

Enforcing Arbitration Awards in Mexico

by Marco Tulio Venegas and Diego Sierra, Von Wobeser y Sierra, S.C., with *Practical Law Arbitration*

Maintained • Mexico

A summary of the enforcement of domestic and foreign arbitral awards in Mexico, including procedural considerations and grounds for challenging awards. This Note covers both commercial and investment treaty arbitration.

Contents

Scope of this note

Mexico's Arbitration Law

Statutes and Treaties

Matters Excluded from Arbitration in

Mexico Kompetenz-kompetenz

Recognition and Enforcement

Grounds for Denial of Enforcement

Challenges to Awards

Potential Amparo

Challenge Public Policy

Challenge

Mexico's Judiciary on Arbitration Award Recognition and Enforcement

Mexico's Judiciary

Mexico's Precedents on Award Recognition and Enforcement

Investment Treaty Arbitration

Scope of this note

This Note provides guidance on enforcing domestic and foreign arbitral awards in Mexico. In particular, this Note:

- Provides a summary of arbitration law in Mexico.
- Explains the procedural and practical issues related to enforcement.
- Reviews the grounds for defending against enforcement.
- Provides relevant precedents.
- Briefly describes enforcement of investor treaty awards.

Mexico's Arbitration Law

Statutes and Treaties

In 1993, Mexico's Congress amended the Commercial Code (CC) to incorporate, with minor modifications, the **United Nations Commission on International Trade Law (UNCITRAL) Model Law of 1985** as Mexico's arbitration law. Mexico is a party to the following treaties:

- New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).
- Inter-American Convention on International Commercial Arbitration (Panama Convention).
- Inter-American Convention for Extraterritorial Validity of Foreign Judgments and Arbitral Awards (**Montevideo Convention**).

Article 133 of the Mexican Constitution makes the Panama and New York Conventions the "Supreme Law of the State." Because Mexico made no reservation or declarations when it ratified the New York and Panama Conventions, Mexican law treats arbitral awards from countries that are not signatories to those conventions in the same manner as arbitral awards from signatory countries.

Matters Excluded from Arbitration in Mexico

Mexican law prohibits arbitration of the following subject matters:

- Criminal liability (*Article 1 of the National Code of Criminal Procedure*).
- Taxes (*Article 14 of the Tax and Administrative Federal Court Organizational Law*).
- Family law and civil status (*Article 52 of the Superior Court of the Federal District Organizational Act*).
- Personal and commercial bankruptcy (*Article 1 of the Bankruptcy Law*).
- Labor disputes (*Article 123 section XXXI of the Mexican Constitution*).
- Agrarian disputes (*Article 27 section XIX of the Mexican Constitution*).
- Territorial resources and waters (*Article 568 of the Federal Code of Civil Procedure*).
- Exclusive economic zone area resources (*Article 568 of the Federal Code of Civil Procedure*).
- Disputes regarding the internal management of Mexican embassies, consulates, and government agencies (*Article 568 of the Federal Code of Civil Procedure*).
- Sovereign decisions and acts of authority (*Article 568 of the Federal Code of Civil Procedure*).
- Administrative Rescission and Early Termination of Public Works Contracts (*Article 98 of the Law of Public Works and Related Services*).
- Administrative Rescission and Early Termination of Public Purchase and Sale, Lease and Service Agreements (*Article 80 of the Law of Acquisitions, Leases and Services of the public Sector*).
- Administrative Rescission of Exploration and Extraction Agreements between a private contractor and the National Commission of Hydrocarbons (*Article 21 of the Hydrocarbons Law*).

Kompetenz-kompetenz

Where the parties so agree, an arbitral tribunal has the authority to determine its own jurisdiction and rule on any challenges over the existence or validity of an arbitral agreement under the principle of kompetenz-kompetenz (*Article 1432, CC*).

A party must raise any challenge to the jurisdiction of the arbitral tribunal before the answer is filed (*Article 1432, CC*). A party alleging that the tribunal exceeded its powers must object as soon as the matter arises during the arbitration proceeding (*Article 1432, CC*).

Recognition and Enforcement

Regardless of where the arbitrators issued the award, the award is valid, binding, and enforceable in Mexico. The winning party has ten years to enforce the award (*Article 1047, CC*).

To enforce an award in Mexico, a party must file a request for recognition and enforcement with any Mexican commercial court. The request must contain:

- The original arbitration agreement or a certified copy of it.
- The original award duly authenticated or a certified copy of it.
- If the award or the agreement to arbitrate is not in Spanish, a certified translation.
(See *Article 1461, CC*.)

The court notifies the defendants of the filing and grants 15 business days to answer (*CC Article 1473*). If the parties produce no additional evidence and the judge does not consider further evidence necessary, the judge summons the parties to a hearing that takes place within the next three business days (*Articles 1064 and 1474, CC*).

If the parties request production of evidence or the judge considers it necessary, the judge grants ten days to produce evidence (*Article 1475, CC*). After the evidentiary hearing, the judge issues a judgment. The CC provides that the court must issue judgment 15 business days after execution of all the previous procedural acts (*Article 1077, CC*).

