

## Enforcement 2016

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### Mexico

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#### Applicable procedural law for recognition and enforcement of arbitral awards

1. 1.

What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

The recognition and enforcement of arbitral awards in Mexico is governed by the provisions contained in the Fourth Title, entitled "Commercial Arbitration", of the Fifth Book, entitled "Commercial Trials", of the Commerce Code, which was amended in 1993 to incorporate, with only a few minor modifications, the United Nations Commission on International Trade Law (UNCITRAL) Model Law of 1985 as Mexico's arbitration law. In 2011, the Commerce Code was amended again to incorporate some of the 2006 amendments to the provisions of the Model Law.

Regarding multilateral treaties facilitating recognition and enforcement of arbitral awards, Mexico is a party to: (i) the New York Convention of 1958, which was ratified in 1971; (ii) the Inter-American Convention on International Commercial Arbitration (Panama Convention), which was ratified on October 1977; and, (iii) the Inter-American Convention of Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention), which was ratified in 1987.

Mexico is not a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). Surprisingly, it has included ICSID in almost all of its investment treaties. Considering that ICSID arbitration is only available in case the Host State is a party to the ICSID Convention, the investor only has the option to start a proceeding under the Additional Facility Rules, UNCITRAL, or other applicable rules depending on the relevant treaty.

Regarding bilateral treaties, Mexico entered into a Convention on the Recognition and Enforcement of Foreign Judgments and Arbitral Awards in Civil and Commercial Matters with the Kingdom of Spain in 1992.

- Next
- Back to top
- Back to question list

2. 2.

Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under article I(3) of the Convention?

Mexico is a party to the 1958 New York Convention, which was ratified in 1971 and published in the Federal Official Gazette on 22 June 1971. Mexico made no declarations or reservations upon the execution of the Convention.

- Previous
- Next
- Back to top
- Back to question list

#### Recognition proceedings

3. 3.

Which court has jurisdiction over an application for recognition and enforcement of arbitral awards?

Mexico is a federal state and there is a federal judiciary branch and a local judiciary branch in each one of the 32 states. First instance civil courts, both federal and local, have jurisdiction to hear of arbitration related matters. The claimant can choose whether to file the application before a federal or a local court.

The court that has jurisdiction over an application for recognition and enforcement of arbitral awards is the first instance court of the seat of the arbitration, the first instance court of the place of residence of the party against which the arbitral award is to be enforced or the court of the place where the assets are located (article 1422 of the Commerce Code, incorporating article 6 of the UNCITRAL Model Law on International Commercial Arbitration).

- Previous

- Back to top
- Back to question list

4. 4.

What are the requirements for the court to have jurisdiction over an application for recognition and enforcement of arbitral awards? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

In order for a court to have jurisdiction over an application for recognition and enforcement of arbitral awards, the seat of the arbitration must be within the territorial jurisdiction of the court or the place of residence of the party against which the arbitral award is to be enforced or its assets must be within that jurisdiction.

The applicant is not necessarily obliged to identify assets within the jurisdiction of the court for the purpose of recognition proceedings.

- Previous
- Next
- Back to top
- Back to question list

5. 5.

Are the recognition proceedings in your jurisdiction adversarial or ex parte?

Recognition proceedings in Mexico are adversarial in all cases. To obtain the recognition of an arbitral award, it is necessary to process a special proceeding for commercial settlements and arbitration in which both parties have the opportunity to provide evidence and present arguments.

- Previous
- Next
- Back to top
- Back to question list

6. 6.

What documentation is required to obtain the recognition of an arbitral award?

To recognise and enforce an arbitral award in Mexico, the interested party must file a request for recognition and enforcement containing the following:

- The arbitration agreement.
- The award.
- If the award or the agreement to arbitrate is not in Spanish, a certified translation.

It is necessary to file the original award duly authenticated or a certified copy of it, as well as the original arbitration agreement or a certified copy of it.

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, as long as the reasons why the remaining arbitrators failed to sign are set forth (article 1448 of the Commerce Code).

The award must contain the reasons for the decision, unless the parties have agreed otherwise or have reached a settlement. The award shall set forth the date it was signed and the seat of the arbitration.

- Previous
- Next
- Back to top
- Back to question list

7. 7.

