Mexico

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1. EXECUTIVE SUMMARY

1.1.1 What are the advantages and disadvantages relevant to arbitrating or bringing arbitration related proceedings in your jurisdiction?

The advantages are as follows:

- Mexico has modern arbitration legislation; it has incorporated into the Commerce Code the UNCITRAL Model Law (the 'Model Law'), and it is a party to the New York Convention and to the Inter-American Convention on International Commercial Arbitration (the 'Panama Convention')
- Mexican law and courts are supportive of arbitration;
- Mexico is a great seat of arbitration for proceedings being conducted in the Spanish language;
- the approach of local courts to the recognition and enforcement of awards is favourable to arbitration;
- Mexico has recently amended its legislation to guarantee the availability of interim measures in support of arbitration proceedings;
    - regarding provisional relief ordered by the arbitral tribunal, unless otherwise agreed by the parties, the arbitral tribunal may, at the petition of either party, order provisional remedies which are required to protect the subject matter in dispute (Article 1433 of the Commerce Code);
    - 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; and
    - 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 of the Commerce Code).

The disadvantage is that the amendments to the Commerce Code, in which the 2006 amendments to the Model Law were implemented, are recent (published in the *Federal Official Gazette* on 27 January 2011 and 6 June 2011). Thus, the provisions included or amended have not yet been extensively interpreted by Mexican courts and there is little case law available to assist in their interpretation. In many cases, it will not be possible to foresee the result of a proceeding based on the new provisions until a controversy is brought to and settled by the Mexican courts.

1.1.2 How would you rate the supportiveness of your jurisdiction to arbitration on a scale of 1 to 5, with the number 5 being highly supportive towards arbitration and 1 being unsupportive of arbitration? Where your

jurisdiction is in the process of reform, please add a + sign after the number. On a scale of one to five, Mexico ranks as a 4.

2. GENERAL OVERVIEW AND NEW DEVELOPMENTS

2.1.1 How popular is arbitration as a method of settling disputes? What are the general trends and recent developments in arbitration in your jurisdiction?

The practice of arbitration has been growing and spreading in Mexico amongst all sectors of the economy and judiciary. The number of proceedings as well as the quality of such proceedings has increased over the years.

In 1993, a specific Title, dedicated to arbitration, was incorporated into the Commerce Code (Title IV of the Commerce Code). This included, with a few modifications, the Model Law.

Recently, there have been two reforms to the provisions regulating arbitration in the Commerce Code. The first was published in the *Federal Official Gazette* on 27 January 2011 and consisted of an important reform on commercial arbitration in order to regulate judicial intervention in arbitration, amongst other matters. The second reform was published on 6 June 2011 and consisted of adding a third paragraph to Article 1424, regarding the judge's obligation to remit the parties to arbitration in the event that an arbitration agreement exists.

Among the noteworthy amendments, we mention the following examples:

(a) special rules regarding the remittance to arbitration by a judge, as well as the grounds on which such remittance can be denied, were included. Regarding the procedure for the submission to arbitration, the amendments provide that: (i) the request shall be made in the first written motion filed by the requesting party, regarding the merits of the controversy; (ii) the judge shall issue a decision immediately, after giving the other party the opportunity to respond; (iii) if the judge remits the parties to arbitration, he or she shall also order the suspension of the judicial proceedings; (iv) once the controversy has been finally settled in arbitration, the judge shall terminate the judicial proceedings, upon the request of either party; and (v) 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 must be given the opportunity to be heard; and (vi) no defence shall be available against the decision issued in the foregoing proceeding;

(b) a special proceeding for commercial transactions and arbitration was also included, 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;

(c) finally, due to the recent amendments to the Public Works Law and the Acquisitions Law, in which arbitration was included as a method of settling disputes arising from contracts executed between a private party

and a state entity, arbitration proceedings in which a party is a state entity have increased considerably in Mexico.

2.1.2 Are there any unique jurisdictional attributes or particular aspects of the approach to arbitration in your jurisdiction that bear special mention?

In order to enable judicial assistance for arbitration proceedings, a special process referred to by the Commerce Code as the 'special proceeding for commercial transactions and arbitration' was implemented.

Pursuant to Article 1470 of the Commerce Code, the following matters shall be settled through the special proceeding for commercial transactions and arbitration:

- any resolutions in connection with the challenge of arbitrators;
- any resolution in connection with the arbitral tribunal's competence, unless such decision is contained in an award on the merits;
- the adoption of provisional remedies by the court;
- the recognition and enforcement of provisional remedies ordered by the arbitral tribunal; and
- the annulment of commercial transactions and arbitral awards.

Under this process, once the corresponding request has been admitted by the competent judge, such judge shall serve the respondent and grant it a period of 15 days to respond (Articles 1471-V, 1472 and 1473 of the Commerce Code).

