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Global Practice Guides

International Arbitration

Mexico – Law & Practice

Contributed by

Von Wobeser y Sierra, SC

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MEXICO

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Law and Practice

Contributed by Von Wobeser y Sierra, SC

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Von Wobeser y Sierra, has a solid team of experts in regards to commercial arbitration. Under the leadership of Mr. Claus von Wobeser, nationally and internationally renowned arbitrator and, throughout the existence of the Firm, several of its members have acquired extensive and intensive experience in the area, acting as arbitrators, as legal counsel and as consultants, representing important national and foreign companies involved in international commercial disputes. he experience of the members of the Firm as arbitrators and legal counsel includes commercial arbitration between Mexican companies, between Mexican and foreign companies and between foreign companies. In handling these proceedings, the Firm has the necessary knowledge and sophistication to apply the most widely used Rules of Arbitration in Mexico and the world, such as the Rules of Arbitration of the International Chamber of Commerce, the American Arbitration Association, the Mexican Arbitration Center and those of UNCITRAL, etc.

Authors

Claus von Wobeser Managing partner of Von Wobeser y Sierra with almost 40 years of experience in advising both multinational Fortune 500 clients as well as governments. He has an undisputed track record acting as counsel and arbitrator appointed by international companies and governments involved in international investor-state or commercial disputes. Furthermore, he has a strong background in corporate as well as litigation matters and has been the leader in some of the most groundbreaking transactions taking place in Latin America and Mexico during the past 30 years.

Adrian Magallanes has been part of Von Wobeser y Sierra S.C. since 2002. He is a Partner of the firm with ample experience offering legal counsel for Fortune 500 companies, local enterprises and government entities throughout the world. He has a solid track record and has international expertise working in law firms in Mexico, the United States and Asia. He is admitted to practice in Mexico and New York, and his main practice areas include International & National Arbitration, Constitutional (Amparo) & Administrative Proceedings, Government Procurement & Public Works, Civil & Commercial Litigation and Anticorruption & Compliance.

1. General

1.1 Prevalence of Arbitration

In Mexico, the use of arbitration as a method of resolving disputes has been increasing substantially during the last decade. It has become the preferred option for foreign investors entering into commercial agreements with Mexican private individuals or state entities, as well as for parties entering into agreements that involve complex or technical matters that require an in-depth analysis.

So far, arbitration clauses have almost exclusively been included in mid-sized and large transactions. However, a change is starting to be seen and arbitration clauses have begun to be included in smaller transactions, mainly due to the issuance of low-amount arbitration rules by domestic and international management institutions.

1.2 Trends

Some noteworthy developments in this last year regarding Mexican arbitration practice include:

- A ruling by the Supreme Court in constitutional protection action (amparo) 71/2014, filed by the Federal Electricity Commission against a court's decision which determined not to set aside an arbitral award. This decision confirmed a very high standard for setting aside an award, based on alleged violations of public policy. It also confirmed that the judges are prevented from analysing the merits of the dispute. The Supreme Court determined that the right of agreeing on arbitration as a method of dispute resolution is in fact a constitutional right, and not just a consequence of freedom of contract.
- An amendment to the General Law of Business Corporations, passed in March 2016, created simplified stock companies. The amendment established that disputes arising between the shareholders of this type of corporation should be resolved through alternative dispute resolution methods, including arbitration. However, it is unclear if a clause in the corporate bylaws establishing mandatory arbitration would in fact be enforceable.

1.3 Key Industries

In Mexico the matters considered relevant in arbitration practice have remained unchanged over the last few years. The industries that continue to see the most international

arbitration activity in Mexico are the energy industry and infrastructure projects with regard to contracts concluded between private individuals and the Mexican state. Arbitration is also of great relevance for infrastructure projects, joint ventures and mergers and acquisitions between private parties. Of course, commercial disputes in general represent an important volume of cases.

1.4 Arbitral Institutions

In Mexico, the International Chamber of Commerce remains a first pick for institutional international arbitration. However, the London Court of International Arbitration and the American Arbitration Association – ICDR are also commonly chosen.

