



Arbitration

in 49 jurisdictions worldwide

2014

Contributing editors: Gerhard Wegen and Stephan Wilske



Published by
Getting the Deal Through
in association with:

- Aarna Law
- Anderson Mōri & Tomotsune
- ASAR – Al Ruwayeh & Partners
- Association for International Arbitration
- Baker & McKenzie Habib Al Mulla
- Bán, S Szabó & Partners
- Barbosa, Müssnich & Aragão
- Barger Prekop sro
- Billiet & Co
- Braddell Brothers LLP
- Cairo Regional Centre for International Commercial Arbitration
- Chinese European Arbitration Centre
- Chinese European Legal Association
- Crowell & Moring LLP
- Dorothy Ufot & Co
- Dzungst & Associates LLC
- Esin Attorney Partnership
- Fangda Partners
- Fangda Partners (in association with Peter Yuen & Associates)
- Gan Partnership
- Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm
- Gleiss Lutz
- Heussen Rechtsanwalts-gesellschaft mbH
- Hoet Pelaez Castillo & Duque
- Hughes Hubbard & Reed LLP
- Johnson Winter & Slattery
- Kim & Chang
- Kimathi & Partners, Corporate Attorneys
- Kosheri, Rashed & Riad Law Firm
- Laszczuk & Partners
- LawFed BRSA
- Law Offices Bělohávek
- Lilla, Huck, Otranto, Camargo Advogados
- Mamić Perić Reberski Rimac
- McClure Naismith LLP
- Meyer Fabre Avocats
- Miranda Correia Amendoeira & Associados
- Mkono & Co Advocates
- Motieka & Audzevičius
- Niedermann Rechtsanwälte
- Norton Rose Fulbright (Middle East) LLP
- Oblin Melichar
- Pérez Bustamante & Ponce
- Pestalozzi Attorneys at Law Ltd
- Posse Herrera Ruiz
- Roosdiono & Partners
- Sandart & Partners
- Schellenberg Wittmer
- Sherby & Co, Advs
- Stoica & Asociații
- Stockholm Arbitration & Litigation Center (SALC) Advokatbyrå KB
- Tilleke & Gibbins
- Vasil Kisil & Partners
- Von Wobeser y Sierra SC

Arbitration 2014

Contributing editors:
Gerhard Wegen and
Stephan Wilske
Gleiss Lutz

Getting the Deal Through is delighted to publish the ninth edition of *Arbitration*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Equatorial Guinea, Mexico, Nigeria and Scotland.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editors Gerhard Wegen and Stephan Wilske of Gleiss Lutz for their continued assistance with this volume.

Getting the Deal Through

London
 January 2014

Introduction	4	ICSID	54
Gerhard Wegen and Stephan Wilske Gleiss Lutz		Nicolas Herzog and Niccolò Gozzi Niedermann Rechtsanwälte	
CAM-CCBC	10	The Polish Chamber of Commerce	60
André de Albuquerque Cavalcanti Abbud and Gustavo Santos Kulesza Barbosa, Müssnich & Aragão		Justyna Szpara and Maciej Łaszczuk Łaszczuk & Partners	
CEAC	16	SCC	63
Eckart Brödermann and Christine Heeg Chinese European Arbitration Centre		Dan Engström & Cornel Marian Stockholm Arbitration & Litigation Center (SALC) Advokatbyrå KB	
Thomas Weimann Chinese European Legal Association		The Swiss Chambers' Arbitration Institution	67
CIETAC	21	Philippe Bärtsch, Christopher Boog and Benjamin Moss Schellenberg Wittmer	
Peter Yuen, Helen Shi and Benjamin Miao Fangda Partners		Angola	72
CMA	25	Agostinho Pereira de Miranda, Cláudia Leonardo and Jayr Fernandes Miranda Correia Amendoeira & Associados	
André de Albuquerque Cavalcanti Abbud and Gustavo Santos Kulesza Barbosa, Müssnich & Aragão		Australia	79
CRCICA	30	Tony Johnson and Henry Winter Johnson Winter & Slattery	
Mohamed Abdel Raouf Cairo Regional Centre for International Commercial Arbitration		Austria	87
DIAC	36	Klaus Oblin Oblin Melichar	
Gordon Blanke and Soraya Corm-Bakhos Baker & McKenzie Habib Al Mulla		Bahrain	94
DIS	39	Adam Vause Norton Rose Fulbright (Middle East) LLP	
Renate Dendorfer-Ditges Heussen Rechtsanwalts-gesellschaft mbH		Belgium	102
HKIAC	44	Johan Billiet Billiet & Co	
Peter Yuen and Doris Yeung Fangda Partners (in association with Peter Yuen & Associates)		Tatiana Proshkina Association for International Arbitration	
ICC	48	Brazil	111
José Rosell and María Beatriz Burghetto Hughes Hubbard & Reed LLP		Hermes Marcelo Huck, Rogério Carmona Bianco and Fábio Peixinho Gomes Corrêa Lilla, Huck, Otranto, Camargo Advogados	

