

GAR INVESTMENT TREATY ARBITRATION

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# Mexico

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## I Overview

### 1 What are the key features of the investment treaties to which this country is a party?

This information is based on the official database of the *Consultoría Jurídica* of the Mexican Foreign Relations Ministry (*Secretaría de Relaciones Exteriores*). See: [https://aplicaciones.sre.gob.mx/tratados/consulta\\_nva.php](https://aplicaciones.sre.gob.mx/tratados/consulta_nva.php) (last reviewed on 20 July 2020).

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Argentina (22 July 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Austria (26 March 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Bahrain (30 July 2014)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Belarus (27 August 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
BLEU (Belgium–Luxemburg Economic Union) (18 March 2003)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
China (6 June 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cuba (5 April 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Czech Republic (13 March 2004)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Denmark (24 September 2000)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Finland (20 August 2000)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
France (11 October 2000)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Germany (23 February 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Greece (3 October 2002)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Iceland (28 April 2006)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
India (23 February 2008)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Italy (5 December 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Korea (28 June 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Kuwait (28 April 2016)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Netherlands (1 October 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Portugal (4 September 2000)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Singapore (3 April 2011)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Slovakia (8 April 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Spain (3 April 2008)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Sweden (1 July 2001)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Switzerland (14 March 1996)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Trinidad and Tobago (16 September 2007)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Turkey (17 December 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Arab Emirates (25 January 2018)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
United Kingdom (25 July 2007)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Uruguay (7 July 2002)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes



FTAs <sup>1</sup>	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Central America (22 November 2011)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Chile (17 April 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Colombia (11 June 2010)	No	Yes	No	Yes	No	6 months	Yes	Yes
CPTPP (8 March 2018)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
EFTA (27 November 2000)	Yes	No	Yes	Yes	No	No	No	Yes
Israel (10 April 2000)	No	No	No	Yes	No	No	Yes	Yes
Japan (17 September 2004)	Yes	Yes	Yes	Yes	No	180 days	Yes	Yes
Pacific Alliance (6 June 2012)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Panama (3 April 2014)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Peru (6 April 2011)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Uruguay (15 November 2003)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
USMCA (1 July 2020)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

## II Qualifying Criteria

### 2 Definition of investor

What are the distinguishing features of the definition of ‘investor’ in this country’s investment treaties?

Issue	Distinguishing features in relation to the definition of ‘investor’
Seat of the investor/ place of business	<p>Most of the investment treaties concluded by Mexico state that an investor is a national of a contracting party or an enterprise constituted under the laws of one of the contracting parties making or having made an investment in the other contracting party’s territory. For example, the BIT with Austria defines investor as “a natural person having the nationality of a Contracting Party in accordance with its applicable law; or an enterprise constituted or organised under the applicable law of a Contracting Party making or having made an investment in the other Contracting Party’s territory”. A similar definition is found in the investment treaties with Argentina, Korea and Sweden, among others.</p> <p>For enterprises, some investment treaties concluded by Mexico require the seat of the company is in the territory where it is constituted to be considered an investor under the treaty. This is the case for the BITs with Argentina, Finland and Spain, among others. For example, the BIT with Argentina in its article 1 states that an investor can be “a legal person, constituted in accordance with the laws and regulations of one of the contracting parties and having its seat in the territory of that contracting party.</p> <p>Likewise, recent treaties concluded by Mexico are now requiring company investors to have “substantial business activities” in the territory where they are constituted. For example, the BITs with China, Kuwait, Singapore, United Arab Emirates and Turkey. The BIT with Trinidad and Tobago states that an investor is “a company that is constituted or otherwise organized according to the laws of a Contracting Party, and having substantial business activities in the territory of that Contracting Party”.</p>
Control by a non-national	<p>Generally, most of the BITs, MITs or FTAs signed by Mexico exclude non-nationals from seeking BIT protection. The general rule for seeking BIT protection is for the investor(s) to be a national of any of the contracting parties.</p>



