



Arbitration Guide
IBA Arbitration Committee

MEXICO

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Over the past few decades, arbitration has been increasingly used in Mexico to settle large commercial disputes.

The principal advantages seen in our jurisdiction of submitting a dispute to arbitration vary depending on whether the arbitration is domestic or international. Regarding domestic arbitrations, the principal advantage is seen to be that an arbitral tribunal has greater time availability to solve a dispute, in contrast with the local courts which normally have an excessive work load. Regarding international arbitrations, the principal advantages are generally considered to be that in arbitration both parties have the possibility of solving their dispute in a neutral forum. It is also seen to be a great advantage that the dispute will be solved by a specialised tribunal with expertise in determining such cases.

The main disadvantage of domestic and international arbitration is that it is usually more expensive than court litigation.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

There are no available statistics which we could find that could indicate whether most are domestic or international.

With respect to international arbitrations, the most commonly used institutions and/or rules are those of the International Chamber of Commerce (ICC). Regarding domestic arbitrations, the most commonly used institutions and/or rules are those of the International Chamber of Commerce (ICC), the Arbitration and Mediation Commission of the Mexico City Chamber of Commerce (CANACO), and the Arbitration Centre of Mexico (CAM).

(iii) What types of disputes are typically arbitrated?

Disputes most commonly arbitrated are those related to infrastructure projects, construction contracts, joint venture agreements, contracts for the sale of goods and public procurement.

(iv) How long do arbitral proceedings usually last in your country?

Due to the flexibility of arbitration it is not possible to provide a general answer to this question. In Mexico, as in most countries, the parties are able to propose a procedural calendar.

- (v) **Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

Article 1427 of the Commerce Code states that the nationality of a potential arbitrator is not an impediment, unless otherwise agreed by the parties. The Commerce Code does not foresee any restrictions for the counsel's nationality, however, the parties can always agree on limitations in this regard.

II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The law governing arbitration proceedings is contained in the Fourth Title "Commercial Arbitration" Fifth Book "Commercial Trials" of the Mexican Code of Commerce ("the Commerce Code"). This title was enacted in 1993.

The Commercial Arbitration Title is the adoption of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") with minor modifications. This Title was amended in 2011 to incorporate the provisions of the Model Law, as amended in 2006, with minor modifications.

The governing legislation is thus the Commerce Code and international treaties to which Mexico is a party.

This legal framework applies to both domestic and international arbitrations with a seat in Mexico, as explained in the following section.

- (ii) **Is there is a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

Domestic and international arbitration are differentiated under Mexican law, however, the differences are merely formal since Article 1415 of the Commerce Code states that the Code's provisions in arbitration apply indistinctively to domestic and international commercial arbitration, public or private, when the seat of arbitration is Mexico.

Under Mexican law, an arbitration is international i) when the parties have, at the time they enter into the arbitration agreement, their place of business in different countries; ii) when a substantial part of the obligations of the commercial relationship is to be performed outside the country in which the parties have their

place of business; iii) the seat of arbitration is in a different country from the country in which the parties have their place of business; or iv) the place with which the subject-matter of the dispute is most closely connected is a different country from the one where the parties have their place of business.

- (iii) What international treaties relating to arbitration have been adopted (e.g, New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Mexico is not party to the Geneva Convention or to the Washington Convention.

Mexico is party to the New York Convention of 1958, which was ratified in 1971.

Mexico is also party to the Inter-American Convention on International Commercial Arbitration (the 'Panama Convention'), which was ratified on October 27, 1977.

- (iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

Article 1445 of the Commerce Code provides that the arbitral tribunal shall decide the controversy 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 controversy, the tribunal shall determine the applicable law, taking into account the "characteristics and the nexus of the case".

III. Arbitration Agreements

- (i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

Article 1423 of the Commerce Code states that the arbitration agreement shall be in writing and signed by the parties. This article also provides that an arbitration agreement can be validly executed through an exchange of letters, telexes, telegrams or faxes, or any other means of telecommunication that properly records the agreement. Such agreement may also be an exchange of a written complaint and a written answer from which the agreement can be affirmed by one party without being denied by the other. Likewise, a reference made in an agreement to a document that contains a committing clause to arbitrate shall constitute an

agreement to arbitrate as long as such agreement is in writing and the reference creates the implication that such clause is part of the agreement.