Publisher

Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions

Rachel Nurse
subscriptions@gettingthedealthrough.com

Business development managers

George Ingledew
george.ingledew@lbresearch.com

Alan Lee
alan.lee@lbresearch.com

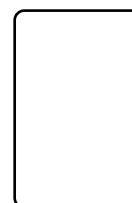
Dan White
dan.white@lbresearch.com



Published by
Law Business Research Ltd
 87 Lancaster Road
 London, W11 1QQ, UK
 Tel: +44 20 7908 1188
 Fax: +44 20 7229 6910
 © Law Business Research Ltd 2014
 No photocopying: copyright licences do not apply.
 First published 2006
 Ninth edition
 ISSN 1750-9947

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of January 2014, be advised that this is a developing area.

Printed and distributed by
 Encompass Print Solutions
 Tel: 0844 2480 112



CONTENTS

China 118	Hungary 214	Mexico 299
Peter Yuen, Helen Shi and Benjamin Miao Fangda Partners	Chrysta Bán Bán, S Szabó & Partners	Claus von Wobeser and Montserrat Manzano Von Wobeser y Sierra SC
Colombia 127	India 222	Morocco
Carolina Posada Isaacs, María Alejandra Arboleda González and Diego Romero Cruz Posse Herrera Ruiz	Mysore Prasanna, Shreyas Jayasimha, Rajashree Rastogi and S Bhushan Aarna Law	Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm see www.gettingthedealthrough.com
Croatia 134	Indonesia 233	Mozambique 306
Natalija Perić and Frano Belohradsky Mamić Perić Reberski Rimac	Anderonikus A S Janis Roosdiono & Partners	Agostinho Pereira de Miranda, Filipa Russo de Sá and Catarina Carvalho Cunha Miranda Correia Amendoeira & Associados
Czech Republic 141	Israel 241	Nigeria 313
Alexander J Bělohávek Law Offices Bělohávek	Eric S Sherby and Tali Rosen Sherby & Co, Advs	Dorothy Udeme Ufot SAN Dorothy Ufot & Co
Ecuador 149	Italy 250	Poland 323
Rodrigo Jijón Letort and Juan Manuel Marchán Pérez Bustamante & Ponce	Mauro Rubino-Sammartano LawFed BRSA	Justyna Szpara and Andrzej Maciejewski Łaszczuk & Partners
Egypt 158	Japan 258	Portugal 330
Tarek F Riad Kosheri, Rashed & Riad Law Firm	Shinji Kusakabe Anderson Mōri & Tomotsune	Agostinho Pereira de Miranda, Cláudia Leonardo and Catarina Carvalho Cunha Miranda Correia Amendoeira & Associados
England and Wales 164	Jordan	Qatar 337
Jane Wessel, Claire Stockford and Meriam N Alrashid Crowell & Moring LLP	Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm see www.gettingthedealthrough.com	Jalal El Ahdab and Myriam Eid Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm
Equatorial Guinea 175	Korea 265	Romania 346
Agostinho Pereira de Miranda and Cláudia Leonardo Miranda Correia Amendoeira & Associados	BC Yoon, Richard Menard and Liz Kyo-Hwa Chung Kim & Chang	Cristiana-Irinel Stoica, Daniel Aragea and Andrei Buga Stoica & Asociații
France 180	Kuwait 274	Saudi Arabia 353
Nathalie Meyer Fabre Meyer Fabre Avocats	Ahmed Barakat and Ibrahim Sattout ASAR – Al Ruwayeh & Partners	Jalal El Ahdab and Myriam Eid Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm
Germany 189	Libya	Scotland 363
Stephan Wilske and Claudia Krapfl Gleiss Lutz	Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm see www.gettingthedealthrough.com	Brandon Malone McClure Naismith LLP
Ghana 196	Lithuania 282	Singapore 372
Kimathi Kuenyehia Sr and Kafui Baeta Kimathi & Partners, Corporate Attorneys	Ramūnas Audzevičius and Rimantas Dajotas Motieka & Audzevičius	Edmund Jerome Kronenburg and Tan Kok Peng Braddell Brothers LLP
Hong Kong 204	Malaysia 289	
Peter Yuen and Doris Yeung Fangda Partners (in association with Peter Yuen & Associates)	Foo Joon Liang Gan Partnership	