Issue	Distinguishing features in relation to the definition of ‘investor’
Permanent residents	<p>Generally, the investment treaties concluded by Mexico only require natural persons to be “nationals” of a contracting party to be considered an investor of that contracting party. Treaties tend to refer to the local laws of each contracting party to determine the nationality of the individual.</p> <p>There is no permanent residence requirement in most of the investment treaties concluded by Mexico. The BIT with Cuba has this requirement providing as follows: “National means: a) with respect to the Republic of Cuba: the natural persons that are citizens of that State in accordance with their national legislation and have their permanent residence in the national territory.”</p> <p>However, it should be considered that in some cases the local law of a contracting party may require residency in order to be considered a national of that contracting party. Therefore, a residency requirement could indirectly exist through the domestic laws of the contracting parties. In Mexico, the nationality of an individual does not depend on residency requirements.</p>

### 3 Definition of investment

What are the distinguishing features of the definition of ‘investment’ in this country’s investment treaties?

Issue	Distinguishing features in relation to the concept of ‘investment’
Eligible assets	<p>Most Mexican investment treaties define “investment” broadly. They tend to include every kind of asset, owned or controlled, directly or indirectly, by investors of one contracting party admitted in accordance with the laws, regulations and policies of the other.</p> <p>Nevertheless, other treaties include a definition of what does not constitute investment. For instance, the BIT signed with United Kingdom at article 1 provides that “investment” does not mean a loan to an enterprise nor a claim for money that arise solely from commercial contracts for the sale of goods or services or the extension of credit with a commercial transaction. Another example of agreements that provide what is not considered as investment is the FTA signed with Chile and the FTA signed with Uruguay.</p>
Profit and interest, etc	<p>There is no general rule, it depends on the treaty. For instance, the BIT signed with Trinidad and Tobago provides in its article 1(5), that profit and interest, capital gains, dividends, royalties and fees are included within the investment definition.</p>
Duration of investment	<p>There is no general rule, it depends on the treaty. The BIT signed with Denmark contains a specific provision about duration, by stating in its article 1(1) that the BIT covers only those investments that have the purpose of establishing lasting economic relations with an enterprise.</p>

## III Substantive Protections

### 4 Fair and equitable treatment

What are the distinguishing features of the fair and equitable treatment standard in this country’s investment treaties?

Issue	Distinguishing features of the fair and equitable treatment standard
Illustrations of the FET standard	<p>In general, the investment treaties concluded by Mexico have an unqualified FET formulation. Meaning that the treaty simply accords fair and equitable treatment to investments. The typical formulation found is “each contracting party shall ensure fair and equitable treatment of the investments of nationals of the other contracting party.” The BITs with Argentina, Austria, Belarus, Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Korea, the Netherlands, among others have almost the same wording. This unqualified formulation is mainly found in the first generation of investment treaties concluded by Mexico.</p> <p>However, some investment treaties, particularly the new ones, link the FET standard to the minimum standard of treatment under customary international law of treatment of aliens. For instance, the BIT with Bahrain states that: “the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.” Such FET formulation is similarly found in the BITs with China, India, Kuwait, Singapore, Trinidad and Tobago, Turkey and United Arab Emirates.</p>



Issue	Distinguishing features of the fair and equitable treatment standard
Illustrations of the FET standard (cont.)	Other investment treaties add other substantive contents to the FET standard. For example, the BIT with China stipulates the irrelevance of a breach of a different treaty norm: “a determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article [FET].” The treaties with Singapore and Trinidad and Tobago also provide this restriction. Interestingly, the Central America investment treaty specifies that the FET protection includes, but it is not limited to, the obligation not to deny justice in criminal, civil and administrative procedures, in accordance with the principle of due process incorporated into the main legal systems of the world. The USMCA in article 14.6 limits the scope of FET to this definition.

## 5 Expropriation

What are the distinguishing features of the protection against expropriation standard in this country’s investment treaties?

