

# Mexico

Adrián Magallanes

Von Wobeser y Sierra SC

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## 1. Overview

Over the past couple of decades, and particularly since the entry into force of the North America Free Trade Agreement (NAFTA) in 1994, treaty-based arbitration has increasingly been used against Mexico to settle investment disputes with foreign investors. However, none of these arbitration cases have been filed under the Rules of the International Centre for Settlement of Investment Disputes (ICSID), as Mexico is one of the few countries in the world that is not a signatory to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (ICSID Convention).

Although Mexico is not subject to the international obligations imposed by Articles 53 and 54 of the ICSID Convention regarding the enforcement of arbitral awards, this situation has arguably proved to be of little relevance, at least in appearance.

The author is not aware of any judicial proceeding before Mexican courts requesting the enforcement of an investment treaty arbitration award. This is also true with regard to awards rendered against both Mexico and any other state with assets in Mexican territory.

### 1.1 Mexico's sovereign immunity in its own territory

To the best of the author's knowledge, Mexico has complied with all investment treaty arbitration awards that have been rendered against it. The judicial enforcement of this type of award against a sovereign state has therefore not represented an issue in Mexico. There are, however, two important factors to consider, as they are relevant for the purposes of this chapter:

- In some cases, Mexico's voluntary compliance has been preceded by judicial requests for annulment of the award. These set-aside proceedings have been initiated by Mexico before Canadian courts (Ontario having been designated as the seat of each of those investment arbitration processes).<sup>1</sup>
- There have been occasions on which Mexico's voluntary compliance has been tainted by some other issues, particularly with regard to:

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<sup>1</sup> In *Cargill Incorporated v United Mexican States* (ICSID Case ARB(AF)/05/2), *Metalclad Corporation v United Mexican States* (ICSID Case ARB(AF)/97/1) and *Marvin Roy Feldman Karpa v United Mexican States* (ICSID Case ARB(AF)/99/1), Mexico filed a nullity claim against the award before the Supreme Court of Ontario. None of these claims by Mexico resulted, however, in the total annulment of the corresponding awards.

- allegedly improper income tax withholdings applied by the government when paying the compensation awarded to investors; and
- the long time it has taken the government to make such payments.<sup>2</sup>

Furthermore, although not confirmed officially, the author understands that the Mexican government has on occasions negotiated with foreign investors to pay lesser amounts than those imposed as compensation by arbitral tribunals.

On the basis of these two points, the possibility of enforcing this type of award in Mexican territory and against the Mexican government is not a futile discussion. In fact, some may argue that precisely because Mexico has not ratified the ICSID Convention, and because of the harsh domestic laws regulating state immunity over assets that are the property of the Mexican government, compliance with an award by Mexico, even if voluntary, may translate into significant difficulties and restrictions for investors.

To the author's knowledge, there have been no recent official discussions in the Office of the Presidency or in the Senate on whether to enter and ratify the ICSID Convention, and it seems that this topic is not on their respective agendas. This important international treaty should therefore be left out of the equation at present when discussing the enforcement of investment treaty arbitration awards against Mexico.

Furthermore, there have been no official discussions in Congress with a view to modifying current domestic laws on state immunity over assets of the Mexican government. In this regard, Article 4 of the Federal Code of Civil Procedure is of particular importance, as it establishes that orders for enforcement or seizure over assets cannot be made against institutions, services and offices of the Federal Public Administration. The specific wording of Article 4 of the code reads as follows:

*Article 4. The institutions, services and offices of the Public Federal Administration and of the federal state entities, will have in the judicial proceeding, in any manner in which they intervene, the same situation as any other party [sic]. However, enforcement orders or seizure of assets can never be ruled against them, and they shall be exempted from issuing the guarantees that this Code demands from the parties.*

Article 4 is of the utmost importance and applies to any proceeding in which the enforcement of an investment treaty arbitration award is sought against Mexico.<sup>3</sup> Its origin was a legislative initiative of the executive branch in December 1942. In the initiative, the executive branch commented that this Article constituted an exception to the party equality principle in judicial litigation, and that the exception was justified because the "organs of power" could not constrain each other and because there was no power superior to that of the state. The exact wording of the legislative initiative was as follows:

*The only exception to the rule of equality is contained in the article 4th, which provides*

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2 For example, in *Talsud, SA v United Mexican States* (ICSID Case ARB(AF)/04/4), the Ministry of Public Finance withheld income tax that allegedly applied to the sum the arbitral tribunal imposed against Mexico as damages. The investor initiated litigation against this determination before Mexican courts, however, and to the author's knowledge, the case has not yet been resolved.