Slovakia	382
Roman Prekop, Monika Simorova and Peter Petho	
Barger Prekop sro	
Sweden	391
Eric M Runesson and Simon Arvmyren	
Sandart & Partners	
Switzerland	398
Thomas Rohner and Nadja Kubat Erk	
Pestalozzi Attorneys at Law Ltd	
Tanzania	406
Wilbert Kapinga, Ofotsu A Tetteh-Kujorjie and Kamanga Kapinga	
Mkono & Co Advocates	
Thailand	413
Kornkieat Chunnhakasikarn and John King	
Tilleke & Gibbins	
Turkey	421
Ismail G Esin, Dogan Gultutan and Ali Yesilirmak	
Esin Attorney Partnership	
Ukraine	429
Oleksiy Filatov and Pavlo Byelousov	
Vasil Kisil & Partners	
United Arab Emirates	439
Gordon Blanke and Soraya Corm-Bakhos	
Baker & McKenzie Habib Al Mulla	
United States	448
Birgit Kurtz, Arlen Pyenson and Amal Bouhabib	
Crowell & Moring LLP	
Venezuela	455
José Gregorio Torrealba	
Hoet Pelaez Castillo & Duque	
Vietnam	463
Nguyen Manh Dzung, Le Quang Hung and Nguyen Ngoc Minh	
Dzungst & Associates LLC	

Mexico

Claus von Wobeser and Montserrat Manzano

Von Wobeser y Sierra SC

Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Mexico is party to the New York Convention, which has been in force since 13 July 1971.

Mexico made no particular declaration regarding articles I, X and XI of the Convention.

Mexico is also party to the Panama Convention on Inter-American Commercial Arbitration, and the Inter-American Convention for the Extraterritorial Validity of Foreign Decisions and Awards (the Montevideo Convention).

Mexico has also established some rules regarding commercial arbitration, which are regulated under the free trade agreements with Canada and the United States, Chile, Costa Rica, Israel, the G-3 (Colombia, Mexico and Venezuela) and Nicaragua.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Mexico has celebrated 29 BITs with the following countries: Argentina, Australia, Austria, Belarus, Belgium, China, Cuba, the Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, India, Italy, Luxembourg, the Netherlands, Panama, Portugal, Singapore, Slovakia, South Korea, Spain, Sweden, Switzerland, Trinidad and Tobago, the United Kingdom and Uruguay.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary domestic arbitration source of law is the Commerce Code, which regulates domestic arbitration. It also regulates international arbitration when the place of arbitration is set forth in Mexican territory or as otherwise provided in article 1415 of the Commerce Code.

Pursuant to article 1416 of the Commerce Code, an arbitration is international if:

- the parties to an arbitration agreement have, at the time of the celebration of that agreement, their places of business in different states; or
- the place of the arbitration, the place where a substantial part of the obligations of the commercial relation are to be performed, or the place with which the subject matter of the dispute is most closely connected, is situated outside the state in which the parties have their places of business.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

Yes, the Commerce Code adopted the UNCITRAL Model Law with minor modifications. There are, however, several differences regarding:

- interim measures – the Commerce Code establishes a judicial procedure to grant interim measures; and
- the number of arbitrators when there is no agreement of the parties. According to the Commerce Code, there will be a single arbitrator while the Model Law states that there must be three.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

This would have to be determined on a case-by-case basis.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

According to article 1445 of the Commerce Code, the tribunal has to decide a dispute based on the law that the parties agreed on. Where there is no agreement, the tribunal can choose the applicable law, according to the circumstances and connections of the case.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The most prominent Mexican arbitral institutions are:

Centro de Arbitraje de México (CAM)

Av. Carlos Lazo No. 100, Edificio Aulas 1, level 5
Col. Santa Fe
Mexico, DF
www.camex.com.mx

Cámara Nacional de Comercio de la Ciudad de México (CANACO)

Paseo de la Reforma No. 42
Col. Centro
Delegación Cuauhtémoc
CP 06040
Mexico, DF
www.camaradecomerciodemexico.com.mx

Both institutions have their own arbitration rules, rooms for hearings, lists of recommended arbitrators, and fee structures for arbitrators calculated on the basis of the amount of the dispute.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

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

- 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; and
- the internal regime of Mexican embassies and consulates abroad and their official proceedings.

