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XIX Dispute resolution

Any controversy, irrespective of its nature, may be brought before Mexican courts. Parties to a conflict may also agree to submit their disagreement to arbitration.

In the case of certain procedures, reconciliation between the parties has special priority. Such special procedures include divorce by mutual consent (where the judge will schedule two hearings to try to reconcile the parties), procedures before the Consumer Protection Agency, and labor disputes between employees and employers. In other types of controversies, such as those between insurance companies and insured parties, special conciliation proceedings before regulatory authorities are available. However, the conciliation proceedings are not required prior to filing a judicial claim.

Mexico does not have rules for enforcement of mediation clauses or resolutions issued by mediators. However, if within a mediation procedure parties agree to settle, the parties can create a settlement agreement that will be enforced by Mexican courts. As noted in Section II there are special courts for certain matters. For instance, disputes arising from family controversies and lease contracts are heard in special courts.

A. Court proceedings

1. Choice of jurisdiction

Parties to a contract may elect to waive the forum designated by law and select an alternate forum. For instance, parties who waive forum may have their cases heard in courts where any party has domicile, where performance of some obligation takes place, or where the goods in controversy are located.

Jurisdiction shall be established in the place of the domicile of the debtor in bankruptcy proceedings, and in cases of voluntary jurisdiction. If the parties to a contract do not expressly choose a forum, as described immediately above, the Commercial Code provides that regardless of the cause of action, jurisdiction shall be established pursuant to the following forum selection rules, in order of preference:

- a) The place designated by the debtor to be judicially required for payment;
- b) The place designated in the contract for the performance of obligations.

If the parties have not made the designations in a) or b):

- c) The place of the domicile of the debtor, and if the debtor has various domiciles, that which the creditor chooses;
- d) If there is no fixed domicile, the place in which the contract was enforced when the action is *in personam*, and when the action is *in rem*, the place of the location of the property; and
- e) If the subject matter of the *in rem* action is located in different domiciles, the competent court will be that of the place in which the plaintiff initiated the action.

2. Choice of law

Mexican law is very liberal with respect to the choice of the law governing a contract. This liberal application of law enables the parties to a contract to choose in most instances the applicable substantive law governing the interpretation and performance of their rights and obligations. One exception to this rule includes employment contracts, which are governed by the Federal Labor Law if the employee works in Mexico.

Although Mexican law does not require that the choice of law is related to the parties or the controversy, it is implied by logical interpretation. Mexican law will generally be applied to all persons located in the Mexican Republic, and to the acts and matters occurring within its territory or jurisdiction. However, Mexican law will not be applied in the following in-

stances:

- a) Where Mexico recognizes legal relationships validly created in the other states of the Republic, or in a foreign country in accordance with its own law;
- b) Where the status and capacity of individuals is governed by the law of their domicile;
- c) Where the regime of property rights over real estate and movable property is governed by the law of the place of its location, including leasing agreements or other contracts concerning the temporary use of goods;
- d) Where the form of legal acts is governed by the law of the place of enforcement; and
- e) Legal effects of acts and contracts will be governed by the law of the site of performance, except if the parties validly designate the application of another law.

The law of the location of real property and the status and capacity of individuals may not be waived.

B. Arbitration

Taking another step towards modernization, Mexico amended the Commerce Code and the Federal and Local Civil Procedure Codes in 1993. The amendments laid down new arbitration rules similar to the UNCITRAL Model Law, which has been adopted by many jurisdictions throughout the world. Civil disputes may be settled by arbitration pursuant to Mexican law. However, actions regarding alimony, divorce, nullity of marriage, individuals' civil status, and others as expressly provided by law, may not be settled by arbitration.

Commercial disputes also may be settled by arbitration pursuant to the rules of the Commerce Code. Under Mexican law, parties may freely decide which claims shall be submitted to arbitration, the arbitration rules to be applied in the proceedings (ICC, Mexico City Chamber of Commerce, Rules of the AAA), applicable substantive law, language, the place of arbitration, and the designation of arbitrators. Parties may also provide that the arbitral awards be final. Arbitration agreements must be in writing and can be enforced at any time, even during court proceedings.

In the past, arbitration was not permitted in contracts with the government. All disputes had to be submitted to Mexican courts. However, arbitration is becoming increasingly acceptable in most contracts with governmental agencies, including the acceptance of arbitration by international arbitration organizations, and in some cases, even the application of foreign law. Mexico is a signatory to, and has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Also, Mexico has signed and ratified the 1975 Inter-American Convention on International Commercial Arbitration, also known as the Panama Convention.

C. Enforcement of foreign judgments and arbitral awards

In establishing whether a judgment or arbitral award is binding, it is necessary to determine whether the resolution is issued in a country that is a party to an existing convention with Mexico regarding the relevant subject matter. If there is no convention, the enforcement of the foreign judgment or arbitral award will be governed by the Federal or Local Civil Procedure Codes.

1. Exclusive Jurisdiction

The following matters are under the exclusive jurisdiction of Mexican courts and therefore, no judgments or awards of any other authority will be enforced in Mexico:

- a) Rights over real estate, land, or waters located in Mexican territory;
- b) Resources of the exclusive economic zone, or related to sovereignty rights of the economic zone, according to Mexican law;
- c) Acts of authority related to the internal regime of Mexico, or to Mexican

governmental entities or its states;

- d) The internal regime of Mexican embassies and consulates located abroad;
- e) Controversies regarding employment of persons in Mexico;
- f) Pledges or mortgages of goods or real estate located in Mexico.

2. General Jurisdiction

Foreign judgments and arbitration awards will be enforced in Mexico, and their effects will be governed by the Federal or Local Civil Procedure Codes.

Enforcement must be requested in the courts of the domicile of the defendant, or in the place of location of defendant's assets in Mexico.

The court will analyze compliance with the following requirements:

- a) Formalities regarding the letters rogatory;
- b) That the judgment or arbitration award was not issued in a dispute over an *in-rem* action;
- c) Jurisdiction and competence of the court or arbitrator issuing the resolution,
- d) Personal service made upon the defendant, and respect for the defendant's right to due process and defense;
- e) "Res judicata" (definitive judgment) in the country where the resolution is issued;
- f) There may not be a pending lawsuit in any Mexican court for the same matter; and
- g) That the obligation to be enforced is not contrary to the public order of Mexico.

The enforcement of the foreign judgment or arbitration award can be denied if in the country of origin, equivalent Mexican judgments and arbitration awards may not be enforced. If a judgment or arbitration award cannot be enforced completely, the courts may declare a partial enforcement at the request of the interested party. Judgments approving the recognition or enforcement of a foreign judgment or foreign arbitration award may be appealed.

D. Foreign extraterritorial measures

On March, 1996, The U.S. government enacted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, commonly known as Helms Burton Act ("the Act"), Because the Act is enforceable outside U.S. Territory in countries where companies have an exchange of goods and services with the Cuban government, the Act is highly controversial.

On October, 1996, the Mexican government published, the Law for the Protection of Trading and Investment Against Foreign Legislation that Violates International Law, or the "Antidote Law."

The aforementioned law contains provisions similar to those included in foreign laws such as the FEMA (Foreign Extraterritorial Measures Act) of Canada, and the PTIA (Protection Trading Interests Act) of Great Britain.

Specifically, Mexico's Antidote Law protects entities or individuals who are liable in the U.S. under the Helms Burton Act.

Any decision or award issued by a foreign court, authority, or arbitral panel, containing resolutions with extraterritorial effects, and/or against international principles, will not be enforced within Mexican territory.