Upon expiration of the above-mentioned 15-day period, and provided that the parties did not file any evidence and that the judge did not deem necessary the filing of evidence, the parties shall appear before the judge within the following three days for the hearing of closing arguments. Notwithstanding the foregoing, such hearing shall be held with or without the appearance of the parties (Article 1474 of the Commerce Code).

However, if the parties have filed any evidence or if the judge deems the filing of such evidence necessary, the judge shall grant an evidentiary period of 10 days for the admission of such evidence (Article 1475 of the Commerce Code). After the hearing, the judge shall summon the parties to render his or her decision. Such decision is not subject to challenge (Article 1476 of the Commerce Code).

Additionally, the 2009 amendments to the Public Works Law and to the Public Acquisitions and Services Law included arbitration as a mechanism to settle disputes arising from the agreements executed pursuant to such provisions, as well as from any matters related to their performance. However, these laws also determined that administrative rescission and early termination of administrative agreements are not arbitrable (Article 98 of the Public Works Law and Article 80 of the Public Acquisitions and Services Law).

In a recent case, the national courts determined that rescission of administrative agreements constitutes an act of authority and therefore cannot be arbitrated. This decision demonstrates that arbitrations conducted in connection with administrative disputes are not fully developed in Mexico, and that in administrative matters public entities still hold a superior position over private entities.

Finally, the Public-Private Associations Law was published in January 2012, which regulates the public-private association projects aimed at establishing long-term contractual relationships between public and private entities for the rendering of public services with infrastructure provided, totally or partially, by the private sector. Article 139 establishes the possibility of submitting to arbitration any disputes arising from the performance of any agreements executed pursuant to the provisions of such law. Unfortunately, section III of Article 139 provides that arbitral awards rendered pursuant to the above-mentioned arbitral proceedings will be challengeable through an *amparo* proceeding.

2.1.3 Principal laws and institutions

2.1.3.1 What are the principal sources of law and regulation relating to international and domestic arbitration in your jurisdiction?

The Commerce Code incorporates the Model Law into the Mexican system, with minor modifications.

The Federal Code of Civil Procedures is subsidiary to the Commerce Code, and therefore its provisions are applicable in any matters not regulated by the Commerce Code.

Together with the Model Law, the New York Convention and the Panama Convention are two international instruments with great relevance to the development of commercial arbitration in Mexico.

In addition, the numerous free trade agreements and bilateral investment treaties executed by Mexico establish international arbitration as the primary means of resolving disputes. In this regard, the North American Free Trade Agreement (NAFTA), to which Mexico is a party, was innovative at its inception, allowing individual investors in one of the member states to arbitrate investment disputes directly with another member state. Other free trade agreements have been recently executed by Mexico, following the example set by NAFTA.

2.1.3.2 What are the principal institutions that are commonly used and/or government agencies that assist in the administration or oversight of international and domestic arbitrations?

The principal institutions in charge of administering commercial arbitrations in Mexico include:

- the Mexican Chapter of the International Chamber of Commerce, a non-profit institution formally established in 1985, with its offices in Indiana at 260, 5th level, office 508, Col. Ciudad de los Deportes, CP 03810, Mexico City, Federal District, *www.iccmex.org.mx;*
- the Arbitration and Mediation Commission of the Mexico City Chamber of Commerce (CANACO), a non-profit organisation based at Paseo de la Reforma no. 42, Delegación Cuauhtémoc, CP 06040, Mexico City, Federal District (see *www.arbitrajecanaco.com.mx*); and
- the Mexican Arbitration Center (CAM), created in 1997, with its offices in Tecnológico de Monterrey, Campus Santa Fe, Av. Carlos Lazo No. 100, Edificio Aulas 1, Nivel 5, Col. Santa Fe, México, Federal District, CP 01389, *www.camex.com.mx*.

2.1.3.3 Which courts or other bodies have judicial oversight or supervision of the arbitral process?

Courts do not have judicial oversight or supervision of the arbitral process, their intervention is only for the purpose of assistance and is only available upon the parties' request.

3. ARBITRATING IN YOUR JURISDICTION – KEY FEATURES

3.1 The appointment of an arbitral tribunal

3.1.1 Are there any restrictions on the parties' freedom to choose arbitrators?

Pursuant to the Commerce Code, the parties may freely agree on the number, procedure of appointment, and requirements applicable to arbitrators. Consequently, the only limitations are that arbitrators shall be impartial and independent (Article 1427 of the Commerce Code).

Arbitrators are not required to be members of the local Bar.

3.1.2 Are there specific provisions of law regulating the appointment of arbitrators?

See sections 3.1.1 and 3.1.3.