Issue	Distinguishing features of the ‘expropriation’ standard
Definition	Most of the investment treaties where Mexico is part state the typical expropriation clause: “a contracting party shall not expropriate or nationalise, directly or indirectly, an investment of an investor of the other Contracting Party or to take any measures having equivalent effect.” Such definition is found in the BIT with Argentina, Austria, United Kingdom, Uruguay, among others. Similarly, other investment treaties have the following wording “neither contracting party may expropriate or nationalize an investment either directly or indirectly through measures tantamount to expropriation or nationalization” such as the CPTPP, FTA with Japan or the BITs with Bahrain, China, the Czech Republic, Denmark, Spain, among others.
Interest and compensation	Most of the investment treaties signed by Mexico do not consider interest paid and resulting from an expropriation as part of the compensation. However, some investment treaties, such as the BITs signed with Korea, Singapore, Greece and France, do.
Grounds for expropriation	<p>Most of the treaties refer to similar grounds for expropriation, including:</p> <ul style="list-style-type: none"> <li>• it must serve a public purpose;</li> <li>• it must be non-discriminatory;</li> <li>• it must be carried out in accordance with due process of law; and</li> <li>• it must be accompanied by payment as means of compensation.</li> </ul> <p>Some of the last concluded treaties define the concept of “indirect expropriation”. For example, the CPTPP provides that indirect expropriation is “an action or series of actions by a Party” that “has an effect equivalent to direct expropriation without formal transfer of title or outright seizure”. Such analysis requires a “case-by-case, fact-based inquiry” and considering several factors, such as the economic impact of the government action, the extent to which the government action interferes with distinct, reasonable investment-backed expectations, the character of the government action, among others.</p>

## 6 National treatment/most-favoured-nation treatment

What are the distinguishing features of the national treatment/most favoured nation treatment standard in this country’s investment treaties?

Issue	Distinguishing features of the ‘national treatment’ and/or ‘most favoured nation’ standard
Difference between the most favoured nation (MFN) and the national treatment (NT) clauses.	<p>Among the investment treaties concluded by Mexico, national treatment clauses generally provide that each contracting party shall accord to investors of the other contracting party and their investments, treatment no less favourable than that it accords to its own investors and to investments of its own investors. By contrast, most-favoured-nation clauses provide that no less favourable treatment shall be accorded to investors and to investments of investors of any third state.</p> <p>Some investment treaties specify that the treatment no less favourable, for both standards, must be with respect to the management, maintenance, use, enjoyment or disposition of investments. This is the case for the BITs with Bahrain, Belarus, China, France, Greece, Iceland, India, among others. Some even add the requirement “in like circumstances” to be considered in the analysis, such as the BITs with Belarus, Iceland and India.</p> <p>USMCA addresses these two concepts in different articles. This formulation is followed by the investment treaties and BITs executed with Belarus, Central America, Chile, China, Costa Rica, CPTPP, India, Japan, Pacific Alliance, Peru, Slovakia, Trinidad and Tobago, among others. In contrast, some investment treaties such as the ones executed with Colombia, Argentina, Cuba, France, Korea and Spain address the protections in the same article.</p>



Issue	Distinguishing features of the ‘national treatment’ and/or ‘most favoured nation’ standard
Difference between the most favoured nation (MFN) and the national treatment (NT) clauses. (cont.)	<p>Most of the investment treaties of Mexico expressly provide that the provision of the most-favoured national and/or national treatment does not extend to the benefits of membership of an association, an economic union, a common market or a free trade area or taxation.</p> <p>The USMCA narrows the scope of application of both most-favoured nation treatment and national treatment standards. USMCA arbitral tribunals must consider whether the treatment is accorded in “like circumstances”, which depends on the “totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives”.</p>
Taxation measures	<p>Mexico’s investment treaties commonly include a reservation providing that, by virtue of a treaty to avoid double taxation, there is no obligation to extend to the investors or investments of one contracting party advantages granted to investors or investments of the other contracting party or of a country that is not a party. For instance, such a provision can be found in article 5.3 of the BIT between Mexico and Turkey.</p> <p>Similarly, article 11–10 of the investment treaty executed with Peru establishes that MFN treatment and national treatment do not apply to purchases made by a party or a state company, nor to subsidies or contributions – including governmental loans – guarantees and insurance granted by a party or a state company.</p>

## 7 Protection and security

What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country’s investment treaties?

