

GAR KNOW HOW COMMERCIAL ARBITRATION

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# Mexico

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## Infrastructure

### 1 The New York Convention

#### Is your state a party to the New York Convention? Are there any noteworthy declarations or reservations?

Mexico is party to the New York Convention of 1958, which it ratified in 1971. Mexico made no declarations or reservations upon the execution of the New York Convention.

### 2 Other treaties

#### Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?

Mexico is party to the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention), which it ratified in 1987. It is also party to the Inter-American Convention on International Commercial Arbitration (Panama Convention), ratified in 1978.

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

### 3 National law

#### Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?

The law governing arbitration proceedings is contained in the Commerce Code and it incorporates the UNCITRAL Model Law on arbitration, with minor modifications. Such code applies to all arbitral proceedings with a seat in Mexico relating to commercial disputes.

### 4 Arbitration bodies in your jurisdiction

#### What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?

The main arbitration bodies based within Mexico are the following:

- the Mexican Chapter of the International Chamber of Commerce ([www.iccmex.org.mx](http://www.iccmex.org.mx));
- the Arbitration and Mediation Commission of the Mexico City Chamber of Commerce (CANACO) ([www.arbitrajecanaco.com.mx](http://www.arbitrajecanaco.com.mx)); and
- the Arbitration Centre of Mexico (CAM) ([www.camex.com.mx/](http://www.camex.com.mx/)).

The above-mentioned arbitration bodies can act as appointing authorities, with prior agreement of the parties.

### 5 Foreign institutions

#### Can foreign arbitral providers operate in your jurisdiction?

Yes, there is no restriction on foreign arbitral providers operating in Mexico; however, they can only operate in arbitration and not before courts unless they are officially recognised and authorised as lawyers before Mexican authorities.

### 6 Courts

#### Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with, and supportive of, the law and practice of international arbitration?

There is no specialist arbitration court; however, arbitration-related matters are brought before the first instance civil courts. Pursuant to article 1422 of the Commerce Code, when judicial intervention is required, the competent court is the federal court of first instance or the ordinary courts of the place of the arbitration.

The judiciary in Mexico is generally familiar with the law and practice of international arbitration. However, the most experienced courts in Mexico in arbitration matters are the Federal courts in Mexico City. The trend of the judiciary led by the Mexican Supreme Court is to be supportive of arbitration. In fact, recent precedents have strongly limited the scope of what

should be understood as public policy in governmental contracts, reducing the chances of setting aside awards based on said cause.

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## Agreement to arbitrate

### 7 Formalities

**What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?**

The arbitration agreement shall be in writing and signed by the parties, or it may be in an exchange of letters, telexes, telegrams or faxes, or any other means of telecommunication that properly record the agreement. It may also be an exchange of a written complaint and a written answer from which the agreement can be affirmed by one party without being denied by the other. A reference made in an agreement to a document that contains a committing clause to arbitrate shall constitute an agreement to arbitrate as long as such agreement is in writing and the reference creates the implication that such clause is part of the agreement (article 1423, Commerce Code).

Furthermore, to be enforceable, the agreement must also meet the following other basic requirements of any contract:

- it must have a legal purpose;
- the parties' consent was not given by error, or obtained by fraud or under duress; and
- the parties had full legal capacity to sign the agreement.

Pursuant to the Commerce Code, arbitration agreements can cover both controversies that have arisen and controversies that may arise in the future (article 1416, Commerce Code).

### 8 Arbitrability

**Are any types of dispute non-arbitrable? If so, which?**

Pursuant to the Federal Code of Civil Procedures, controversies arising from the following matters shall be exclusively settled by national courts (article 568, Federal Code of Civil Procedures):

- land and water resources located within national territory;
- resources of the exclusive economic zone or resources related to any of the sovereign rights regarding such zone;
- acts of authority or related to the internal regime of the state and of the federal entities;
- the internal regime of Mexican embassies and consulates abroad and their official proceedings;
- in any other case where other laws provide so.

Additionally, all family and criminal matters correspond to the exclusive jurisdiction of national courts and are therefore not arbitrable. The Law of Public Works and Related Services, as well as the Law of Acquisitions, Leases, Services of the Public Sector have expressly excluded from arbitration any dispute regarding the validity of the administrative rescission or the early termination of any contract entered into by public entities with private parties which fall under the scope of these laws. The same exclusion is established in the Hydrocarbons Law and the Law on Public-Private Partnerships.

