

Mexico

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## Legislation

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### 1. Which legislation governs the enforcement of international commercial arbitration awards and arbitral agreements in international business contracts, and international commercial arbitration proceedings?

The primary domestic arbitration source of law is the Commerce Code which regulates both, domestic and international arbitration proceedings, including the enforcement of arbitral agreements and awards. In particular Articles 1415 and 1416 of the Commerce Code set the basis of arbitration in our legal system.

Regarding *enforcement of awards* Article 1461 of the Commerce Code states that, an award, regardless of the country it was rendered, can be enforced before a Mexican judge.

Enforcement of *arbitral agreements* is set forth in Article 1424 of the Commerce Code, which states that judges must submit a dispute to arbitration whenever there is an arbitration agreement and any of the parties request the judge to do such submission, thus, Mexican judges must enforce all arbitration agreements unless the other party proves that the arbitral agreement is void, ineffective or impossible to enforce.

The nature of arbitration proceedings as domestic or international is regulated in Article 1416 of the Commerce Code, which states that the 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.

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### 2. Has the UNCITRAL model arbitration law been adopted in your jurisdiction?

The Commerce Code has adopted the UNCITRAL Model Law with minor modifications. However, there are several differences regarding:

- Interim measures; in this regard, the Commerce Code establishes a special judicial proceeding to grant such measures.
- The number of arbitrators when there is no agreement of the parties; the Commerce Code establishes that there will be a single arbitrator while the Model Law states that there must be three.

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## Conventions

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**3. Is your jurisdiction a party to both the New York Convention and the Panama Convention? Is it a party to any other conventions or treaties governing international commercial arbitration agreements, awards or proceedings?**

Mexico is party to the New York Convention, which has been in force since 22 June 1971.

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

Mexico is also a party to the Panama Convention on Inter- American Commercial Arbitration (Panama Convention ) which entered into force on 26 April 1978 and to the Inter-American Convention for the Extraterritorial Validity of Foreign Decisions and Awards (the Montevideo Convention), which entered into force on 11 July 1987.

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

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**4. Is your jurisdiction a party to the ICSID Convention? Have steps been taken to renounce the Convention or withdraw from ICSID?**

There is no public information regarding final cases in which a government entity refused to honour an arbitral award. However, during the past few years, the government entities PEMEX and CFE have been involved in certain arbitration procedures, which led to unfavourable awards against them. Such awards have been challenged by the government entities through all means available, thus a number of legal procedures are still in course both in Mexico and abroad. It is important, however, to mention that some of these challenges have been supported on the allegation of certain immunity of enforcement claimed by PEMEX leaving the impression of its reticence to assume and pay the contractual liabilities in which it has incurred.

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**5. Has your jurisdiction refused to honour an international arbitral award issued against the state or an instrumentality of the state in your jurisdiction? If so, please provide a brief explanation.**

We do not have any public information available that this has ever happen.

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## Commercial arbitral agreements and arbitrability

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**6. Is a pre-dispute clause or separate agreement to resolve international commercial disputes by arbitration enforceable?**

According to the Commerce Code it does not matter if the arbitral agreement is in a separate clause or agreement, as long as it fulfils the requirements set forth in Article 1423 of the Commerce Code. Moreover Article 1416 of the Commerce Code specifically provides that the arbitral agreement can be in a clause of an

agreement or in a separate agreement.

Article 1424 states a judge must submit a dispute to arbitration when there is an arbitration agreement and any party requests so. Thus, an arbitration agreement can be enforced at any time, regardless if it is a separate agreement or a pre-dispute agreement.

Mexican Commerce Code does not require any kind of post-dispute “compromiso” In fact any party can enforce the award by filing the arbitration agreement and the award before a Mexican Judge.

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## 7. Is there any legislation in your jurisdiction governing the arbitrability of consumer disputes?

The legislation that regulates the arbitrability of consumer disputes is the Consumer Protection Federal Act. It is important to point out that consumer disputes are subject to a particular regime, therefore this will have to be analysed on a case by case basis. In principle these disputes are arbitrable, and the arbitration agreement can be enforced if it is contained in a pre-dispute agreement or in a separate agreement (Article 117 Consumer Protection Federal Act).