Additionally, all family and criminal matters correspond to the exclusive jurisdiction of national courts and are therefore not arbitrable.

There are some types of disputes that, although there is no express prohibition regarding their arbitrability, cannot be submitted to arbitration. An example of this is antitrust law, which makes no reference to arbitration but since a claim under antitrust law is not merely a private matter, given that it may affect third parties the dispute cannot be arbitrable.

Regarding intellectual property it is necessary to distinguish between industrial property regulation and copyright regulation. Article 227 of the Industrial Property Law provides that parties may submit to arbitration only when the controversy affects private rights. The Copyright Law regulates a specific arbitration procedure.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

Article 1423 of the Commerce Code states that 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 records 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.

Further, to be enforceable, the agreement must also meet the basic requirements of any contract (article 1795, Federal Civil Code).

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Mexican law expressly provides for the principle of autonomy of the arbitration agreement in a broad manner in article 1432 of the Commerce Code, therefore the circumstances preventing the arbitration agreement to be enforced are the same as in any other agreement under Mexican law. Therefore, to find out whether an arbitration agreement is still enforceable, it is necessary to look at the general rules of Mexican contract law.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

There are some cases where non-signatories are bound by an arbitration agreement, for example, in the case of a subrogee, of an heir or of an assignee.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

There is no specific provision settling this matter in Mexican arbitration provisions.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

There is no specific provision on groups of companies in Mexican arbitration law; this question will have to be assessed using general contract law on a case-by-case basis.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Commerce Code contains no provision in connection with multiparty arbitration agreements and therefore the general provisions regarding arbitration agreements are applicable.

Constitution of arbitral tribunal**15 Eligibility of arbitrators**

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Pursuant to articles 1427 and 1428 of the Commerce Code, the parties may freely agree on the number and procedure for the appointment of arbitrators and the requirements applicable to them. There are no restrictions on the nationality of arbitrators, unless otherwise agreed on by the parties.

Consequently, the only limitations are that arbitrators shall be impartial and independent.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

In the absence of an agreement between the parties on the selection of the arbitrators, the following procedure will be followed pursuant to article 1427 of the Commercial Code:

- in the event of a sole arbitrator, if the parties are unable to reach an agreement, he or she shall be appointed by the judge, upon the request of either party; and
- in an arbitration 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 the request of either party.

The CAM Rules (article 14) provide that:

- where the parties have not agreed on the number of arbitrators, the dispute shall be submitted to a sole arbitrator;
- if the parties fail to nominate a sole arbitrator within 30 days from the date when the request notified by the Secretary General has been received by the respondent, the arbitrator shall be appointed by this institution; and

- if the parties have agreed that the dispute shall be referred to three arbitrators and they fail to nominate them in the request or the answer, the institution shall do the nomination.

The CANACO provides for a different procedure in article 7 of its Rules: the sole arbitrator is always nominated by the institution after submitting a list of names to the parties on which they can express their order of preference.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

An arbitrator can only be challenged if there are circumstances that could raise justified doubts regarding impartiality or independence, or if he or she lacks qualities agreed upon by the parties. A party can only challenge an arbitrator for grounds that have come to its knowledge after the appointment was made (article 1428, Commerce Code).

The parties may freely agree upon 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 attains knowledge of the causal facts, submit in writing the circumstances believed to justify the impeachment of the impartiality or independence, or the lack of the agreed qualifications of the challenged arbitrator.

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, go before the judge and request a review. During such time the arbitral tribunal, including the arbitrator being challenged, may continue with the proceedings and issue an award (article 1429, Commerce Code).

Regarding the illness or death of an arbitrator, Mexican law only states that if an arbitrator ceases to be able to perform his or her duties, another arbitrator shall be appointed following the same procedure by which the substituted arbitrator was originally designated (article 1431, Commerce Code).

The IBA Guidelines on Conflict of Interest are frequently referred to by arbitrators as guidelines.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

The IBA Guidelines on Conflicts of Interest in International Arbitration have increasingly become general practice in Mexico, including in domestic arbitration proceedings.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

The Commerce Code does not address the issue of liability of arbitrators. The matter is therefore governed by the Mexican civil tort regime. Nevertheless the Commerce Code states that an arbitrator is responsible for all the damages that an interim measure awarded by him or her may cause (article 1480, Commerce Code).