3 Federal courts would have jurisdiction over such cause of action.

*that a mandate of execution or decision of seizure may never be pronounced against the Federation or federal entities, and such entities of public law are also exempt from providing guarantees that in the code are required of the parties. This exception is justified because it is not possible for such entities to coerce themselves, and it is impossible, within the state, for a power to be greater than the state power; and, regarding guarantees, it is considered that the state is always solvent, since it is a general principle of public law, and in particular, of tax law, that the state must obtain, from the inhabitants of the country, the necessary income to meet its purposes, so that it is always in possibility of disposing of a property that allows him to respond, in general, of his obligations, [sic] without the need of a special guarantee.<sup>4</sup>*

Also of great relevance are Articles 4 and 13 of the National Assets Act, which determine that assets of the “public domain of the Federation” and assets of federal institutions with independent legal personality under the Political Constitution of the United Mexican States are not subject to seizure of any kind. The relevant text of these Articles is as follows.

*Article 4. The national assets shall be subject to the public domain regime or to specific regulation established in the respective laws.*

...

*The movable and immovable assets property of the institutions of federal character with legal personality and patrimony of their own and to which the Political Constitution of the Mexican United States grants them autonomy, cannot be seized and cannot be adversely possessed.*

*Article 13. The assets subject to the public domain regime of the Federation cannot be adversely possessed, seized or transferred ...*

These legal provisions regulate, to some extent, Mexico’s sovereign immunity in its own territory. They are the reason why several claimants have sought to enforce commercial arbitration awards against companies of the federal public administration (eg, Petróleos Mexicanos, or PEMEX) in foreign courts, such as the federal courts in New York.

Prior to May 2004, Mexican law clearly distinguished between government assets destined for private use (private domain assets) and assets destined for the exercise of governmental powers (public domain assets).<sup>5</sup> On May 20 2004, however, Congress enacted a National Assets Act<sup>6</sup> which does not make this distinction and rules that all assets of the federal government, except those subject to a different special law, shall be considered public domain assets. In fact, Article 6, Section XX of the act incorporates a catch-all provision in the following terms:

*Article 6. The following are subject to the public domain of the Federation regime:*

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4 See: [http://dof.gob.mx/nota\\_to\\_imagen\\_fs.php?cod\\_diario=195388&pagina=4&seccion=2](http://dof.gob.mx/nota_to_imagen_fs.php?cod_diario=195388&pagina=4&seccion=2).

5 The law then in force made reference to this distinction and the same was unanimously recognised by several authors. See Martínez Morales, “*Derecho Administrativo 3er Y 4º Cursos*”, Oxford University Press (Third Edition 2001), pp 35-36; Narciso Sánchez Gómez, “Segundo Curso de Derecho Administrativo”, Editorial Porrúa 2009, p 49; “Ernesto Gutierrez y Gonzalez, *Derecho Administrativo y Derecho Administrativo al Estilo Mexicano*”, Editorial Porrúa, (Third Edition, 2008), p 961; Luis Humberto “Delgadillo Gutierrez, *Elementos de Derecho Administrativo – Segundo Curso*”, Editorial Limusa (2008), p 93.

6 Incorporating Articles 4 and 13 previously cited.

*XX. Any other movable and immovable assets that by any means are found to form part of the assets of the property of the Federation, with the exception of those that are subject to the specific rules of applicable laws ...*

In light of the above, it might be questioned whether, under the National Assets Act, government assets destined for private use still exist as a juridical concept in Mexican law, as there appears to be no special law identifying this type of asset. Some legal authorities have argued, however, that this type of asset still exists, even if it is not mentioned in the statute.<sup>7</sup> However, in any case, Article 4 of the code makes no such distinction and applies to all assets.

## 1.2 Other states' sovereign immunity in Mexican territory

The United Nations Convention on Jurisdictional Immunities of states and their Properties was ratified by Mexico on April 29 2014.<sup>8</sup> Prior to this date, no specific treaty or statutory law regulated the sovereign immunity of foreign states in Mexican territory.

