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# Arbitration

in Mexico



# Table of contents

## Legal framework

- National arbitration laws
- Mandatory laws
- New York Convention
- Treaties and conventions
- UNCITRAL
- Reform

## Arbitration agreements

- Validity
- Enforcement of agreements
- Consolidation
- Choice of law
- Separability
- Multiparty agreements

## Arbitral tribunal

- Criteria for arbitrators
- Contractual stipulations
- Default requirements
- Challenging the appointment of an arbitrator
- Jurisdictional objections
- Replacement of an arbitrator
- Powers and obligations
- Liability of arbitrators
- Communicating with the tribunal
- Reaching decisions
- Arbitrability
- Jurisdiction and competence-competence

## Arbitral proceedings

- Starting an arbitration proceeding
- Limitation periods
- Procedural rules
- Dissenting arbitrators
- Judicial assistance
- Third parties
- Default language and seat
- Gathering evidence
- Confidentiality
- Ethical codes

## Costs

- Estimation & allocation
- Security for costs

## The award

- Requirements
- Timeframe for delivery
- Remedies





- Interest
- Finality
- Appeal
- Enforcement

**Third-party funding**

- Rules and restrictions

**Class-action or group arbitration**

- Concept

**Hot topics**

- Emerging trends





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## Legal framework

### National arbitration laws

#### What legislation applies to arbitration in your jurisdiction?

The law governing arbitration proceedings in Mexico is the Commerce Code. The code, a federal law applicable across the whole of Mexico, incorporates the Model Law of the UN Commission on International Trade Law (UNCITRAL) on arbitration, with minor modifications. The code applies to all arbitral proceedings brought in Mexico relating to commercial disputes.

### Mandatory laws

#### Are there any mandatory laws?

The Commerce Code contains some mandatory provisions. Other laws also establish some mandatory principles and restrictions to arbitration, such as the Federal Code of Civil Procedures, the Law of Acquisitions, Leases and Services of the Public Sector, the Law of Public Works and Related Services of the Public Sector and the Hydrocarbons Law – to name a few.

### New York Convention

#### Is your country a signatory to the New York Convention? If so, what is the date of entry into force?

Mexico is a party to the New York Convention 1958, which it ratified in 1971.

#### Are there any reservations to the general obligations of the convention?

Mexico has made no declarations or reservations upon the execution of the New York Convention.

### Treaties and conventions

#### What other treaties and conventions in relation to arbitration is your jurisdiction party to?

Mexico is a party to the Inter-American Convention of Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention), which was ratified in 1987. It is also a party to the Panama Convention.

In January 2018 Mexico signed the International Centre for Settlement of Investment Disputes (ICSID) Convention. Its ratification by the Mexican Senate was pending at the time of writing (April 2018). Considering Mexico's policy on free trade and investment protection treaties, not being a party to the ICSID Convention was an unexplainable anomaly that has now been corrected.

### UNCITRAL

#### Has your jurisdiction adopted the UNCITRAL Model Law?

Yes, as mentioned above, Mexico has essentially incorporated the UNCITRAL Model Law into its Commerce Code.

### Reform

#### Are there any impending plans to reform the arbitration laws in your jurisdiction?

Not in connection with commercial arbitration. However, there has been a strong trend to reform local civil laws to incorporate alternative dispute resolution procedures and make their use both wider spread and more effective.

## Arbitration agreements

### Validity

#### What are the validity requirements for an arbitration agreement?

An arbitration agreement should 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 record the agreement. An arbitration agreement can also be inferred from a written complaint and a written answer to it where such inference cannot be denied. A reference made in an agreement to a document that contains a committing clause to arbitrate will constitute an agreement to arbitrate if such agreement is in writing and the reference creates the implication that such clause is part of the agreement (Article 1423 of the Commerce Code).

To be enforceable the agreement must also meet the following other basic requirements of any contract:

- It has a legal purpose;
- The parties' consent was not given by error, or obtained by fraud or under duress; and
- The parties had full legal capacity to sign the agreement.

Arbitration agreements can cover both disputes that have arisen and disputes that may arise in the future (Article 1416 of the Commerce Code).

#### Enforcement of agreements

### How are arbitration agreements enforced in your jurisdiction? What is the attitude of the national courts towards arbitration agreements?