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## 8. What are the requirements for an enforceable arbitral 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 statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

The Commerce Code has no requirements for the relevant text of the agreement to be more conspicuous than the rest of the text.

Further, to be enforceable, the agreement must also meet the basic requirements of any contract (Articles 1794 and 1795, Federal Civil Code).

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## 9. Is there subject matter that is not legally subject to arbitration in the context of an international business transaction?

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.

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#### **10. Are there any limits to the ability of a state or an instrumentality of the state to enter into an agreement to arbitrate in your jurisdiction? If so, under what circumstances may the state or its instrumentalities enter into such an agreement?**

Consistent with the political decision to transform the operation, nature and purpose of Petroleos Mexicanos (PEMEX) and the Comision Federal de Electricidad (CFE) into “productive enterprises of the State”, total freedom is given to them to include any alternative dispute resolution method in the contracts they will execute with private enterprises in accordance with Article 81 and 115 of the law of PEMEX and Article 83 of the law of CFE. Prior to this reform CFE and PEMEX could agree to arbitration, but there were restrictions on the arbitration of certain disputes such as those related to the validity of the administrative rescission. Furthermore, Article 7 of the law of PEMEX and CFE clearly establishes that agreements and other legal acts executed by said enterprises may include any of the terms permitted by the commercial and civil legislation. The challenge of the resolutions issued in bidding procedures for the adjudication of contracts, shall be carried out by means of an administrative remedy or by means of a trial for annulment before the Federal Court of Tax and Administrative Justice (Articles 81 PEMEX law and 83 CFE).

The Hydrocarbons Law entitles the National Commission of Hydrocarbons to award and execute contracts for the exploration and extraction of hydrocarbons with private national and foreign companies. These contracts may be subject to any dispute resolution clause including arbitration. Notwithstanding the above, there is a serious defect in the reform consisting in the inarbitrability of its administrative rescission (Article 20 and 21 of the Hydrocarbons Law).

Also, the Public Works Law and the Government Procurement Law, allow arbitration of contractual disputes related to public works and government procurement, however, they exclude from arbitration the administrative rescission and early termination of contracts. This law is applicable to state entities, whereby their own laws and regulations do not expressly refer to the form in which they may solve disputes (Article 98 Public Works Law and Article 80 of Government Procurement Law).

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#### **11. Does the law specify whether an arbitration will be in equity or under law if the parties do not expressly specify the nature of the arbitration in the agreement?**

Pursuant to Article 1445 of the Commerce Code the Tribunal must settle the dispute in accordance to the law

that the parties agreed on, in the event that the parties made no agreement on the applicable law, the Tribunal must determine it considering the characteristics and connections of the case. Nevertheless, the Tribunal can only settle a dispute in equity if the parties expressly authorize it to do so.

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## 12. How does the law limit party autonomy with respect to the terms of an arbitral agreement?

The parties are free to agree the terms of the arbitration agreement, there is no prohibition towards the number of arbitrators or any other procedural matter. However, it is important to consider that some subject matters are not arbitrable and to consider the scope of the public policy as a general limitation to arbitration proceedings.

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## 13. Under what circumstances does the law allow a non-signatory to an arbitral agreement to pursue a claim in an international arbitration against a party that signed the arbitral agreement?

There are cases where a non-signatory can enforce an agreement- even if is not an arbitral one- under Mexican contract law, and in most cases, it has to be analysed on a case-by-case basis

The same applies whether a non-signatory to an arbitral agreement can pursue a claim in an international arbitration in Mexican jurisdiction, these must be analysed under the particular circumstances of the case.

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## 14. Under what circumstances does the law allow a signatory to an arbitral agreement to pursue a claim in an international arbitration against a party that did not sign the arbitral 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. Notwithstanding, the case would have to be analysed on a case-by-case basis to know if the arbitration agreement can bound non-signatories.

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## 15. Under what circumstances may a non-signatory to an arbitral agreement compel arbitration of a claim asserted against it by a signatory of the arbitral agreement in a court of law?

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

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## 16. Under what circumstances may a signatory to an arbitral agreement compel arbitration of a claim asserted against it by a non-signatory of the arbitral agreement in a court of law?