Despite the above, there is a binding precedent of 2003 from the Second Chamber of the Supreme Court which acknowledges that foreign state entities enjoy sovereign immunity over assets situated on Mexican territory, except if such assets are property used for a private purpose and not in the exercise of sovereign powers. The text of this binding precedent is as follows:

*Ninth Epoch*

*Registration Number: 182824*

*Instance: Second Chamber*

*Precedent Source: Weekly Report of the Federation and its Gazette*

*Volume XVIII, November 2003*

*Matter: Common*

*Thesis: 2A / j 101/2003*

*Page: 149*

*INTERNATIONAL JURISDICTIONAL IMMUNITY. IT IS NOT AN UNLIMITED PREROGATIVE.*

*Recognition of jurisdictional immunity by a state in front of another or any international agency, should be considered as a feature that prevents other states to exercise jurisdiction over the acts performed in the exercise of its sovereign powers, or, on property which is owned or used in the exercise of the sovereign authority. However, the*

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<sup>7</sup> See Narciso Sánchez Gómez, Op Cit, pp17-18:

*The aforementioned law, was superseded by a new National Assets Act, published in the Official Journal of the Federation on May 20, 2004, entering into force the day after its publication. In its regulatory structure, we see the regulation of the assets that constitute the property of the nation, leaving established the relationship between them, subject to a legal public domain and a specific regulatory regime; highlighting two major categories of assets in the public domain, which are: those of common use and those destined for public service; without dismissing that, within the same property, are those that traditionally have been known as assets of the private domain of the state (...). Actually we do not see sufficient clarity in the aforementioned classification of national assets, however, we reached the conviction that within them we find: those known as assets of the direct domain; those of common use, destined to a public service and assets corresponding to the private property of the nation, even though the latter category is not contemplated in a specific title or chapter, and this leaves us with doubt and uncertainty.*

<sup>8</sup> *Federal Official Gazette*, June 11 2014.

*evolution of the jurisdictional immunity which, in principle, was recognized as absolute, currently is not an unlimited prerogative, since in accordance with the doctrine, foreign states or international organizations, when acting in a foreign state, can perform two types of acts: ones identified with those made by the state in exercise of its sovereign powers, and others carried out as any individual, and in this case, as a general rule, the referred immunity is not granted.*

*Amparo review 348/2001. Latin American Institute of Educational Communication. February 14 2003. Five votes. Rapporteur: Juan Díaz Romero. Secretaries: Sofia Veronica Avalos Díaz and Jesus Molina César Suárez.*

*Amparo review 384/2001. Latin American Institute of Educational Communication. February 28 2003. Five votes. Rapporteur: Juan Díaz Romero. Secretaries: Jesus Molina César Suárez and Sofia Veronica Avalos Díaz.*

*Amparo in revision 390/2001. Latin American Institute of Educational Communication. February 28 2003. Five votes. Rapporteur: Juan Díaz Romero. Secretaries: Jesus Molina César Suárez and Sofia Veronica Avalos Díaz.*

*Amparo review 434/2003. Latin American Institute of Educational Communication. April 30 2003. Unanimity of four votes. Absent: José Vicente Aguinaco German. Rapporteur: Juan Díaz Romero. Secretaries: Sofia Veronica Avalos Díaz and Jesus Molina César Suárez.*

*Amparo review 790/2003. Latin American Institute of Educational Communication. August 22 2003. Five votes. Rapporteur: Guillermo I. Ortiz Mayagoitia. Secretary: Aida García Franco.*

*Precedent 101/2003. Approved by the Second Chamber of this High Court, in the private session held on October thirty-first, two thousand and three.*

This precedent is not in contradiction with the convention and is binding on any Mexican court with respect to any action to enforce an investment treaty arbitration award initiated in Mexico against a foreign state by a prevailing foreign investor. It is doubtful, however, whether this criterion could apply by analogy to assets of the Mexican government on Mexican soil, particularly because the distinction between Mexican state assets of public and private use is arguably non-existent under domestic law in force, and because of the rule found in Article 4.<sup>9</sup>

## 2. **International conventional instruments**

Mexico is a party to:

- the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), which it ratified in 1971;
- the Inter-American Convention on International Commercial Arbitration (the Panama Convention), which it ratified in 1978; and

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<sup>9</sup> Some may argue that Article 4 of the Federal Civil Code of Procedure, and Articles 4 and 13 of the National Assets Act in force should be interpreted in light of the principles of the convention and the binding precedent of the Supreme Court of 2003, and that therefore immunity over state assets in Mexican territory should be the same regardless whether these are assets of the Mexican government or of any other foreign government. However, this argument appears to be unprecedented and would constitute an issue of first impression against which other arguments could be construed.