Furthermore, since the arbitration agreement is a contract in nature, to be enforceable, the agreement must also meet the basic requirements of any contract (Article 1795, Federal Civil Code): (i) have a legal purpose; (ii) the parties' consent was not given by error, or obtained by fraud or under duress; and (iii) that the parties had full legal capacity to sign the agreement.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an award will not be enforced?

Mexico is generally considered an “arbitration-friendly” jurisdiction. Since the adoption of the UNCITRAL Model Law in 1993, the general approach of local and Federal courts has been under the principle of “no intervention”, giving absolute deference to the parties' intention to settle their dispute through arbitration. A judge hearing a matter that is subject to an arbitration agreement shall thus remit the parties to arbitration if either so petitions, hence recognizing both the positive and negative effect of an arbitration agreement.

The only exceptions to the enforcement of an arbitration agreement is if it is shown that: the agreement to arbitrate is null and void, ineffective or impossible to perform (Article 1424, Commerce Code).

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tier clauses are commonly used, but are not specifically regulated in the Commerce Code, and there are no judicial precedents in Mexico regarding this matter.

(iv) What are the requirements for a valid multi-party arbitration agreement?

Multi-party arbitration agreements are not provided for in the Commerce Code. However, it is possible for these agreements to be executed between the parties, as provided by Article 16 of the CAM Rules of Arbitration for instance. Therefore, the general provisions regarding arbitration agreements are applicable.

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

Provided that both parties have agreed to confer one of the parties a unilateral right to arbitrate a commercial dispute, there appears to be no restriction on the enforceability.

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

There is no specific provision regulating a circumstance where third parties (non-signatories) are bound by an arbitration agreement. Third parties cannot generally be compelled to arbitrate if they have not agreed to do so.

However, there are some examples in Mexican law of non-signatories being bound by an arbitration agreement. For instance, the case of a subrogee (in which such person acquires the rights of the person being substituted); the case of an heir (which inherits the rights of the person from whom he or she is inheriting); or in the case of an assignee.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Pursuant to Article 568 of the Federal Code of Civil Procedures, controversies arising from the following matters shall be exclusively settled by national courts: (i) land and water resources located within national territory; (ii) resources of the exclusive economic zone or resources related to any of the sovereign rights regarding such zone; (iii) acts of authority or related to the internal regime of the State and of the federal entities; and (iv) the internal regime of Mexican embassies and consulates abroad and their official proceedings.

Additionally, all family, tax matters and criminal matters are not arbitrable.

Arbitrability is a matter regulated by Mexican law and it is the law, which expressly confers exclusive jurisdiction to national courts regarding the abovementioned matters. Therefore, based on the law, the courts and the arbitrators are capable to decide whether a matter can be submitted to arbitration, depending on the specific case. However, courts will have the final decision regarding the arbitrability of a dispute.

Lack of arbitrability is a matter of jurisdiction.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

Article 1424 of the Commerce Code provides that in the event that a court proceeding is initiated despite the existence of an arbitration agreement, the judge before whom such proceeding has been initiated shall, if either of the parties so requests, remit the parties to arbitration, unless it is determined that the agreement to arbitrate is null and void, ineffective or impossible to enforce.

If an action before a court has been initiated, arbitration may nevertheless be initiated or completed, and an award may be entered while the matter of the validity of the agreement or the jurisdiction of the tribunal is pending before the judge.

The law does not provide for a specific time limit for making a jurisdictional objection. However, article 1464 provides that the request must be made in the first written motion filed by the requesting party, regarding the merits of the dispute.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

The principle of competence-competence is recognised by Article 1432 of the Commerce Code, which provides that an arbitral tribunal has the authority to determine its own jurisdiction and rule on any challenges regarding the existence or validity of an arbitral agreement. 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.

The judicial courts have great deference to the arbitral tribunal's power to decide over its own jurisdiction.

V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

Article 1427 of the Commerce Code provides that the parties are free to agree the number and method of selection of the arbitrators, or can incorporate the rules of

an arbitral institution. The only requirement is that due process be observed and complied with in the notification related to the constitution of the arbitral tribunal.