There are three relevant arbitral institutions situated in Mexico:

Cámara de Comercio de la Ciudad de México (CANACO)
Address: Morelos 67, 5to Piso Col. Juárez, Delegación Cuauhtémoc, P.C. 06600, Mexico City, Mexico

Telephone number: +52 55 3685 2269, extension 1309/1310

Website: www.arbitrajecanaco.com.mx

Centro de Arbitraje de México (CAM)
Address: Calle del Puente No. 222 Edificio Aulas IV, Segundo Piso (within Tecnológico de Monterrey, Campus Ciudad de México), Col. Ejidos de Huipulco, Delegación Tlalpan, P.C. 14380, Mexico City, Mexico

Telephone number: +52 55 9177 8198, Fax: +52 55 9177 8199

Email: camex@camex.com.mx

Website: www.camex.com.mx

Centro de Arbitraje de la Industria de la Construcción (CAIC)
Address: Montecito No. 38, Piso 11, Oficina 33, Nápoles, P.C. 03810, Mexico City, Mexico

Telephone number: +52 55 9000 4989, Fax: +52 55 9000 4989

Email: adelrivero@caic.com.mx

Website: www.caic.com.mx

2. Governing Law

2.1 Governing Law

The Fourth Title, entitled 'Commercial Arbitration,' of the Fifth Book, entitled 'Commercial Trials,' of the Mexican Commerce Code contains the provisions applicable to both domestic and international arbitrations, as well as to the recognition and enforcement of arbitral awards. The abovementioned title is, to a large extent, an adoption of the provisions of the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) of 1985. These provisions were included in the Code of Commerce in 1993.

Besides procedural matters such as the recognition and enforcement of arbitral awards, there are only three notable differences between the provisions of the Code of Commerce and the Model Law:

- In the case of lack of agreement between the parties regarding the number of arbitrators, the Model Law establishes that three arbitrators must be appointed, while the Code of Commerce only requires one arbitrator.
- Under Mexican domestic arbitration law, an expedited trial must be conducted before being able to obtain preliminary relief from a state court. Regardless of this, some Mexican courts have properly interpreted the domestic arbitration law in the sense that preliminary protective measures may be granted when admitting the request, in order for this preliminary relief to be confirmed later on with the judgment resulting from the expedited bench trial.
- Under the Code of Commerce, arbitration agreements must necessarily be executed in writing, while the new Model Law allows arbitration agreements to be recorded in any form.

2.2 Changes to National Law

Regarding the current legislative landscape of arbitration in Mexico, in April 2016 a presidential bill was filed before Federal Congress. Said bill proposed an amendment to the Constitution that seeks to empower Congress to issue a general law on alternative means of conflict resolution. So far, this constitutional amendment is still pending. From the preliminary drafts of both the House of Representatives and the Senate, the Federal Congress will apparently be entitled to issue federal laws establishing the bases and principles for mechanisms of alternative dispute resolution. The only limitation to this power is related to criminal matters, given that alternative dispute resolution is already regulated in criminal law.

3. Arbitration Agreement

3.1 Enforceability

Under Mexican law, an arbitration agreement must fulfil certain formal requirements in order for it to be enforceable. Under Article 1423 of the Commerce Code, the agreement must be in writing and contained in a document or in the exchange of communications between the parties, such as e-mails, letters and faxes, among others. Under this provision,

it is possible to reach an arbitration agreement by including in a contract only a reference to another document that actually contains an arbitration clause. Additionally, if within a trial the claimant states the existence of the agreement in its complaint and the respondent does not deny it, the agreement is considered existing and valid.

It is important to mention that the general requirements for consent are established in Articles 1798 and 1812 of the Mexican Federal Civil Code, and according to those provisions an agreement is not to be considered valid if:

- a party did not have legal capacity at the time of the conclusion of the agreement; or
- consent was granted under duress or by mistake.

3.2 Arbitrability

Not every subject matter can be referred to arbitration under Mexican law. Each relevant law determines if a subject can or cannot be submitted to arbitration. Among the subject matters that cannot be submitted to arbitration are the following:

