

Making use of Commercial Arbitration in COVID-19 Times

COVID-19 has already had a dramatic and profound impact upon the commercial operations and even the solvency of many businesses across many sectors of the Mexican economy. For contracting parties, it is likely to be vitally important that their business partners continue to honor their contractual obligations throughout the crisis, and that their credits are not lost in the event of their business partners' insolvency. To best protect the rights of such businesses, it may be necessary to obtain urgent binding relief from a competent entity.

Whereas much of the Mexican judiciary is in a state of paralysis, arbitral institutions – including the International Chamber of Commerce (ICC), Centro de Arbitraje de Mexico (CAM) and the Centro de Mediación y Arbitraje CANACO – remain open and fully operational. The ICC, for one, has made adaptations and issued guidance materials designed to mitigate the effects of the crisis on the efficiency of arbitral proceedings. Pertinently, under Article 1421 of the Mexican Commerce Code, arbitrations may be initiated, processed and resolved in principle without any need for any judicial intervention and thus, where contracts provide for dispute settlement by arbitration, it may provide a valuable route to relief in the immediate term.

In this regard, under Article 1479 of the Mexican Commerce Code it is possible to obtain from an arbitral tribunal urgent relief that is necessary to maintain the *status quo*, pending the final resolution of the broader dispute. Should a party's contracts provide for dispute settlement under the rules of the ICC it may be possible for them to obtain such relief from an 'emergency' arbitrator in as few as 15 days from initiating the procedure.

Accordingly, if any of your contracts provide for arbitration as their means of resolving disputes, and your counterparty is in breach of its obligations, you may be well advised to urgently seek counsel to ensure that your position is as well protected as possible. Our experts can gladly offer their immediate support.

For those who are already engaged in an ongoing arbitral proceeding, there exists a possibility that COVID-19 shall have an impact upon how their main proceeding is conducted. Generally speaking, arbitral tribunals under the main institutional rules are bestowed duties to conduct arbitral proceedings in an expeditious and cost-effective manner, and, equally, to act fairly and impartially – ensuring that each party has “a reasonable opportunity to present its case.” The COVID-19 pandemic can adversely impact upon how expeditiously an arbitral proceeding is conducted; however excessive countermeasures may impact upon procedural fairness.

Under the Mexican Commerce Code and generally under the procedural rules of arbitral institutions, an arbitral tribunal has the right to conduct an arbitration proceeding in any manner it considers appropriate. The ICC has already [suggested](#) that its tribunals may exercise that right by implementing some of the following measures (among others) that parties should be aware of, to mitigate the effects of the pandemic:

- Disposing expeditiously of certain claims or defenses that are considered to be manifestly without merit;
- Ordering that the entirety of the dispute, or discrete issues, may be resolved only the basis of documentary evidence, with no evidentiary hearing;

- Ordering that no witness or expert evidence shall be required to decide upon certain issues, or ordering that such evidence takes the form of replying to questions posed by the opposing counsel and/or the arbitral tribunal;
- Limiting the number and size of written submissions; or
- Using audioconference and videoconference for in lieu of in-person hearings.

Even at the best of times, arbitral proceedings must be addressed with strategic nuance and a thorough understanding of the applicable contractual and legal regimes. In these times those demands are only heightened. Von Wobeser y Sierra S.C.'s dispute resolution team is highly experienced and specialized in such matters and is available to offer immediate advice to national and foreign enterprises conducting business in Mexico and overseas.

To obtain additional information contact our experts:

Claus von Wobeser, Partner:

+52 (55) 5258 1011 | cvonwobeser@vwys.com.mx

Adrián Magallanes, Partner:

+52 (55) 5258 1077 | amagallanes@vwys.com.mx

Montserrat Manzano, Partner:

+52 (55) 5258 1018 | mmanzano@vwys.com.mx

Diego Sierra, Partner:

+52 (55) 5258 1039 | dsierra@vwys.com.mx

VON WOBESER Y SIERRA, S.C.

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