3.1.3 Are there alternative procedures for appointing an arbitral tribunal in the absence of agreement by the parties?

In the absence of agreement by the parties, the following provisions apply (as per Article 1427 of the Commerce 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 prior request of either party; and
- 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 by 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 by either party.

3.1.4 Are there requirements (including disclosure) for 'impartiality' and/or 'independence', and do such requirements differ as between domestic and international arbitrations?

Persons who have been designated as candidates for appointment as arbitrators must disclose all circumstances that may give rise to a justified doubt regarding their impartiality and independence. Arbitrators shall reveal, without delay, all circumstances which could raise doubts about their impartiality to the parties from the time of their appointment and during the time that they perform their arbitration functions, unless they have already done so (Article 1428 of the Commerce Code).

There are no differences between domestic and international arbitrations regarding the arbitrators' requirements for impartiality and independence.

3.1.5 Are there provisions of law governing the challenge or removal of arbitrators?

The parties may freely agree on the procedure for the challenge of arbitrators.

In the absence of such agreement, the party seeking the challenge of an arbitrator shall, within 15 days from the time it had knowledge of the tribunal's constitution or of any circumstances which may give rise to any justified doubts about the impartiality or independence of the arbitrator, submit in writing the grounds of such 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 (Article 1429 of the Commerce Code).

3.1.6 What role do national courts have in any such challenges?

If a challenge is rejected, the petitioner may, within 30 days from the notice of rejection, request the judge to issue a decision on the admissibility of the challenge. Such decision shall not be appealable. While such decision is pending, the arbitral tribunal, including the arbitrator being challenged, may continue with the proceedings and issue an award (Article 1429 of the Commerce Code).

3.1.7 What principles of law apply to determine the liability of arbitrators for acts related to their decision-making function?

It has been recognised by several judicial precedents that an arbitrator is not considered to be a public authority 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 award issued by them or for any errors of law contained in such award.

As regards acts related to their decision-making function, as a general rule, civil liability can be regulated by agreement of the parties, except in those cases in which a legal provision expressly establishes otherwise (Article 2117 of the Federal Civil Code), and when such liability arises from wilful misconduct (Article 2106 of the Federal Civil Code).

Notwithstanding the foregoing, with the amendments of January 2011 to the Commerce Code, a provision was included in Article 1480, establishing that arbitrators are liable for any losses and damages arising from the provisional remedies they order. Due to the fact that article 1480 was recently included into the Commerce Code, case law is very limited and Mexican courts have not yet established the scope of applicability of said provision or if such liability can be waived by the parties' agreement.

3.2 Confidentiality of arbitration proceedings

3.2.1 Is arbitration seated in your jurisdiction confidential? What are the relevant legal or institutional rules which apply?

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 autonomy 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.

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

3.2.2 To what matters does any duty of confidentiality extend (eg does it cover the existence of the arbitration, pleadings, documents produced, the hearing and/or the award)?

Since there are no legal provisions as to the confidentiality of arbitration, the scope of any confidentiality duty depends on the parties' agreement. Additionally, there are no legal provisions that contemplate any specific sanction in the event of breach of such confidentiality, other than those derived from a breach of the parties' agreement.

3.2.3 Can documents or evidence disclosed in arbitration be used in other proceedings or contexts?

There are no specific provisions on this matter.

3.2.4 When is confidentiality not available or lost?

There are no specific provisions on this matter.

3.3 Role of (and interference by) the national courts and/or other authorities

3.3.1 Will national courts stay or dismiss court actions in favour of arbitration?

In the event that a court proceeding is initiated despite the existence of an arbitration agreement, the judge before whom such proceeding has been initiated shall, upon the prior request of either party, remit the parties to arbitration, unless it is determined 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 1424 of the Commerce Code).

3.3.2 Are there any grounds on which the national courts will order a stay of arbitral proceedings?

There are no grounds on which the national courts will order a stay of arbitral proceedings.

3.3.3 What is the approach of national courts to parties who commence court proceedings in your jurisdiction or elsewhere in breach of an agreement to arbitrate?

In the event that a court proceeding is initiated despite the existence of an arbitration agreement, the judge before whom such proceeding has been initiated shall, upon the prior request of either party, remit the parties to arbitration, unless it is determined 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 1424 of the Commerce Code).

In the event either party requests remittance to arbitration pursuant to the above, the following shall be observed (Article 1464 of the Commerce Code):

- 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; and
- 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 are given the opportunity to be heard.

No remedy shall be admissible against the decision issued in the foregoing proceeding.

3.3.4 Is there a presumption of arbitrability or policy in support of arbitration? Have national courts shown a willingness to interfere with arbitration proceedings on any other basis?