### 9 Third parties

**Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?**

There is no specific provision regulating a circumstance where third parties (non-signatories) are bound by an arbitration agreement. Consent is essential under Mexican law to be bound by an arbitration agreement. However, since Mexican law allows the consent to be construed pursuant to the conduct assumed by a party, it would not be strictly necessary to have a signed agreement to bind a third party to an arbitration. If there is enough evidence to support that said party consented to the arbitration, then that would be enough to bind it.

## 10 Consolidation

### Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?

There are no specific provisions on this matter, so that would entirely depend on the consent of the parties of each arbitral proceeding and the willingness of the arbitral tribunal to consolidate the different proceedings.

## 11 Groups of companies

### Is the “group of companies doctrine” recognised in your jurisdiction?

To this day, piercing the corporate veil is recognised in several precedents. However, it has not been used yet for finding consent to an arbitration clause. This notwithstanding, if a party can prove that within a group of companies several of them participated in the performance of an agreement just signed by one of them and that they have acted and consented to the arbitration clause contained in it, then binding them to the arbitration would be allowed by Mexican law. Specifically, the group of companies’ doctrine has started to be discussed in other areas of law such as antitrust law.

## 12 Separability

### Are arbitration clauses considered separable from the main contract?

Yes, pursuant to the Commerce Code, an arbitration clause included within the wording of a contract shall be deemed as an agreement independent from the other stipulations of the contract. In the event that the arbitral tribunal declares the main contract to be null and void, this shall not entail the nullity of the arbitration clause (article 1432, Commerce Code).

## 13 Competence-competence

### Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal’s jurisdiction and competence?

Yes, the competence-competence principle is recognised. An arbitral tribunal has the authority to determine its own jurisdiction and rule on any defences regarding the existence or validity of an agreement for arbitration. For such purpose, the arbitration clause in a contract shall be deemed an agreement independent of all other stipulations in the contract. A determination by an arbitral tribunal declaring a contract null and void shall not void the arbitration clause. If a party brings a claim before a court challenging the jurisdiction of the Arbitral Tribunal, it must remit the parties to arbitration, unless it is proven that the arbitration clause is null, ineffective or unenforceable.

Within the arbitration proceeding, the defence of lack of jurisdiction of the arbitral tribunal must be raised before the filing of the answer. The parties shall not be barred from asserting this defence by virtue of having appointed an arbitrator or participated in his or her appointment. The defence that the tribunal exceeded its authority must be asserted as soon as it is raised or when it so appears during the arbitration proceeding. The tribunal may, however, in either case admit a defence filed after the above-mentioned term has expired, provided that such delay is justified.

The arbitral tribunal may resolve the above-mentioned defences a priori or in the final award on the merits. If prior to the issuance of its final award, the tribunal declares itself competent, either party may request a judge to review the foregoing within 30 days of receiving notice of the declaration, and his decision shall be non-appealable. While such petition is pending, the arbitral tribunal may continue to act until an award is entered (article 1432, Commerce Code).

## 14 Drafting

### Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

There are no specific requirements regarding the drafting of the arbitration clause, except for those established in article 1423 of the Commerce Code (see question 7).

### 15 Institutional arbitration

**Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?**

Institutional international arbitration is more common than ad hoc international arbitration in this jurisdiction. In ad hoc international arbitrations, the UNCITRAL Rules are commonly used.

### 16 Multi-party agreements

**What, if any, are the particular points to note when drafting a multi-party arbitration agreement with your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.**

The Commerce Code contains no provision as regards multi-party arbitration agreements and, therefore, the general provisions regarding arbitration agreements are applicable (see question 7). In any event, it is highly advisable to ensure that the parties have the possibility of participating in the arbitration in a fair and equitable manner in conditions of reciprocity.

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## Commencing the arbitration

### 17 Request for arbitration

**How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?**

An arbitration is usually commenced following the rules of institutional arbitrations (with the filing of a request for arbitration or a complaint and with the appointment of the arbitral tribunal). In ad hoc arbitrations, arbitration is usually commenced with the proceeding to appoint the sole arbitrator or the arbitral tribunal and the filing of an arbitration complaint.

In connection with the statute of limitation, in general terms there is a 10-year period to bring a commercial action before courts (article 1047, Commerce Code).

