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Mexico

International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Mexico.

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Mexico: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The Commerce Code is applicable to domestic and international arbitrations when the seat of arbitration is Mexico.

Parties are free to agree upon the rules that govern their arbitration (including by reference to arbitral rules) provided they are treated with equality and given the opportunity to present their case (Article 1434 Commerce Code).

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Mexico ratified the New York Convention on 14 April 1971 with no reservations; it entered into force on 13 July 1971.

3. What other arbitration-related treaties and conventions is your country a party to?

In addition to the New York Convention, Mexico is a party to the Inter-American Convention of Extraterritorial Validity of Foreign Judgments and Arbitral Awards (the Montevideo Convention) and the Inter-American Convention on International Commercial Arbitration (the Panama Convention).

In 2018, Mexico ratified the Convention on the Settlement of Investment Disputes between States and Nationals on Other States (the ICSID Convention). The ICSID Convention entered into force in Mexico on 26 August 2018.

Many free trade agreements and bilateral investment treaties executed by Mexico establish international arbitration as the primary dispute resolution mechanism. In this regard, the United States-Mexico-Canada Agreement (USMCA) allows foreign investors to commence an arbitration against host States.

4. Is the law governing international arbitration in

your country based on the UNCITRAL Model Law? Are there significant differences between the two?

In 1993, Mexico adopted the UNCITRAL Model Law on International Commercial Arbitration into the Commerce Code, with minor language and order modifications.

5. Are there any impending plans to reform the arbitration laws in your country?

There are currently no impending plans to reform the arbitration laws in Mexico.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The International Chamber of Commerce (ICC), the International Centre for Dispute Resolution (ICDR) and the London Court of International Arbitration (LCIA) are the most commonly used international institutions.

Likewise, there are domestic arbitral institutions, for instance:

- The Arbitration Center of Mexico (Centro de Arbitraje de México or CAM), which is specialized in the administration of private commercial arbitration proceedings. The arbitration proceedings administered by the CAM are regulated by its Arbitration Rules, which were last modified in 2022.¹
- The National Chamber of Commerce of Mexico City (Cámara de Comercio de la Ciudad de México or CANACO) is an institution that administers mediation and private commercial arbitration proceedings. The arbitration proceedings administered by CANACO are regulated by the Arbitration Rules, which were last modified in 2013.²

There are currently no amendments being considered to the arbitration rules of these domestic arbitral institutions.

7. Is there a specialist arbitration court in your country?

There are no specialized arbitration courts in Mexico. In case the intervention of a judge is required, federal and local commercial courts are competent to hear disputes related to domestic and international arbitrations.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The validity requirements under Mexican law are legal capacity, form, licit purpose, and absence of defects in consent.

An arbitration agreement may arise from (i) an agreement that is written and signed by the parties, (ii) an exchange of letters, telex, telegrams, or other means of communication that can evidence the agreement, or (iii) an exchange of statements of claim and defense in which the arbitration agreement is affirmed by one party without being denied by the other (Article 1423 Commerce Code).

9. Are arbitration clauses considered separable from the main contract?

The arbitration agreement is considered separable and autonomous from the main contract. In this sense, if the arbitral tribunal declares the underlying contract to be null and void, it will not entail the invalidity of the arbitration clause (Article 1432 Commerce Code).

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

There are no precedents specifically addressing such validation principle.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Mexico's legislation has no specific regulations dealing with multi-party or multi-contract arbitration.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Arbitral tribunals generally only have jurisdiction over signatory parties to the arbitration agreement. However, the following judicial precedents are relevant to this subject.

In transferred rights and succession contexts, an arbitral tribunal may consider applying an arbitration agreement to third parties, according to a 2004 decision of the Third Federal Circuit Court for Civil Matters of the First Circuit (Tesis 178813).

In 2012, the inter partes applicability principle was recognized by the Fourth Federal Circuit Court for Civil Matters of the First Circuit. However, it observed that applying arbitration agreements to third parties could involve complex commercial relationships that call for careful consideration (Amparo en Revisión 273/2019).

Nonetheless, the inter partes principle was reinforced in a 2019 ruling by the Third Federal Circuit Court for Civil Matters of the First Circuit (Tesis 2021201).