Mexican law has a general tendency to support arbitration. The intervention of national courts in arbitration proceedings is framed in the Commerce Code as judicial assistance in support of arbitration, and not as interference. Such judicial assistance is dependent on the prior request of either party and is limited to the cases and circumstances expressly regulated by the Commerce Code: (i) remission to arbitration upon the existence of an arbitration agreement and prior request of either party; (ii) appointment of arbitrators; (iii) production of evidence in arbitration; (iv) consultation on arbitrator's fees; (v) challenge of arbitrators; (vi) provisional relief; (vii) recognition and enforcement of provisional relief ordered by the arbitral tribunal; and (viii) competence of the arbitral tribunal.

Due to the fact that judicial assistance is only triggered by the parties' request and is limited to the cases regulated by the law, it is very unlikely that arbitrations will be delayed or frustrated by court applications or interference by local courts.

3.3.5 Are there any other legal requirements for arbitral proceedings to be recognisable and enforceable?

It is necessary for the lawyers representing the parties to have been granted valid powers of attorney, although most arbitral tribunals do not formally require the submission by the parties of these documents. Mexican law may be interpreted as requiring that the lawyers representing the parties in arbitration act under a valid power of attorney, in order for the arbitral proceedings to be recognisable and enforceable.

3.4 Procedural flexibility and control

3.4.1 Are specific procedures mandated in particular cases, or in general, which govern the procedure of arbitrations or the conduct of an arbitration hearing? To what extent can the parties determine the applicable procedures?

The parties are free to agree 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, provided that the parties are treated equally and are given the opportunity to present their case (Articles 1434 and 1435 of the Commerce Code).

In the absence of agreement by the parties, the Commerce Code establishes certain default rules for conducting the procedure, detailed below:

- unless otherwise agreed by the parties, the proceedings shall commence on the date on which the respondent received the request for arbitration (Article 1437 of the Commerce Code);
- the parties are free to determine the language or languages in which the proceedings shall be conducted. In the absence of such agreement, the arbitral tribunal shall make such determination (Article 1438 of the Commerce Code);
- within the term agreed by the parties or the term established by the tribunal, the claimant shall submit the facts and circumstances on which the claim is based, the issues in dispute and the relief sought. The respondent shall refer to all matters contained in the claim unless the parties have agreed otherwise. The parties shall provide, when formulating their final pleadings, all documents they may deem appropriate and which are in their possession, or shall make reference to the documents or other evidence they will file. Unless otherwise agreed by the parties, they may modify or extend their claim or counterclaim, unless the arbitral tribunal considers that such modification is not admissible due to the delay of such modifications (Article 1439 of the Commerce Code); and
- unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold hearings for the filing of evidence or oral pleadings, or if the proceedings shall be conducted based on documentary and/or other evidence. Unless otherwise agreed by the parties, the arbitral tribunal shall hold such hearings upon the request of either party in the procedural phase as it may deem appropriate (Article 1440 of the Commerce Code).

The Parties shall be given sufficient advance notice of the commencement of any hearings, as well as any meetings to be held by the arbitral tribunal for the examination of any merchandise or any other assets or documents. Any statements, documentary evidence, expert reports, or any other information provided to the tribunal by one of the parties, shall be communicated to the other party (Article 1440 of the Commerce Code).

Pursuant to article 1441 of the Commerce Code, unless otherwise agreed by the parties and provided that there is no reasonable cause, whenever:

- the claimant does not file its claim pursuant to the procedural requirements established by the parties or the tribunal, the tribunal shall terminate the proceedings;

- the respondent does not file its counterclaim pursuant to the procedural requirements established by the parties or the tribunal, the tribunal shall continue the proceedings, provided however that such omission shall not be deemed as an acceptance of the claimant's arguments; and
- either party does not appear at a hearing or does not file any documentary evidence, the arbitral tribunal shall be entitled to continue the proceedings and issue the award based on the evidence filed.

Unless otherwise agreed by the parties, the arbitral tribunal shall have the power to appoint any experts to examine any specific matters and inform the tribunal, and may request that the parties provide such experts with all the necessary information or to give them access to all documents, merchandise or any other assets (Article 1442 of the Commerce Code).

Unless otherwise agreed by the parties, upon the request of either party or whenever the arbitral tribunal deems it necessary, the expert shall, after filing his or her report, either orally or in writing, attend a hearing, in which the parties will be given the opportunity to formulate any questions and present experts to inform about the issues in dispute (Article 1443 of the Commerce Code).

3.4.2 Are there any requirements governing the place or seat of arbitration, or any requirement for arbitral hearings to be held at the seat?

The parties are free to determine the seat of the arbitration. In the absence of such agreement the arbitral tribunal shall determine it, considering the circumstances of the case. Additionally, unless otherwise agreed to by the parties, the arbitral tribunal may hold meetings, deliberate, hear the parties or experts, or examine any merchandise, assets or documents in any place it sees fit (Article 1436 of the Commerce Code).