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## Choice of law

### 18 Choice of law

**How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?**

The tribunal shall decide the controversy in accordance with the principles of law chosen by the parties. If the parties do not set forth the law that is to govern the substance of the controversy, the arbitral tribunal shall determine the applicable law, taking into account the characteristics and the nexus of the matter (article 1445, Commerce Code).

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## Appointing the tribunal

### 19 Choice of arbitrators

**Does the law of your jurisdiction place any limitations in respect of a party's choice of arbitrator?**

The parties are free to agree upon the number and method of selection of the arbitrators, or can incorporate the rules of an arbitration institution (articles 1426 and 1427, Commerce Code).

The only limitations are that arbitrators shall be impartial and independent (article 1428, Commerce Code).

## 20 Foreign arbitrators

### Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?

There are no restrictions regarding the nationality of arbitrators, unless otherwise agreed by the parties (article 1427, Commerce Code). There are no provisions regarding immigration requirements.

## 21 Default appointment of arbitrators

### How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?

In the event that no nomination is made by a party or parties regarding the selection of arbitrators, the following mechanism shall apply (article 1427, Commerce Code):

- In the event of a sole arbitrator, if the parties are unable to reach an agreement, the arbitrator shall be appointed by the judge, prior to the request of either party;
- in arbitrations with three arbitrators, each party shall appoint one arbitrator and the appointed two shall name the third one. If one party fails to name an arbitrator within 30 days from a request of the other party, or if both arbitrators named by the parties do not agree on the third arbitrator within 30 days from their designation, the appointment shall be made by the judge upon request of either party.

If during the agreed procedure for the appointment, one of the parties does not act in accordance with the stipulated agreement, or the parties or the arbitrators cannot reach an agreement regarding the procedure to be followed, or a third party, including an institution, does not comply with the functions that have been assigned to it by the agreement, either party may petition the judge to adopt the necessary measures, unless the agreement for the procedure for appointment has provided for other means to determine a third arbitrator.

## 22 Immunity

### Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?

There are no legal provisions regarding immunity of arbitrators. However, it has been recognised in several judicial precedents that an arbitrator is not considered a public officer and, consequently, decisions by arbitrators do not constitute acts of authority. Based on the foregoing criteria, arbitrators are not liable for the legal consequences of the awards issued by them or for any errors of law contained in such awards. Similarly, constitutional amparo proceedings cannot be brought directly against arbitral awards or other acts of arbitral tribunals.

Notwithstanding the foregoing, article 1480 of the Commerce Code establishes that members of the Arbitral Tribunal are responsible for any damage caused by the granting of provisional measures within an arbitration.

## 23 Securing payment of fees

### Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?

There are no specific provisions regarding security of fees. However, article 1456 of the Commerce Code establishes that, immediately after being integrated, the arbitral tribunal may request each party to deposit an equal amount as an advance on the arbitral tribunal's fees, travel expenses and any other expenses of the arbitrators, as well as on the costs of expert evidence or for any other advice required by the tribunal.

During the course of the proceedings, the arbitral tribunal may request the parties to make additional deposits.

Upon the request of any of the parties, and provided that the judge agrees to do so, the arbitral tribunal may only fix the amount of such deposits or of any additional deposits, prior consultation with the judge, who may intervene and make any observations and clarifications he may deem appropriate.

If the fees have not been deposited by the parties within 30 days of the tribunal's request, the arbitral tribunal shall ask the parties to make the corresponding deposits. In the event that such deposits are not made, the tribunal may order the suspension or the termination of the arbitration.

There are no fundholding services provided by CAM.

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## Challenges to arbitrators

### 24 Grounds of challenge

**On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or (as applicable) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?**

An arbitrator may only be challenged if there are circumstances that generate justified doubts regarding the arbitrator's impartiality or independence, or if he does not possess the characteristics previously agreed by the parties. A party may only challenge the arbitrator appointed by such party, or in whose designation it participated, for reasons that came to its knowledge after the appointment (article 1428, Commerce Code).

The parties may freely agree on the procedure for the challenge of arbitrators. In the absence of such agreement, the party seeking the challenge shall, within 15 days from the time that the arbitral tribunal has been constituted, or 15 days from the time that the party obtains knowledge of the causal facts, submit in writing the circumstances he believes justify the challenge. Unless the arbitrator voluntarily resigns or the other party accepts the challenge, the arbitral tribunal shall resolve the challenge of the arbitrator in question.

If a challenge is rejected, the petitioner may, within 30 days from the notice of rejection, request the competent court to review the decision. The court's decision is not appealable. During such time, the arbitral tribunal, including the arbitrator being challenged, may continue the proceedings and issue an award (article 1429, Commerce Code).