If the required documentation is drafted in another language than the official language of your jurisdiction, is it necessary to submit a translation together with an application to obtain recognition of an arbitral award? If yes, in what form must the translation be?

If the award or the agreement to arbitrate is not in Spanish, the party requesting the recognition of the award has to file a translation made by an authorised translation expert (article 1461 of the Commerce Code). Translation experts are certified by the both the Federal and Local Judiciary Branches, and they must hold an official governmental seal for their translation to be considered official. Lists of certified official translators are periodically published in the Official Gazette.

- Previous
- Next
- Back to top
- Back to question list

8. 8.

What are the other practical requirements relating to recognition and enforcement of arbitral awards?

There are no additional requirements relating to recognition and enforcement of arbitral awards. However, it is worth noting that the interested party is not required to pay costs or fees to the court. Also, the burden of proof to demonstrate the existence of grounds to refuse the recognition and enforcement is not on the requesting party, but on the party opposing the enforcement.

- Previous
- Next
- Back to top
- Back to question list

9. 9.

Do courts recognise and enforce partial or interim awards?

Yes, Mexican courts recognise and enforce partial or interim awards. The Commerce Code makes no distinction between interim or partial and final awards for recognition purposes. Also, Mexican courts enforce provisional measures without regard as to whether interim relief was obtained through an order or a preliminary award.

- Previous
- Next
- Back to top
- Back to question list

10. 10.

What are the grounds on which an award may be refused recognition? Are the grounds applied by the courts different from the ones provided under article V of the Convention?

A court may deny recognition and enforcement of an award under Mexican law for the following limited reasons established in article 1462 of the Commerce Code, which mirror those provided for article V in the New York Convention and article 36 of the UNICTRAL Model Law on International Commercial Arbitration:

- The arbitration agreement was invalid or the parties lacked legal capacity to make the agreement.
- The appointing authority did not give the losing party proper notice of the appointment of the arbitrator or of the arbitration proceedings, or the losing party was otherwise unable to present its case.
- The award deals with a matter not contemplated by or falling within the terms of the arbitration agreement.
- The composition of the arbitral tribunal or arbitral procedure violated the parties' agreement or (absent any such agreement) the law of the seat of arbitration.
- The award is either not yet binding in or was set aside by a court at the seat of arbitration.
- The subject matter of the parties' dispute is incapable of settlement by arbitration under Mexican law.
- Recognition or enforcement of the award would be contrary to public policy.

The first five grounds may only be raised and proven by the party opposing the enforcement of the award. Mexican courts may raise the last two grounds *ex officio*.

The court has discretion whether to enforce an award despite the confirmation of one of the grounds mentioned. However, we are unaware of any case in which a Mexican court decided to exercise this discretion.

- Previous
- Next
- Back to top
- Back to question list

11. 11.

What is the effect of a decision recognising the award in your jurisdiction? Is it immediately enforceable? What challenges are available against a decision recognising an arbitral award in your jurisdiction?

The effect of a decision recognising the award in Mexico is that the award is immediately enforceable.

There are no ordinary remedies available against the decision recognising an arbitral award. However, the party against whom the award is to be enforced may file an *amparo* action against the court's judgment arguing violations to human rights established in the political Constitution of the United Mexican states and international treaties. A Collegiate Circuit Court has jurisdiction to rule on the *amparo* action and it cannot review the merits of the award.

The court that hears the *amparo* proceeding must examine whether the judicial ruling that is challenged has been correctly issued and indicate, if such is the case, that the judge incorrectly evaluated the grounds to refuse recognition of the award.

- Previous

- Back to top
- Back to question list

12. 12.

What challenges are available against a decision refusing to recognise an arbitral award in your jurisdiction?

The decision refusing to enforce an arbitral award cannot be challenged through ordinary remedies. The only available procedural remedy is the *amparo* trial before a Collegiate Circuit court, alleging violations to human rights (most of the times parties allege violations to the principle of legality) committed by the court which decided not to recognise and enforce the award. Under no circumstances is the *amparo* court allowed to review the substance of the award in the same manner that the first instance court cannot.

- Previous
- Next
- Back to top
- Back to question list

13. 13.