This would have to be analysed on case-by case basis.

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- 17. Does a concept in your jurisdiction provide for class-action arbitration or group arbitration? If so, are there any limitations to the arbitrability of such claims or requirements that must be met before such claims may be arbitrated?**

Pursuant to Article 578 of the Federal Code of Civil Procedures, class action disputes must always be settled by the Federal Courts.

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- 18. Are contractual waivers precluding arbitration of claims on a class wide basis enforceable? Under what circumstances have such waivers been upheld or set aside by the courts?**

Class claims cannot be settled under arbitration, because the Federal Code of Civil Procedures establishes that class-action disputes can only be settled by Federal Courts. Thus, a contractual waiver on a class wide basis cannot be related to arbitration, and the Federal Courts are the only ones with power to determine the effects of any waiver.

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- 19. If the parties' contract is silent on the issue of class-action arbitration, is class-action arbitration allowed under the law of your jurisdiction?**

No, class-action arbitration is not allowed under Mexican jurisdiction.

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## Arbitral institutions and arbitrators

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- 20. Are foreign arbitral institutions authorised to administer arbitrations in your jurisdiction? Does the law require that a foreign institution be licensed under local law in order to administer an arbitration seated there?**

The Commerce Code expressly provides for the principle of autonomy of the arbitration agreement in a broad manner in Article 1432. Also, there is no express regulation regarding foreign arbitral institutions in Mexican jurisdiction. Therefore, arbitral institutions can freely administrate arbitrations in Mexico without being licensed under local law.

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- 21. Is an arbitral award issued in an arbitration seated in your jurisdiction under the auspices of a foreign institution such as the ICDR, the ICC or the LCIA vulnerable to challenge?**

Yes, pursuant to Article 1457 of the Commerce Code arbitral awards may be subject to the annulment procedure, irrespective of the procedure having been administered by a foreign arbitral institution.

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**22. Does the law require that arbitrators in international arbitrations be citizens or residents of your jurisdiction?**

No, Article 1427 Commerce Code expressly states that nationality is not an obstacle to be an arbitrator unless the parties agree otherwise. Thus, there is no legal impediment for a foreigner to serve as an arbitrator in Mexico.

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**23. Does your law require that arbitrators in international cases be lawyers?**

Mexican law does not require arbitrators to be lawyers regardless if the arbitration is domestic or international. Therefore, it is not required to be admitted to practice as a lawyer and foreign lawyers can serve as arbitrators regardless if the arbitrator is admitted to practice in other jurisdiction.

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**24. Are the fees of foreign arbitrators serving in an arbitration seated in your jurisdiction subject to taxation?**

The general tax provision states that income is taxable even if it is generated by a non-resident when the income is sourced in Mexico. The income of the arbitrator is considered to be sourced in Mexico and thus taxable when: (i) the arbitrator develops its arbitrator functions inside Mexican territory; or (ii) when the payment of the fee is made by a Mexican resident or a foreign entity with an establishment in Mexico.

Nevertheless, the fees are exempt of taxes when the services are paid by a non-resident or by a person that has no establishment in Mexico.

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**25. Must arbitrators in international arbitrations be independent and impartial? What is the legal standard governing conflicts of interest and disclosure by arbitrators in international arbitrations?**

Pursuant to Article 1428 of the Commerce Code arbitrators must be independent and impartial, and the only reasons under which an arbitrator may be challenged are the lack or the doubts of his or her independence and impartiality.

Article 1428 also states that an arbitrator must disclose all the information that could rise justified doubts about his/her impartiality or independence, as soon as the parties notify the possible appointment as an arbitrator.

Also, the IBA standards for disclosure and disqualification are widely applied in domestic practice.

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## 26. Will courts entertain requests to disqualify an arbitrator during an arbitration?

Yes, pursuant to Article 1429 of the Commerce Code a party can request a court to disqualify an arbitrator, however it must initiate first a procedure for disqualification before the arbitral tribunal and after concluding this procedure (if it is not satisfied with the outcome) it may initiate the procedure before a judge.

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## Arbitral proceedings

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### 27. Does the law require that arbitral proceedings seated in your jurisdiction be held in a specific language?