- the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (the Montevideo Convention), which it ratified in 1987.

The New York Convention applies to the enforcement of investment treaty arbitration awards sought before the Mexican courts. The Panama Convention, however, limits the scope of its application to awards resulting from commercial transactions,<sup>10</sup> as may be inferred from its title. Further, the relevance of the Montevideo Convention is simply to supplement the Panama Convention; both of these conventions are therefore, in principle, not applicable to the enforcement of investment arbitration awards, except where expressly provided otherwise in an investment treaty.

In addition, Mexico is a party to the following multilateral free trade agreements (FTAs) that include provisions with respect to the enforcement of arbitral awards:

- The North American Free Trade Agreement (NAFTA) was executed on December 17 1992,<sup>11</sup> and entered into force in Mexico on January 1 1994. Article 2022 of this FTA obliges each party to provide appropriate procedures to ensure the enforcement of arbitral awards. Specifically with regard to investment treaty arbitration, Article 1137 of NAFTA provides that any party may seek to enforce an award on the basis of the New York or Panama Convention.<sup>12</sup> Further, if any party fails to comply with the award, an arbitration panel may be constituted, pursuant to Article 2008, with the purpose of issuing a resolution recommending that the party in breach should comply with the award.
- The Central America Free Trade Agreement (Costa Rica, Salvador, Guatemala, Honduras and Nicaragua) (CAFTA) was executed on November 22 2011<sup>13</sup> and entered into force on September 1 2012. Article 11.30 of this FTA contains provisions similar to those found in Article 1137 of NAFTA.
- Various FTAs executed between Mexico and Chile,<sup>14</sup> Costa Rica,<sup>15</sup> Colombia,<sup>16</sup> Peru,<sup>17</sup> Uruguay<sup>18</sup> and Japan<sup>19</sup> include an investment protection chapter which provides for arbitration as a means of resolving investor-state disputes. In addition, all of them provide that awards may be enforced under the New York or Panama Convention on terms that are similar terms to those set out in NAFTA and CAFTA.

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10 Article 1 of the Panama Convention provides: “An agreement in which the parties undertake to submit to arbitral decision any differences that may arise or have arisen between them with respect to a *commercial transaction* is valid. The agreement shall be set forth in an instrument signed by the parties, or in the form of an exchange of letters, telegrams, or telex communications.” (Emphasis added)

11 *Federal Official Gazette*, December 20 1993.

12 Article 1136 also makes reference to enforcement under the ICSID Convention, which is not applicable to Mexico.

13 *Federal Official Gazette*, August 31 2012.

14 *Ibid*, July 28 1999.

15 *Ibid*, January 10 1995.

16 *Ibid*, January 9 1995.

17 Executed on April 6 2011.

18 *Federal Official Gazette*, July 14 2004.

19 Executed on September 17 2004.

Furthermore, Mexico has entered into various bilateral investment treaties (BITs), all of which provide for arbitration as a means of resolving investor-state disputes. They also provide that awards may be enforced under the New York or Panama Convention.<sup>20</sup> The following BITs are in full force and effect in Mexico:

- Argentina, which was executed on November 13 1996 and entered into force on July 22 1998;<sup>21</sup>
- Cuba, which was executed on May 30 2001 and entered into force on March 20 2002;<sup>22</sup>
- Panama, which was executed on October 11 2005 and entered into force on December 14 2006.<sup>23</sup> This BIT also provides, in Article 20, that each party shall adopt in its territory the measures necessary to ensure the effective enforcement of arbitral awards, and facilitate the enforcement of any award issued in a proceeding to which it was a party;
- Trinidad and Tobago, which was executed on October 3 2006 and entered into force on September 16, 2007.<sup>24</sup> Article 20 of this BIT includes similar terms to Article 20 of the Panama BIT;
- Uruguay, which was executed on June 30 1999 and entered into force on July 1 2002;<sup>25</sup>
- Germany, which was executed on August 29 1998 and entered into force on February 23 2001;<sup>26</sup>
- Austria, which was executed on June 29 1998 and entered into force on March 26 2001;<sup>27</sup>
- Belarus, which was executed on September 4 2008 and entered into force on August 27 2009;<sup>28</sup>
- Denmark, which was executed on April 13 2000 and entered into force on September 23 2000;<sup>29</sup>
- Spain, which was executed on October 10 2006 and entered into force on April 4 2008;<sup>30</sup>
- Slovakia, which was executed on October 26 2007 and entered into force on April 8 2009;<sup>31</sup>
- Finland, which was executed on February 22 1999 and entered into force on August 21 2000;<sup>32</sup>
- France, which was executed on November 12 1998 and entered into force on October 11 2000;<sup>33</sup>

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20 These treaties also contemplate enforcement under the ICSID Convention, but this provision would only become relevant if and when Mexico ratifies this convention.

21 *Federal Official Gazette*, August 28 1998. See Article 10(7).

22 *Federal Official Gazette*, December 19 2006. See Appendix, Article 9.

23 *Federal Official Gazette*, December 14 2006.

24 *Federal Official Gazette*, September 12 2007.

25 *Federal Official Gazette*, August 9 2002. See Article 8(8).

26 *Federal Official Gazette*, March 20 2001. See Article 19.

27 *Federal Official Gazette*, March 23 2001. See Article 18.

28 *Federal Official Gazette*, August 27 2009. See Article 20.

29 *Federal Official Gazette*, November 30 2000. See Article 16(5) and (6).

30 *Federal Official Gazette*, May 19 2008. See Article 17.

31 *Federal Official Gazette*, April 3 2009. See Article 20(6) and (7).

32 *Federal Official Gazette*, November 30 2000. See Articles 17(5) and (6).

- Greece, which was executed on November 30 2000 and entered into force on September 17 2002;<sup>34</sup>
- Iceland, which was executed on June 24 2005 and entered into force on April 28 2006;<sup>35</sup>
- Italy, which was executed on November 24 1999 and entered into force on December 4 2002;<sup>36</sup>
- Netherlands, which was executed on May 13 1998 and entered into force on October 1 1999;<sup>37</sup>
- Portugal, which was executed on November 11 1999 and entered into force on September 4 2000;<sup>38</sup>
- United Kingdom, which was executed on May 12 2006 and entered into force on July 25 2007;<sup>39</sup>
- Czech Republic, which was executed on April 4 2002 and entered into force on March 14 2004;<sup>40</sup>
- Sweden, which was executed on October 3 2000 and entered into force on July 1 2001.<sup>41</sup> Article 17 of this FTA includes similar terms to the Panama and Trinidad and Tobago BITs;
- Switzerland, which was executed on July 10 1995 and entered into force on March 11 1996;<sup>42</sup>
- Belgium-Luxembourg Economic Union, which was executed on August 27 1998 and entered into force on March 20 2003;<sup>43</sup>
- Australia, which was executed on August 23 2005 and entered into force on July 18 2007;<sup>44</sup>
- China, which was executed on July 11 2008 and entered into force on June 6 2009;<sup>45</sup>
- Korea, which was executed on November 14 2000 and entered into force on June 28 2002;<sup>46</sup>
- India, which was executed on May 21 2007 and entered into force on June 28 2002;<sup>47</sup> and
- Singapore, which was executed on November 12 2009 and entered into force on April 4 2011.<sup>48</sup>

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33 *Federal Official Gazette*, November 10 2000. This FTA does not contain any provisions regarding the enforcement of the arbitral awards.

34 *Federal Official Gazette*, October 11 2002. See Articles 17(5) and (6).

35 *Federal Official Gazette*, June 6 2006. See Article 17(6) and (7).

36 *Federal Official Gazette*, January 17 2003. See Annex, Article 9.

37 *Federal Official Gazette*, July 10 2000. See Appendix, Article 10.

38 *Federal Official Gazette*, January 8 2001. See Articles 16(5) and 6.

39 *Federal Official Gazette*, July 25 2007. See Article 18.