Will the courts adjourn the recognition or enforcement proceedings pending the outcome of annulment proceedings at the seat of the arbitration? What trends, if any, are suggested by recent decisions? What are the factors considered by courts to adjourn recognition or enforcement?

If the outcome of annulment proceedings at the seat of the arbitration is pending, the court that receives an application to obtain recognition or enforcement of the award may adjourn the proceeding, if it deems it appropriate under the circumstances (article 1463 of the Commerce Code).

Until now, there has not been a clear trend arising from recent decisions. There have been cases in which courts refuse to adjourn and others in which they have suspended the proceeding. The main factor usually considered by courts to adjourn the recognition or enforcement is that the court that will rule on the annulment proceeding assumed jurisdiction properly.

- Previous
- Next
- Back to top
- Back to question list

14. 14.

If the courts adjourn the recognition or enforcement proceedings pending the annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security? What are the factors considered by courts to order security? Based on recent case law, what are the form and amount of the security to be posted by the party resisting enforcement?

If a Mexican court decides to adjourn the recognition or enforcement proceedings pending the annulment proceedings, the claimant may request the court to order the defendant to be ordered to post security.

The court has discretion to decide the amount of the security to be posted by the party resisting enforcement. The security usually consists in deposit-in-court certificates or surety bonds. If the award relates to a money claim, courts will usually order to post annual renewal security in an amount equal to the applicable interest rate on the principal amount.

- Previous
- Next
- Back to top
- Back to question list

15. 15.

Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? In case the award is set aside after the decision recognising the award has been issued, what challenges are available against this decision?

There is no mandatory provision in this regard. Mexican courts have discretionary power to decide if they enforce an award that has been set aside at a different jurisdiction. In any event, the party against whom the award is to be enforced must prove that it has been set aside or declared void by the courts of the seat of arbitration in order for the Mexican court to decide if it will refuse to recognise and enforce the award.

- Previous
- Next
- Back to top
- Back to question list

16. 16.

What is the applicable procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction?

All service of documents regarding the proceedings is performed by the personnel of the competent court. Notice of judicial documents to the parties are subject to strict procedural rules, and the court officer that summons the defendant has authority under statutory law to give full faith and credit as to whether the summons was performed. Service of process is always performed by summons with notice.

All the parties in the proceedings for the enforcement and recognition of arbitral awards are required to designate an address where the tribunal's communications can be received in their first writ filed before the court (article 1473 of the Commerce Code). In all other cases, or when a personal notification cannot be performed or is not necessary the communications are notified to the parties by the other methods provided in Commerce Code (publication of the communication in a judicial newsletter, publication in edicts, certified mail or certified telegraph).

As for the service of extrajudicial documents, there is no specific formality that must be satisfied. However, the enforcement proceeding regulated under the Commerce Code establishes no instance in which parties shall notify or communicate each other through extra-judicial methods.

- o Previous
- o Next
- o Back to top
- o Back to question list

17. 17.

What is the applicable procedure for service of extrajudicial and judicial documents to a defendant out of your jurisdiction?

Articles 1071 and 1072 of the Commerce Code provide the rules applicable to the service of documents in places different from the place of the proceedings, but within the country. This procedure mainly consists in the emission of a rogatory letter requesting the help of the competent judge or other relevant judicial authority in the place where the communication is to be delivered.

Articles 1073 and 1074 of the Commerce Code govern the procedure for the service of documents outside the country. This procedure provides for the remittance of the communication as a rogatory letter through the Mexican Foreign Service. It also establishes the minimum formal requirements that the rogatory letter must have in order to be valid.

Only personal notices to the parties are subject to this procedure. Regarding not personal notices, the other methods of service of documents provided in the Commerce Code will apply (publication of the communication in a judicial newsletter, publication in edicts, certified mail or certified telegraph). These latter methods are usually utilised to communicate decision not affecting the substantive rights of the parties.

- o Previous
- o Next
- o Back to top
- o Back to question list

## Identification of assets

18. 18.

Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction?

Each state in Mexico has its own Real Estate Public Registry and a corresponding office of the Public Registry of Commerce. The former consists in a database open to the public showing who holds the ownership of immovable property. As for the latter, it consists in a database also open to the public of all the relevant information pertaining a company, such as minutes, shareholders, managers, among other information.