According to Article 1438 of the Commerce Code, the parties can freely agree on the language of the arbitration, and if there is no agreement of the parties in this regard the arbitral tribunal will determine the applicable language to the arbitration.

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### 28. Can foreign lawyers serve as advocates in arbitral proceedings in your jurisdiction? If so, can they do so alone or must a local lawyer serve as co-counsel?

The Commerce Code makes no reference to this issue; nevertheless there is no reason to believe that the parties' representatives must be Mexican lawyers.

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### 29. Are the fees of foreign lawyers earned for services rendered in connection with an arbitration seated in your jurisdiction subject to local taxation?

The fees of the foreign lawyers would only be taxable under Mexican law when the services are provided inside Mexico, the tax law states the presumption that the services are provided in Mexico when:

- A part of the services is provided in Mexico; and
- The fees are paid by a Mexican resident or a foreign party with establishment in Mexico.

Nevertheless, the fees are exempt of taxes when the services are paid by a non-resident or by a person that has no establishment in Mexico.

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### 30. In what circumstances, if any, does your law allow the consolidation of multiple arbitral proceedings?



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

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**31. Please describe common practice and usage in international arbitrations seated in your jurisdiction with respect to a party's right to require an opposing party to produce documents pertinent to the dispute.**

Mexican law has no specific provision regarding this issue; nevertheless, the law does allow the parties to freely agree on the conduction of the arbitration proceeding, including issues related to document production (Article 1435 Commerce Code).

However, unless otherwise agreed to by the parties, the arbitral tribunal may appoint experts and request the parties to grant them all the documents that the expert may need (Article 1442 of the Commerce Code).

Also, Mexican arbitration practice has shown that international practice and usage are widely accepted and used in arbitrations seated in Mexico, such as the IBA Rules on the Taking of Evidence.

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**32. Does the law impose a duty of confidentiality in arbitration? If so, on whom?**

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 most prominent arbitral institutions: "Centro de Arbitraje de Mexico" (CAM) and the "Camara Nacional de Comercio" CANACO arbitration proceedings are confidential, unless otherwise agreed to by the parties. (Article 5 CANACO Arbitration Rules and Article 5 of the CAM Arbitration Rules).

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**33. Does the law authorise third party funding for international arbitration? Are there any ethical limitations imposed upon counsel to the parties that restricts the use of such funding?**

There is no express provision regarding third party funding under Mexican law. Regarding the ethical limitations it would have to be analysed on a case-by-case basis.

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**34. Are there any mandatory national rules of professional ethics that apply to counsel in an international arbitration in your jurisdiction? If so, are those rules applicable to counsel from another jurisdiction participating in an arbitration in your jurisdiction?**

There are no mandatory national rules of professional ethics applicable to counsel in an international arbitration in this jurisdiction. However, the parties may choose to adopt the IBA Guidelines on Conflicts of Interest in International Arbitration and the Guidelines on Party Representation in International Arbitration.

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**35. Are there any mandatory rules on oath or affirmation for witnesses testifying in an arbitration in your jurisdiction that have to be administered prior to their testimony? If so, what are they.**

There are no mandatory rules on oath or affirmation for witnesses testifying in arbitration in this jurisdiction. However, parties may agree that the IBA Rules on the Taking of Evidence in International Arbitration apply to their arbitration and specifically rules 4 (5)(d) and 8(4).

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## Court support for arbitration

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**36. Can arbitrators decide on their own jurisdiction? Is the principle of ‘Kompetenz-Kompetenz’ followed in the courts?**

‘Kompetenz-Kompetenz’ is recognised by the Commerce Code, which grants the arbitrators the power to decide on their own jurisdiction, even when the validity or existence of the arbitral agreement is contested. Thus the arbitral tribunal shall rule over its own jurisdiction through a preliminary award or in the award on the merits of the dispute.

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**37. Do the courts follow the principle of the independence and separability of the arbitration clause?**

Yes, pursuant to Article 1424 of the Commerce Code courts must submit to arbitration any dispute that is subject to an arbitral agreement, unless the arbitral agreement is proven to be void, ineffective or impossible to enforce. Thus if a party is challenging the enforceability of an entire commercial agreement (that provides an arbitral agreement) it must pursue its claim through arbitration.