National courts may intervene in the selection of arbitrators if the parties fail to agree upon a procedure for the constitution of the arbitral tribunal either prior to or during the commencement of the arbitration. In the absence of such agreement, judicial assistance is available upon the parties' request: (i) when they do not agree on the appointment of the sole arbitrator, or the co-arbitrator or if the parties fail to abide by the chosen method of selection; (ii) when in an arbitration with three arbitrators, each party shall appoint one arbitrator and the appointed two shall name the third one. If one party fails to name an arbitrator within thirty days from a request of the other party, or if both arbitrators named by the parties do not agree on the third arbitrator within thirty days from their designation, the appointment shall be made by the judge upon the request of either party; or even when (iii) the arbitral institution does not comply with its functions.

The national court shall adopt any measure necessary, such as consulting with one or several arbitral institutions or chambers of commerce, or making the appointment through a list-procedure if it deems so convenient, in order to find a suitable arbitrator.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

A person who has been designated as a candidate for appointment as an arbitrator shall reveal, without delay, all circumstances which could raise doubts about his or her impartiality and independence, to the parties from the time of appointment, and during the time of the performance of the arbitration functions, unless he or she has already done so.

An arbitrator can only be challenged if there are circumstances that could raise justified doubts regarding impartiality or independence, or if he or she lacks other qualities agreed by the parties. A party can only challenge the arbitrator appointed by such party, or in whose appointment it has participated, for grounds that have come to its knowledge after the appointment was made (Article 1428, Commerce Code).

The parties may freely agree upon the procedure for the challenge of arbitrators. In the absence of such agreement, the party seeking the challenge shall, within 15 days from the time that the arbitral tribunal has been constituted, or 15 days from the time that the party attains knowledge of the causal facts, submit in writing the circumstances believed to 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 shall resolve the challenge of the arbitrator in question.

If a challenge is rejected, the petitioner may, within 30 days from the notice of rejection, go before the judge and request a review. During such time the arbitral tribunal, including the arbitrator being challenged, may continue with the proceedings and issue an award (Article 1429, Commerce Code).

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Pursuant to Article 1428 of the Commerce Code, the parties may freely agree on the number, procedure of appointment and requirements applicable to arbitrators. Consequently, the only limitations are that arbitrators shall be impartial and independent.

There are no legal provisions or rules regarding the ethical duties of arbitrators.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific rules or codes of conduct concerning conflicts of interest for arbitrators. The IBA Guidelines on Conflicts of Interest in International Arbitration are applied or used as guidance when the parties have previously agreed so. In practice, it is common that arbitral tribunals and arbitration institutions take them into consideration.

VI. Interim Measures

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Unless otherwise agreed to by the parties, Article 1433 of the Commerce Code provides that the arbitral tribunal may, at the petition of either party, order provisional remedies which are required to protect the subject matter in dispute. In the recent amendments, the Mexican arbitration law did not incorporate provisions that define the types of interim measures that an arbitral award may grant (such as Article 17(2) of the UNCITRAL Model Law). Accordingly, arbitral tribunals (and courts) are allowed discretion to grant a myriad of conservatory, preliminary and interim measures of protection and relief (Articles 1433 and 1478, Commerce Code). In such event, the tribunal may also require a guarantee from the party requesting the measures.

There are no specific requirements regarding the form of the tribunal's decision.

In line with the 2006 revisions to the UNCITRAL Model Law, the Mexican arbitration law was amended in 2011 to include a section dealing with enforcement of provisional measures or interim relief adopted by arbitral tribunals. Article 1479 of the Commerce Code thus provides that all interim measures ordered by an arbitral tribunal shall be recognized as binding. Unless otherwise determined by the tribunal, such interim measures shall be enforceable upon request to the courts, regardless of the stage in which they have been ordered. The party who 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 recognition or enforcement of an interim measure has been requested, 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 is necessary to protect third party rights.