- Disputes arising from:
  - (a) resources found within the exclusive economic zone or resources related to any rights of the Mexican nation in said zone (Article 568 of the Federal Code of Civil Procedure);
  - (b) acts of authority or acts related to the internal rules of the public administration and of the federal entities;
  - (c) the internal regulation of Mexican embassies and consulates; and
  - (d) land and water resources located within national territory.
- Disputes regarding the lawfulness of administrative rescissions or the early termination of contracts concluded between public entities and private parties (Law of Acquisitions, Leases and Services of the Public Sector and the Law of Public Works and Related Services);
- Disputes related to the administrative termination of contracts concluded by the National Hydrocarbons Commission (Articles 20 and 21 of the Hydrocarbons Law);
- Personal and commercial bankruptcy proceedings (Article 1 of the Bankruptcy Law);
- Criminal charges (Article 1 of the National Code of Criminal Procedure);
- Disputes with regard to taxes (Article 14 of the Tax and Administrative Federal Court Organisational Law);
- Disputes with regard to family law and civil status (Article 52 of the Superior Court of the Federal District Organisational Act);
- Disputes concerning agrarian law (according to Article 27, Section XIX of the Mexican Constitution);
- Disputes regarding labour law (Article 123, Section XXXI of the Constitution); and
- Regarding industrial property law, parties may only submit a dispute to arbitration when it exclusively concerns private rights. If the dispute concerns a public interest, then it is not arbitrable (Article 227 of the Industrial Property Law).

3.3 National Courts' Approach

State courts that take up enforcement of arbitration agreement cases are restricted by the requirements established in the Commerce Code when issuing a decision on whether to refer parties to arbitration. One of the main aspects that Mexican courts have to analyse to determine the enforceability of an arbitration agreement is the subject matter arbitrability.

Mexican courts have established very high standards for not recognising the validity of an arbitral agreement and they usually respect the parties' decision to submit the dispute to arbitration.

3.4 Validity

Regarding contracts declared null and void, under Mexican law, this does not entail the invalidity of the arbitration clause. Article 1432 of the Commerce Code states that an agreement to arbitrate established in a contract shall be treated as an independent agreement. In other words, the Commerce Code recognises the principle of separability of the arbitration clause.

4. The Arbitral Tribunal

4.1 Limits on Selection

Under domestic arbitration law, parties are free to appoint any person with full legal capacity to act as arbitrator. The only limitation that exists to this freedom is that, under Article 101 of the Mexican Constitution, judges and justices, their secretaries and members of the Council of the Federal Judiciary cannot be appointed as arbitrators.

4.2 Default Procedures

Article 1427 of the Code of Commerce sets the mechanism for selecting arbitrators in case the parties cannot reach an agreement regarding their appointment, or if the procedure they had previously established for this fails. Under this provision, if there is no agreement on the number of arbitrators, the proceedings shall be conducted with only one arbitrator.

The default procedure depends on how many arbitrators have to be appointed, for example:

- If the proceeding is to be conducted by a single arbitrator but the parties cannot reach an agreement regarding the appointment, the arbitrator can be selected by a court at the request of any of the parties.

- If the parties have agreed on three arbitrators, each of the parties shall designate an arbitrator. The third arbitrator will then be appointed by the other two arbitrators. However, if a party fails to choose an arbitrator within 30 days after being requested to do so, a state court will make the appointment. Also, in case the arbitrators already appointed by the parties cannot reach an agreement on who will be designated as the third arbitrator after 30 days from being appointed, a judge can make the appointment.

4.3 Court Intervention

Under Mexican law, courts can only intervene in the appointment of arbitrators where: i) the arbitration agreement establishes that the proceedings shall be conducted by a single arbitrator and the parties cannot reach an agreement regarding the appointment; or ii) the arbitration agreement establishes that the proceedings shall be conducted by three arbitrators and one of the parties fails to appoint an arbitrator or the two appointed arbitrators cannot reach an agreement regarding the third one.

If the responsibility to appoint an arbitrator corresponds to a court, both parties have the right to be heard beforehand. Afterwards, the judge has to make a list of possible arbitrators based on the information requested from arbitral institutions, colleges of public commercial notaries and chambers of commerce or industry. This list is then sent to the parties who then have ten days to indicate whomever they deem fit for the position. Once the parties make their nominees known, the judge proceeds to appoint one of them.

4.4 Challenge and Removal of Arbitrators

Once the arbitrators have been appointed, the Commerce Code states that the parties have the possibility of initiating proceedings for their challenge and removal. Any circumstances that provide for justifiable doubts regarding the impartiality or independence of an arbitrator can be used as a basis for challenging their appointment. An arbitrator's failure to meet the qualifications agreed upon by the parties can also serve as a basis for the challenge.

These proceedings are to be ruled upon by the Arbitral Tribunal itself, unless the challenged arbitrator renounces or if the other party consents to the challenge. Nonetheless, if the challenge turns out to be unsuccessful, the interested party has the right to bring this claim before a court, provided it does so within 30 days after being notified of the tribunal's decision.