3.4.3 What procedural powers and obligations does national law give or impose on an arbitral tribunal?

In the absence of a specific agreement between the parties, the arbitral 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 evidence (Article 1435 of the Commerce Code).

3.4.4 Evidence

3.4.4.1 What is the general approach to the gathering and tendering of written evidence at the pleading stage and at the hearing stage?

There are no specific provisions regarding the gathering and tendering of written evidence at the pleading and hearing stages, and the Commerce Code establishes that the parties are free to 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 evidence (Article 1435 of the Commerce Code).

Based on the above, the IBA Rules on Evidence are often used as a guide by the arbitral tribunal, even in cases where the parties have not agreed on their adoption.

3.4.4.2 Can parties agree the rules on disclosure? How does the disclosure in arbitration typically differ to that in litigation?
There are no legal provisions regarding rules on disclosure. Based on the parties' broad discretion to determine the rules to govern the proceedings, it can be assumed that they can also agree on the rules on disclosure.

3.4.4.3 What are the rules on oral (factual or expert witness) evidence? Is cross-examination used?
There are no specific provisions in connection with witness testimony. 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, and therefore may determine the procedural rules applicable to witness testimony (Article 1435 of the Commerce Code).

Cross-examination is common in arbitrations seated in Mexico.

3.4.4.4 If there is no express agreement, what powers of compulsion are there for arbitrators to require attendance of witnesses (factual or expert) or production of documents, either prior to or at the substantive hearing? To what extent are national courts willing or able to assist? Are there differences between domestic and international arbitrations or as between orders sought against parties and non-parties?
There are no specific provisions regarding the powers of compulsion for arbitrators to require attendance of witnesses or production of documents. However, Article 1444 of the Commerce Code provides that the arbitral tribunal, or either party, with the approval of the tribunal, may request the assistance of the judge to compel the presentation or introduction of any kind of evidence (Article 1444 of the Commerce Code).

3.4.4.5 Do special provisions exist for arbitrators appointed pursuant to international treaties (ie bilateral or multilateral investment treaties)?
No special provisions exist for arbitrators appointed pursuant to international treaties.

3.4.5 Are there particular qualification requirements for representatives appearing on behalf of the parties in your jurisdiction?
The law does not establish any particular qualifications for representing a party in arbitration.

3.5 THE AWARD

3.5.1 Are there provisions governing an arbitral tribunal's ability to determine the controversy in the absence of a party who, on appropriate notice, fails to appear at the arbitral proceedings?
There are no provisions under Mexican arbitration law regarding the tribunal's ability to determine the controversy in the absence of a party who, on appropriate notice, fails to appear at the arbitral proceedings. However, based on the tribunal's broad power to conduct the proceedings as it sees fit,

the tribunal can determine how to proceed in such event (Article 1435 of the Commerce Code).

However, Article 1441 of the Commerce Code contemplates provisions governing the tribunal's ability to determine the controversy in the absence of a party in the event no legitimate reason has been adduced.

There are no provisions addressing what happens in the event of a party seeking a last minute adjournment of the hearing.

3.5.2 Are there limits on arbitrators' powers to fashion appropriate remedies, eg punitive or exemplary damages, specific performance, rectification, injunctions, interest and costs?

There are no limits to arbitrators' powers to fashion appropriate remedies provided by law. However, only those remedies which do not contravene any legal provision may be enforced.

3.5.3 Must an award take any particular form or are there any other legal requirements, eg in writing, signed, dated, place stipulated, the need for reasons, method of delivery, etc?

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 it are given. The award must be reasoned in a decision, unless the parties have agreed otherwise or have reached a settlement. The award shall state the date it was entered and the place where the arbitration was held. After entry of the award, the tribunal shall deliver a copy to the parties (Article 1448 of the Commerce Code).

3.5.4 Can an arbitral tribunal order the unsuccessful party to pay some or all of the costs of the dispute? Is an arbitral tribunal bound by any prior agreement by the parties as to costs?

As a general rule, the costs of the arbitration shall be borne by the losing party. The arbitral tribunal has the discretion to apportion the costs on a pro rata basis between the parties, if appropriate and after considering the specific circumstances of the dispute.

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 (Article 1455 of the Commerce Code).

When the tribunal issues any order for the termination of the arbitral proceedings, or an award pursuant to terms agreed by the parties, the tribunal shall fix the arbitration costs in such order or award.

The arbitral tribunal may not charge any additional fees for the interpretation, rectification, or complementation of the award (Article 1455 of the Commerce Code).

Notwithstanding the foregoing, the parties are free to determine (directly or through the adoption of institutional rules) any provisions regarding the arbitration costs and the tribunal will be bound by such agreement (Article

1452 of the Commerce Code).