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

The following types of disputes are considered non-arbitrable:

- a. Family and criminal matters are under the exclusive jurisdiction of domestic courts.
- b. Controversies arising from the following matters shall be exclusively settled by domestic courts (Article 568 Federal Code of Civil Procedure):
 - i. Land and water resources located within Mexico.
 - ii. Resources of the Mexican Exclusive Economic Zone or resources related to the sovereign rights about that zone.
 - iii. Acts by or related to the federal entities.
 - iv. Mexican embassies and consulates abroad and their official proceedings.
- c. The Law of Public Works and Related Services excludes the administrative rescission or early termination of any contract entered by public entities that fall within those laws (Article 98 Law on Public Works).

d. The Law on Procurement, Leasing and Services in the Public Sector expressly excludes the administrative rescission or early termination of any contract entered by public entities that fall within those laws (Article 80 Law on Procurement, Leasing and Services in the Public).

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

There are no recent court decisions in Mexico country concerning the choice of law applicable to an arbitration agreement.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The arbitral tribunal shall decide the dispute according to the choice of law determined by the parties. If the parties have not determined the law, the arbitral tribunal will determine the applicable law considering the particularities of each specific case, as well as its characteristics and connections. Additionally, the arbitral tribunal shall consider the applicable commercial usages (Article 1445 Commerce Code).

16. In your country, are there any restrictions in the appointment of arbitrators?

There are no restrictions on the appointment of arbitrators. Parties can freely determine the number and appointment procedure of arbitrators, as long as they are independent and impartial (Articles 1426 and 1427 Commerce Code).

17. Are there any default requirements as to the selection of a tribunal?

According to Article 1427 of the Commerce Code, unless otherwise agreed by the parties (including by reference to arbitral rules):

- In an arbitration with a sole arbitrator, he or she shall be appointed by a judge at the request of either party if they cannot agree on the designation of the arbitrator.
- In an arbitration with three arbitrators, each party shall designate one arbitrator, and the two arbitrators thus selected shall appoint the

third arbitrator. The appointment shall be made by the judge at the request of either party if a party fails to name an arbitrator within the 30 days of receiving a request from the other party, or if the two arbitrators cannot agree on the third arbitrator within 30 days of their appointment.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Domestic courts can intervene in the designation procedure of arbitrators as described above.

Additionally, when in an appointment procedure agreed upon by the parties, one of the parties fails to act in accordance with the provisions of such procedure, or the parties or two arbitrators are unable to reach an agreement in accordance with such procedure, or a third party, including an institution, fails to perform any function conferred upon it in such procedure, either party may request the judge to take the necessary measures, unless if the agreement on the appointment procedure provides for other means to achieve it (Article 1427 Commerce Code).

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Parties may agree on the procedure for challenging and removing arbitrators. However, if the parties do not expressly agree on such procedure, Article 1429 of the Commerce Code provides the following default rules:

- The arbitral tribunal must receive a written submission from the party which wants to challenge an arbitrator within 15 days after: (i) learning of the arbitral tribunal's constitution, or (ii) any events that raise concerns about the arbitrator's independence, impartiality, or lack of qualifications.
- The arbitral tribunal will decide the case if the challenged arbitrator does not resign from his or her position as arbitrator and the non-challenging party does not consent to the challenge.

Within 30 days of receiving notice of the decision rejecting the challenge, the challenging party may file a request to a Mexican court.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

There have not been any recent developments concerning the arbitrators' duty of independence and impartiality. Under Mexican law, arbitrators shall be independent and impartial. Any person approached by a party for a possible appointment as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts about impartiality or independence (Article 1428 of the Commerce Code).

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

There is no default procedure in case of a truncated arbitral tribunal under Mexican law. The outcome of the proceeding will rely on the rules of the institution administering the arbitration.

22. Are arbitrators immune from liability?

While there is no specific law dealing with this issue, there are various arguments to establish such immunity or reduce the liability of arbitrators.

23. Is the principle of competence-competence recognised in your country?

Mexico recognizes the principle of competence-competence: an arbitral tribunal may rule on its own jurisdiction (Article 1432 Commerce Code).

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Courts shall dismiss the complaint and refer the parties to arbitration unless it is proven that the arbitration agreement is ineffective, null, or impossible to enforce (Article 1424 Commerce Code).