40 *Federal Official Gazette*, March 25 2004. See Article 17.

41 *Federal Official Gazette*, July 27 2001.

42 *Federal Official Gazette*, August 28 1998. See Appendix, Article 9.

43 *Federal Official Gazette*, March 19 2003. See Articles 18(5) and (6).

44 *Federal Official Gazette*, June 12 2007. See Articles 19(5) and (6).

45 *Federal Official Gazette*, June 5 2009. See Article 20(6).

46 *Federal Official Gazette*, August 9 2002. See Articles 15(5) and (6).

47 *Federal Official Gazette*, March 5 2008. See Articles 19(6) and (7).

48 *Federal Official Gazette*, April 1 2011. See Article 18(6).



Despite the large number of investment treaties entered into by Mexico (whether FTAs or BITs), Mexico has not, to the author's knowledge, adopted a model BIT. Having said that, all of its treaties confer the usual substantive protections in favour of investors, such as:

- national treatment;
- most favoured nation treatment;
- fair and equitable treatment;
- full protection and security;
- minimal treatment;
- free transfers;
- protection against unlawful expropriation; and
- arbitration as a means of resolving disputes with the state. These treaties do not usually include an umbrella clause.

Domestic legislation does not provide substantial protections to investors under international law standards and it is highly unusual to find investment agreements between investors and government companies or agencies.

### 3. **State practice in investment treaty arbitration with regard to enforcement**

No special rules in Mexico apply to the enforcement of an award against a state or state entity. In 1993, however, Mexico adopted, in its Commerce Code, the UNCITRAL Model Law on International Commercial Arbitration (1985 version), whose enforcement provisions of which are very similar to those found in the New York Convention.

Both under the Model Law and the New York Convention, perhaps the most controversial issue, particularly in the context of investment treaty arbitration awards, is the notion of public policy as grounds for refusing enforcement. Mexican courts have issued decisions setting out several sets of judicial criteria in interpreting this concept.

One such judicial criterion states:

*[T]he notion of public policy has, as a reference framework, both national and international, the institution of arbitration, which can not be frustrated, altered or hindered in its mission by such notion, and requires precision as regards its definition, scope and content, because only in such manner can be established in which cases and under what conditions its application is pertinent.<sup>49</sup>*

Another noteworthy judicial criterion establishes that in order for a court to determine whether an arbitral award contravenes public policy, the judge must read it, analyse its content and consider whether alleged non-compliance with a legal provision that defines itself as being 'public policy' is a sufficient basis to conclude that public policy has been transgressed:

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<sup>49</sup> *Public policy, proarbitration principle and recognition of party autonomy to ponder the nullity of the arbitral award (Interpretation of article v, point 2, subparagraph b, of the convention on recognition and enforcement of arbitral awards)*, Court Precedent 1.3o.C.953 C, Weekly Judicial Journal of the Federation and its Gazette, Ninth Epoch, Third Collegiate Tribunal in Civil Matter of the First Circuit, May 2011, p 1241.

*[T]he concept of “public policy” is broader, since it is not sufficient to affirm that in an arbitral award a legal provision that defines itself as being of “public order” is not being complied with, to necessarily conclude that our public policy is being transgressed. In conclusion, it is reiterated that it shall be for the judge to determinate [sic] in each specific case if the “public policy” is being transgressed or not.<sup>50</sup>*

Further, when a judge considers whether enforcement of an arbitral award would transgress the state’s public policy, his decision cannot rely on his simple subjective appreciations. On the contrary, a binding court precedent establishes that, when assessing this issue “the judge must have in mind the essential conditions for the harmonious development of a community, that is, the minimal rules of social coexistence”.<sup>51</sup>

#### **4. State experience of enforcement in investment treaty arbitration**

Enforcement actions against Mexico have not been necessary so far, as the country has voluntarily complied with all awards made against it.

Mexico has been a respondent in 15 concluded sets of investment arbitration proceedings; in half of those an award was issued in favour of the investor. The following chart shows, for each set of investment treaty arbitration proceedings, the economic result of the award, specifically with regard to what the investor originally claimed by way of compensation and what the arbitral tribunal awarded.