The Mexican courts generally enforce arbitration clauses. There is a trend to recognise arbitration clauses and promote alternative dispute resolution. Arbitration has been recognised at the constitutional level and a recent reform to the Commerce Code makes it easier to enforce an arbitration clause when one of the parties wrongfully brings a claim before the Mexican courts.

#### Consolidation

### Can an arbitral tribunal with its seat in your jurisdiction consolidate separate arbitral proceedings under one or more contracts, and, if so, in what circumstances?

There are no rules or restrictions set in the Commerce Code regarding the consolidation of arbitral proceedings. In principle, the rules of consolidation established in the arbitral rules of the most common institutions, such as the International Chamber of Commerce, the International Centre for Dispute Resolution and the LCIA, can be easily applied in arbitrations that have Mexico as their seat.

#### Choice of law

### How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

The tribunal shall decide on the dispute in accordance with the principles of law chosen by the parties. If the parties do not set forth the law that is to govern the substance of the dispute, the arbitral tribunal will determine the applicable law, considering the characteristics and the nexus of the matter (Article 1445 of the Commerce Code).

#### Separability

### Are there any provisions on the separability of arbitration agreements?

Yes, pursuant to the Commerce Code, an arbitration clause included within the wording of a contract will be deemed as an agreement independent from the other stipulations of the contract. In other words, if the arbitral tribunal declares the main contract to be null and void, this will not entail the nullity of the arbitration clause (Article 1432 of the Commerce Code).

#### Multiparty agreements

### Are multiparty agreements recognised?

There are no specific restrictions in the Commerce Code against multi-party arbitration agreements. In any event, the general provisions regarding arbitration agreements are applicable. It would be important, however, to give the parties the possibility of participating in the arbitration in a fair and equitable manner, ensuring as much reciprocity of rights as possible.

#### Arbitral tribunal

## Criteria for arbitrators

### Are there any restrictions?

No, the Commerce Code is very liberal in this respect. The parties are free to agree the number and method of selection of the arbitrators or can incorporate the rules of an arbitration institution (Article 1427).

The only requirements are that arbitrators must be impartial and independent (Article 1428).

## Contractual stipulations

### What can be stipulated about the tribunal in the agreement?

The parties are free to impose any type of qualification on the arbitrators. However, judicial precedents show that it is important to be very clear and not to impose qualifications that may subject the arbitration tribunal to a challenge for improper constitution.

## Default requirements

### Are there any default legal requirements as to the selection of a tribunal - for example, concerning the number of arbitrators or their characteristics?

If the parties fail to nominate the arbitrators, the following mechanism will apply (Article 1427 of the Commerce Code):

- A judge will appoint the arbitrator upon a request by either party in the event of a sole arbitrator.
- A judge will appoint the arbitrator in arbitrations with three arbitrators where each party usually appoints one arbitrator and the two arbitrators together nominate the third one if:
  - one party fails to nominate an arbitrator within 30 days of a request by the other party; or
  - both arbitrators named by the parties fail to agree on the third arbitrator within 30 days of their designation.

In addition, if during the agreed procedure for the appointment one of the parties does not act in accordance with the stipulated agreement, or the parties or the arbitrators cannot reach an agreement on the procedure to be followed, or a third party (including an institution) does not comply with the functions that have been assigned to it by the agreement, either party may petition the judge to adopt the necessary measures to appoint a third arbitrator, unless the agreement for the procedure for appointment has provided for other means to determine a third arbitrator.

## Challenging the appointment of an arbitrator

### Can the appointment of an arbitrator be challenged? Can an arbitrator be disqualified? What is the procedure for this?

An arbitrator may be challenged only if serious doubts as to his or her impartiality or independence arise, or if he or she does not possess the characteristics previously agreed by the parties. A party may challenge its own appointed arbitrator only due to causes arising after the appointment (Article 1428 of the Commerce Code).

The parties may freely agree on the procedure for the challenge of arbitrators. In the absence of such agreement, the party seeking the challenge will, within 15 days of the time that the arbitral tribunal has been constituted, or 15 days of the time that the party attains knowledge of the causal facts, submit in writing the circumstances that it believes justify the impeachment of the impartiality or independence, or the lack of the agreed qualifications, of the challenged arbitrator. Unless the arbitrator voluntarily resigns or the other party accepts the challenge, the arbitral tribunal will resolve the challenge of the arbitrator in question.

