

Expediting Judgment through Arbitration or New Oral Trials

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The latest reforms to Mexico's Commercial Code, published in the Official Federal Gazette on January 27, 2010, are a positive step toward a more equal, transparent, and efficient judicial system in Mexico.

The new provisions provide greater speed and certainty in commercial arbitration proceedings and the enforcement of interim measures as well as arbitral awards. Judges were also granted broader discretion on issuing injunctive relief. Moreover, while Mexican legal proceedings have traditionally been carried out only through written documents, hearings and written statements, the reform introduces oral trials in certain commercial litigation cases, which will reduce litigation time and increase the efficiency of litigants' legal filings. The new provisions on Commercial Oral Proceeding become effective in January 2012.

Commercial Arbitration

Under the revised provisions, Mexican judges have been granted full discretion in the adoption of interim measures included in an arbitral award. Interim measures ordered by an Arbitral Tribunal will be recognized as binding and enforced upon request before the competent judge, irrespective of the state in which the measure was issued. The judge deciding the recognition or enforcement of an injunction may, if he or she considers it necessary and if the Arbitral Tribunal has not already done so, require the applicant for relief to post a bond to protect the rights of third parties. The recognition and enforcement of a (national or international) arbitral award does not require approval of the arbitral award itself by the Mexican judge who has been requested to execute the award. As long as the arbitration award does not violate Mexican public policy, it must be enforced.

Enforcement Measures

Another new article grants the judge power to issue enforcement measures to execute his/her judgment. These measures include fines, up to 36 hours detention, the use of public agencies, and breaking of locks if necessary. If the judge determines the case includes elements of a criminal offense, he/she will notify the prosecutor's office.

Commercial Oral Proceeding

This new type of proceeding can resolve disputes involving less than MXP \$220,533.48 (approx. \$18,000 USD). Interest and/or damages are not included, and this amount will be updated annually according to the CPI. An oral proceeding reduces the possibility of unnecessary delays and legal tricks regarding whether service of process was proper. Judgments expressed orally during hearings will be considered as rendered without any further formality required. The judge has the power to encourage the parties to settle.

At trial, prepared evidence will be submitted and heard, transcripts will be made, and the parties will be required to appear in court for a continuation of the hearing within 10 days, at which time judgment will be rendered. The judge will orally explain the facts and legal reasoning and read the judgment. These timelines will substantially speed up Mexican trials.

Even though this new proceeding is intended for low-value disputes, it will permit judgment more quickly and efficiently, becoming a useful tool in cases such as promptly collecting promissory notes, or obtaining an order of seizure of property.