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**38. Are arbitral tribunals empowered to grant interim relief? If so, how is that relief enforced in the courts?**

Pursuant to Article 1433 of the Commerce Code an arbitral tribunal may adopt interim measures, unless the parties agree otherwise. The interim measures adopted by the tribunal are enforceable pursuant to Article 1480 of the Commerce Code when a court recognises them as binding, after the recognition is made, the interim measure is enforced by the court, and thus, the court gives the measure the authority of law to compel compliance.

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**39. Can arbitrators issue orders, subpoenas or use other legal processes to compel the production of evidence by a third party or compel a third-party witness to appear before them? If so, will a court lend its aid in enforcing such an order against a recalcitrant third party? Also, if arbitrators can issue orders, subpoenas or use other legal processes to compel the production of evidence by a third party or compel a third-party witness to appear before them, are there any limitations to their doing so?**

There is no specific provision regarding this issue under Mexican arbitration provisions. Nevertheless, pursuant to Article 1444 of the Commerce Code the tribunal may seek court's assistance to compel evidence production.

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**40. Can a party to an arbitration seek relief from the court to obtain evidence in aid of an international arbitration? What is the scope of such relief ?**

Article 1444 of the Commerce Code states that the Tribunal and the Parties (when the tribunal allows them) may seek the court's assistance in the relief of evidence. Thus, courts are empowered to order the relief of any evidence that the arbitral tribunal requests or that a party with the consent of the tribunal so requests.

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**41. Can a party in an international commercial arbitration seek interim or provisional relief from a court without first seeking relief from the arbitral tribunal?**

According to article 1425 of the Commerce Code, any of the parties may request a court to impose interim measures. This article does not require the prior consent of the arbitral tribunal to be able to request the measure from a court.

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**42. Have the courts issued injunctions enjoining arbitral proceedings from going forward?**

We have no record of any of such injunctions being issued by Mexican courts.

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**43. Does the law provide that post-award interest accrues on an unpaid arbitral award?**

There is no specific provision regulating post-award interest specifically related to an unpaid arbitral award. This would have to be further analysed on a case by case basis.

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#### **44. Is an arbitral tribunal empowered to award attorneys' fees to the prevailing party or is that power reserved to the courts?**

Unless otherwise agreed on by the parties, the arbitral tribunal can award the costs of the arbitration proceeding in favour of the prevailing party (Article 1455 of the Commerce Code).

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#### **45. Is an arbitral tribunal empowered to award punitive or exemplary damages?**

Under Mexican law, damages are only compensatory. Punitive damages are not regulated and therefore, cannot be obtained. However, arbitrators can award interest if such a request has been made by the parties during the proceedings.

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### **Awards – content**

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#### **46. What are the grounds for challenging or vacating an international award issued in an arbitration seated in your jurisdiction?**

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;

Also, if 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.

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#### **47. Is 'lack of reasonableness', manifest disregard or a mistake in the application of the substantive law to the dispute of an international award grounds to vacate it?**

The only grounds to vacate an award are those set forth in article 1457 of the Commerce Code, thus the lack of reasonableness should be narrowly constructed

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**48. Have international awards rendered in your jurisdiction been vacated on the grounds of ‘public policy’? If so, how has the ‘public policy’ ground for vacating an award been interpreted in your jurisdiction?**

In our experience public policy is frequently claimed as a ground for refusing enforcement of an award. However, Mexican courts have never issued a general definition of public policy. Instead, precedents state that, since there is no definition of public policy in the Mexican Constitution or in the Mexican Law, it is the court’s duty to interpret the scope of public policy as a ground to refuse enforcement of international awards. In this regard, precedents have established that public policy is not necessarily breached when the award fails to apply a legal provision that states that it protects public policy, but quite the contrary, in order for public policy to be breached it is necessary to undertake a deep analysis of the Mexican legal system. Said analysis must determine that it is evident that the award recognition and enforcement would result in a transgression of Mexican rule of law. Precedents have also established that the notion of public policy cannot interfere with the notion of arbitration, in a manner that an interpretation of public policy cannot frustrate, alter or hinder the purpose of arbitration.

