

# SANTAMARINA Y STETA

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## **Mexico: A Growing Force in International Arbitration**

México has become an increasingly important player in the field of international arbitration, among other reasons, because it provides a suitable framework for arbitration. This is achieved by: (i) an appropriate legal environment; (ii) a favorable attitude of the courts towards arbitration; and (iii) a convenient geographical location.

### **Appropriate legal environment**

In 1971 México ratified, without reserves, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention); in 1978 it ratified the Inter-American Convention on International Commercial Arbitration (the Panama Convention), which is practically identical to the New York Convention; and in 1987 it ratified the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (the Montevideo Convention), which applies to arbitral awards in all matters not covered by the Panama Convention. Furthermore, in 1993 México adopted the UNCITRAL Model Law, by including it in the Title IV, Book V of the Code of Commerce.

As a consequence of the above, the Mexican legislation on arbitration has the following characteristics:

- It is modern and favorable for arbitration, and it allows the effective substantiation of the arbitral proceedings.
- It is independent of domestic legal provisions, which grants procedural autonomy, without imposing local restrictions, constraints of time limits or

other interference. Thus, the parties, and failing them the arbitral tribunal, may conduct the proceedings in such manner they consider appropriate, with no need of applying other dispositions, as the local Code of Civil Procedure.

- In the absence of a choice of the substantive applicable law, the arbitral tribunal is free to determine it, without being forced to apply the local conflict of laws system.
- Where parties have chosen an institutional arbitration proceeding, the Mexican arbitration law respects those arbitration rules. It does not impose mandatory provisions related to the constitution of the arbitral tribunal, interim measures, evidence, or the conduction of the arbitral proceeding.
- The courts' intervention is exceptional. In accordance to the Mexican arbitration law, courts may provide assistance to the arbitration. For example, they provide support in the appointment, challenge or replacement of arbitrators, in the taking of evidence, and in recognizing and enforcing arbitral awards.
- Arbitral awards are final and binding and may only be set aside for the grounds provided by law which do not include the *novo* review of the merits.

### **Favorable attitude of the courts towards arbitration**

Mexican courts have had a favorable attitude towards arbitration, for example: (i) in the enforcement of the agreement to arbitrate, (ii) in the assistance to arbitration during the arbitration proceedings; and (iii) regards the setting aside and recognition and enforcement of the awards.

As an example, the following recent decisions can be quoted:

- Grupo Carce, S.A. de C.V. Case,<sup>1</sup> where the courts ruled among others that: (i) the procedure for setting aside an award should not be considered as a relief against the award; (ii) the judge's analysis for setting aside an award is limited to the grounds provided by law; and (iii) courts cannot review the merits of an award.
- Court decision 14/2005,<sup>2</sup> where the courts ruled that as México incorporated in the Code of Commerce the UNCITRAL Model Law, in the interpretation of the Code regard must be made to said Law and to its Explanatory Note; accordingly, one of the purposes of the Mexican arbitration law is to guarantee the efficiency of the arbitration agreement and to avoid dilatory tactics.
- Court decision 138/2002,<sup>3</sup> where it was established that courts have no powers to review the merits when recognizing and enforcing an award.
- Teléfonos de México, S.A. de C.V. Case,<sup>4</sup> where the Mexican Supreme Court held that: (i) commercial arbitration proceedings are governed by the Title IV, Book V of the Code of Commerce (UNCITRAL Model Law) and no other provisions are applicable; (ii) the arbitral procedure provided in said law fulfills the essential formalities of proceedings; and (iii) the authority of the arbitral tribunal is limited by the dispositions of the arbitration law.

Furthermore, the courts have interpreted and applied the arbitration law on the basis of international criteria. Consequently, in the Administración Portuaria Integral de Manzanillo, S.A. de C.V. Case,<sup>5</sup> the courts interpreted the concept of public policy in a broad manner, according to the international criteria.

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<sup>1</sup> IntADR, Court Decision RC 1542-2001, Ninth District Civil Judge of the Federal District Court, [www.kluwerarbitration.com](http://www.kluwerarbitration.com)

<sup>2</sup> IntADR, Court Decision RC 14/2005, Third Civil Collegiate Tribunal of the First Circuit, [www.kluwerarbitration.com](http://www.kluwerarbitration.com)

<sup>3</sup> IntADR, Court Decision 138/2002, First Collegiate Court of the Fifteenth Circuit, [www.kluwerarbitration.com](http://www.kluwerarbitration.com)

<sup>4</sup> IntADR, Court Decision 759/2003, Mexican Supreme Court, [www.kluwerarbitration.com](http://www.kluwerarbitration.com)

<sup>5</sup> Case 153/2005-A, Eleventh District Civil Judge of the Federal District Court. Unpublished.

## **Convenient geographical location**

In addition, it should be mentioned that México is geographically suitable as place of arbitration, in case the hearings take place there. It offers good flight and traffic communications; good hotel and conference facilities; and good infrastructure generally.

## **Conclusions**

In short, México offers an appropriate legal environment for arbitration, its courts have a favorable attitude towards it, and the country has a convenient geographical location. Consequently, it fulfills the parties' requirements and provides a suitable framework for arbitration.

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