The courts of enforcement cannot analyze the content of interim measures granted by arbitral tribunals. However, the courts of enforcement may refuse to enforce said interim measures if they consider such refusal to be warranted on the grounds set forth in Article 1462, Section I (a), (b), (c) or (e) and Section II of the Commerce Code (same grounds for refusing to enforce an arbitral award) or because the arbitral tribunal's order with respect to the provision of security in connection with the interim measure has not been complied with or the interim measure has been terminated or suspended either by the arbitral tribunal, by a court of the state in which the arbitration procedure is being heard, or under which law the interim measure was granted (Article 1480, Section I, Subsection c) of the Code of Commerce).

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Yes, under the Commerce Code, courts are entitled to grant interim protection to parties subject to an arbitration agreement, prior to the commencement or during the pendency of the arbitral proceedings (Article 1425, Commerce Code). Under Article 1478 of the Code of Commerce, Mexican courts enjoy full discretion to grant any type of provisional measures in aid of arbitration. In requesting interim measures from a court, parties must follow the summary proceedings foreseen in Articles 1472 to 1476 of the Code of Commerce. Upon such request, the judge has complete discretion to adopt any interim measures he may deem appropriate (Article 1478, Commerce Code). There is no specific provision which indicates that any court ordered provisional relief will cease to have effect following the constitution of the arbitral tribunal.

Mexican precedents and laws regarding interim relief in other types of procedure have established two main circumstances that justify the granting of interim relief: the *fumus boni iuris* (likelihood of success in the merits) and the *periculo in mora* (urgency) as the fundamental circumstances that justify the granting of interim relief. Accordingly, both circumstance should coexist for a court to order any type of interim relief.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

The Mexican arbitration law imposes a duty upon state courts to act in support of arbitration in the taking of evidence when so requested by an arbitral tribunal or by the parties to an arbitration with the prior authorisation of the tribunal (Article 1444 of the Code of Commerce). Court assistance in the taking of evidence may be necessary in the face of recalcitrant parties in order to compel the production of documents or to take the testimony of an unwilling witness.

Regarding provisional relief, courts may support arbitration in this regard as noted above (see response to question (ii) of section VI). There is no legal provision that requires the tribunal's consent regarding evidentiary assistance or provisional relief by courts.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

There are no mandatory provisions or rules in the Mexican arbitration law regarding specifically to disclosure or discovery of evidence. According to Article 1435 of the Code of Commerce, parties to an arbitration are free to agree on the procedure to be followed by the arbitral tribunal, including for evidentiary purposes.

To the extent that parties do not agree on the applicable rules, the arbitral tribunal is free to determine the procedure at its own discretion. This power conferred to the arbitral tribunal includes the discretion to freely assess the admissibility and relevance of any evidence submitted in an arbitration. Since no specific rules exist in Mexico with respect to evidence, arbitral tribunals seated in Mexico will readily refer to the IBA Rules on the Taking of Evidence in International Arbitration for guidance.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

While the production of documents is a common feature in arbitrations seated in Mexico, there are no mandatory rules on disclosure or discovery of documents. The power of arbitrators to order production of documents will ultimately depend on the agreement of the parties in such regard.

If no agreement has been reached, the arbitral tribunal will have the discretion to order the disclosure of documents as it sees fit. The only tool that an arbitral tribunal may have against this drawback is to draw adverse inferences from a party's refusal to comply with such an order.

Finally, arbitral tribunals do not have authority and cannot assume jurisdiction over individuals or entities that are not parties to the arbitration agreement. Accordingly, while arbitral tribunals may request a third party to disclose a certain document or category of documents, the arbitral tribunal has no power to either draw adverse inferences or to sanction the failure to comply with such an order.

(iii) Are there special rules for handling electronically stored information?

There are no special rules.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

There is no specific provision in Mexican law regulating confidentiality specifically relating to arbitration proceedings. As the arbitration chapter contained in the Commerce Code adopts the UNCITRAL Model Law, it is silent on the issue of confidentiality of the arbitration proceeding. However, Article 1435 of the Commerce Code provides the parties with broad discretion to determine the arbitration proceedings, and therefore, the parties have the autonomy to determine the confidentiality of the arbitration. Accordingly, any confidentiality agreement included by the parties in their arbitration agreement, would be binding under Mexican law.