Jurisdiction and competence of arbitral tribunal

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Article 1424 of the Commerce Code provides that if a court proceeding is initiated despite the existence of an arbitration agreement, the judge before whom such proceeding has been initiated shall, if either of the parties so request, remit the parties to arbitration, unless it is established that the agreement to arbitrate is null and void, ineffective or impossible to enforce. If such an action has been initiated, arbitration may nevertheless be initiated or completed, and an award may be entered while the matter is pending before the judge.

Article 1464 of the Commerce Code states that if either party requests remittance to arbitration pursuant to the above, the following shall be observed:

- the request shall be made in the first written motion filed by the requesting party, regarding the merits of the controversy;
- the judge shall issue a decision immediately, after giving the other party the opportunity to respond;
- if the judge remits the parties to arbitration, he or she shall also order the suspension of the judicial proceedings;
- once the controversy has been finally settled in arbitration, the judge shall terminate the judicial proceedings, upon the request of either party;
- if the arbitration agreement is declared to be null and void, if the arbitral tribunal is declared to be incompetent or if for any reason the controversy is not settled in arbitration, the suspension shall be lifted, upon the request of either party, provided that all parties involved have been given the opportunity to be heard; and
- no defence shall be available against the decision issued in the foregoing proceeding.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

The principle of Kompetenz-Kompetenz is recognised by the Commerce Code, which grants the arbitrators the power to decide on their own jurisdiction, even when the existence or validity of the arbitration agreement is contested. An arbitral tribunal shall rule over its own jurisdiction through a preliminary award or in the award on the merits, which can, in turn, be challenged by the contesting party to the national judge within 30 days of its notification, but the arbitral proceedings may proceed and an award be rendered by the arbitral tribunal (article 1432, Commerce Code).

According to article 1465 of the Commerce Code, referral to arbitration will only be denied if:

- there has been a prior arbitral award or a judicial judgment that firmly declares, with a res judicata effect, the nullity of the agreement; or
- if, the nullity, ineffectiveness, or impossible execution of an arbitral award is 'notorious' to the judge.

The challenge of the jurisdiction of a tribunal by a party shall be made at the latest when the respondent presents its response on the merits (article 1432, Commerce Code). The resisting party is not precluded to do so by participating to the proceedings or nominating an arbitrator.

Arbitral proceedings**22 Place and language of arbitration**

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

Absent agreement of the parties on the place of arbitration, the tribunal shall designate the seat, having regard to the circumstances of the case, including the convenience of the parties (article 1436, Commerce Code).

Absent agreement as to the language of the arbitration proceedings, the arbitral tribunal will determine this matter (article 1438, Commerce Code).

23 Commencement of arbitration

How are arbitral proceedings initiated?

Under both the CAM and CANACO rules, the party initiating the arbitration shall first submit a request to either institution, which will then notify and deliver it to the respondent. The request must include a number of basic elements such as the name and address of the parties, a description of the facts and legal circumstances giving right to the claims, and a statement of the relief sought with an indication of the amount asked for. The parties should also include their preferences as to the number and identity of the arbitrators.

24 Hearing

Is a hearing required and what rules apply?

Unless otherwise agreed to by the parties, the arbitral tribunal shall decide whether hearings are to be held, or whether the arbitration will be conducted based on documents and other evidence.

If the parties do not agree to the waiver of hearings, the tribunal shall hold them upon petition of one of the parties (article 1440, Commerce Code). There are no specific limits to the arbitral tribunal's discretion to govern the hearings, except with respect to compliance with the due process requirements.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

It is common for parties to agree on the adoption of the IBA Rules on the Taking of Evidence to guide arbitration proceedings. The arbitral tribunal will normally refer to these Rules as guidelines or as a reference point in the conduct of the proceedings.

There are no specific provisions under Mexican law in connection with witness testimony. Article 1435 of the Commerce Code does, however, establish 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 deems appropriate. This power conferred to the arbitral tribunal includes the discretion to determine the admissibility and relevance of the evidence, and therefore, the tribunal has the power to determine, in each case, the procedural rules applicable to witness testimony.

The use of written witness statements with cross-examination is common. Direct oral examinations are also used. It is common practice for arbitrators to question witnesses.

Unless otherwise agreed to by the parties, the arbitral tribunal may appoint one or more experts to inform it on specific matters, and request either party to provide experts with all the information that is relevant or give them access to all documents, merchandise or other assets that are necessary for the inspection of such evidence (article 1442, Commerce Code).