- o Previous
- o Next
- o Back to top
- o Back to question list

19. 19.

Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

Information kept by private companies or entities, such as bank accounts, company shares, among others, can be requested to those who hold them by means of a court order.

- o Previous
- o Next
- o Back to top
- o Back to question list

20. 19.

Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

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- Previous
- Next
- Back to top
- Back to question list

## Enforcement proceedings

21. 20.

Are interim measures against assets available in your jurisdiction? May award creditors apply such interim measures against assets owned by a sovereign state?

The procedure regarding the application, granting and enforcement of interim measures can be found in articles 1425 and 1478 to 1480 of the Commerce Code. Interim measures can be granted before or during the arbitration proceeding, as well as during the proceeding for the enforcement of the arbitral award. The interim measures can be granted either by a court (article 1425) or by an arbitral tribunal (article 1479).

According to articles 1470, section III and 1425 of the Commerce Code, there is no limitation in Mexican Law as to which measures can be granted for the sake of the enforcement of the arbitral award (article 1478). However, said limitations could be established in the Rules applicable to the arbitration proceeding, although most Arbitration Rules give the Tribunal discretionary power to determine the proper interim measures.

In regard to the application of interim measures in Mexico against assets owned by a sovereign state, the Mexican Supreme Court of Justice has held that they have immunity, unless such assets are property used for a private purpose and not related to the exercise of sovereign powers. That immunity also exists with regard to assets owned by Mexican governmental entities (article 4 of the Federal Code of Civil Procedure and articles 4 and 13 of the National Assets Act).

- Previous
- Next
- Back to top
- Back to question list

22. 21.

What is the procedure to apply interim measures against assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before applying interim measures? If yes, are such proceedings ex parte?

When an interim measure that has already been granted by a Mexican court is not willingly complied with by a party, an order from the competent court is necessary to enforce it. This proceeding is not ex parte, but it could probably imply criminal liability for contempt.

The proceeding to request interim relief from a Mexican court in support of an arbitration proceeding – or to request the recognition of an interim measure granted by an arbitral tribunal – initiates by filing a written motion before the competent court. Afterwards, the other party against which the interim measure is to be enforced is summoned to the proceeding (or recognised) in order for it to present arguments. Finally, after giving the parties the opportunity to produce evidence, the court gives its decision on whether the interim measure will be granted (or recognised).

There has been extensive discussion among practitioners regarding whether it is appropriate to summon the other party to the proceeding before deciding if the interim measure will be granted, since this could make the whole purpose of said measure pointless. The proceeding usually takes a long time, risking losing what the interim measure seeks to protect.

There have been cases in which the courts have granted interim relief at the very beginning of the proceeding (ex parte), before summoning the defendant. The interim relief has been kept in force throughout the whole proceeding pertaining the injunction application and in the final judgment the court decides whether it will maintain interim measures for the whole duration of the arbitration.

- Previous
- Next
- Back to top
- Back to question list

23. 22.

What is the procedure for interim measures against immovable property within your jurisdiction?

There is no specific procedure for recognising or enforcing interim measures against immovable property. The interim measure only needs to be requested by the interested party to the competent court for it to be granted (or recognised when dealing with an interim measure granted by an arbitral tribunal) in the final judgment issued by the court in the special action for commercial transactions and arbitration. Once the judge issues its ruling, notice of the judgment will be registered in deed of said property, and this deed can be found in the public registry.

- Previous
- Next
- Back to top
- Back to question list

24. 23.

What is the procedure for interim measures against moveable property within your jurisdiction?

There is no specific procedure for recognising or enforcing interim measures against moveable property.

- Previous
- Next
- Back to top
- Back to question list

25. 24.

What is the procedure for interim measures against intangible property within your jurisdiction?

There is no specific procedure for recognising or enforcing interim measures against intangible property.

- Previous
- Next
- Back to top
- Back to question list

26. 25.

What is the procedure to attach assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before attaching assets? If yes, are such proceedings ex parte?

The procedure to attach assets is not ex parte and a court order is always required. Once the competent court has granted the interim measure (or recognised it), it orders the attachment of the relevant property. The specific attachment procedure depends mainly on whether the property dealt with is of an immoveable, moveable or intangible nature.

