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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 after some time, in 1978, it ratified the Panama Convention. In 1993, while introducing minor changes to other sections of the Commercial Code, Mexico adopted the UNCITRAL Model Law by incorporating its provisions into the Commercial Code.

For many years, these three instruments constituted the main arbitration legal framework in Mexico that helped to plant the seeds of a healthy environment for arbitral practice in the country. Despite the glitches that arose during these years, arbitration grew steadily and a substantial body of practitioners and experts emerged, while the practice took hold in the commercial landscape.

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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 six years after the reform, 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.

Additionally, the major arbitration institutions also operate in Mexico. The ICC, ICDR and the LCIA are better known and 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 suitable hearing rooms are offered in Mexico City and other major locations like Monterrey and Guadalajara.

All in all, Mexico is a convenient seat for arbitration and will continue to be so due to the rapid economic growth observed in the past years, especially in matters related to the new reform of oil, gas and electricity. 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 syllabus.

B. Cases

B.1 Arbitrators not to be subject to amparo actions

As discussed in previous editions of the *Yearbook*, reforms to the Amparo Law[4] that took place during 2013 made it possible to bring a constitutional challenge against private entities or individuals that perform activities equivalent to those performed by government authorities.[5] 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 onwards, 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),[6] the federal Mexican judiciary confirmed that arbitrators cannot be

[4] 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.

[5] 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, 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 a responsible authority 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 […]*"

[6] 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

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, as it stems 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 subject to the possibility of an amparo action and their acts (procedural orders, interim decision, awards, etc.) subject to scrutiny through this form of constitutional control. In summary, this precedent confirms the principle of no judicial intervention in arbitration and the longstanding position of Mexican law and the 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.

2015 under the title *Private arbitrators do not have the character of responsible authorities in the amparo proceeding*.