Additionally, article 1443 of the Commerce Code provides that unless the parties have agreed otherwise, and if either of them so requests or the tribunal deems it necessary, after presenting their findings in writing or orally, the expert shall participate in a hearing at which the parties shall have the opportunity to question him or her and offer other experts to testify on disputed findings.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The arbitral tribunal or either party, with the arbitral tribunal's approval, may request the courts to grant evidentiary assistance (article 1444, Commerce Code). Regarding provisional relief, courts may support arbitration (see questions 21 and 28).

27 Confidentiality

Is confidentiality ensured?

There is no specific provision in Mexican law regulating confidentiality specifically relating to arbitration proceedings. However, article 1435 of the Commerce Code provides the parties with broad discretion to determine the arbitration proceedings, and therefore, the parties have the autonomy to determine the confidentiality of the arbitration. Accordingly, any confidentiality agreement included by the parties in their arbitration agreement would be binding under Mexican law.

Under domestic arbitration rules of the CAM and the CANACO, arbitration proceedings are confidential, unless otherwise agreed by the parties.

Interim measures and sanctioning powers**28 Interim measures by the courts**

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Courts will grant provisional relief in support of arbitrations. The parties may request the judge to grant provisional relief before or during the arbitration proceedings (article 1425, Commerce Code). Upon such a request, the judge has complete discretion to adopt these interim measures (article 1478, Commerce Code). There is no specific provision which indicates that any court-ordered provisional relief will cease to have effect following the constitution of the arbitral tribunal.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The Commerce Code has no specific provision regarding the appointment of emergency arbitrators; however, both under the CANACO and CAM Rules this issue is regulated.

According to article 50 of the CANACO Rules, a party that seeks an interim measure of protection must address its request before the tribunal is constituted. CANACO's Permanent Commission of Arbitration must appoint a single interim arbitrator from a special list of interim arbitrators who are authorised to rule on applications for interim protection measures.

The Rules empower the interim arbitrator to order any interim protection measure or issue any preliminary order that he or she deems necessary, including injunctive relief and measures for the protection or conservation of title. Such a measure may take the form of an interim award or an order. The interim arbitrator may sit as a member of the arbitral tribunal if the parties so agree.

The enforcement of an interim award or protection measure may be made conditional on a grant of appropriate security from the party that seeks the measure.

The CAM Rules (article 30(2)) are similar to the CANACO Rules, except that the emergency arbitrator may not sit as a member of the arbitral tribunal or as a sole arbitrator unless the parties agree otherwise.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Unless otherwise agreed to by the parties, article 1433 of the Commerce Code provides that the arbitral tribunal may, at the petition of either party, order provisional remedies that are required to protect the subject matter in dispute. In such event, the tribunal may also require a guarantee from the party requesting the measures.

Article 1479 of the Commerce Code further provides that all interim measures ordered by an arbitral tribunal shall be recognised as binding. 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 judge, to whom the recognition or enforcement of an interim measure has been requested, 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 such is necessary to protect third-party rights.

31 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

Such powers are not expressly conferred to arbitrators by Mexican law.

Awards

32 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Tribunals composed of more than one arbitrator reach decisions by majority (article 1446, Commerce Code). Should no majority be reached, unless provided for in the applicable arbitration rules, the presiding arbitrator does not have authority to issue the award alone, unless otherwise agreed by the parties. If authorised by the parties or by all members of the arbitral tribunal, the presiding arbitrator may decide questions of procedure.

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

There are no specific provisions in the Commerce Code regulating the issuance of dissenting opinions to the award. However, they are allowed in our jurisdiction and are regularly used by arbitrators.

34 Form and content requirements

What form and content requirements exist for an award?

Pursuant to article 1448 of 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 signature(s) that are missing are set out in the award.

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

The award must state the date on which it was issued and the place where the arbitration was held. After the issuance of the award, the tribunal shall give notice to the parties by delivering a copy of it.

35 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

The law does not provide for any time limit within which the award should be issued. Such periods are nonetheless provided by domestic arbitration rules, for instance article 31 of the CAM Rules.

36 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

Pursuant to article 1450 of the Commerce Code, the parties can request a correction or an interpretation of the award within 30 days from the day that the award was notified to the parties.

According to article 1458 of the Commerce Code, to annul the award the parties may file a nullity action within three months from the day that the award was notified to the parties.

37 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The regime applicable to the award makes no distinction as to the different types of awards: interim, partial or final awards must meet the same requirements (article 1446 to 1449, Commercial Code).

38 Termination of proceedings

By what other means than an award can proceedings be terminated?