When the challenge or removal of an arbitrator proves successful, or if an arbitrator resigns, a substitute arbitrator shall be appointed according to the same procedure used to appoint the original arbitrators.

4.5 Arbitrator Requirements

Arbitrators must fulfil not only the requirements agreed upon by the parties, but must also be impartial and independent. In this regard, Article 1428 of the Code of Commerce states that arbitrators must reveal all circumstances that could provide for justifiable doubts with respect to their impartiality or independence from the parties. This obligation continues during arbitration proceedings, and includes any new circumstance that could arise.

The most important domestic arbitration management institutions (CANACO, CAM and CAIC) all have rules that contain similar provisions regarding the impartiality and independence of arbitrators from the parties. These provisions are also applicable to the appointment of emergency arbitrators.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

The subject matters that may not be referred to arbitration are established in the Mexican Constitution and in statutory law. They include criminal matters, family law, labour law, taxes, agrarian law, administrative rescissions or the early termination of contracts between public entities and private parties, among others (see section **3.2 Arbitrability**).

5.2 Challenges to Jurisdiction

Mexican law recognises the principle of Kompetenz-Kompetenz, which gives the Arbitral Tribunal the authority to decide on its own jurisdiction (Article 1432 of the Commerce Court).

Parties have to file any challenge to the jurisdiction of the Arbitral Tribunal when filing the answer to the complaint, at the latest, regardless of whether they have appointed an arbitrator or participated in the appointment procedure. The arbitral tribunal can determine if it has jurisdiction in a partial award or in the final award.

5.3 Circumstances for Court Intervention

Under Mexican arbitration law, a court can only address issues of jurisdiction of the Arbitral Tribunal after the challenge has been brought before the Arbitral Tribunal and it has issued a decision on the matter. The party who disagrees with the decision may file a commercial action before a domestic court, within the following 30 days, in order to obtain a final judgment on the tribunal's jurisdiction (Article 1432 of the Commerce Court).

5.4 Timing of Challenge

The Arbitral Tribunal can address the issue of its own jurisdiction in the final award or it can rule on this matter before rendering the award on the merits. If the Arbitral Tribunal

rules on this matter when rendering its final award, this decision will have to be challenged together with the award. However, if it confirms its own jurisdiction before rendering the award on the merits, the parties have 30 days to bring the matter before a judge for a final determination.

5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

When evaluating the decision of the Arbitral Tribunal regarding its jurisdiction, state courts perform a complete analysis of the arbitration agreement and its scope; that is to say, a de novo analysis occurs. Notwithstanding the foregoing, Mexican courts have a high standard for rejecting the jurisdiction of the Arbitral Tribunal.

5.6 Breach of Arbitration Agreement

The approach of national courts when a party commences court proceedings in breach of an arbitration agreement is to refer the case to arbitration immediately after a party requests it, unless the agreement is void, ineffective or unenforceable (Article 1424 of the Commerce Code).

Domestic law does not provide for sanctions because of a party's attempt to bring the dispute to court in breach of an arbitration agreement; however, this may serve as a basis for imposing litigation costs on said party, in favour of the party that requested the remittance of the dispute to arbitration.

5.7 Third Parties

Mexican arbitration law does not expressly establish the possibility of allowing the Arbitral Tribunal to assume jurisdiction over disputes regarding individuals or entities which are neither party to the arbitration agreement, nor signatories to the contract containing the arbitration agreement.

There are some cases in which third parties or non-signatories can be deemed to be bound by an arbitration agreement, under the provisions of the Federal Civil Code, the Commerce Code and the General Law on Business Corporations. Examples of these cases include the assignment of rights, successions, merger of companies and the acquisition of shares of simplified stock companies.

There is no uniform criterion on whether non-signatories can be bound to an arbitration agreement in other circumstances, nor have the Mexican courts ruled on the matter.

6. Preliminary and Interim Relief

6.1 Types of Relief

Mexican law does not distinguish between preliminary and interim relief; nevertheless, both of these can be granted by the courts. As for Mexican arbitration law, the parties are entitled to request from the Arbitral Tribunal any interim measures they deem necessary.

Subject to the agreement between parties, the Arbitral Tribunal is empowered to order any interim measures it considers necessary to preserve the subject matter of the dispute (Article 1433 of the Code of Commerce). In this regard, the parties can agree to disregard this possibility in the arbitration agreement or at any moment during the arbitration proceedings.

