counter to Article 258 of the Constitution, cited above.



[3] Araque Benzo, Luis Alfredo, The ABCs of Commercial Arbitration, in: Journal of the Caracas Chamber, 2020, No. 13. Available at: https://bit.ly/3OHIxds



Accordingly, the proper understanding is that the arbitration agreement—like the proceedings arising therefrom—may not directly contravene public policy; however, this does not preclude certain matters, even those bearing elements of general interest, from being validly submitted to arbitral determination[4].

Lastly, the subjective validity of the arbitration agreement concerns the general requirement present in every contract: legal capacity to act. This means that persons must possess the legal capacity to enter into valid legal acts, whether in their own name or through lawful representation. Article 3 of the Commercial Arbitration Law so provides, stating that only "persons capable of settling" may validly submit to arbitration disputes arising from matters that are capable of settlement[5].

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[4] Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 1541, 17 October 2008, ob. cit.: "When the legislature determines that, in accordance with the protective principle (principio tuitivo), a given subject matter must be governed by public policy, alternative means of dispute resolution should not, per se, be excluded … since a declaration that a matter is of public policy … entails only that the parties may not relax or mitigate the safeguards or protections owed to the legally weaker party, which are substantive in nature; whereas, by contrast, the free and consensual stipulation to opt for an alternative means … in the direct and immediate exercise of party autonomy is of an exclusively procedural (adjectival) nature."

[5] Commercial Arbitration Law, Official Gazette No. 36,430, 7 April 1998.

In conclusion, the validity of the arbitration agreement is the foundation upon which the entire arbitral process rests. Its effectiveness hinges on satisfaction of three essential requirements: (i) formal validity, which ensures an informed, written expression of consent; (ii) material validity, which confines arbitration to matters subject to free disposition by the signatories and not contrary to public policy; and (iii) subjective validity, which requires that the persons who execute the agreement possess legal capacity.



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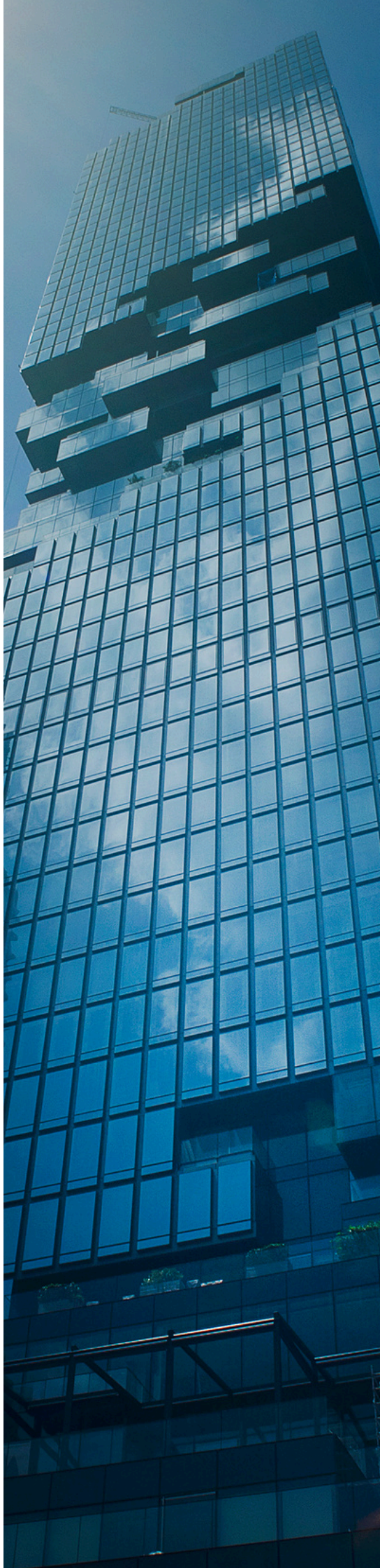
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