The IBA Guidelines on Conflicts of Interest in International Arbitration are taken into account if the parties have previously agreed so, and it is customary for parties to agree that the guidelines may be used as guidance by the Arbitral Tribunal.

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## Interim relief

### 25 Types of relief

**What main types of interim relief are available in respect of international arbitration and from whom (the tribunal or the courts)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?**

Relief is available both before courts and the arbitral tribunal.

Unless otherwise agreed by the parties, the arbitral tribunal may, upon a request from either party, order provisional remedies which are necessary to protect the subject matter in dispute. In this case, the tribunal may also require a guarantee from the party requesting the measures (article 1433 of the Commerce Code).

All interim measures ordered by an arbitral tribunal shall be recognised as binding on the parties. Unless otherwise determined by the tribunal, such interim measures shall be enforceable upon request to the courts, regardless of the stage in which they have been ordered. The party who requested or obtained the recognition or the enforcement of an interim measure shall immediately inform the judge in the event of revocation, suspension or modification of such measure. The judge, to whom the request for recognition or enforcement of an interim measure has been addressed, can, if appropriate, order the requesting party to give a guarantee whenever the arbitral tribunal has not issued a decision regarding such guarantee or if the guarantee is necessary to protect third-party rights (article 1479 of the Commerce Code).

Courts can also grant provisional relief in support of arbitrations. The parties may request that a judge grant provisional relief before or during the arbitration proceedings (article 1425 of the Commerce Code). Upon such request, the judge has complete discretion to adopt any interim measures he or she may deem appropriate (article 1478 of the Commerce Code).

Notwithstanding the above, anti-suit injunctions are not allowed as such, since the right to access to court is considered a fundamental right that cannot be restricted. In this regard, Mexican courts have held that, under Mexican law, it is forbidden to grant an injunction to prevent a party to refrain from filing an action exercising its rights.

If a party brings a claim before a court in breach of an arbitration clause, the existing remedy would be that the defendant may ask the court to remit the parties to arbitration and suspend the court procedure.

## 26 Security for costs

### Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?

Even though the Commerce Code does not contain any specific provisions regarding security for costs. However, article 1456 allows the arbitral tribunal to request each party to deposit an equal amount as an advance on the arbitral tribunal's fees, travel expenses and any other expenses of the arbitrators, as well as on the costs of expert evidence or for any other advice required by the tribunal. During the course of the proceedings, the arbitral tribunal may request the parties to make additional deposits. Upon request by any of the parties and provided that the judge agrees to do so, the arbitral tribunal may only fix the amount of such deposits or of any additional deposits, with prior consultation with the judge, who may intervene and make any observations and clarifications he or she may deem appropriate (article 1456 of the Commerce Code).

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## Procedure

## 27 Procedural rules

### Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

The Commerce Code establishes that the parties may freely agree on the procedure to be followed by the arbitral tribunal. In the absence of such agreement, the tribunal may conduct the proceedings as it may deem appropriate, but always following the general guideline of due process which allows both parties to be treated equally and to have a full opportunity to exercise their rights. This power conferred to the arbitral tribunal includes the discretion to determine the admissibility and relevance of the evidence (article 1435, Commerce Code).

## 28 Refusal to participate

### What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

Unless otherwise agreed by the parties, if the respondent fails to participate in an arbitration, the arbitral tribunal shall continue the proceedings. However, such failure to participate shall not be considered as an admission of the claimant's pleadings (article 1441, Commerce Code).

Furthermore, in the event that either party fails to appear in a hearing or fails to file any evidence, the arbitral tribunal may continue the proceedings and issue a final award based on the evidence presented.

## 29 Admissible evidence

### What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the Taking of Evidence in International Arbitration generally be taken into account?

The Commerce Code establishes that the parties may freely agree on the procedure to be followed by the arbitral tribunal. In the absence of such agreement, the tribunal may conduct the proceedings as it may deem appropriate. This power conferred to the arbitral tribunal includes the discretion to determine the admissibility and relevance of the evidence (article 1435, Commerce Code).

The adoption of the IBA Rules on the Taking of Evidence, to govern arbitration proceedings is very common and even in cases where the parties have not agreed on their adoption, the Rules are often used as a guide by the arbitral tribunal.

It is our understanding that in our jurisdiction the Prague Rules are not commonly taken into account yet.