The figure of the emergency arbitrator is not provided for in the Commerce Code. Nonetheless, this does not mean that the parties cannot establish the possibility of appointing an emergency arbitrator within their arbitral agreement.

6.2 Role of Courts

Courts can play a significant role in preliminary or interim relief in arbitration proceedings. Parties may initiate a commercial action to request the enforcement of interim measures granted by the Arbitral Tribunal, which are considered binding under Mexican law (Article 1480 of the Code of Commerce).

In addition, regardless of the existence of an arbitration agreement, the parties have the right to request interim measures from the competent courts at any moment, whether it is before the commencement or during arbitration proceedings (Article 1425 of the Commerce Code). The courts have complete discretion to grant whatever interim measures they deem appropriate for the specific case (Article 1478 of the Commerce Code).

It must be noted that there is no specific provision establishing that an interim measure granted by a court before the commencement of the arbitration proceedings will cease to have effect once the arbitral tribunal is constituted. Furthermore, there is no specific provision of whether the Arbitral Tribunal has the authority to modify or revoke the interim measures granted by the court.

6.3 Security for Costs

Mexican arbitration law does not expressly regulate the possibility of courts or arbitral tribunals to order security for costs. Given they are not expressly prohibited, the possibility of requesting security for costs must ultimately be determined on the basis of the arbitration agreement. This is because, as mentioned above, the Arbitral Tribunal has the power to grant any interim measure it deems necessary for preserving the subject matter of the dispute.

7. Procedure

7.1 Governing Rules

Given that Mexican arbitration law was inspired by the UNCITRAL Model Law (1985 version), it gives the parties the liberty to agree on the procedure to be followed by the Arbitral Tribunal. They usually do so by incorporating the rules of an arbitration management institution.

In absence of such agreement, the Arbitral Tribunal has the authority to conduct the proceedings as it deems appropriate, provided that the parties have a reasonable opportunity to present their case (Articles 1434 and 1435 of the Commerce Code).

Just like the UNCITRAL Model Law, the Commerce Code establishes some default provisions that become applicable in the absence of an agreement between the parties. For example, it provides that the arbitral tribunal can choose the language of the arbitration.

7.2 Procedural Steps

In arbitration proceedings conducted in Mexico, there are no particular procedural steps that are required by law. In that sense, parties are entitled to agree on the procedure and only if they are not able to reach an agreement will the Arbitral Tribunal determine the relevant procedural steps it deems appropriate (Article 1435 of the Commerce Code).

The main limits to the parties' and the Arbitral Tribunal's power to conduct the proceedings is that parties must be treated with equality and given a full opportunity to present their case (Article 1434 of the Commerce Code). Other limitations to their conduct may be inferred from the provisions of the Commerce Code regarding the grounds for setting aside the arbitral award. For example, parties have to be notified of the arbitral proceedings and of the appointment of arbitrators.

7.3 Powers and Duties of Arbitrators

The most relevant power granted to arbitrators by Mexican law is the authority to conduct proceedings as they deem appropriate, regarding matters not covered by the parties' agreement. This power includes the discretion to determine the admissibility, relevance and probative value of any evidence submitted by the parties during the arbitration (Article 1435 of the Commerce Code).

The Arbitral Tribunal has the discretionary power to request the presentation of a guarantee or security sufficient to cover any damages arising from the enforcement of interim measures.

In addition, the Arbitral Tribunal is entitled to decide if a hearing is necessary and to appoint experts to explain technical matters, unless otherwise agreed upon by the parties.

It is possible under Mexican law to grant the Arbitral Tribunal the power to settle the dispute ex aequo et bono, that is, not having to apply any specific statutory law and ruling based on fairness considerations. In order for the Arbitral Tribunal to act as an amiable compositeur, an express agreement between the parties is necessary.

7.4 Legal Representatives

Under Mexican law, there are no particular qualifications or requirements for legal representatives appearing in commercial arbitrations seated in Mexico. However domestic legislation, such as the Law Implementing Article 5 of Mexico's Federal Constitution Concerning Professional Practice in the Federal District, provides that for the regular practice of the legal profession in Mexico it is necessary to obtain a professional licence from the Ministry of Education.

Mexican authorities could consider that representing a party in several arbitration proceedings in which Mexican law is applicable to the merits constitutes regular practice of the legal profession. To our knowledge, this has not occurred.