3.5.5 What matters are included in the costs of the arbitration?

The costs include the fees of the arbitral tribunal, travel and other expenses incurred by the arbitrators, the 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 1416 paragraph IV of the Commerce Code).

3.5.6 Are there any practical or legal limitations on the recovery of costs in arbitration?

There are no legal limitations on the recovery of costs in arbitration, provided such costs are reasonable and are fixed considering the amount in dispute, the complexity of the matter, the time spent by the arbitrators and any other circumstances relevant to the case (Articles 1452 and 1454 of the Commerce Code).

There are no practical limitations on the recovery of costs. However, the Commerce Code contains certain provisions allowing the arbitral tribunal to request each party to deposit an equal amount as an advance of the arbitral tribunal's fees, travel expenses and any other expenses of the arbitrators, as well as for 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 either party 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 a judge, who may intervene and make any observations and clarifications he or she may deem appropriate (Article 1456 of the Commerce Code). The Commerce Code does not regulate the circumstances in which a judge needs to be consulted for deposits, therefore the parties may file such request under any circumstances and the decision to intervene or not is left to the judge's discretion.

3.5.7 Are there any rules relating to the payment of taxes (including VAT) by foreign and domestic arbitrators? If taxes are payable, can these be included in the costs of arbitration?

Regarding VAT, both foreign and domestic arbitrators' fees are taxed in Mexico, whenever the legal services of the arbitrators are performed within Mexican territory or have an effect on Mexican parties. In this regard, the payable VAT can and must be included in the costs of arbitration, so that the corresponding invoice issued by the arbitrators includes the amount of their fees plus the corresponding VAT.

Domestic arbitrators' fees are subject to income tax in Mexico. Determining the rules applicable to foreign arbitrators is complex, because, in addition to the Income Tax Law, Mexico is a party to several treaties to

avoid double taxation. Therefore, the rules applicable to foreign arbitrators should be determined in each particular case. Generally speaking, there are two basic criteria to determine the payment of taxes by foreign residents. According to the first criteria, the source of the income should be considered: income will be taxed if it is related mainly to Mexican territory. The second criteria relates to the permanent establishment of the service provider and is contained in several taxation treaties and in Article 181 of the Income Tax Law. This establishes that revenues from salaries and generally from the rendering of subordinated personal services paid by individuals or entities residing abroad and having no permanent establishment within Mexican territory, or having such an establishment which bears no relation to such services, are exempt from payment of income tax, provided that the stay in the national territory of the renderer of the service was less than 183 calendar days, consecutive or otherwise, in a period of twelve months.

3.6 Arbitration agreements and jurisdiction

3.6.1 Are there form and/or content or other legal requirements for an enforceable agreement to arbitrate? How may they be satisfied? What additional elements is it advisable to include in an arbitration agreement?

The arbitration agreement shall be in writing and signed by the parties, or it may be evidenced 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 is 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 of the Commerce Code).

Furthermore, to be enforceable, the agreement must also meet the basic requirements of any contract: (i) it must have a legal purpose; (ii) the parties' consent must not be given by error, or obtained by fraud or under duress; and (iii) the parties must have full legal capacity to sign the agreement (Article 1795 of the Federal Civil Code).

3.6.2 Can an arbitral clause be considered valid even if the rest of the contract in which it is included is determined to be invalid?

Yes; pursuant to the Commerce Code, an arbitration clause included within the wording of a contract shall be deemed to be an agreement independent from the rest of the contract. In the event that the arbitral tribunal declares the main contract to be null and void, such decision shall not entail the nullity of the arbitration clause (Article 1432 of the Commerce Code).

3.6.3 Can an arbitral tribunal determine its own jurisdiction ('competence–competence')? When will the national courts deal with the issue of jurisdiction of an arbitral tribunal? Need an arbitral tribunal suspend its proceedings if a party seeks to resolve the issue of jurisdiction before the national courts?

An arbitral tribunal has the authority to determine its own jurisdiction

and rule on any defence regarding the existence or validity of an arbitral agreement (Article 1432 of the Commerce Code).

The defence of lack of jurisdiction of the arbitral tribunal must be raised in the filing of the answer, at the latest. The parties shall not be barred from asserting this defence by virtue of having appointed an arbitrator or participating in his or her appointment. The defence based on the fact that the tribunal exceeded its powers must be asserted as soon as the matter, which allegedly exceeds the tribunal's powers, is raised 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 (Article 1432 of the Commerce Code).

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 that decision within 30 days after receiving notice of the declaration. The judge's decision shall not be subject to appeal. While such petition is pending, the arbitral tribunal may continue to act until an award is entered (Article 1432 of the Commerce Code).