- Previous
- Next
- Back to top
- Back to question list

27. 26.

What is the procedure for enforcement measures against immoveable property within your jurisdiction?

Once an interim measure has been granted (or recognised if granted by an arbitral tribunal) by the competent court, said court will also order the corresponding Public Real Estate Registry to register the attachment of the immoveable property.

- Previous
- Next
- Back to top
- Back to question list

28. 27.

What is the procedure for enforcement measures against moveable property within your jurisdiction?

Only an order from the court requesting the attachment is necessary for the enforcement of the interim measure and the subsequent attachment. However, it is also possible, seeking legal certainty, to request the competent court to order the Secured Transactions Registries to registry the attachment of the moveable property.

- Previous
- Next
- Back to top
- Back to question list

29. 28.

What is the procedure for enforcement measures against intangible property within your jurisdiction?

It is necessary to obtain an order from a Court for the enforcement of the measure and the subsequent attachment of intangible property. The specific steps to be taken after the court orders the attachment of intangible property depends on the type of asset that is going to be attached.

Institute of Industrial Property to register the attachment over the incomes produced by intellectual property (articles 32 and 41 of the Copyright Federal Law) and over trademarks and patents (article 143 of the Industrial Property Law), respectively.

In the case of shares of corporations, the procedure is different depending on whether the corporation is listed in the stock market. If it is a private corporation, the court will order the Management Body of the corporation to register the attachment in the book of registered shareholders (articles 73 and 128 of the General Law of Business Corporations); and in the case of shares of corporations listed in the stock market, the competent Court can order the brokerage firm with whom the shareholder has a securities trading agreement to registry the attachment.

- Previous
- Next
- Back to top
- Back to question list

## Enforcement against foreign states

30. 29.

Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

Even though there is no specific statutory regulation in Mexican law regarding immunity, the Mexican Supreme Court of Justice has established in prior rulings that foreign states have sovereign immunity and therefore Mexican courts cannot exercise jurisdiction. However, this immunity only applies with respect to their sovereign or public acts or assets, not with respect to their private acts or assets (such as commercial transactions), given that in this case the foreign state and its agents are liable to the same extent as a private individual.

In 2005 a legislative initiative was presented in the Senate entitled the Law on State Jurisdiction Immunity", however, it has not yet been approved.

In 2015, Mexico ratified the United Nations Convention on Jurisdictional Immunities of States and their Properties, which recognises that state enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another state, except regarding commercial transactions, contracts of employment, personal injuries and damage to property, ownership, possession and use of property, intellectual and industrial property, participation in companies or other collective bodies, ships owned or operated by a state and arbitration agreements. However, this treaty has not yet come into force.

- Previous
- Next
- Back to top
- Back to question list

31. 30.

What is the applicable procedure for service of extrajudicial and judicial documents to a foreign state?

The procedure for the service of extrajudicial and judicial documents to a foreign state is established in articles 549–556 of the Mexican Civil Code of Procedures and articles 1073 and 1074 of the Mexican Commerce Code.

Articles 549 to 556 of the Mexican Code of Civil Procedures and articles 1073 and 1074 of the Commerce Code provide that in order to serve documents outside the country, the competent Mexican court must send a rogatory letter through the Mexican Foreign Service. Those provisions also establish several minimum formal requirements that the rogatory letter must have in order to be valid.

- Previous
- Next
- Back to top
- Back to question list

32. 31.

Are assets belonging to a foreign state immune from enforcement in your jurisdiction? If yes, are there exceptions to such immunity?

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. Among the immune assets are the premises of the diplomatic mission, their furnishings and other property thereon and the means of transport of the mission, which are immune from search, requisition, attachment or execution (article 22 of the 1961 Vienna Convention on Diplomatic Relations).

- Previous
- Next
- Back to top
- Back to question list

33. 32.

Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? If yes, what are the requirements of such waiver?



To our knowledge, no such case has been brought before Mexican courts; however, there is no reason to think that a waiver would not be valid as long as it is made expressly in precise and clear terms (article 7 of the Federal Civil Code).

- [Previous](#)
- [Back to top](#)
- [Back to question list](#)