## 30 Court assistance

### Will the courts in your jurisdiction play any role in the obtaining of evidence?

The arbitral tribunal or either party (with leave from the tribunal) may request the presence of the judge to assist in the discharge of evidence (article 1444, Commerce Code).



### 31 Document production

#### What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

There is no specific law regarding document production in international arbitration in Mexico. Therefore, the arbitration rules chosen by the parties in each particular case apply.

### 32 Hearings

#### Is it mandatory to have a final hearing on the merits?

Unless otherwise agreed by the parties, the arbitral tribunal shall decide if hearings are to be held for the submission of evidence or for oral argument, or if the proceedings should be conducted based on documents and other evidence. If the parties do not agree to the waiver of hearings, the tribunal shall hold them at the proper stage of the proceedings upon petition of one of the parties (article 1440, Commerce Code).

### 33 Seat or place of arbitration

#### If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

Regardless of the place of arbitration, the arbitral tribunal may, unless otherwise agreed by the parties, conduct hearings or procedural meetings anywhere (article 1436, Commerce Code).

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## Award

### 34 Majority decisions

#### Can the tribunal decide by majority?

Yes. Pursuant to the Commerce Code, if there is more than one arbitrator, the signatures of a majority shall be sufficient to issue a decision, as long as the reasons of why the remaining arbitrators failed to sign are set forth (article 1448, Commerce Code).

### 35 Limitations to awards and relief

#### Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

No, arbitral tribunals may grant any type of remedy or relief. The only limitation is with respect to enforcement, which is reserved to courts.

### 36 Dissenting arbitrators

#### Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

Even though the Commerce Code does not contain any specific provisions regarding dissenting opinions to the award, article 1448 states that in arbitration proceedings conducted by more than one arbitrator, the award must contain the signatures of the majority, provided that reasons why the remaining arbitrators failed to sign it are set forth in the award.

### 37 Formalities

#### What, if any, are the legal and formal requirements for a valid and enforceable award?

Pursuant to the Commerce Code, the award must be in writing and signed by the arbitrators. If there is more than one arbitrator, the signatures of a majority shall be sufficient, as long as the reasons why the remaining arbitrators failed to sign are set forth (article 1448, Commerce Code).

The award must be reasoned in a decision, unless the parties have agreed otherwise or have reached a settlement.

The award shall set forth the date it was issued and the place where the arbitration was held.

After issuing the award, the tribunal shall give notice to the parties by delivering a copy of it signed by the arbitrators.

### 38 Time frames

#### What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

Unless the parties agree upon a different time period, within 30 days after a final award is notified, either party may, after due notice to the other party, request the tribunal (article 1450, Commerce Code):

- To correct an error of calculation, copying, typography, or another error of a similar nature in the award. The arbitral tribunal may also correct any such errors on its own initiative within 30 days from the date of the award.
- If the parties so agree, to give an interpretation upon an issue or upon a specific part of the award. If the tribunal deems it justified, it shall make a correction or give the interpretation requested within 30 days from the receipt of the petition. Such interpretation shall form an integral part of the award.

Additionally, unless otherwise agreed by the parties, either party may, within 30 days from the reception of the award and prior notice to the other party, request the arbitral tribunal to issue an additional award regarding any requests or pleadings included in the proceedings, but omitted in the final award. If the tribunal considers such request to be justified, it shall issue the additional award within 60 days (article 1451, Commerce Code).

The above-mentioned time limits may be extended by the arbitral tribunal, if necessary (article 1451, Commerce Code).

## Costs and interest

### 39 Costs

#### Are parties able to recover fees paid and costs incurred? Does the “loser pays” rule generally apply in your jurisdiction?

The costs of arbitration are usually borne by the unsuccessful party. However, the arbitral tribunal may divide the elements of such costs on a pro rata basis if appropriate and taking into consideration the specific circumstances of the dispute (article 1455, Commerce Code).

Regarding the costs of representation and legal advice, the arbitral tribunal, considering the specific circumstances of the case, shall decide which party will pay such costs or if a pro rata division among the parties is reasonable.

### 40 Interest on the award

#### Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

The arbitrators can award interests only if they were requested by the parties during the proceedings and according to the rate established in such request.

If the interest rate is not specified by the parties, the legal interest rates shall apply. The legal interest rate in commercial matters is 6 per cent. In civil matters, the legal interest rate is 9 per cent.