Issue	Distinguishing features of the ‘protection and security’ standard
Extent of obligation	<p>The general rule provided by the investment treaties signed by Mexico is the general obligation of the host state to provide full protection and security. Most treaties do not define the scope of such obligation.</p> <p>Nevertheless, some investment treaties clarify the scope of such standard by stating the following: “for greater certainty the concepts of fair and equitable treatment” and “full protection and security” do not require additional treatment to what is required by the minimum level of treatment of foreigners under customary international law. This is the case for the BITs with China, India, Kuwait, Singapore, Trinidad and Tobago, Turkey, the free trade agreement with Peru, among others. Notably, the USMCA modifies the wording by establishing that “full protection and security” requires each party to “provide the level of police protection that is required under customary international law”.</p>

## 8 Umbrella clause

What are the distinguishing features of the umbrella clauses contained within this country’s investment treaties?

Issue	Distinguishing features of any ‘umbrella clause’
Standardisation	<p>The investment treaties concluded by Mexico that have an umbrella clause generally have the following formulation: “Each contracting party shall observe any other obligation it has assumed in writing, with regard to investments in its territory by investors of the other contracting party. Disputes arising from such obligations shall be settled under the terms of the contracts underlying the obligations.”</p> <p>The following BITs contain an umbrella clause (Austria, BLEU, Denmark, France, Germany, Greece, Iceland, Netherlands, Portugal, Spain and Switzerland BITs).</p>
Specific chapter for umbrella clause	<p>Most of the treaties that contain this clause have a specific chapter that regulates it. However, Denmark and Netherlands BITs do not have a specific chapter regulating the umbrella clause.</p>

## 9 Other substantive protections

What are the other most important substantive rights provided to qualifying investors in this country’s investment treaties?

Issue	Other substantive protections
Compensation for losses	<p>Several investment treaties guarantee protection and security for investments of the other contracting party referring to special situations. For instance, the typical clause says that if the investment of a contracting party suffers losses because of war or other armed conflict, resulting from a state of national emergency, civil disturbance or other similar events, investments should be treated with the same national investments privileges as those of nationals. For instance, the BITs signed with Austria, Bahrain, Belarus, BLEU, China, Czech Republic, France, Germany, Greece, India, Italy, Korea, Kuwait, Netherlands, Portugal, Singapore, Slovakia, Spain, Sweden, Trinidad and Tobago, Turkey and United Arab Emirates provide such protection.</p>



## IV Procedural Rights

### 10 Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural Rights
Fork-in-the-road	Some of the investment treaties signed by Mexico contain fork-in-the-road provisions (Spain, Argentina, Korea, Greece, India, Iceland, Panama, Portugal, UK, Czech Republic, Sweden, Switzerland, Trinidad and Tobago, and Uruguay). Under most of these treaties, investors must opt to pursue their claim through the local courts or by means of international arbitration. They cannot do both. This means that if the investor chooses to submit a claim before local courts, the choice is final and loses the right to access the investor-state arbitration. For example, the Central America treaty states in its article 11.20.4: "If a disputing investor chooses to submit a claim of the type described in this article to the judicial or administrative courts or tribunals of a disputing party or any other solution procedures for disputes, national or international, that choice will be final, and the disputing investor may not subsequently submit the dispute to conciliation or arbitration under this article." Interestingly, the USMCA Annex 14-D, Appendix 3 provides that US investors may not submit to arbitration a claim arguing Mexico had breached an obligation "if the investor or the enterprise, respectively has alleged that breach of an obligation under [the investment] Chapter, as distinguished from breach of other obligations under Mexican law, in proceedings before a court or administrative tribunal of Mexico".
Coexistence of local remedies and international arbitration	There is the possibility of a contracting party submitting a claim to arbitration that has already been brought before a national court, provided that the competent national tribunal has not rendered judgment in the first instance or on the merits of the case (Germany and Netherlands BITs).
BITs that prioritise arbitration.	Some investment treaties signed by Mexico give more importance to arbitration than to local court proceedings, such as the Germany, Netherlands and Argentina BITs.