If a challenge is rejected, the petitioner may, within 30 days of the notice of rejection, go before the judge and request a review. The judge's decision is not appealable. During such time the arbitration tribunal, including the arbitrator being challenged, may continue with the proceedings and issue an award (Article 1429 of the Commerce Code).

The International Bar Association Guidelines on Conflicts of Interest in International Arbitration are applied only if the parties have previously agreed so.

## Jurisdictional objections

### How should an objection to jurisdiction be raised?

The defence of lack of jurisdiction of the arbitral tribunal must be raised before the filing of the answer in the arbitration proceeding. The parties shall not be barred from asserting this defence by having appointed an arbitrator or participated in his or her appointment. The defence that the tribunal exceeded its authority must be asserted as soon as it is raised or when it so appears during the arbitration proceeding. The tribunal may, however, in either case admit a defence filed after the abovementioned term has expired, provided that such delay is justified.

The arbitral tribunal may resolve the abovementioned defences a priori or in the final award on the merits. If, prior to the issuance of its final award, the tribunal declares itself competent, either party may request a judge to review the foregoing within 30 days of receiving notice of the declaration, and the judge's decision shall be non-appealable. While such petition is pending, the arbitral tribunal may continue to act until an award is entered (Article 1432 of the Commerce Code).

## Replacement of an arbitrator

### Why and how can an arbitrator be replaced?

Once an arbitrator has been recused or has stepped down, the substitute must be appointed following the same procedure used for the appointment of the original arbitrator.

## Powers and obligations

### What powers and obligations do arbitrators have?

The Arbitral Tribunal has the authority to govern and manage the arbitration as it deems proper, including the power to admit, reject and evaluate the evidence filed before it. That said, the tribunal has the duty of treating the parties with equality and fairness, and to give them the plain opportunity to exercise their rights.

## Liability of arbitrators

### Are arbitrators immune from liability?

There are no legal provisions regarding immunity for arbitrators. However, several judicial precedents have recognised that arbitrators are not public officers analogous to judicial court officers and, consequently, arbitration decisions do not have the same authority as judicial decisions. This also means that arbitrators are not liable for the legal consequences of the awards issued by them or for any errors of law contained in such awards.

However, the Commerce Code makes the members of an arbitral tribunal responsible for any damage caused by the undue or illegal granting of provisional measures within an arbitration.

## Communicating with the tribunal

### How do the parties communicate with the tribunal?

The Commerce Code provides no specific rules for communicating with the arbitral tribunal. In practice, the parties usually communicate with the arbitral tribunal in writing through formal briefs or by email. The procedural rules for communicating with the tribunal are set at the beginning of the arbitration by the arbitral tribunal, using its discretionary power to conduct the arbitration in the best and most efficient manner.

## Reaching decisions

### Is unanimous agreement of the tribunal required? If there is disagreement, does the will of the majority suffice? What are the implications of this?

Pursuant to Article 1448 of the Commerce Code, if there is more than one arbitrator, the signatures of a majority shall be sufficient to issue a decision, as long as the reasons for the remaining arbitrators' failure to sign are set forth. An award or decision rendered by majority decision is perfectly valid and the opinion of the dissident arbitrator has no effect on a potential challenge of an award.

## Arbitrability

### Are there any disputes incapable of being referred to arbitration?

Pursuant to Article 568 of the Federal Code of Civil Procedures, the judicial courts have exclusive jurisdiction to hear disputes arising from the following matters:

- land and water resources located within the 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 Mexican state and federal entities; and
- the internal regime of Mexican embassies and consulates abroad and their official proceedings.

Additionally, all family and criminal matters fall within the exclusive jurisdiction of national courts and are therefore not arbitrable. The Law of Public Works and Related Services and the Law of Acquisitions, Leases and Services of the Public Sector have expressly excluded from arbitration any dispute regarding the validity of the administrative rescission or the early termination of any contract entered into by public entities with private parties that fall within the scope of these laws.

