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## Chapter 13

# Litigation and Dispute Resolution

## Introduction

The Mexican legal system regulates various types of dispute resolution: legal proceedings, arbitration, and mediation.

The parties enter into agreements about the application of the law, methods of dispute resolution, and appropriate jurisdiction, all of which must meet the requirements established by Mexican law in order to prevent annulments or frauds against the law. In the case that no agreement has been entered into, the law also establishes rules for determining jurisdiction.

With the goal of implementing important reforms, Mexican rules for arbitration have been adopted from the UNCITRAL Model Law.

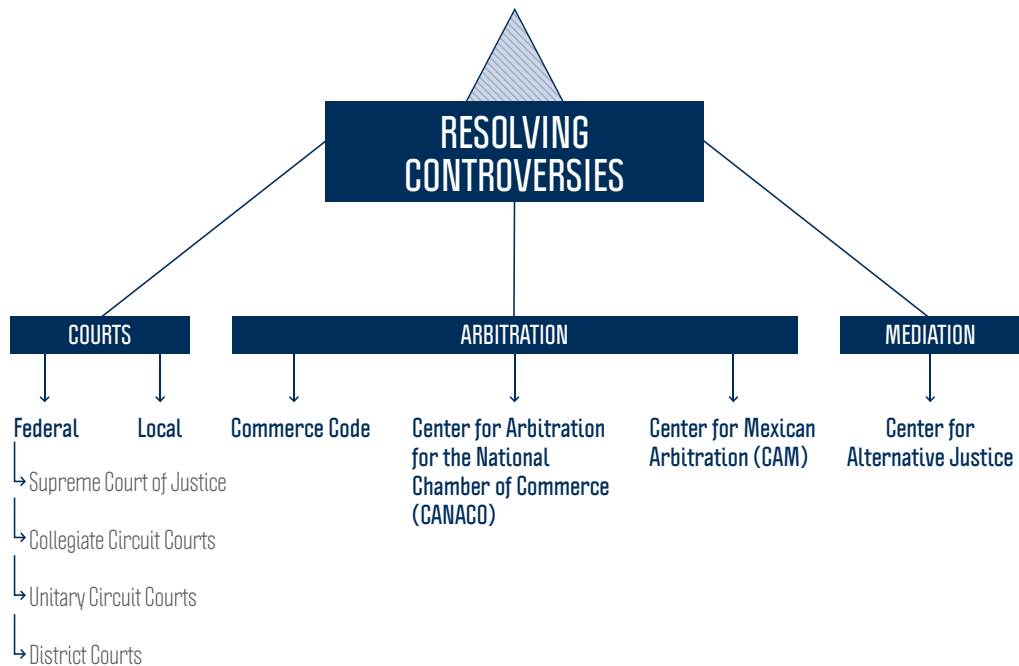
Likewise, with the goal of expanding access to justice and resolving conflicts through non-confrontational methods and alternatives to litigation, our system regulates mediation in various fields.

The Mexican legal system expressly regulates the application of foreign laws by Mexican judges, as well as the recognition, validity, and enforcement of foreign awards and judgments, which are intended to have effect in Mexico as long as they comply with the requirements established by law.



## KEY POINTS

- In order for the law to be enforced and for a court to exercise jurisdiction over a dispute, both parties should express a willingness to enter into litigation in the locality where one of the parties is located, where the obligation was supposed to take place, or where the object of litigation is located.
- Mexican laws on arbitration shall apply to domestic and international arbitration provided that they take place in Mexico.
- Mediation is used in family, civil, commercial, and criminal matters as a way to resolve disputes between individuals.
- The recognition and enforcement of court judgments issued abroad is subject to the compliance of that judgment with the formal requirements of Mexican law. With regard to the enforcement of foreign arbitral awards, Mexico is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The “New York” Convention)



## QUESTIONS AND ANSWERS

1. How long can an ordinary trial in Mexico last?

Approximately two years, including an amparo proceeding, which is a procedural remedy which seeks to restore rights when a violation of rights guaranteed under the Federal Constitution has occurred. The length of a trial very much depends on the complexity of the matter and the workload of the courts.

2. Will a foreign judgment related to the performance of a mortgage loan for a property located in Mexico be recognized and enforced in Mexico?

No. In accordance with Mexican law, foreign judgments resulting from actions *in rem* (real property and certain types of personal property) cannot be enforced in Mexico.

3. In the event that parties have submitted to arbitration as a way of settling a dispute, can one of the parties request provisional measures for relief?

Yes. A party can ask the court to allow for the adoption of provisional measures for relief. For example, a party can (i) request prejudgment attachment of assets, when there is a risk that these assets will be hidden or lost; and (ii) request that a third party –such as a banking institution– freeze a bank account of the defendant, or seize payment from a company that owes money to the defendant with the intention of securing payment for an outstanding creditor, but in a way which avoids double payment by the third party if the defendant later does not comply with the judge's orders.

4. Can a Mexican judge apply foreign law when hearing and deciding a case?

Yes. Foreign law should be applied in the same way the law would be applied in its original forum, so that all the relevant laws and doctrines are taken together to ensure the proper application of the law.

5. According to Mexican law, what happens if a case is filed in Mexican court despite the fact that the parties have expressly submitted to the jurisdiction of a foreign court?

In principle, the Mexican court should not exercise jurisdiction in the case, and it should be dismissed. If no determination has been made over whether the Court can exercise jurisdiction in the case, it is the responsibility of the defendant to raise the issue of competence before the court. Otherwise, the defendant is said to have implicitly submitted to the jurisdiction of that court, the judge will continue with the trial, and the defendant will be barred from raising the issue of jurisdiction on appeal.

## CASE STUDY

An English company has initiated an arbitration proceeding against a Mexican company because of an alleged breach of contract. The parties had previously agreed that grievances would be resolved through arbitration and under English law. The parties proceed through all stages of the arbitration and an award is issued, faulting the Mexican company and requiring the company to pay damages. Following British procedure, the award issued from the arbitration conducted in the U.K. is forwarded to a Mexican judge for recognition and enforcement against the defendant residing in Mexico.

### Is possible to annul the arbitral award in a Mexican court?

No. The Mexican judge can refuse to recognize and enforce the award, but cannot nullify or suspend it. That power rests solely with the judge in the country where the award was issued.

### How long does it take for a court to recognize and enforce an arbitration award?

Approximately two months from the issuance of the award. In the event that the defendant challenges the award, the period of recognition and enforcement can last up to 6 months.