## Challenging awards

### 41 Grounds for appeal

#### Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

Mexican courts are prohibited from reviewing the merits of a final award, but may set aside an award on one of the following grounds (article 1457, Commerce Code):

- I The party filing to set aside the award proves that:
  - (a) One of the parties to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Mexican law;
  - (b) Such party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to assert its rights;
  - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration. However, if the decisions on

matters submitted to arbitration can be separated from those not so submitted, that part of the award that contains decisions on matters submitted to arbitration may be annulled; or

- (iv) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement is in conflict with the provisions of the Commerce Code, which the parties cannot waive; or, in the absence of such an agreement, the proceedings were not in conformity with the arbitration regulation in the Commerce Code.
- II The judge finds that in accordance to Mexican law, the subject matter of the difference is not capable of settlement by arbitration or the award is contrary to public policy.

#### 42 Other grounds for challenge

**Are there any other bases on which an award may be challenged, and if so what?**

No.

#### 43 Modifying an award

**Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?**

There are no mechanisms for appeal or recourse to modify the awards, which are deemed final and binding since they are issued.

## Enforcement in your jurisdiction

#### 44 Enforcement of set-aside awards

**Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?**

According to article 1462 of the Commerce Code, Mexican courts may deny the recognition or enforcement of an arbitration award, irrespective of the country in which it was issued, when the award has been set aside by the courts of the seat of arbitration.

In any event, the party against whom the award has been invoked must prove that such an award has been set aside or declared null by the courts in the seat of arbitration in order for the court to grant its discretionary power to enforce or reject the enforcement (article 1462, Commerce Code).

#### 45 Trends

**What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?**

Courts tend to favour enforcement of awards, unless such enforcement entails a violation of due process. In this regard, Mexican courts have rejected arguments that may invite them to revisit the merits of the dispute. In fact, recently there have been some decisions of Mexican courts denying the setting aside of awards based on allegations of breach of public policy that intend to revisit the merits of the case.

#### 46 State immunity

**To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

Mexico has no specific legislation regarding immunity. Pursuant to the Federal Code of Civil Procedure, the institutions, services, and entities of the Federal Government Public Administration, as well as the federal states, have the same status as any other party in judicial proceedings. However, no enforcement or attachment orders can be ordered against them and they cannot be obliged to deposit any guarantees required under said code (article 4, Federal Code of Civil Procedures).

There are no treaties ratified by Mexico on this subject.

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## Further considerations

### 47 Confidentiality

#### To what extent are arbitral proceedings in your jurisdiction confidential?

There is no provision in Mexican law specifically regulating the confidentiality of arbitration proceedings. As the arbitration chapter of the Commerce Code adopts the Model Law, it is silent on the issue of confidentiality of arbitration proceedings. However, article 1435 of the Commerce Code gives the parties a broad discretion to determine the arbitration proceedings, and therefore the parties have the authority to decide whether the arbitration should be confidential. Accordingly, any confidentiality agreement included by the parties in their arbitration agreement would be binding on the arbitrators as well.

### 48 Evidence and pleadings

#### What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?

There is no provision in Mexican law specifically regulating the confidentiality of arbitration proceedings.

### 49 Ethical codes

#### What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

There are no specific legal provisions or rules regarding ethical duties of arbitrators. However, the Commerce Code requires arbitrators to be independent and impartial. Moreover, the Mexican Bar Association has a code of ethics that is binding on its members.

### 50 Procedural expectations

#### Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?

Counsel and arbitrators should place special attention to Chapter X of Title Four of the Commerce Code, regulating all procedural aspects of judicial support to arbitration.

### 51 Third-party funding

#### Is third-party funding permitted in your jurisdiction? If so, are there any rules governing its use?

There are no legal restrictions under Mexican Law for third-party funding, either in arbitration or litigation. To date, there have been no known cases of third-party funding in arbitration. In addition, there is no regulation about the need to divulge the identity of the funders. However, we consider that to avoid potential risks of setting aside of the award, it would be recommendable to make such disclosure.