### 11 What is the status of this country's investment treaties?

The Mexican Ministry of Economy has stated that Mexican economic policy is always looking to offer proper conditions for investment and economic growth. Accordingly, the Ministry of Economy has created the Foreign Trade Sub-secretariat, which is in charge of the negotiation, authentication and enforcement of investment and foreign trade treaties.

On August 2018, Mexico became part of ICSID, strengthening the legal regime for dispute resolution on investment disputes.

Currently, Mexico and the European Union are working on a new free trade agreement, which will contain an investment section. The agreement, in principle, was announced on 21 April 2018, without prejudice to the final outcome of the agreement between the EU and Mexico. According to the European Commission, in April 2020, the EU and Mexico concluded the last outstanding element of the negotiation of their new trade agreement. The next steps include the translation of the agreement into every EU language and the transmission of the agreement to the Council and European Parliament.

Additionally, the new USMCA recently entered into force (1 July 2020), terminating NAFTA. Investment arbitration under NAFTA will still be applicable for legacy investments and pending claims (USMCA Annex 14-C).

## V Practicalities (Claims)

### 12 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent	In an arbitration claim against Mexico, notice of arbitration must be submitted before the Dirección General de Consultoría Jurídica de Comercio Internacional, which is subordinate to the Ministry of Economy.
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### 13 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	In Mexico, the Ministry of Economy manages investment treaty arbitrations.
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- 14 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

Internal/External counsel	In recent cases, the legal counsel serving with the Dirección General de Consultoría Jurídica de Comercio Internacional in the Ministry of Economy has represented Mexico. However, according to the public version of procedural order 1 of the ongoing cases of <i>Oro Negro v Mexico</i> and <i>Odyssey Marine Exploration Inc v Mexico</i> , external counsel is also representing Mexico. Therefore, Mexico has used external counsel in investor-state arbitrations.
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## VI Practicalities (Enforcement)

- 15 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

Washington Convention implementing legislation	Yes, in April 2018, the Mexican Congress approved the Washington Convention. The Convention entered into force on 26 August 2018. In Mexico, there is no need to have a legislation implementing the treaties to which Mexico is a party. When a treaty is ratified and published in the Official Gazette, it is automatically considered part of the Mexican legal system.
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- 16 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

New York Convention implementing legislation	Mexico signed the New York Convention on 14 April 1971. In addition, by incorporation of the UNCITRAL Model Law on Arbitration into Mexico's Commerce Code (applicable to local and international arbitration), UNCITRAL provisions are now found in domestic legislation.
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- 17 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations	There is no specific legislation governing non-ICSID investment arbitrations. However, claims have been brought against the Mexico outside ICSID, under the UNCITRAL Arbitration Rules in cases such as: <ul style="list-style-type: none"> <li>• <i>GAMI Investments Inc v Mexico</i> (concluded);</li> <li>• <i>International Thunderbird Gaming Corp v Mexico</i> (concluded);</li> <li>• <i>Shanara and Marfield v Mexico</i> (pending);</li> <li>• <i>Carlos Sastre v Mexico</i> (pending);</li> <li>• <i>Billy Joe Adams et al v Mexico</i> (discontinued); and</li> <li>• <i>Robert J Frank v Mexico</i> (discontinued).<sup>2</sup></li> </ul>
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- 18 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

Compliance with adverse awards	Mexico has a good record when it comes to complying with awards. Currently, all awards have been ultimately satisfied.
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- 19 Describe the national government's attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration	It is favourable; the execution of over 20 BITs granting access to investment arbitration to foreign investors confirms it.
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- 20 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Attitude of local courts towards investment treaty arbitration	We are not aware of any award that has not been voluntarily recognised by Mexico.
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## VII National Legislation Protecting Inward Investment