When there is no agreement on confidentiality made by the parties or this confidentiality requirement is not made by the arbitral tribunal in a procedural order, the parties have no restriction to comment on the arbitration.

Under certain arbitration rules such as the arbitration rules of the Arbitration Centre of Mexico (CAM) and the Arbitration and Mediation Commission of the Mexico City Chamber of Commerce (CANACO), arbitration proceedings are confidential, unless otherwise agreed by the parties.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There are no specific provisions regarding the arbitral tribunal's power to protect trade secrets and confidential information.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

There are no provisions regarding privilege. However, given the widespread use of the IBA Rules on the Taking of Evidence, parties and arbitral tribunals seated in Mexico will readily refer to them for issues concerning documents and/or information protected by attorney-client privilege.

Also, there is a general standard that prevents attorneys from revealing information received in the exercise of their legal profession. Accordingly, a lawyer that breaches the professional secrecy incurs in a criminal offense and is subject to tort liability.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

It is common for parties to agree on the adoption or guidance of the IBA Rules on the Taking of Evidence to govern arbitration proceedings. To the extent that parties do not agree on the applicable rules, the arbitral tribunal is free to determine the procedure at its own discretion. The arbitral tribunal seated in Mexico may apply the IBA Rules on the Taking of Evidence as guidelines or as a reference point in the conduct of the proceedings.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

There are no specific limits to the arbitral tribunal's discretion to govern the hearings, except with respect to compliance with the due process requirements.

- (iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

There are no specific provisions under Mexican law in connection with witness testimony. Article 1435 does however, establish 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 deems 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.

It is very common for arbitrations seated in Mexico to have the testimony of a witness be delivered by way of a written statement and/or expert reports. Witnesses and experts are then usually cross-examined by the opposing party and may also be questioned by the arbitral tribunal. Witnesses (fact or expert) are not formally sworn in but are usually made aware by the arbitral tribunal of their general duty to tell the truth, a duty that is also sanctioned by Mexican criminal law.

- (iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are no provisions under Mexican law on the matter and therefore the tribunal's general power to conduct the arbitration applies, unless otherwise agreed by the parties (see question (iii) of this section IX).

- (v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

There are no specific provisions under Mexican law, and therefore, the tribunal's general power to conduct the arbitration applies, unless otherwise agreed by the parties (see question (iii) of this section IX).

- (vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

There are no specific provisions under Mexican law and therefore, the tribunal's general power to conduct the arbitration applies, unless otherwise agreed by the parties (see question (iii) of this section IX).

- (vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

In practice, it is not common for arbitral tribunals to appoint experts beside those selected by the parties.

Unless otherwise agreed to by the parties, the arbitral tribunal may appoint one or more experts to inform it on specific matters, and request either party to provide experts with all the information that is relevant or give them access to all documents, merchandise or other assets that are necessary for the inspection of such evidence (Article 1442, Commerce Code).

Additionally, Article 1443 of the Commerce Code provides that unless the parties have agreed otherwise, and if either of them so requests or the tribunal deems it necessary, after presenting their findings in writing or orally, the expert shall participate in a hearing at which the parties shall have the opportunity to question him or her and offer other experts to testify on disputed findings.

There are no requirements in the Commerce Code regarding experts being selected from a particular list.

- (viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

It depends on the arbitral tribunal. If the tribunal decides to use witness conferencing, it will normally require both parties to present a list of questions, which will be put to the witnesses to be answered simultaneously. Hot-tubbing is particularly used when it comes to expert witnesses.

- (ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no special rules or requirements regarding the use of arbitral secretaries, however, they are commonly used when the arbitration is complex or when there is a sole arbitrator.

X. Awards

- (i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

Pursuant to Article 1448 of the Commerce Code, the award must be in writing and signed by the arbitrators to be validly rendered. 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 it are set forth in the award.

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

The award must set forth the date in which it was issued and the place where the arbitration was held.

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

- (ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

There are no limits to arbitrators' powers to fashion appropriate remedies provided by law. Tribunals can award interest at the rate agreed by the parties and if there is no agreement at a 6% annual rate (Article 362, Commerce Code). Compound interest in commercial law are not expressly prohibited, thus, arbitrators can award them.