It is important to mention that in the recent reforms of the oil and gas and electricity legislation, arbitration is allowed between private parties and the oil (PEMEX) and electricity (CFE) companies of the Mexican government without any restriction. These arbitrations could be subject to foreign laws if the performance of the relevant agreement is executed abroad.

Moreover, oil exploration and extraction contracts with the Energy Regulatory Commission may also be subject to arbitration, with the limitation that the rescission of these contracts cannot be subject to arbitration.

## Can the arbitrability of a dispute be challenged?

Yes, it can be challenged before the same arbitral tribunal, or later in the judicial enforcement or setting-aside proceedings.

### Jurisdiction and competence-competence

## Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal's jurisdiction and competence?

Yes, the 'competence-competence' principle is recognised. An arbitral tribunal has the authority to determine its own jurisdiction and rule on any defences regarding the existence or validity of an agreement for arbitration. For such purpose, the arbitration clause in a contract shall be deemed an agreement independent of all other stipulations in the contract. A determination by an arbitral tribunal declaring a contract null and void shall not void the arbitration clause.

If the arbitral tribunal resolves an objection on its own jurisdiction in a preliminary award, either party may request a judge to review the foregoing within 30 days of receiving notice of the declaration, and the judge's decision shall be non-appealable. While such petition is pending, the arbitral tribunal may continue to act until an award is granted (Article 1432 of the Commerce Code).

## Arbitral proceedings

### Starting an arbitration proceeding

## What is needed to commence arbitration?

An arbitration procedure is usually commenced following the rules of institutional arbitrations (with the filing of a request for arbitration or a complaint, and with the appointment of the arbitral tribunal). However, in ad hoc arbitrations the procedure is usually commenced with the appointment of the sole arbitrator or the arbitral tribunal, and the filing of an arbitration complaint.

### Limitation periods

## Are there any limitation periods for the commencement of arbitration?

In general terms, there is a 10-year limit to bring a commercial action either to arbitration or before the courts, although shorter limitation periods exist for specific actions.

### Procedural rules

## Are there any procedural rules that arbitrators must follow?

No. The Commerce Code authorises arbitral tribunals to conduct proceedings in the manner that they deem appropriate without imposing any specific or mandatory rules. The only mandatory principles are those related to the respect of due process.

### Dissenting arbitrators

## Are dissenting opinions permitted under the law of your jurisdiction?

Yes, although they do not have any legal weight or value.

### Judicial assistance

## Can local courts intervene in proceedings?

Yes; although the general rule is that courts should not intervene in the arbitration, the Commerce Code establishes several types and cases of judicial intervention in support of arbitration (eg, for obtaining evidence, appointing arbitrators, issuing or enforcing provisional or interim relief).

## Can the local courts assist in choosing arbitrators?

Yes, a court may choose the sole arbitrator or the chair of the arbitral tribunal when the parties and/or the arbitral institutions have failed to do so.

## What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration? Can the courts compel parties to arbitrate? Can they issue subpoenas to third parties?

Unless otherwise agreed by the parties, if the respondent fails to participate in the arbitration, the arbitral tribunal shall continue the proceedings. However, such failure to participate shall not be considered as consent to the claimant's pleadings (Article 1441 of the Commerce Code).

Further, if either party fails to appear at a hearing or fails to file any evidence, the arbitral tribunal may continue the proceedings and issue a final award based on the evidence presented.

The courts have no authority to force parties to appear in an arbitration; the courts can reject a judicial action filed before them only if the dispute is subject to arbitration, and remit the parties to arbitration. This remission, however, does not imply a judicial order forcing the parties to appear in an arbitration; it is only a rejection to hear the case at the judicial instance.

### Third parties

## In what instances can third parties be bound by an arbitration agreement or award?

There is no specific provision regulating circumstances where third parties (non-signatories) are bound by an arbitration agreement. In fact, parties that have not signed or consented to an arbitration agreement cannot be deemed to be bound by it. Consent is essential under Mexican law to be bound by an arbitration agreement. However, since Mexican law allows consent to be construed from a party's conduct, it would not be strictly necessary to have a signed agreement to bind a third party to an arbitration. If there is enough evidence to support that the said party consented in writing to the arbitration, then that would be enough to bind.