Most of the time, whenever foreign counsel appear in arbitrations seated in Mexico in which the applicable law is Mexican law, they appear alongside a Mexican co-counsel or in a number of cases so limited that it does not constitute a habitual practice.

8. Evidence

8.1 Collection and Submission of Evidence

There is no specific provision in Mexican arbitration law regarding the collection and submission of evidence during proceedings. Therefore, the parties or the Arbitral Tribunal can establish the rules they consider appropriate according to the case.

Usually, in arbitration proceedings seated in Mexico, factual witness testimony is delivered through a written statement and expert testimony is delivered through expert reports. The opposing party can request the opportunity to cross-examine witnesses and experts during the hearing, and the arbitral tribunal may intervene and raise all the questions it deems necessary. Although witnesses and experts are not formally sworn in, they are usually made aware by the Arbitral Tribunal of their general duty to tell the truth.

8.2 Rules of Evidence

Mexican arbitration law does not provide rules of evidence. The Commerce Code establishes that parties are free to agree

on the procedure to be followed, which includes the issues related to the submission and production of evidence. If the parties are not able to reach an agreement on the rules related to evidence, the Arbitral Tribunal has the power to establish them at its own discretion.

Arbitral tribunals in proceedings seated in Mexico often use the IBA Rules on the Taking of Evidence in International Arbitration for guidance, even in cases in which the parties have not specifically agreed to their application.

8.3 Powers of Compulsion

Depending on the arbitration agreements and the rules applicable to the dispute, arbitral tribunals usually have the power to request the production of documents or the appearance of witnesses. In the event that a party or a witness refuses to comply with the tribunal's instructions, the tribunal or the other party may request the assistance of the competent court.

Mexican arbitration law imposes a duty upon courts to support arbitration in the taking of evidence if requested by the Arbitral Tribunal or by one of the parties (Article 1444 of the Commerce Code).

9. Confidentiality

There is no specific provision in the Commerce Code in relation to confidentiality in arbitral proceedings. However, in practice parties usually agree on the confidentiality of proceedings, either through the application of the rules of a specific institution or in the arbitration agreement.

10. The Award

10.1 Legal Requirements

Under Mexican arbitration law, there are only a few legal requirements for arbitral awards. First, the award must be in writing and signed by the arbitrators, indicating the seat of the arbitration and the date on which it was signed. If there was more than one arbitrator, only the signature of the majority is required, although the reasons why the remaining arbitrators did not sign must be described.

Second, the arbitral award must include the reasons for the decision, unless the parties have agreed that this is not necessary or have reached a settlement (Article 1448 of the Commerce Code).

10.2 Types of Remedies

The Arbitral Tribunal has the power to award any kind of relief requested by the parties, provided such remedy falls within the scope of the arbitration agreement.

There is no specific provision in Mexican arbitration law authorising or prohibiting arbitral tribunals to award punitive damages. However, it is a concept that, until a few years ago, was not recognised under Mexican law. Although punitive damages have been recognised by Mexican courts, there is an important group of scholars and practitioners who consider that arbitral tribunals should not award punitive damages when applying Mexican law, because their mission under the arbitral agreement does not consist in imposing exemplary or consequential punishments.

10.3 Recovering Interest and Legal Costs

Parties to an arbitration proceeding can include interest and legal costs as part of their claims. The general rule regarding the costs of arbitration is that they must be paid by the unsuccessful party. However, Article 1455 of the Commerce Code gives the Arbitral Tribunal discretionary powers to distribute the costs among the parties, according to the specific circumstances of a case.

The fees of arbitrators, experts and the managing institution, travel expenses incurred by arbitrators, experts and witnesses, and legal fees paid by the prevailing party (if approved by the Arbitral Tribunal) can be included as recoverable costs (Article 1416 of the Commerce Code).

Regarding interest, Mexican law provides for an annual mandatory interest rate of 6% in case no specific rate has been agreed upon by the parties (Article 362 of the Commerce Code). It is important to bear in mind that this rate applies only if the law applicable to the merits of the dispute is Mexican law.

11. Review of an Award

11.1 Grounds for Appeal

According to Mexican arbitration law, awards are considered binding and final. Generally, the only option available for the unsuccessful party is to start a setting-aside proceeding before a local or federal court, alleging one of the limited causes for this established in the Commerce Code (Article 1457). Irrespective of the foregoing, parties may agree on a second instance in arbitration proceedings. In that case, in order to start a setting-aside proceeding, it would be necessary to first obtain a resolution in the second instance. These types of agreements are, however, extremely uncommon.