- 21 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Law of Foreign Investment	No	No	This law regulates and provides legal certainty to foreign investment in several economic sectors, and abolishes restrictions in most areas. It does not provide specific types of protections or rights.	No	No
Expropriation Law	No	Yes	This provides a specific procedure and guarantees in favour of the person subject to expropriation.	Yes	No

## VIII National Legislation Protecting Outgoing Foreign Investment

- 22 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
No	No

## IX Awards

- 23 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties

Awards		
Case No.	Claimant	Under
ARB/97/1	Metalclad Corp	NAFTA
ARB/97/2	Robert Azinian and Others	NAFTA
ARB/98/2	Waste Management, Inc	NAFTA
ARB/99/1	Marvin Roy Feldman Karpa	NAFTA
ARB/00/2	Técnicas Medioambientales Tecmed SA	Bilateral investment treaty (BIT) between Mexico and Spain
ARB/00/3	Waste Management, Inc	NAFTA
UNCITRAL	GAMI Investment, Inc	NAFTA



Awards		
UNCITRAL	International Thunderbird Gaming Corp	NAFTA
ARB/02/1	Fireman's Fund Insurance Co	NAFTA
ARB/04/1	Corn Products International, Inc	NAFTA
ARB/04/5	Archer Daniels Midland Co and Tate & Lyle Ingredients Americas, Inc	NAFTA
ARB/04/3; ARB/04/4	Gemplus SA, SLP SA, and Gemplus Industrial SA de CV, Talsud SA	BITs between France and Mexico; BIT between Argentina and Mexico
ARB/05/1	Bayview Irrigation District and Others	NAFTA
ARB/05/2	Cargill, Inc	NAFTA
UNCT/14/1	KBR, Inc y Corporación Mexicana de Mantenimiento Integral	NAFTA
ARB(AF)/09/0	Abengoa, SA y COFIDES	BIT between Mexico and Spain
ARB(AF)/12/4	Telefónica SA	BIT between Mexico and Spain
Cases initiated and pending resolution		
<i>Lion Mexico Consolidated v Mexico</i> , ARB(AF)/15/2, NAFTA		
<i>Shanara Maritime International, SA and Marfield Ltd Inc, v Mexico</i> , Mexico–Panama BIT		
<i>B-Mex, LLC &amp; others, v Mexico</i> , ARB(AF)/16/3, NAFTA		
<i>Blanco, Nelson &amp; Tele Fácil v Mexico</i> , UNCT/171, NAFTA		
<i>Anthone &amp; others v Mexico</i> , ARB(AF)16/3, NAFTA		
<i>Carlos Esteban Sastre v Mexico</i> , Argentina–Mexico BIT, Mexico–Spain BIT and Mexico–Switzerland BIT		
<i>Eutelsat v Mexico</i> , ARB(AF)/17/2, France–Mexico BIT		
<i>Legacy Vulcan &amp; Calica v Mexico</i> , ARB/19/1, NAFTA		
<i>Odyssey Marine Exploration, Inc &amp; Exploraciones Océánicas, S de RL de CV v Mexico</i> , UNCT/20/1, NAFTA		
<i>Oro Negro v Mexico</i> , UNCT/18/4, NAFTA		
<i>PACC Offshore Services Holding Ltd v Mexico</i> , UNCT/18/5, Mexico–Singapore BIT		
<i>Terence Highlands v Mexico</i> , ARB/19/26, Mexico–United Kingdom BIT		
<i>Vento Motorcycles, Inc v Mexico</i> , ARB(AF)/17/3, NAFTA		
Active notices of intent		
<i>Espíritu Santo Holdings, LP v Mexico</i>		
<i>Llbrero et al v Mexico</i>		
<i>Primer Mining Corp v Mexico</i>		
<i>Dal Tile Corporation (DTC) &amp; Dal Tile International (DTI) v Mexico</i>		
<i>Jinlong Dongli Minera Internacional, SA de C.V v Mexico</i>		
<i>Renaud Jacquet et al v Mexico</i>		

This information is based on the official database of the Ministry of Economy. See <https://www.gob.mx/se/acciones-y-programas/comercio-exterior-solucion-de-controversias?state=published> (last reviewed on 20 July 2020).