*With special thanks to Jonathan Brito for his assistance in the research leading to the drafting of this chapter.*

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50 *Arbitral award. Public policy shall be determined by the judge when its nullity or recognition and enforcement is being claimed.* Court Precedent 1.7o.C.20 C, Weekly Judicial Journal of the Federation and its Gazette, Tenth Epoch, Seventh Collegiate Tribunal in Civil Matter of the First Circuit, July 2012, p 1878.

51 *Suspension, notions of public policy and social interest in regards of [sic].* Binding Court Precedent 1.3o.A.J/16, Weekly Judicial Journal of the Federation and its Gazette, Ninth Epoch, Circuit Collegiate Tribunals, January 1997, p 383.

**Investment treaty arbitrations involving Mexico: amounts awarded**

<b>Case</b>	<b>Amount requested by claimant</b>	<b>Compensation awarded by tribunal</b>
<i>Abengoa, SA v United Mexican States</i>  ICSID Case ARB(AF)/09/2	\$186 million (December 2009)	\$50,500,000 (April 2013) (27.15)%
<i>Archer Daniels Midland v United Mexican States</i>  ICSID Case ARB(AF)/04/5	Not less than \$100 million (August 2004)	\$33,510,091 (November 2007) (33.51%)
<i>Bayview Irrigation District and others v United Mexican States</i>  ICSID Case ARB(AF)/05/1	Between \$320,124,350 and \$667,687,930 (February 2005)	None (lack of jurisdiction)
<i>Cargill, Incorporated v United Mexican States</i>  ICSID Case ARB(AF)/05/2,	Not less than \$100 million (December 2004)	\$77,329,240 (August 2009) (77.32%)
<i>Corn Products International, Inc v United Mexican States</i>  ICSID Case ARB(AF)/04/1	Not less than \$325 million (October 2003)	\$58,386,000 (August 2009) (17.96%)
<i>GAMI Investments, Inc v Government of the United Mexican States</i>  UNCITRAL	Not less than \$27.8 millions (February 2003)	None

*continued overleaf*

Case	Amount requested by claimant	Compensation awarded by tribunal
<p><i>Gemplus, SA v United Mexican States</i></p> <p><i>Talsud, SA v United Mexican States</i></p> <p>ICSID Case ARB(AF)/04/3 &amp; ARB(AF)/04/4</p>	<p>Ps98,600,000 for Talsud and Ps68,000,000 for Gemplus (August 2004)</p>	<p>\$6,458,721 to Talsud \$4,483,164 to Gemplus (approximately Ps82,154,931 and Ps57,025,846 respectively) (June 2010) (83.5%)</p>
<p><i>International Thunderbird Gaming Corporation v United Mexican States</i></p> <p>UNCITRAL</p>	<p>Not less than \$100 million (August 2002)</p>	<p>None</p>
<p><i>Marvin Roy Feldman Karpa v United Mexican States</i></p> <p>ICSID Case ARB(AF)/99/1</p>	<p>\$50 million (April 1999)</p>	<p>Ps9,464,627.50 (approximately \$926,995.83) (December 2002) (1.85%)</p>
<p><i>Metalclad Corporation v United Mexican States</i></p> <p>ICSID Case ARB(AF)/97/1</p>	<p>\$43 million, plus damages to the expropriated company (January 1997)</p>	<p>\$16,685,000 (August 2000) (37%)</p>
<p><i>Fireman's Fund Insurance Company v United Mexican States</i></p> <p>ICSID Case ARB(AF)/02/01</p>	<p>\$50 million (October 2001)</p>	<p>None</p>

*continued overleaf*

Case	Amount requested by claimant	Compensation awarded by tribunal
<i>Robert Azinian v United Mexican States</i>  ICSID Case ARB(AF)/97/2	\$17 million (May 1997)	None
<i>Técnicas Medioambientales Tecmed, SA v United Mexican States</i>  ICSID Case ARB (AF)/00/2	Ps416 million (July 2000)	\$5,533,017 (approximately Ps56,768,754) (May 2003) (13.64%)
<i>Waste Management, Inc v United Mexican States [I]</i>  ICSID Case ARB(AF)/98/2	\$60 million (September 1998)	None (lack of jurisdiction)
<i>Waste Management Inc v United Mexican States [II]</i>  ICSID Case ARB(AF)/00/3	\$36,010,283 (June 2000)	None