Grounds for Denial of Enforcement

A court can deny recognition and enforcement of an award under Mexican law for the following limited reasons, which mirror those provided for in the New York Convention:

- The arbitration agreement was invalid or the parties lacked the 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 difference 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 where the arbitration took place.
- 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. (*Article 1462, CC*.)
- Only the resisting party may raise the first five of these grounds and that party has the burden of proof. A court may raise the last two grounds *sua sponte*.
- Mexican courts have discretion whether to enforce an award where the courts at the seat of arbitration have annulled the award (*Article 1462, CC*).

Challenges to Awards

The grounds to challenge an arbitral award are the same as those specified for refusing to enforce an award (*Article 1457, CC*).

The objecting party must file its petition to set aside an award within three months from the date it received notice of the award. The three-month period runs from the date the arbitral tribunal makes its decision when either party requests the tribunal do any of the following:

- Correct any errors of the award.
- Give an interpretation of the award.
- Enter an additional award on claims presented in the proceedings but omitted from consideration in the award. (*Article 1450, CC*.)

Potential Amparo Challenge

The writ of amparo (*recurso de amparo*) empowers courts to protect individuals against state abuses (*Articles CIII and CVII of the Mexican Constitution*). The new amparo act, enacted in 2014, broadened the scope of what is considered an act of authority (sovereign act) that may be challenged by writ of amparo. This raises the concern that an arbitral award, or a judgment enforcing it, could be a predicate for an amparo challenge. Fortunately, a recent precedent clearly establishes that an arbitral award is not an act of authority, because its binding nature has its source in the will of the parties, and not in any legal mandate.

Public Policy Challenge

The Fourth Federal Collegiate Court in Civil Matters decided that in order to establish whether an arbitral award may be deemed against public policy, the consequences of the award should be analyzed by the court. In this context, the mere order contained in an arbitral award against a public entity to pay an amount arising from a public or administrative contract does not constitute a violation of public policy.

A recent precedent of the Supreme Court of Justice established that contracts executed by a public company and subjected to arbitration, even if they may be related to the provision of a public services to the population, could be adjudicated and ruled by an Arbitral Tribunal. Thus, the Supreme Court of Justice has adopted a restricted vision of the public policy defense, at least in public contracts.

Mexico's Judiciary on Arbitration Award Recognition and Enforcement

Mexico's Judiciary

Mexico has federal and state courts. Only federal courts, through the Collegiate Circuit Courts and the Supreme Court, issue precedents (*jurisprudencia*) that are binding on both federal and state courts throughout the country. Court precedents do not create common law but they can be cited as persuasive authority.

Mexico's Precedents on Award Recognition and Enforcement

In one case, a US party sought recognition and enforcement before Mexican courts of an arbitral award rendered in the US under the American Arbitration Association (AAA) rules. The Sixth Civil Court of the First Circuit enforced the award under both the Panama and New York Conventions. The court relied on the principle noted that courts do not review the merits of arbitral awards (*Nordson Corporation v. Industrias Camer SA de CV*, Mar. 14, 1996). The Collegiate Court of the 15th Circuit in *Mecalux México, S.A. de C.V.*, May 28, 2002 reiterated that principle.

In a challenge to a domestic award, the First Chamber of the Mexican Supreme Court ruled that only an arbitral tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence. The Mexican Supreme Court reversed decisions of the lower courts that disagreed with the procedures the arbitrators used (*Facultad de Atracción 78/2011*). For a more detailed explanation of that decision, see Legal Update, Mexico Supreme Court shows deference towards arbitral tribunal's absolute powers to admit and weigh evidence.

However, the Eleventh Collegiate Court on Civil Matters of the Federal District invalidated an International Chamber of Commerce (ICC) arbitral award in favor of Corporación Mexicana de Mantenimiento Integral (COMMISA), against Pemex-Exploración y Producción (Pemex), a Mexican state-owned oil company (*Corporación Mexicana de Mantenimiento Integral v. Pemex-Exploración y Producción*, Sept. 21, 2011). After each party charged the other with breaching certain contractual obligations, COMMISA made a demand for arbitration. Pemex then gave notice of termination of the contract by administrative rescission. COMMISA challenged Pemex's rescission in the Mexican courts and proceeded with the arbitration.

The Mexican Supreme Court held that the rescission was legal and that Mexico's district courts had jurisdiction to hear contract disputes arising from administrative rescission. On remand, the Eleventh Collegiate Court then found that it was unacceptable for arbitrators to resolve a matter of public policy, such as Pemex's administrative rescission of the contract. For a more detailed explanation of this decision and a US court's recognition and enforcement of the same award, see Legal Update, SDNY Confirms \$400 Million Arbitration Award Set Aside by Foreign Court.

Investment Treaty Arbitration

As of January 11, 2018, Mexico signed on to (but has not yet ratified) the *ICSID Convention*. Previously, Mexico participated in ICSID proceedings only under the ICSID Arbitration (Additional Facility) Rules. Mexico has entered into bilateral investment treaties with:

- Argentina.
- Australia.
- Austria.
- Bahrain.

- Belarus.
- Belgium and Luxembourg.
- China.
- Czech Republic.
- Denmark.
- Finland.
- France.
- Germany.
- Greece.
- India.
- Iceland.
- Italy.
- Korea.
- Netherlands.
- Panama.
- Portugal.
- Singapore.
- Slovakia.
- Spain.
- Sweden.
- Switzerland.
- Trinidad & Tobago.
- United Kingdom.
- Uruguay.

To date, It appears that no investor claimants have had to enforce awards in their favor because Mexico has voluntarily satisfied all awards against it.