- (iii) Are interim or partial awards enforceable?**

Yes, as long as they comply with the requirements established in Article 1448 (see the response to question (i) of this section X and section VI question (i).

- (iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

There is no specific provision in the Commerce Code regulating the issuance of dissenting opinions to the award. Considering the fact that they are not prohibited, the possibility to issue a dissenting opinion will depend on the arbitration agreement and the arbitration rules applicable to the proceedings.

- (v) **Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

Pursuant to Article 1447 of the Commerce Code, if during arbitration proceedings the parties reach a settlement that resolves the controversy, the tribunal shall terminate its proceedings and if both parties so request and the tribunal does not object, shall enter the settlement in the form of an award.

Article 1449 of the Commerce Code provides that arbitration proceedings can also be terminated (other than by the issuance of an award) by an order of the arbitral tribunal if: (i) the claimant withdraws its claim, unless the defendant objects and the tribunal acknowledges the right of the defendant to obtain a final determination of the controversy; (ii) the parties agree to terminate the proceedings; or (iii) the tribunal concludes that the continuation of the proceedings would be impossible or unnecessary.

- (vi) **What powers, if any, do arbitrators have to correct or interpret an award?**

Unless the parties agree upon a different time period, within 30 days after a final award is notified, either of them may, after due notice to the other party, request the tribunal (article 1450, Commerce Code):

- to correct an error of calculation, copying, typographical or of a similar nature in the award;
- to give an interpretation upon an issue or upon a specific part of the award, if the parties so agree.

Additionally, unless otherwise agreed by the parties, either party may, within 30 days from the reception of the award and prior notice to the other party, request the arbitral tribunal to issue an additional award regarding any requests or pleadings included in the proceedings, but omitted in the final award. If the tribunal considers such request to be justified, it shall issue the additional award within 60 days (article 1451, Commerce Code). The above-mentioned time limits may be extended by the arbitral tribunal, if necessary (article 1451, Commerce Code).

XI. Costs

- (i) **Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

Article 1455 of the Commerce Code states that 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 dispute.

Article 1455 further provides that regarding the costs of representation and legal advice, the arbitral tribunal, considering the specific circumstances of the case, shall decide which party will pay such costs or if a *pro rata* division among the parties is reasonable.

Notwithstanding the foregoing, the parties are free to determine any provisions regarding which party shall bear the costs of the arbitration and in what proportion. In such a case, the arbitral tribunal will be bound to such agreement.

(ii) What are the elements of costs that are typically awarded?

Pursuant to Article 1416, paragraph IV of the Commerce Code, the costs include the fees of the arbitral tribunal, the travel and other expenses incurred by the arbitrators, the fees for expert advice or any other assistance required by the tribunal, travel and other expenses incurred by the witnesses, the costs and legal fees of the prevailing party if they are claimed during the arbitration and only in an amount approved by the arbitral tribunal as reasonable and the fees and expenses of the institution that designated the arbitrators.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

Articles 1452 and 1454 of the Commerce Code provide that if the parties have not agreed on any rules, the tribunal is entitled to decide on the arbitrators' fees, which must be reasonable, bearing in mind the following: (i) the amount in dispute; (ii) the complexity of the matter; and (iii) the time spent by the arbitrators.

The fees of each arbitrator must be indicated separately and shall be fixed by the arbitral tribunal.

Notwithstanding the foregoing, upon the request of the parties, the arbitral tribunal shall fix its fees after consulting with the judge, who may intervene and make any observations and clarifications deemed appropriate.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Article 1455 of the Commerce Code provides that the arbitral tribunal has the discretion to apportion the costs on a *pro rata* basis between the parties (question (i) section XI).

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

Article 1456 of the Commerce Code states that the courts may supervise the tribunal's decision on costs, upon the request of any of the parties, and provided that the judge agrees to do so. In such event, the arbitral tribunal may only fix the arbitration costs and any additional deposits, upon consultation with the judge, who may intervene and make observations and clarifications.

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

Arbitral awards are considered final and binding for the parties and are not subject to appeal. However, the challenge of the award is available on the restrictive grounds enumerated following a summary procedure that was introduced with the 2011 amendments.