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Unless otherwise agreed by the parties, if respondent fails

to participate in the arbitration proceeding, the arbitral tribunal shall continue the proceeding without the respondent's participation (Article 1441-II Mexican Commerce Code). Mexican courts cannot compel a respondent to participate in the arbitration.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The Mexican Commerce Code does not regulate instances where a third party may join the arbitration proceedings.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Parties have the right to seek interim measures before or during the arbitration. Domestic courts have discretion as to which preliminary measures to adopt on a case-by-case basis (Article 1478 Commerce Code).

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Mexican law does not specifically regulate anti-suit or anti-arbitration injunctions.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

According to Article 1445 of the Commerce Code, the arbitral tribunal is competent to decide on evidentiary matters and has the power to rule on admissibility, pertinence and submission of evidence.

Arbitral tribunals and parties can request judicial assistance in the production of evidence and subpoenas (Article 1444 Commerce Code).

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There are no specific ethical codes or professional standards binding to counsel and arbitrators for conducting arbitral proceedings.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Mexican law does not expressly establish that arbitrations are confidential. In this respect, parties must either: (i) include a confidentiality clause in the arbitration agreement, or (ii) choose a set of arbitral rules that include such provision.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

Parties may expressly agree upon the rules for determining legal costs and the arbitral tribunal's fees, or instead, choose a set of procedural rules that regulate such matters (Article 1442 Commerce Code).

Mexican law does not regulate the automatic inclusion/exclusion of pre- and post-award interest on the principal claim and costs incurred; hence those issues shall be resolved according to the applicable law.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

An arbitral award, irrespective of the country in which it was rendered, shall be recognized as binding after the filing of a written request to the judge. The party invoking an award or requesting its enforcement shall submit the award (duly authenticated or a certified copy thereof), as well as the arbitration agreement (Articles 1460 and 1462 Commerce Code).

34. What is the estimated timeframe for the recognition and enforcement of an award? May a

party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The recognition and enforcement of an award lasts approximately eight to twelve months. The motion for the recognition and enforcement of an award cannot be submitted on an ex parte basis.

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

There is no distinction between domestic awards and foreign awards under Mexican law.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

There are no provisions establishing limits on the remedies that an arbitral tribunal may award.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitral awards are not subject to appeal under Mexican law. However, according to Article 1457 of the Commerce Code, parties can request the annulment or set-aside of the award on the following grounds:

– The party seeking to annul the award must prove that:

- A party to the arbitration agreement is incapable or the agreement is invalid;
- The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;
- The award deals with a dispute outside of the scope of the ruling of the arbitrators.
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties.

– The court finds that:

- The subject of the dispute is non-arbitrable.
- The award conflicts with the public policy in Mexico.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The Commerce Code does not provide for a waiver for the right to set aside the award.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Mexican law does not contemplate that third parties or non-signatories can be bound by an award.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There are no recent public court decisions in Mexico regarding third party funding in connection with arbitration proceedings.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Under Mexican *lex arbitri*, parties may request interim measures from either the arbitral tribunal, an emergency arbitrator, or a Mexican court.

An interim measure ordered by an arbitral tribunal, or an emergency arbitrator will be recognized as binding and enforced throughout Mexico by Mexican courts, if so requested (Article 1479 Commerce Code).

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Mexican law does not distinguish arbitration proceedings according to their value. However, there is an accelerated "ABC" arbitral proceeding for low-value disputes offered by both CANACO and CAM, in addition to those of international arbitral institutions (ICC).

43. Is diversity in the choice of arbitrators and

counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

It is, through different guidelines and campaigns dealing with this issue.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There are no recent court decisions in Mexico considering the setting aside of an award that has been enforced in another jurisdiction.

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

There are no recent decisions considering the issue of corruption.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

In response to the COVID-19 pandemic, the CAM offered on 1st June 2020 to (i) reduce procedural timeframes, and (ii) lower by 25% arbitration costs for all proceedings which value does not exceed \$1,500,000.00 M.N. (approx. USD \$75,000) with a sole arbitrator. CANACO reinforced the pre-existent abbreviated proceeding for low-value disputes: the ABC arbitration.

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

In addition to the abovementioned, there are no modifications to the arbitration rules of CANACO or CAM to implement virtual hearings. Arbitral tribunals have, on the other hand, implemented virtual hearings during the last few years.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There have been no such developments.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

There have no public decisions in which Mexican courts

have considered international economic sanctions. There are no recent decisions considering the impact of sanctions on international arbitration proceedings.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

Mexico has not implemented any specific rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration.

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