3.6.4 Is arbitration mandated/prohibited for certain types of dispute?

Under Mexican law, arbitration is not mandated for certain types of dispute.

Controversies arising from the following matters shall be exclusively settled by national courts: (i) land and water resources located within national territory; (ii) resources of the exclusive economic zone or resources related to any of the sovereign rights regarding such zone; (iii) acts of authority or related to the internal regime of the state and of the federal entities; and (iv) the internal regime of Mexican embassies and consulates abroad and their official proceedings (Article 568 of the Federal Code of Civil Procedures).

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

Finally, both the Public Works Law and the Public Acquisitions and Services Law establish that administrative rescission and early termination of administrative agreements are not arbitrable (Article 98 of the Public Works Law and Article 80 of the Public Acquisitions and Services Law).

3.6.5 What, if any, are the rules which prescribe the limitation periods for the commencement of arbitration proceedings and what are such periods?

There are no specific limitation periods provided in Mexican arbitration law for the commencement of arbitration proceedings, and therefore the general limitation period of 10 years applies (Article 1047 of the Commerce Code). The 10 year limitation period starts from the date in which the claim could have been legally filed (Article 1040 of the Commerce Code). It is only applicable when such law does not provide for a shorter limitation period in each particular case.

3.6.6 Does national law enable an arbitral tribunal to assume jurisdiction over persons who are not party to the arbitration agreement?

There are some cases where non-signatories are bound by an arbitration agreement, for example: in the case of subrogation (where a party acquires the rights of the party being substituted); in the case of an heir (who inherits the rights of the person from whom he or she is inheriting); or in the case of an assignee.

3.7 Applicable law

3.7.1 How is the substantive law governing the issues in dispute determined?

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

3.7.2 Are there any mandatory laws (of the seat or elsewhere) which will apply?

The arbitral tribunal shall settle the dispute in accordance with the legal provisions designated by the parties. It shall be understood that any indication of the law or legal system of a country, unless otherwise established, refers to the substantive law of that country and not to any provisions on the conflict of laws (Article 1445 of the Commerce Code).

If the parties have not indicated the law that shall govern the merits of the dispute, the arbitral tribunal, considering the characteristics and the nexus of the case, shall determine the applicable law (Article 1445 of the Commerce Code).

The tribunal shall issue a decision in accordance with the stipulations of the agreement and shall consider the applicable commercial practices (Article 1445 of the Commerce Code).

4. SEEKING INTERIM MEASURES IN SUPPORT OF ARBITRATION CLAIMS

4.1.1 Can an arbitral tribunal order interim relief? What forms of interim relief are available and what are the legal tests for qualifying for such relief?

Unless otherwise agreed by the parties, the arbitral tribunal may, on the petition of either party, order provisional remedies which are necessary to protect the subject matter in dispute. In such event, 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. 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 such guarantee is necessary to protect third party rights (Article 1479 of the Commerce Code).

There are no limitations to the tribunal's discretion to order interim relief, and it can order any form of interim relief in order to protect the subject matter in dispute.

There are no legal tests expressly contemplated by the law for qualifying for interim relief.

4.1.2 Have national courts recognised and/or limited any power of an arbitral tribunal to grant interim relief?

See section 4.1.1.

4.1.3 Will national courts grant interim relief in support of arbitration proceedings and, if so, in what circumstances?

Yes, courts will 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).

Consequently, the courts' powers to grant interim relief are not limited, and they may order any form of interim relief deemed appropriate.

4.1.4 Are national courts willing to grant interim relief in support of arbitration proceedings seated elsewhere?

Yes, the parties may request that a judge grant provisional relief before or during the arbitration proceedings, even in connection with arbitration proceedings seated elsewhere (Article 1415 and Article 1425 of the Commerce Code).

5. CHALLENGING ARBITRATION AWARDS

5.1.1 Can an award be appealed to, challenged in or set aside by the national courts? If so, on what grounds?

Under Article 1457 of the Commerce Code, arbitral awards may only be set aside by the competent judge if:

- the party requesting the award to be set aside proves that:
  - one of the parties to the arbitration agreement was subject to a legal disability, or the agreement is null and void pursuant to the law chosen by the parties or pursuant to Mexican law if no other law was chosen by the parties;
  - such party was not given proper notice of the designation of one of the arbitrators or of the arbitration proceedings, or was unable to assert its rights for any other reasons;
  - the award refers to a controversy not contemplated in the arbitration agreement or contains decisions, which exceed the terms of the arbitration agreement (however, if the provisions of the award which refer to matters subject to the arbitration can be separated from those which are not, only the latter will be annulled); or

- the integration of the arbitral tribunal or the arbitration procedures were not performed in accordance with the agreement between the parties, unless such agreement contravenes any provision of the Commerce Code which the parties cannot waive, or, in the absence of such an agreement, the proceedings were not performed in compliance with such provisions; or
- the judge finds that in accordance with Mexican law, the subject matter of the controversy is not arbitrable or the award is contrary to public policy.

