10th
Anniversary
Edition

2016-2017

The Baker McKenzie **International Arbitration Yearbook**

Mexico

Mexico

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A. Legislation and rules

A.1 Legislation

Mexico ratified the New York Convention in 1971 and it ratified the Panama Convention in 1978. Mexico adopted the UNCITRAL Model Law on International Commercial Arbitration in 1993 by incorporating its provisions into the Commercial Code.

For many years, these three instruments comprised the main arbitration legal framework in Mexico that helped to plant the seeds of a healthy environment for arbitral practice in the country. Despite glitches that arose during these years, arbitration grew steadily and a

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considerable number of practitioners and experts came to the scene, while the practice took hold in the commercial landscape.

This framework remained relatively unchanged until 2011, when significant improvements were incorporated to address pressing issues. In general terms, the reforms of 2011 clarified the way in which courts were to relate to and intervene in arbitration proceedings, as well as establishing a special, summary way to request enforcement of arbitral awards and deal with other instances in which the courts must take a role *vis-à-vis* arbitration.

Even after 5 years, the changes introduced are still being tested. However, the results so far have been satisfactory in the sense that courts have continued to construe the legal provisions in a fashion that is favorable to arbitration in Mexico.

A.2 Institutions, rules and infrastructure

There are two main arbitration institutions in Mexico: the *Centro de Arbitraje de México* and the *Camara Nacional de Comercio*. These institutions have experienced a small decline in their caseload, but are still valid choices for domestic and international arbitration in Mexico. Moreover, both institutions are managed by experienced individuals and are well respected by practitioners.

The world's major arbitration institutions also operate in Mexico. Both the ICDR and the ICC are better known and are widely chosen. Furthermore, Mexican users and lawyers are becoming more familiar with these institutions and their rules.

Finally, proper infrastructure for arbitration proceedings is widely available across Mexico. There are several companies that provide recording and transcription services, while the number of conference rooms offered in Mexico City and other major locations like Monterrey or Guadalajara is considerable.

B. Cases

B.1 Arbitrators not to be subject to *amparo* actions

As discussed in previous *Arbitration Yearbooks*, reforms to the *Amparo* Law[5] that took place in 2013 made it possible to bring a constitutional challenge against private entities or individuals that perform activities equivalent to those performed by government authorities.[6] Prior to that reform, *amparo* was only available as a remedy against acts performed by government authorities.

This new version of the *Amparo* Law was used to sue arbitrators as if they were authorities (in a fashion similar to state judges) and at the same time challenge awards on the basis that the award violated the fundamental or human rights of the losing party.

Fortunately, from 2015 onward, there were several judicial resolutions that confirmed the private nature of commercial arbitration and that arbitrators are not to be regarded as authorities of the state for the purposes of the *Amparo* Law.

In a relatively recent judicial precedent (jurisprudence thesis),[7] the federal Mexican judiciary confirmed that arbitrators cannot be

[5] *Amparo* refers to an extraordinary judicial remedy intended to allow a person to question whether or not a certain action or law conforms with the rights protected under the Mexican Constitution.

[6] Article 5 of the current *Amparo* Law reads: "Are parties to the *amparo* proceeding: […] II. The responsible authority, being held as such, despite its formal nature, is the one that pronounces, orders, enforces or attempts to enforce the act that creates, modifies, or terminates legal situations in a unilateral and obligatory manner; or fails to perform the act, that if performed, would create, modify or terminate such legal situations.
For the purpose of this Law, private parties will be held as responsible authorities when they perform acts equivalent to those of an authority that affect rights in terms of this section, and whose functions are determined by a general law."

[7] Thesis I.8o.C.23 C (10a.) of the Eighth Collegiate Tribunal in Civil Matters of the First Circuit, published in the weekly Gazette of the Federal Judiciary on 15 May 2015 under the name "Private arbitrators do not have the character of responsible authorities in *amparo* proceedings."

regarded as "responsible authorities" for the purposes of the *Amparo* Law.

The core reasoning in this precedent is:

> "*[…] although private arbitrators are empowered to resolve legal disputes that the parties submit to them, [stemming] from an agreement made between individuals, the role of arbitrators is private and all activities carried out by them in order to resolve the dispute in question have the same character; that is, they are not state officials nor have their own or delegated jurisdiction, since their powers derive not from a general rule, but from the will of the parties expressed in the [arbitration] agreement that the law recognizes, and as one who appoints arbitrators and determines the limits of their office does not act in the public interest, that is, as an organ of the state, but in his own private interest, of course the functions of such arbitrators are not public but private, which means they lack imperium, so that the same arbitrators cannot be conceptualized as state authorities and their actions are not equivalent to those of an official authority.*"

This precedent is important to prevent attacks on arbitration using the *amparo* as a means to delay and obstruct the arbitrators' appointment or the continuance of arbitral proceedings on the argument that arbitrators should be subject to the possibility of an *amparo* action and their acts (procedural orders, interim decision, awards, etc.) subject to being scrutinized through this form of constitutional control. In summary, this precedent confirms the principle of no judicial intervention in arbitration and the longstanding position of the Mexican law and judiciary that the only remedies against the acts of the arbitrators are those established in the arbitration law, which in Mexico are simply those of the UNCITRAL Model Law.

C. Trends and observations

All in all, Mexico is a convenient seat for arbitration. The arbitral practice is populated by capable practitioners, and younger lawyers are joining the ranks, while more and more universities are incorporating the subject in their syllabuses.