## Reading list

- Dolores Bentolila: *Hacia Una Jurisprudencia Arbitral En El Arbitraje Internacional De Inversiones*, *Anuario Mexicano de Derecho Internacional: México*, Décimo Aniversario, 2012, pp. 373–420.
- Gonzalez de Cossio, Francisco: *Arbitraje*, Porrúa: México, 3rd ed., 2011.
- Gonzalez de Cossio, Francisco: *Arbitraje de Inversión*, Porrúa: México, 2009.
- Legum, Barton, “Lessons Learned from the NAFTA: the New Generation of US Investment Treaty Arbitration Provisions”, *ICSID Review Foreign Investment Law Journal*, Vol. 19 p. 344, 2004.
- Rodriguez Jimenez, Sonia: *El Sistema Arbitral CIADI*, Porrúa: México, 2006.



## Notes

- 1 Date of signature.
- 2 Status of the cases is based on the official database of the Ministry of Economy. See <https://www.gob.mx/se/acciones-y-programas/comercio-exterior-solucion-de-controversias?state=published> (last reviewed on 20 July 2020).





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Claus is the founding partner as well as partner of the dispute resolution practice of Von Wobeser y Sierra with more than 40 years of experience. He has acted in more than 200 international arbitration proceedings, either as arbitrator or counsel, as per the rules of the ICC, ICDR, LCIA, HKIAC, UNCITRAL, NAFTA, ICSID and ICSID Additional Facility, among others. Claus frequently participates as an expert in arbitration proceedings as well as on proceedings related to Mexican law before US and English courts. Furthermore, his experience includes having acted as ad hoc judge of the Inter-American Human Rights Court and as conciliator in ICSID proceedings. Claus has served as Vice President of the International Court of Arbitration of the ICC, as co-chair to the IBA Arbitration Committee and as President of the Arbitration Commission of the Mexican Chapter of ICC. Currently, he is President of the Latin American Association of Arbitration (ALARB) and the ICC Mexico, member of the Panel of Arbitrators of ICSID, member of the LCIA, Vice President of the Latin American Arbitration Association, among other designations. Claus has received numerous accolades that recognise him as a leading figure in arbitration at an international level. In November 2017, Claus won the Lifetime Achievement Award from *Chambers and Partners* for his contribution to the legal profession.



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She is chair to the Americas Initiative of the Institute for Transnational Arbitration and part of the Steering Committee of Young Arbitral Women (YAWP).





Latin American dispute resolution is unique in its technicalities, and it demands a mastery of its subject matter. At Von Wobeser y Sierra, we have mindfully constructed a broad and diverse team of elite trial lawyers over more than 30 years – hand-picked from the best law schools in Mexico, the US and Europe, and molded by our globally renowned partners into dispute resolution leaders across the most important industries in Latin America. This formula has yielded a success rate exceeding 88 per cent across both litigation and international arbitration, and our team is at the top of every accredited legal directory. Our dispute resolution practice is ranked in Tier 1 in The Legal 500 and in the top two bands on Chambers and Partners. We are the only Mexican law firm to feature in Global Arbitration Review's 100 top practices in the world, and one of only a handful across all of Latin America.

Our dispute resolution practice at Von Wobeser y Sierra works to prevent and resolve disputes of our clients in an efficient, effective and ethical manner. Our services contemplate all kinds of disputes: commercial arbitration, public works arbitration, investor-state arbitration, investigations, constitutional litigation, administrative litigation, class-action litigation, civil and commercial litigation, mediation, among others.

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