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Evolution of Mexican Arbitration Law

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Despite a legal tradition that has embraced alternative dispute resolution methods dating to the 17th century, Mexico has been somewhat slow to adapt to international commercial arbitration principles in its more recent history. Mexico subscribed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the Inter-American Convention on International Commercial Arbitration (the Panama Convention) until 1971 and 1977, respectively. It was not until 1993 that the UNCITRAL Model Law on International Commercial Arbitration (the Model Law) was adopted.

The Model Law was drafted by UNCITRAL to establish general commercial arbitration principles and procedures, thereby creating a standardized dispute resolution framework that could later be adopted by, implemented in, and adapted to different national legal systems. In the time since it accepted the guidelines of the Model Law, Mexico has become a key site for arbitration proceedings in the Americas. However, implementation of the new law precipitated numerous obstacles to its ultimate success.

One of the primary difficulties was that the Model Law was incorporated, largely without modification, as part of the procedural provisions of Mexico's existing Commerce Code rather than being implemented as its own regulation. This forced the judiciary members of the country to use the procedural provisions established in the Commerce Code and/or the provisions of the Federal Code of Civil Procedures (because the nullity and enforcement procedures of awards made an express remittance to the latter Code) to interpret any legal ambiguities surrounding the Model Law's application.

Issues were sometimes discovered that had been regulated by the previous Commerce Code and the Federal Code of Civil Procedures, but were not expressly regulated under the Model Law. Such discrepancies often led to procedural disputes related to judicial intervention in arbitrations that demonstrated some of the incompatibilities between the wording of the Model Law, as it was incorporated into the Commerce Code, and some existing procedural institutions and interpretations. As a result, judges and practitioners integrated many of the principles and procedures established in the Commerce Code and the Federal Code of Civil Procedures in a gradual and often painstaking process of 'domesticating' the Model Law for use in Mexico.

Those difficulties notwithstanding, the Mexican Federal Courts and the Supreme Court of Justice managed to develop a body of precedents and jurisprudence that defined effective fundamental guidelines for the use of international arbitration. Concepts such as the waiver principle and the kompetenz-kompetenz principle, whereby the arbitral tribunal is granted flexibility in conducting proceedings without strict adherence to formalities as long as due process is observed, were instituted to further align Mexico's arbitration process with international standards. As a result, the implementation and growth of commercial arbitration in Mexico has proven increasingly successful subsequent to the adoption of the Model law and has greatly enhanced Mexico's profile among commercial arbitration countries in the Americas.

More recently, in 2011 a new legislative reform was adopted by Mexico that was designed to update the provisions of the Commerce Code related to commercial arbitration. This reform has been well received by the Mexican arbitration community, as it responds to several questions that have not previously been completely resolved by the courts. The reform is also much more precise in the procedural aspects of judicial intervention, offering specific recommendations as to the manner in which several applications should be made before the courts.

Among other amendments, the manner and time period in which an application should be made before a court to request remittance of the parties to arbitration are made clear. The procedures to set aside or enforce awards now also have specific regulations and no longer remit to the ancillary procedures established in the Federal Code of Civil Procedures. The nature and extent of the power of the courts to issue provisional measures in assistance of arbitration has been clarified, as well.

The 2011 amendments have answered a number of procedural questions, but they are far from perfect. New procedural questions have arisen, such as the proper method for dealing with a dispute between the parties regarding the appointment of an arbitrator, since the procedure established in the Commerce Code is not designed to

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settle such a dispute. These and other issues point out areas where the new provisions related to arbitration, although a marked improvement, show some deficiencies and still sometimes necessitate resorting to other procedural laws or institutions.

Many domestic practitioners still believe that Mexican law and arbitration practice have matured enough to merit an independent and integrated arbitration law of the sort that nearly all developed countries have. Mexico has experienced both the advantages and the difficulties arising from the attachment of its commercial arbitration provisions to a larger procedural code.

However, the experiences accrued, the judicial precedents set, and the amendments made to Mexico's legal provisions regulating commercial arbitration can now be used to issue a new separate commercial arbitration law. This law should be redacted carefully to give response to all the procedural hurdles that may arise from judicial intervention in arbitration. It would be wise to give to the judges and magistrates a strong participation in its drafting so that they can enrich the project and help forefend the bulk of future procedural issues.

Finally, it could even be considered that the scope of the proposed law be extended to include not only commercial but also civil federal matters, which are not clearly regulated by the existing laws. It is the contention of many legal professionals in Mexico that the country is ready to take the next step and have its own independent arbitration law - one that would adapt the provisions and principles of the Model Law to the Mexican practice and procedural tradition in a more specific and detailed manner