Pursuant to article 1449 of the Commerce Code, the arbitral proceedings can be terminated by a final award, an order of the tribunal (when the claimant renounces to its claims before the tribunal, when both parties agree to stop the proceedings, when the tribunal considers the continuance of the proceedings would be unnecessary or impossible).

Default awards are possible under Mexican law and are as readily enforceable as any other award, provided that the parties were given notice and the opportunity to participate in the arbitral proceedings.

Parties may request that the arbitrator issue an award reflecting their settlement agreement (article 1447, Commerce Code).

39 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards?

Pursuant to article 1416, paragraph IV of the Commerce Code, the costs include the fees of the arbitral tribunal, travel and other expenses incurred by the arbitrators, fees for expert advice or any other assistance required by the tribunal, travel and other expenses incurred by the witnesses if approved by the arbitral tribunal, the costs and legal fees of the prevailing party if they are claimed during the arbitration and only in an amount approved by the arbitral tribunal as reasonable, and the fees and expenses of the institution that designated the arbitrators.

Article 1455 of the Commerce Code states that the costs of arbitration shall be borne by the unsuccessful party. However, the arbitral

Update and trends

There have been two recent reforms to the provisions regulating arbitration contained in the Commerce Code. The first, in January 2011, consisted of an important reform on commercial arbitration in order to regulate judicial intervention, among other matters. The second reform was published in June 2011 and consisted of adding a third paragraph to article 1424.

Among the noteworthy amendments were:

- the inclusion of a special procedure regarding the remittance of a dispute to arbitration by a judge, as well as the grounds on which such remittance can be denied (see question 20 for the description of the procedure);
- the inclusion of a special proceeding regarding (i) challenge of arbitrators; (ii) competence of the arbitral tribunal; (iii) precautionary measures in arbitration; (iv) annulment of commercial transactions and arbitral awards; and (v) recognition and enforcement of an award requested as a defence in a proceeding or trial; and
- the inclusion of a provision regarding precautionary measures ordered by the tribunal, establishing that any precautionary measures ordered by the arbitral tribunal must be recognised and enforced as a general rule.

The Public Works Law and the Public Acquisitions Law also underwent important modifications.

Until May 2009, arbitration with the government was highly restricted, as the national framework allowed only two state-owned companies – the oil company *Petróleos Mexicanos* (PEMEX) and the power company *Comisión Federal de Electricidad* (CFE) – to submit disputes to commercial arbitration.

In 2009, amendments to the Public Works Law and to the Public Acquisitions Law introduced international or domestic arbitration as a method of settling disputes arising from contracts between a private party (either Mexican or foreign) and a state entity, thereby increasing the number of arbitrations in which a Mexican state entity is a party. There are nevertheless some exceptions to the arbitrability of certain matters, including administrative rescission for non-performance. Despite these exceptions, the 2009 reforms to the Public Works Law and Public Acquisitions Law represent important progress with respect to the opening of federal government contracts to alternative dispute resolution and arbitration.

Finally, it is worth mentioning another recent legislative change. The Public-Private Associations Law was published in January 2012, regulating public-private projects that establish long-term contractual relationships between public and private entities for rendering public services, with the infrastructure provided totally or partially by the private sector. Article 139 provides for arbitration of disputes arising under these types of agreements.

Mexico has been respondent in about 16 investment arbitration cases, in which five were dismissed on the merits in favour of Mexico and eight in which the investors were successful. The most recent public decisions include *Cargill, Incorporated v United Mexican States*, ICSID Case No. ARB(AF)/05/2 (award in 2009) and *Gemplus SA, SLP SA, Gemplus Industrial SA de CV v The United Mexican States*, ICSID Case No. ARB(AF)/04/3 (award in 2010).

Some pending investment arbitrations in which Mexico is respondent include *Telefónica SA v United Mexican States*, ICSID Case No. ARB(AF)/12/4 and *Cemusa – Corporación Europea de Mobiliario Urbano, SA and Corporación Americana de Equipamientos Urbanos, SL v United Mexican States*, ICSID Case No. ARB(AF)/13/2.

tribunal may divide the elements of such costs on a pro rata basis if appropriate and considering the specific circumstances of the dispute. It can also do so with the counsel fees.

40 Interest

May interest be awarded for principal claims and for costs and at what rate?

Interest may be awarded when the parties make a specific demand to the tribunal. The tribunal must assess whether an interest rate has already been agreed on by the parties and if not, the legal interest rate of 6 per cent per year will apply (article 362, Commerce Code).