Thus, pursuant to Article 1457 of the Commerce Code, Arbitral awards may only be challenged and found to be void by the competent judge for the same reasons provided by Article V of the New York Convention.

The petition to challenge an award shall be filed within a period of three months from the date notice is given of the award. However, in the event that 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 which were presented in the proceedings but omitted from consideration in the award, the three month period shall begin on the date that the petition was ruled on by the arbitral tribunal.

The average duration of challenge proceedings ranges from six months to one year.

If any of the parties requests the annulment or suspension of an arbitral award before the judge of the country in which such award was issued or, according to the law to which the award is subject, the judge before whom the recognition or enforcement of the award is requested may, if appropriate, postpone his or her decision and, upon the request of the party who requested the recognition or enforcement of the award, order the other party to grant sufficient guarantees (Article 1463, Commerce Code).

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

The law does not expressly prohibit the possibility of the parties waiving their right to challenge an arbitration award, specifically regarding those grounds which must be plead by a party, the grounds to challenge an award on public policy grounds, are exercised by the judge *ex officio*, and thus appear non-waivable.

- (iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

Mexican courts are prohibited from reviewing the merits of a final award. There is no right to appeal an arbitral award under the Mexican arbitration law.

- (iv) **May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

There is no specific provision under Mexican law on this matter. Therefore, courts may not act in this regard if the law does not give them the power to do so.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

Regardless of the country in which an award has been issued, such award shall be deemed to be valid and binding and shall be enforced, upon written request to the judge. The Mexican arbitration law was amended in 2011 to include, inter alia, a specific summary procedure for setting aside or recognising and enforcing arbitral awards. In order to initiate enforcement proceedings under such summary proceedings, the party seeking enforcement must provide an original (or certified copies) of both the arbitration agreement and the award. The award and the arbitration agreement must be apostilled (or legalized) and translated if their original language is not Spanish (Article 1461, Commerce Code).

For the recognition and enforcement of awards no homologation procedure is needed. Pursuant to the Commerce Code, the recognition and enforcement of awards shall be conducted through a special procedure regarding commercial transactions and arbitration. Once the request has been filed, the judge shall summon the parties and provide them with a period of 15 days to submit an answer. Upon the expiration of such term, and if the parties do not offer any evidence and the judge does not deem it necessary, the parties shall be summoned to a pleadings hearing, which will take place within the following three days, with

or without the parties presence. If the parties file evidence or if the court deems it necessary to present evidence, an evidentiary period of ten days shall be granted. Finally, the judge shall issue a final decision within five days from the hearing (Articles 1471 to 1476, Commerce Code). Because local and Federal courts have concurrent jurisdiction over commercial matters, the summary proceeding for setting aside may be filed with the competent State or Federal court of the respondent's domicile or of the place where the assets are located. Once filed, the respondent will have 15 business days to answer the complaint. Once the respondent has filed its answer, the court of enforcement will summon the parties to a hearing for closing arguments, after which the decision to enforce (or refusal to enforce) must be rendered.

Mexico is a party to the 1958 New York Convention without reservations. The New York Convention is a self-executing treaty applicable in Mexico since its ratification. However, given that Mexico followed the UNCITRAL Model Law, the relevant rules that apply to the annulment and enforcement of arbitral awards are contained in the Mexican arbitration law (Articles 1415 to 1480 of the Code of Commerce). Thus, Article V of the New York Convention and Article 1462 of the Commerce Code provide that the recognition or enforcement of an award can only be denied on the grounds established by Article V of the New York Convention.

There is no provision in the Commerce Code regulating the stay of enforcement in the event of opposition. However, in practice such opposition stays the enforcement until a decision is issued by the competent court, but such stay does not prevent the parties from initiating a recognition and enforcement process in a different jurisdiction.

(ii) If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

The procedure to enforce an award when an *exequatur* is obtained is to be in accordance with Articles 1461 and 1462 of the Commerce Code. Recourse to a court is possible at this stage in accordance with these provisions.

(iii) Are conservatory measures available pending enforcement of the award?

Conservatory measures are available pending enforcement of the award (Article 389 Federal Code of Civil Procedures).