### Default language and seat

## Unless agreed by the parties, what is the default language and location for arbitrations?

The Commerce Code does not establish a mandatory default language or seat; the arbitral tribunal may make that determination if the parties do not reach an agreement in this regard.

### Gathering evidence

## How is evidence obtained by the tribunal?

The Commerce Code establishes that the parties may freely agree on the procedure to be followed by the arbitral tribunal. In the absence of such agreement, the tribunal may conduct the proceedings as it may deem appropriate. This power conferred to the arbitral tribunal includes the discretion to determine the admissibility and relevance of the evidence and, therefore, the tribunal has the power to determine, in each case, the procedural rules applicable to witness testimony (Article 1435).

The International Bar Association Rules on the Taking of Evidence are often adopted in arbitration proceedings; arbitral tribunals often use them as a guide even where the parties have not agreed to their adoption.

In addition, the arbitral tribunal or either party (with the prior authorisation of the tribunal) may request the presence of a judge for the filing of evidence (Article 1444 of the Commerce Code).

## What kinds of evidence are acceptable?

There are no restrictions as to the type of evidence acceptable in arbitration carried out in Mexico. The arbitral tribunal has broad authority to determine the admissibility of the evidence filed.

### Confidentiality

## Is confidentiality ensured?

There is no provision in Mexican law specifically regulating the confidentiality of arbitration proceedings; the arbitration chapter of the Commerce Code adopts the Model Law of the UN Commission on International Trade Law on arbitration, which itself is silent on the issue of confidentiality in arbitration proceedings. However, Article 1435 of the Commerce Code gives the parties broad discretion to determine the arbitration proceedings and, therefore, the parties have the authority to decide whether the arbitration should be confidential. Accordingly, any confidentiality agreement included by the parties in their arbitration agreement would be binding on the arbitrators as well.

## Can information in arbitral proceedings be disclosed in subsequent proceedings?

If a judicial action to enforce or set aside an award is filed, then all the information of the arbitral proceedings may be disclosed for the sole purposes of said action.

### Ethical codes

## What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

There are no specific legal provisions or rules regarding ethical duties of arbitrators. However, independence and impartiality are features required by the Commerce Code. Moreover, the Mexican Bar Association has an ethical code that is usually followed in arbitration matters too.

### Costs

#### Estimation & allocation

## How are the costs of arbitration proceedings estimated and allocated?

The costs of arbitration shall be borne by the unsuccessful party. However, the arbitral tribunal may divide the elements of such costs on a pro rata basis if appropriate and considering the specific circumstances of the case (Article 1455 of the Commerce Code).

Regarding the costs of representation and legal advice, the arbitral tribunal, in view of the specific circumstances of the case, shall decide which party will pay such costs or whether a pro rata division among the parties is reasonable.

### Security for costs

## Can the national court or tribunal order security for costs under the law in your jurisdiction?

Even though the Commerce Code does not contain any specific provisions regarding security for costs, Article 1456 allows the arbitral tribunal to request each party to deposit an equal amount as an advance of the arbitral tribunal's fees, travel expenses and any other expenses of the arbitrators, as well as for the costs of expert evidence or for any

other advice required by the tribunal. During the proceedings, the arbitral tribunal may request the parties to make additional deposits. Upon request by any of the parties and provided that a judge agrees to do so, the arbitral tribunal may fix the amount of such deposits or of any additional deposits only with prior consultation with the judge, who may intervene and make any observations and clarifications he or she may deem appropriate (Article 1456 of the Commerce Code).

## The award

### Requirements

#### **What legal requirements are there for recognition of an award? Must reasons be given for the award? Does the award need to be reviewed by any other body?**

Pursuant to the Commerce Code, the award must be in writing and signed by the arbitrators; if there is more than one arbitrator, the signatures of a majority shall be sufficient if the reasons for the remaining arbitrators' failure to sign are set forth (Article 1448 of the Commerce Code).

The award must be reasoned in a decision, unless the parties have agreed otherwise or have reached a settlement.

The award shall set forth the date that it was entered and the place where the arbitration was held.

After entry of the award, the tribunal shall give notice to the parties by delivering a copy of it signed by the arbitrators.

The award needs no validation from another body. However, an enforcement action may be brought before the Mexican courts if a party refuses to comply with the award.

