
Kluwer Arbitration Blog

What are the Highlights of Mexico's New Arbitral Regulation on Civil Matters?

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Mexico's new [National Code for Civil and Family Procedure](#) was published on 7 June 2023 ("National Code"). The National Code will apply at both federal and local levels, and will replace both the [Federal Code of Civil Procedure](#) and the thirty-two local codes of civil procedure across all Mexican states. The National Code will enter into force gradually, with the deadline set for 1 April 2027.

The National Code's Third Book, Third Title specifically focuses on civil arbitration (Articles 533-549). Unlike the regulation of *commercial* arbitration embedded in Mexico's [Commerce Code](#), the National Code does not adopt the [UNCITRAL Model Law](#). It does incorporate, however, some of its principles, such as granting arbitral tribunals the authority to conduct the arbitration as they deem appropriate (Article 542), the equal treatment of the parties affording them a full opportunity of presenting their case (Article 542), and the grounds for refusing recognition and enforcement of awards (Article 549).

In this post we discuss the interplay of this new legislative development and the current arbitration landscape in Mexico.

The Current State of Arbitral Regulation in Mexico

Arbitration holds a prominent position in Mexico's legal system; it is governed by provisions set in the Federal Constitution, international treaties, and federal law.

In 2008, Article 17 of the [Constitution](#) was amended to include alternative dispute resolution (ADR) provisions—including arbitration—in the text, providing that "laws will provide for alternative dispute resolution methods." Albeit short, the inclusion is relevant. The Mexican Supreme Court has [ruled](#) that the right to submit disputes to ADR, including arbitration, is a constitutionally protected right.

Mexico has been a party to the [New York Convention](#) since 1971 and to the [Panama Convention](#) since 1978. Mexico made no declarations under Article I (3) of the New York Convention. As a result, the New York Convention applies to both commercial *and civil* international arbitration.

In 1993, Mexico adopted the 1985 UNCITRAL Model Law on International Commercial Arbitration by incorporating it into the Commerce Code (which is the fundamental federal statute of commercial law), and in 2011, it made substantive amendments to the Commerce Code adopting certain portions of the 2006 amendments to the UNCITRAL Model Law. The new National Code contains the regulation of arbitration for civil matters but it is not as comprehensive as that of the Commerce Code. In Mexico, commercial arbitration usually overshadows civil arbitration because parties seldom use civil arbitration.

In the following paragraphs, we delve into selected provisions of the National Code.

Referral to Arbitration

Enforcement of arbitration agreements is crucial for the effectiveness of arbitration. Similar to the New York Convention and the UNCITRAL Model Law, the National Code establishes the referral to arbitration as the mechanism to enforce an arbitration agreement. The regulation, however, presents some distinctive features.

Of note, the National Code treats the referral to arbitration as a procedural defense (*excepción procesal*) available to defendants in court proceedings. Consequently, when a party raises this defense, the court will open an ancillary proceeding (*incidente*) to rule on the referral petition, providing the plaintiff with an opportunity to present its arguments. This distinguishes the nature and treatment of referral to arbitration in civil matters from commercial cases, where the Commerce Code regulates a party request rather than a procedural defense.

The National Code further clarifies that the court can only refuse the referral to arbitration in two specific circumstances: (a) when the party demonstrates the existence of a final decision (judgment or award) declaring the arbitration agreement null and void; and (b) when the arbitration agreement is *notoriously* null and void, inoperative, or incapable of being performed by the time the party responds to the referral request (*see* Article 543).

Additionally, the National Code allows parties to agree to arbitration even after the commencement of a judicial proceeding but before the definitive judgment. If that occurs, the court will refer the parties to arbitration (*see* Article 534).

Preparation of the Arbitration

The National Code also includes provisions regarding the preparation of arbitration. According to the Code, if a contract contains an arbitration clause but the parties have not appointed an arbitrator, or the arbitrator refuses to act or is deceased, without substitute, any contracting party may seek an arbitrator's appointment before court using a preparatory procedure (*see* Article 386).

The proceeding unfolds as follows: after submitting the signed document containing the arbitration clause, the court will schedule a hearing for the parties to appear and select an arbitrator. If the parties fail to appear, the court will appoint the arbitrator (*see* Article 387). Notably, the National Code expressly recognizes that parties may sign electronically the arbitration agreement.

During the hearing, the court will encourage the parties to mutually agree on an arbitrator. Absent an agreement, the court will appoint an arbitrator from the official list of federal or state judiciaries. The court may also consult with arbitration institutions (*see* Article 389).

Once the arbitrator is appointed, the court will prepare the hearing minutes, marking the commencement of the arbitral proceedings (*see* Article 390).