The final judgment issued by the court in a setting-aside proceeding is not subject to appeal. Nevertheless, it can be challenged through a constitutional protection action (amparo).

11.2 Excluding/Expanding the Scope of Appeal

It is debatable whether parties can exclude or expand the scope of challenge under national law. There is no case law on this topic.

In case the parties agreed upon a second instance in arbitration proceedings, they are free to establish the limits and scope of that second instance. For example, that second instance could include a review of the merits or be limited to procedural issues.

11.3 Standard of Judicial Review

In Mexico, the standard of judicial review of the award is deferential to arbitral tribunals. Mexican courts do not have the power to review the merits of a final award; they are only authorised to review the grounds for setting aside or denying recognition of the award listed in the Commerce Code (which mirror the ones established in the New York Convention and the UNCITRAL Model Law).

12. Enforcement of an Award

12.1 New York Convention

Since 14 April 1971, Mexico has been a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which entered into force on 13 July 1971. No reservation under Articles I, X and XI of the Convention was made. Therefore, the enforcement of awards under the New York Convention is not limited to commercial relationships and is applicable to awards issued in the territory of any state, and not only those who are parties to the Convention.

Mexico is also a party to the: i) Inter-American Convention on International Commercial Arbitration (Panama Convention), which entered into force in 1978; and ii) Inter-American Convention of Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention), which entered into force in 1987.

Finally, Mexico entered into a treaty for the enforcement of judgments and arbitral awards in civil and commercial matters with the Kingdom of Spain in 1992.

12.2 Enforcement Procedure

Under Mexican law, the party interested in the recognition and enforcement of an arbitral award has to file a request before local or federal courts. The request must contain the arbitration agreement, the award and, in case those documents are not written in Spanish, a translation issued by an authorised translator.

If the request meets the above-referred requirements, the judge will summon the opposing party and grant it a 15-day period to submit an answer and, if it deems it appropriate, to offer evidence. The defence of the opposing party has to be limited to the grounds for denying the recognition and enforcement of the award provided for in the Commerce Code.

Once the term to file an answer to the complaint has lapsed, if there is no evidence offered by the parties, the judge schedules a pleadings hearing within the following three days. If the parties offer evidence, there is a ten-day period to produce evidence (Articles 1471 to 1476 of the Commerce Code).

A Mexican judge may deny recognition and enforcement of an arbitral award exclusively if the following grounds established in Article 1462 of the Commerce Code are proven:

- The arbitration agreement is invalid or the signatory parties did not have the authority to conclude the agreement;
- The appointing authority or institution did not notify the unsuccessful party of the appointment of the arbitrator or the beginning of the arbitration proceedings, or the unsuccessful party was not able to present its case;
- The award includes matters that fall outside the scope and terms of the arbitration agreement;
- The composition of the Arbitral Tribunal or the arbitration proceedings breached the parties' agreement or, absent a specific agreement, the law of the seat of the arbitration;
- The award was set aside by the competent court at the seat of arbitration or is not yet binding for the parties;
- The subject matter of the parties' dispute cannot be settled through arbitration under Mexican law; or
- The recognition and enforcement of the award would breach public policy.

Due to the way in which Article 1462 of the Commerce Code was drafted, providing that a court "may" (instead of "shall") deny the recognition of an arbitral award under the grounds described above, scholars and practitioners have interpreted that it is a discretionary power and therefore, on a case-by-case basis and under this interpretation, a judge may recognise an award even if he concludes that one of the grounds has been proven. To our knowledge, this discretionary power has not been used and therefore there is no case law on the issue.

12.3 Approach of the Courts

Mexican courts have a pro-arbitration approach and, in general, look favourably upon the recognition and enforcement of awards. For that reason, Mexico is considered as an arbitration friendly jurisdiction. Since Mexico adopted the UNCITRAL Model Law in 1993, the judiciary has followed the principle of no intervention except for the very limited cases in which its intervention is required.

The standards for refusing enforcement mirror those provided for in the New York Convention. One of the limited reasons that allow a court to deny recognition and enforcement of an award is the violation of public policy. This is the reason most often invoked by attorneys seeking to prevent the recognition of awards. However, Mexican courts have established a very high standard and public policy is only considered breached in case the award, or a section of it, is contrary to basic ideas and essential principles of Mexican law. The simple contradiction with statutory law is not sufficient to set aside an award.

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