### Timeframe for delivery

#### **Are there any time limits on delivery of the award?**

No, the Commerce Code establishes no time limits.

### Remedies

#### **Does the law impose limits on the available remedies? Are some remedies not enforceable by the court?**

Yes. There is a three-month deadline for the setting aside of any award.

#### **What interim measures are available? Will local courts issue interim measures pending constitution of the tribunal?**

Unless otherwise agreed by the parties, the arbitral tribunal may, upon a prior request of either party, order provisional remedies that are necessary to protect the subject matter in dispute. In such event, the tribunal may also require a guarantee from the party requesting the measures (Article 1433 of the Commerce Code).

All interim measures ordered by an arbitral tribunal shall be recognised as binding. Unless otherwise determined by the tribunal, such interim measures shall be enforceable upon request to the courts, regardless of the stage at which they have been ordered. The party that requested or obtained the recognition or the enforcement of an interim measure shall immediately inform the judge in the event of revocation, suspension or modification of such measure. The judge to whom the request for recognition or enforcement of an interim measure has been addressed can, if appropriate, order the requesting party to give a guarantee whenever the arbitral tribunal has not issued a decision regarding such guarantee or if such guarantee is necessary to protect third-party rights (Article 1479 of the Commerce Code).

Courts will also grant provisional relief in support of arbitrations. The parties may request that a judge grant provisional relief before or during the arbitration proceedings (Article 1425 of the Commerce Code). Upon such request, the judge has complete discretion to adopt any interim measures that he or she may deem appropriate (Article 1478). Therefore, all types of measure without any limitation are allowed. However, any provisional remedy or relief is dependent on a special separate lawsuit that may take four to six months to reach a decision; where urgency is crucial, such timeframe may make it impractical to seek this kind of remedy before the courts.

Notwithstanding the above, anti-suit injunctions are not allowed as such, since the right of access to court is considered a fundamental right that cannot be restricted. In this regard, the Mexican courts have held that under

Mexican law it is forbidden to impede a party to file an action exercising its rights to enforce an award.

## Interest

### Can interest be awarded?

The arbitrators can award interests only if the parties requested as such during the proceedings and according to the rate established in such request.

### At what rate?

If the parties did not specify the interest rates, the legal interest rates apply. The legal interest rate in commercial matters is 6%. In civil matters, the legal interest rate is 9%.

## Finality

### Is the award final and binding?

Yes, although if a party fails to comply with it, an enforcement action should be filed. If during the enforcement action the award itself is set aside on the basis that the subject matter of the dispute is not arbitrable under Mexican law or the award is contrary to public policy, then the award will lose its binding nature in Mexico.

### What if there are any mistakes?

The parties are entitled to request from the arbitral tribunal the correction of the final award within 30 days of it being rendered. The correction should refer only to a calculation, copying, typographical or similar error in the award. In addition, the arbitral tribunal may correct such errors at its own initiative within 30 days of the date of the award.

### Can the parties exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

In principle, there is no specific restriction in this regard, although the possibility of waiving the setting-aside proceeding has not been discussed before the Mexican courts. Therefore, a risk exists that a court may deem that such action cannot be waived based on the fundamental right of access to justice established in the Mexican Constitution.

## Appeal

### What is the procedure for challenging awards?

The petition to set aside an award must be filed within three months of the date that notice is given of the award. However, if either party requests the tribunal to correct any errors in the award, to give an interpretation of such award or to enter an additional award regarding claims that were presented in the proceedings but omitted from consideration in the award, the abovementioned three-month period shall begin on the date that the petition was ruled on by the arbitral tribunal.

The proceeding begins with a formal complaint, to which the defendant must respond within the next 15 working days. After the response is filed, the court will receive the evidence. If the judge considers it necessary, he or she will set a deadline of 10 working days to receive the evidence. After all the evidence is received, the judge will set a date for holding a hearing on the merits within the next three working days. After the hearing has taken place, the judge renders a final judgment.

Challenge proceedings typically take between six and 12 months.

Lastly, if a petition for the setting aside of an award has been filed with a judge, such judge may suspend the annulment proceedings upon the petition of one of the parties, requesting a specific time period for the arbitral tribunal to continue with those proceedings, or may adopt any measures at his or her discretion that will resolve the causes of the annulment petition (Article 1459 of the Commerce Code).