Matters not Capable of Settlement by Arbitration

While the National Code acknowledges the parties' right to agree to arbitration (*see* Article 533), it explicitly lists certain matters that are non-arbitrable:

1. The right to receive support payments (*alimentos*), the cohabitation regime, guardianship, custody, and other rights of children and adolescents;
2. Divorces, except for separation of property, liquidation and dissolution of the conjugal partnership and other pecuniary differences;
3. Actions seeking annulment of marriages;
4. Actions concerning individuals' civil status, with exceptions specified by state law, and
5. Others expressly prohibited by law.

The UNCITRAL Rules as Default Rules

The National Code recognizes that references to arbitration rules in an arbitration agreement incorporate all the rules to the arbitration agreement (*see* Article 536). Absent an agreement on the rules, and unless it is an institutional arbitration, the [UNCITRAL Arbitration Rules](#) will apply to the arbitration. The National Code will fill any gaps in the arbitration rules (*see* Article 542).

Enforcement of Arbitration Awards

Courts are obligated to assist arbitral tribunals (*see* Article 548). After an award has been notified, any party may petition the court to enforce the award, unless the parties file an action to set aside the award within three months of the award's notification (*see* Article 546).

The court of the seat of the arbitration, or the court where the assets are located in the case of enforcement, will have jurisdiction over all matters related to the arbitration, where the arbitrator lacks jurisdiction. These courts will also oversee the enforcement of orders and awards (*see* Articles 547 and 986).

The National Code clarifies that there is no possibility of appeal against the arbitral award. Still, the National Code sets forth the possibility that parties may seek the vacation of the award. In the enforcement action, the respondent may only resist enforcement by asserting and proving the defenses provided for under Article V of the New York Convention, which are reproduced in the National Code.

Final Thoughts

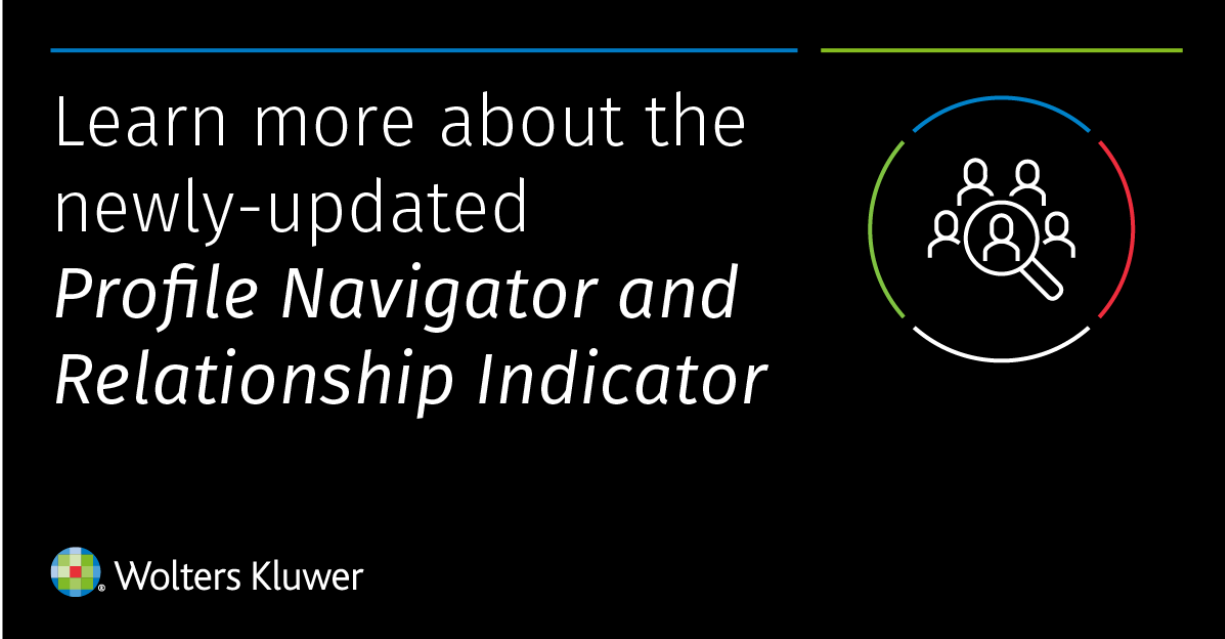
The new regulation of civil arbitration presents challenges for parties and courts as the judiciary will need to start applying a new body of law and interpret its provisions. Nonetheless, the National Code brings uniformity among all the thirty-two states forming the Mexican Republic, replacing a panoply of thirty-three codes with different provisions.

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