Proceedings subsequent to issuance of award

41 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The arbitral tribunal may correct any calculation, copying, typographical or any other errors of a similar nature in the award on its own initiative within 30 days from the date of the award. Furthermore, unless the parties agree upon a different time period, within 30 days after a final award is notified to the parties, either party may, petition the tribunal to: (i) correct a calculation, copying, typographical or any error of a similar nature in the award; or (ii) give an interpretation of an issue or a specific part of the award, if the parties so agree.

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 part of the award (article 1450, Commerce Code).

42 Challenge of awards

How and on what grounds can awards be challenged and set aside?

An award can be challenged and found to be void by the competent judge if the party requesting it proves, in accordance with article 1457 of the Commerce Code, that:

- a party 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 of the laws of Mexico;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to defend its rights;
- the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement;
- 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 matter of the dispute was not susceptible of being referred to arbitration; or
- the award is in conflict with public policy.

43 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

The Mexican arbitration law follows the UNCITRAL Model Law. Therefore, arbitral awards are considered final and binding upon the parties and cannot be appealed. They can only be challenged in setting-aside proceedings.

44 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

The party asserting an award or requesting its enforcement shall file the original award duly authenticated or a certified copy of it, as well as the original arbitration agreement or a certified copy of it. If the award or the agreement to arbitrate is not in Spanish, the party asserting it shall file a translation made by a certified translation expert (article 1461, Commerce Code).

The judge shall then summon the parties and provide them with a period of 15 days to submit an answer. Upon the expiration of such term, and if the parties do not offer any evidence and if the judge does not deem those necessary, the parties shall be summoned to a pleadings hearing, which will take place within the following three days. If the parties file evidence or if the court deems it necessary to present evidence, an evidentiary period of 10 days shall be granted. Finally, the judge shall issue a final decision (articles 1471 to 1476, Commerce Code).

For possible grounds for refusing recognition and enforcement, see question 42.

An enforcement decision may then be challenged by an *amparo* proceeding, which is one of the particularities of the Mexican legal system. It is a constitutional remedy intended to protect constitutional rights.

45 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Generally the courts welcome and favour the enforcement of national or foreign awards. There have been no reported cases on enforcement of foreign awards set aside by the courts at the place of arbitration.

46 Cost of enforcement

What costs are incurred in enforcing awards?

Under Mexican law, all procedures before the courts have no cost so the enforcement costs will be limited to the counsel fees of each party.

Other**47 Judicial system influence**

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

There are no noted particularities in the Mexican judicial system that might have an influence on a Mexican arbitrator. The tendency is to follow the practice of the IBA Rules on the Taking of Evidence.

48 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

There are no particularities to be mentioned.



Claus von Wobeser
Montserrat Manzano

cvonwobeser@vwys.com.mx
mmanzano@vwys.com.mx

Piso 7, Col. Santa Fe
Centro de Ciudad, Del. Álvaro Obregón
01210 México, Distrito Federal
Mexico

Tel: +52 55 5258 1000
Fax: +52 55 5258 1098 / +52 55 5258 1099
www.vonwobesersierra.com



GETTING THE DEAL THROUGH



Annual volumes published on:

Acquisition Finance	Life Sciences
Air Transport	Mediation
Anti-Corruption Regulation	Merger Control
Anti-Money Laundering	Mergers & Acquisitions
Arbitration	Mining
Asset Recovery	Oil Regulation
Banking Regulation	Outsourcing
Cartel Regulation	Patents
Climate Regulation	Pensions & Retirement Plans
Construction	Pharmaceutical Antitrust
Copyright	Private Antitrust Litigation
Corporate Governance	Private Client
Corporate Immigration	Private Equity
Data Protection & Privacy	Product Liability
Dispute Resolution	Product Recall
Dominance	Project Finance
e-Commerce	Public Procurement
Electricity Regulation	Real Estate
Enforcement of Foreign Judgments	Restructuring & Insolvency
Environment	Right of Publicity
Foreign Investment Review	Securities Finance
Franchise	Shipbuilding
Gas Regulation	Shipping
Insurance & Reinsurance	Tax Controversy
Intellectual Property & Antitrust	Tax on Inbound Investment
Investment Treaty Arbitration	Telecoms and Media
Islamic Finance & Markets	Trade & Customs
Labour & Employment	Trademarks
Licensing	Vertical Agreements



**For more information or to
purchase books, please visit:**
www.gettingthedealthrough.com



Strategic research partners of
the ABA International section



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association