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Generally the courts welcome and favor the enforcement of national or foreign awards. We have no information regarding enforcement of foreign awards set aside by the courts at the place of arbitration.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

Articles 1473 to 1476 of the Commerce Code state that the defendant, after being served has 15 days in which to answer the complaint. After this time period, the parties will be summoned within three days or, if evidence is submitted within ten days. There will be a hearing on closing arguments before the final decision is rendered. However, this decision may be challenged by the *amparo* proceeding.

The *amparo* proceeding is a constitutional remedy intended to protect constitutional rights and consists of the possibility of challenging any act of authority including final decisions (such as the decision of a state court regarding the enforcement of an award) considered unconstitutional.

There are no specific provisions in the Commerce Code regarding time limits for seeking the enforcement of an award and as such, the general statutory time limits apply.

XIV. Sovereign Immunity

(i) Do State parties enjoy immunities in your jurisdiction? Under what conditions?

Even though there is no specific legislation regarding immunity, sovereign power can be derived from the Constitution (Articles 39, 40, 41 Federal Constitution of the United Mexican States).

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 guarantees in the proceedings (Article 4, Federal Code of Civil Procedures).

There are no treaties ratified by Mexico on this subject and the United Nations Convention on Jurisdictional Immunities of States and their Properties has not been ratified by Mexico.

- (ii) **Are there any special rules that apply to the enforcement of an award against a State or State entity?**

There are no special rules that apply to the enforcement of an award against a State or State entity.

XV. Investment Treaty Arbitration

- (i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Mexico is not a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. Nevertheless, it is noteworthy to state that Mexico may have access to ICSID's "Additional facility rules" as provided by several BITs and other Treaties such as NAFTA. Mexico is however, a party to the following multilateral free trade agreements that include provisions with respect to the protection of investments: North American Free Trade Agreement (NAFTA); Mexico-Northern Triangle Free Trade Agreement (Salvador, Guatemala and Honduras); Montevideo Treaty (Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela); and the Mexico-European Free Trade Association.

- (ii) **Has your country entered into bilateral investment treaties with other countries?**

Currently, Mexico is a State party to 33 Bilateral Investment Treaties (BITs), out of which 29 are in force.

XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

Practitioners can consult the following materials in order to learn more about arbitration in Mexico:

- The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958;
- The Inter-American Convention on Commercial Arbitration (Panama Convention);

- The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL Rules); and
- Book 5, Title 4 of the Mexican Code of Commerce, which is a Federal law regulating commercial arbitration in Mexico.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

The ICC holds an annual seminar every summer in Mexico. Also, the Mexican Chapter of the ICC jointly with the *Escuela Libre de Derecho*, holds each year a specialized international commercial arbitration diploma. The CAM and the CANACO also organize several events related to arbitration during the year.

XVII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Yes, the practice of arbitration has been growing and spreading amongst all sectors of the economy and judiciary. The number of proceedings as well as the quality of such proceedings has increased over the years.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

There is a judicial trend to boost other ADR mechanisms such as mediation. Today most states' judiciary have a mediation centre that is actively promoted by courts as an ideal alternative to litigation.

Also, there are private institutions such as the *Instituto Mexicano de la Mediación*, A.C. that actively promote the use of mediation in Mexico.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

Recently, in March 2017, the Mexican Supreme Court issued a very relevant decision regarding arbitration and other ADR mechanisms under Mexican Law. This decision established, among other things:

- that the arbitration and other ADR are interests that are constitutionally protected, and thus, they cannot be understood as a mere waiver of the right to settle dispute before courts;
- that governmental policies are not the same as public order (*ordre public*), therefore, an award may go against several government policies but that does not mean that the award is contrary to public order, and accordingly, an award that infringes government policies (but not public order) cannot

- be set aside. Consequently, courts must respect the arbitrators decisions even if they are not in accordance with governmental policies;
- iii) that an award is contrary to the public order, and therefore can be set aside, when it directly goes against fundamental principles and institutions; and
 - iv) that courts may not impose their interpretations over the arbitrators' when they decide over the tribunal's competence, instead they should only verify if the tribunal's decision on its own jurisdiction is reasonable.