### On what grounds can parties appeal an award?

An award cannot be appealed on the merits pursuant to the Commerce Code. The only challenge available is the setting-aside proceeding, which can be based only on limited and specific causes for vacating an award.

## Enforcement

### What steps can be taken to enforce the award if there is a failure to comply?

The Commerce Code establishes a specific proceeding to enforce arbitral awards. The proceeding has the same deadlines and procedural regulations as the setting-aside proceeding explained above.

### Can awards be enforced in local courts?

Yes, the award can be enforced before local and federal courts.

### How enforceable is the award internationally?

An award rendered in Mexico should be deemed enforceable abroad, since Mexico is part of the New York Convention.

### To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

Even though there is no specific legislation regarding immunity, sovereign power can be asserted from the Mexican Constitution (Articles 39, 40 and 41). Additionally, pursuant to the Federal Code of Civil Procedures, the institutions, services and entities of the Federal Government Public Administration, as well as the states, have the same status as any other party in judicial proceedings. Nevertheless, no enforcement or attachment orders can be imposed on them and they shall not be obliged to exhibit any guaranties (Article 4 of the Federal Code of Civil Procedures).

Mexico has ratified no treaties on this subject, not even the UN Convention on Jurisdictional Immunities of States and their Properties.

There is also an implicit and partial immunity recognised in favour of the administrative rescission of public contracts by government entities (except for PEMEX and the CFE). A national court can hear this type of administrative rescission only in an administrative or constitutional proceeding, and not in arbitration.

### Are there any other bases on which an award may be challenged, and if so, by what?

Mexican courts are prohibited from reviewing the merits of a final award, but may set aside an award on one of the following grounds (Article 1457 of the Commerce Code):

- The party requesting it proves that:
  - one of the parties to the arbitration agreement was subject to a legal disability, the agreement is invalid pursuant to the laws that were designated or, if no other laws were designated, it is invalid under Mexican law;
  - such party was not given proper notice of the designation of one of the arbitrators or of the arbitration proceedings, or was impaired by any other reasons to assert its rights;
  - the award refers to a dispute not contemplated within the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement. However, if the provisions of the award that refer to matters subject to the arbitration can be separated from those that are not, only the latter will be annulled; or
  - the arbitral tribunal or the arbitration procedures were not conducted in accordance with the agreement between the parties, unless such agreement conflicts with the provisions of the Commerce Code, which the parties cannot waive; or, in the absence of such an agreement, the proceedings did not conform with such provisions.
- The judge considers that pursuant to Mexican law the subject matter of the dispute is not arbitrable, or the award is contrary to public policy.

### How enforceable are foreign arbitral awards in your jurisdiction?

Foreign arbitral awards are considered binding, and should be recognised and enforced by the Mexican courts. To enforce an award regardless of its international or national nature, a specific proceeding before the Mexican courts should be followed.

### Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

The Mexican courts have discretionary power to decide whether they may enforce a nullified award. In any event,

the party against which the award has been invoked must prove that such an award has been set aside or declared null by the courts in the seat of arbitration in order for the competent court to grant its discretionary power to enforce or reject the enforcement (Article 1462 of the Commerce Code).

## Third-party funding

### Rules and restrictions

#### Are there rules or restrictions on third-party funders?

There are no legal restrictions under Mexican law for third-party funding, either in arbitration or litigation. To date, there have been no known cases of third-party funding in arbitration.

## Class-action or group arbitration

### Concept

#### Is there a concept in your jurisdiction providing 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?

No. Unfortunately, under Mexican law class action arbitrations are not recognised. Collective or class actions are recognised only before the judicial courts.

## Hot topics

### Emerging trends

#### Are there any hot topics or trends emerging in arbitration in your jurisdiction?

Yes, recently the Mexican Supreme Court has started to define the concept of public policy in arbitrations related to public entities. The approach taken by the Supreme Court has been in favour of a more liberal take on what is deemed a breach of public policy. Consequently, the possibility of setting aside an award based on allegations of breach of public policy because of the public nature of the services or subject matter of a contract has been restricted. In general terms, at the federal court level and in Congress there is a clear trend to support arbitration and make it more effective.