The petition to void an award shall be filed within a period of three months from the date notice is given of the award. However, in the event that either party requests the tribunal to correct any errors of the award, to give an interpretation of such award, or to enter an additional award regarding claims which were presented in the proceedings but omitted from consideration in the award, the above-mentioned three-month period shall begin on the date that the petition was ruled on by the arbitral tribunal.

5.1.2 Can the parties exclude rights of appeal or challenge?

There is no right of appeal under Mexican law. Regarding the challenge of arbitral awards, the Commerce Code provides in Article 1457 restrictive grounds in which such challenge is admissible. The provisions of Article 1457 are public policy related and cannot be excluded by the parties.

5.1.3 What are the provisions governing modification, clarification or correction of an award (if any)?

Unless the parties agree upon a different time period, within 30 days after a final award is entered, either of them may, after due notice, petition the tribunal (i) to correct an error of calculation, copying, or of a typographical or similar nature in the award; or (ii) to give an interpretation upon an issue or upon 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 of the Commerce Code).

6. ENFORCEMENT

6.1.1 Has your jurisdiction ratified the New York Convention or any other regional conventions concerning the enforcement of arbitration awards? Has it made any reservations?

Mexico is party to the New York Convention, which was ratified in 1971 with no reservations.

Mexico is also party to the Inter-American Convention on International Commercial Arbitration (the Panama Convention), which was ratified on 27 October 1977 with no reservations.

6.1.2 What are the procedures and standards for enforcing an award in your jurisdiction?

Regardless of the country in which an award has been issued, such award shall be deemed to be valid and binding and shall be enforced, upon

written request to the judge. 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 Spanish translation made by a certified translation expert (Article 1461 of the Commerce Code).

Pursuant to the Commerce Code, the recognition and enforcement of awards shall be conducted through a special procedure regarding commercial transactions and arbitration. Once the request has been filed, the judge shall 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 the judge does not deem it necessary, the parties shall be summoned to the pleadings hearing, which shall take place within the following three days, with or without the parties present. 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 within five days from the hearing (Articles 1471 to 1476 of the Commerce Code).

Under Article 1462 of the Commerce Code, the recognition or enforcement of an award shall only be denied if the party requesting it proves, before the competent judge of the country in which the recognition or enforcement is requested, that:

- one of the parties to the arbitration agreement was subject to a legal disability, or the agreement is null and void pursuant to the law chosen by the parties or the law of the country in which the award was issued, if no other law was chosen by the parties;
- such party was not given proper notice of the designation of one of the arbitrators or of the arbitration proceedings, or was unable to assert its rights for any other reasons;
- the award refers to a controversy not contemplated by the arbitration agreement or contains decisions, which exceed the terms of the arbitration agreement (however, if the provisions of the award which refer to matters subject to the arbitration can be separated from those which are not, only the latter will be annulled);
- the integration of the arbitral tribunal or the arbitration procedures were not performed in accordance with the agreement between the parties, or that, in the absence of such agreement, they were not performed in accordance with the law of the country in which the arbitration was conducted;
- the award is not yet binding upon the parties or it was annulled or suspended by the judge of the country in which such award was issued or to which laws it was subject to; or
- the judge finds that in accordance with Mexican law, the subject matter of the controversy is not arbitrable or that the recognition or enforcement of the award is contrary to public policy.

The average duration of enforcement proceedings is six months to one year.

Regarding the cost of such a proceeding, pursuant to the Political Constitution of the United Mexican States, administration of justice is free and must be provided in an expedited manner. In a commercial action, therefore, the following are not charged: court fees, witnesses' expenses and costs for court activities conducted outside the place of the trial.

The parties' legal fees can be calculated in one of three ways:

(a) as a percentage of the amount of the claim or of the amount recovered (the percentage is agreed on between the lawyer and the client, and is based on the specific circumstances of the case, and can vary according to (i) the complexity of the matter; (ii) the client's economic situation; and (iii) the reputation of the lawyer); or
(b) as an hourly rate for time spent; or
(c) as a fixed fee depending on the amount of the claim.

Consequently, the cost for enforcing an award in Mexico depends on the firms engaged by the parties, and on the parameters agreed for the calculation of the fees.

6.1.3 Is there a difference between the rules for enforcement of 'domestic' awards and those for 'non–domestic' awards?

There is no difference between the rules for enforcement of domestic awards and non-domestic awards. The Commerce Code provides expressly that regardless of the country in which an award has been issued, such award shall be deemed to be valid and binding and shall be enforced upon written request to the judge (Article 1461 of the Commerce Code).