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Claus is the founding partner as well as partner of the dispute resolution practice of Von Wobeser y Sierra with more than 40 years of experience. He has acted in more than 200 international arbitration proceedings, either as arbitrator or counsel, as per the rules of the ICC, ICDR, LCIA, HKIAC, UNCITRAL, NAFTA, ICSID and ICSID Additional Facility, among others. Claus frequently participates as an expert in arbitration proceedings as well as on proceedings related to Mexican law before U.S. and English courts. Furthermore, his experience includes having acted as ad hoc judge of the Inter-American Human Rights Court and as conciliator in ICSID proceedings. Claus has served as Vice President of the International Court of Arbitration of the ICC, as co-chair to the IBA Arbitration Committee and as President of the Arbitration Commission of the Mexican Chapter of ICC. Currently, he is member of the Panel of Arbitrators of ICSID, member of the LCIA, Vice President of the Latin American Arbitration Association, among other designations. Claus has received numerous accolades that recognise him as a leading figure in arbitration on an international level. In November 2017, Claus won the Lifetime Achievement Award from Chambers and Partners for his contribution to the legal profession.



**Montserrat Manzano**  
Von Wobeser y Sierra, SC

Montserrat is partner of the arbitration practice of Von Wobeser y Sierra. She has approximately, 17 years of experience and has participated in more than 50 arbitrations as party attorney, secretary and/or arbitral tribunal assistant, in arbitrations conducted under the rules of the ICC, AAA, UNCITRAL, PCA, ICSID, complementary mechanism of ICSID and CAM. She has solid experience in dispute resolution related to administrative law and government contracting. Furthermore, she has participated in both commercial and investment arbitrations, in various sectors, including the following: Energy, Construction, Port, Shipping, Chemical involving both Mexican and foreign law. Montserrat has been recognised by various leading international editorials including: *Chambers and Partners Global*, *Chambers and Partners Latin America*, *Global Arbitration Review 100 (GAR 100)*, *Who's Who Legal Mexico*, *Who's Who Arbitration*, *Who's Who Legal Arbitration Future Leaders*. She currently acts as Vice Chair of the Latin Americas Initiative of the Institute for Transnational Arbitration



## **Adrián Magallanes**

Von Wobeser y Sierra, SC

Adrián is an arbitration and litigation expert admitted to practise in Mexico and New York, with nearly 20 years of experience working in Mexico City, Washington, DC and Beijing.

He has acted as counsel in arbitrations (ICC, LCIA, ICSID, AAA, ICDR, UNCITRAL, CAM, CANACO) in the commercial, infrastructure, energy and investor-state sectors, and also appears as arbitrator. His litigation experience includes commercial and administrative law trials before Mexican Courts, class actions, and transnational litigations. He has also acted as an expert on Mexican law before courts in the United States.

Adrián is a former chairman of the Arbitration Committee of the Mexican Bar Association, treasurer of the Arbitration Committee of the International Bar Association, and professor of International Litigation at the Escuela Libre de Derecho in Mexico City. He has been recognised as a leader in his field by editorials including *Global Arbitration Review*, *Legal 500*, *Latin Lawyer 250*, *Chambers and Partners* and *Who's Who Legal*. These latter editorials describe him as an “extremely talented practitioner”, an “excellent strategist” and “a very bright and eloquent force in Mexico’s arbitration market”.



Latin American dispute resolution is unique in its technicalities, and it demands a mastery of its subject matter. At Von Wobeser y Sierra, we have mindfully constructed a broad and diverse team of elite trial lawyers over more than 30 years – hand-picked from the best law schools in Mexico, the US and Europe, and moulded by our globally renowned partners into dispute resolution leaders across the most important industries in Latin America. This formula has yielded a success rate exceeding 88 per cent across both litigation and international arbitration, and our team is at the top of every accredited legal directory.

Our dispute resolution practice is ranked in Tier 1 on The Legal 500 and in the top two bands on Chambers and Partners. We are the only Mexican law firm to feature in Global Arbitration Review's 100 top practices in the world, and one of only a handful across all of Latin America. Our dispute resolution practice in Von Wobeser y Sierra works to prevent and resolve disputes of our clients in an efficient, effective and ethical manner. Our services contemplate all kinds of disputes: commercial arbitration, public works arbitration, investor-state arbitration, investigations, constitutional litigation, administrative litigation, class-action litigation, civil and commercial litigation, mediation, among others.

Von Wobeser y Sierra is a multiservice legal firm with over 70 lawyers. Our dispute resolution practice is one of the largest of its type in the market of Mexican law firms.

We have broad experience in dispute resolution in the following sectors and industries: oil and gas, renewable energy, construction and infrastructure, automotive, pharmaceutical and biotechnology, real estate, tourism and hotels, manufacturing and services, mining, consumer goods, health, information technology and outsourcing, among others.

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