In any case, the scope of public policy as a ground to deny recognition of awards must be determined on a case by case basis.

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**49. What is the period of time a party has to challenge such an award?**

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

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**50. Please describe any recent significant experiences or cases that illustrate the attitude of your courts towards the annulment of international awards rendered in your jurisdiction.**

In our experience there is no marked attitude of the court towards the annulment of international awards, the annulment or enforcement always depends on the particular case.

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**51. Do the courts consider themselves empowered to vacate an arbitral award rendered in another jurisdiction?**

According to Article 1457 of the Commerce Code an annulment proceeding may only be heard by a Mexican court when the place of arbitration is located within the Mexican territory.

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**52. May parties waive all court review of an arbitral award rendered in your jurisdiction?**

In our jurisdiction the only available recourse is the annulment procedure. In fact Article 1457 of the Commerce Code clearly states that nullity can “only” be claimed based on the reasons stated by the law.

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## Awards enforcement

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### 53. Please describe the process for enforcing an arbitral award rendered in another jurisdiction.

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, if the parties do not file evidence or 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).

The process to enforce is held before a Federal Court in a single instance regardless if there is an international convention that Mexico is party.

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### 54. Assuming that the award is covered by a convention applicable in your jurisdiction, how long does it take to obtain an order of enforcement in the first instance? How long does it take for the enforcement process to run its full course through to the last instance?

This would have to be analyzed on a case by case basis, depending on whether the enforcement decision is challenged through an amparo proceeding. However, if there is no amparo challenge the enforcement process is considered to be an expedite process as explained in numeral 51.

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### 55. Please compare how long it takes to enforce an arbitral award rendered abroad with how long it takes to domesticate a foreign judgment.

In order to enforce a foreign judgment in Mexico the procedure established in article 1347 of the Commerce Code has to be followed. In this proceeding both parties are heard and summoned to appear before court to make their allegations. Therefore procedurally speaking there is no mayor difference that would render the time for enforcement longer in case of foreign judgments.

This would have to be looked on a case by case scenario.

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**56. Please describe some significant recent experiences with the enforcement of foreign arbitral awards.**

In our experience, the courts' decision related to the enforcement of arbitral award depends on the circumstances of the particular case being analysed. However, recent cases appear to show that there is a tendency to recognise foreign awards, unless there was an undisputable breach of due process during the arbitration proceeding.

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**57. To what degree has 'public policy' been a ground to refuse enforcement of an international award rendered abroad?**

In our experience public policy is frequently claimed as a ground for refusing enforcement of an award. However, Mexican courts have never issued a specific definition of public policy. Instead, precedents state that the determination of the public policy must be analysed on a case by case basis. In any event, the recent trend of the Supreme Court of Justice when analysing a potential violation of public policy, is to focus more on the effects that a potential enforcement of an award may produce within the Mexican legal system than in the reasoning contained in it.

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**58. Can a foreign arbitral award be enforced if the award has been set aside by the courts at the seat of the arbitration?**

Pursuant to Article 1464 of the Commerce Code, Mexican courts have the discretion to determine whether to enforce or deny enforcement of an international arbitral award when it was annulled in the place where it was rendered. However, we have no record of an award dealing with this issue.

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## The outlook

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**59. What is your view of the future of international arbitration and is the trend positive in your jurisdiction? What advice do you have with respect to dispute resolution for a foreign lawyer advising a foreign client contemplating entering into a business deal with a company from your jurisdiction?**

Arbitration in Mexico shows a prominent future as the most useful alternative dispute resolution method, the acceptance of arbitration as a useful tool for dispute resolution grows every day. Also, the current Mexican political scenario appears as an outstanding investor-friendly market. The recent structural modifications to the Mexican legal system have aimed at creating conditions to attract investment and market growth.

Considering Mexico's current favorable investment conditions, the particular advice would depend on the specific business deal. Our advice would be to be thorough in conducting an analysis of the legal framework which would apply to the particular business in order to confirm that legal expectations are covered and that such transaction, be adequately referred and resolved through arbitration, if and when a dispute arises.

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