

# Kluwer Arbitration Blog

## Mexico Judicial Reform: Is Arbitration Going To Be the One that Saves Us?

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On September 15, 2024, the former President of Mexico, Andrés Manuel López Obrador, enacted a law that profoundly modifies the Mexican judicial system at both the federal and local level. This law aims to transform the Mexican juridical system to promote accessibility, transparency, democracy, and efficiency. A significant change is the election of justices and judges by direct vote. While the law is in effect, the following steps are pending: (i) secondary legislation, (ii) the dissolution of the Judiciary's Council (*Consejo de la Judicatura Federal*), and (iii) the appointment of judges by popular elections.

The enactment of this law has caused national and international concerns since it is reasonable to anticipate that its implementation may not succeed or, at the least, might fail to address the issues it intends to solve in the Mexican Judiciary. One of the major concerns is that the administration of justice will be seriously affected since “career” judges, people that were required to take mandatory examinations to ensure their knowledge and skills were adequately assessed, will be replaced by judges elected by popular vote in general elections pursuant to ballots. It is expected that the implementation will be expensive, factually impossible to know all the candidates, and the “judge” will acquire democratic legitimacy and may lead to judges challenging the legislative authority.

Uncertainty about these issues has led some people to assert that we, as attorneys, need to find alternatives for our clients to avoid resorting to the judiciary until the amendment is fully settled, being one of the main proposals to further use arbitration. But, in this context, is it really going to help or, as Oasis put it in their famous song, is arbitration “going to be the one that saves us?”

### What Is the Judicial Amendment?

The judicial amendment consists of the following:

- *Reorganization of the Supreme Court.* The Supreme Court will be reduced from 11 to nine members and the tenure of the justices will also be reduced to 12 years instead of the current 15. The Court will hear all its cases *en banc*, and the majority required for setting a binding precedent will decrease from eight to six votes.
- *Appointment of judges (at the federal and local levels).* Justices and judges will be elected by

popular vote in general elections pursuant to ballots prepared with proposals from Congress, the Executive, and the Judiciary. To be considered a candidate in the ballot, the application must include university transcripts and recommendation letters, among other requirements. Examinations to ensure knowledge and skills are not required.

- *Replacement of current judges.* All justices, magistrates and judges who are currently in office will be removed once their replacements are elected.
- *Creation of Faceless Judges (Jueces sin rostro).* Designed for specific cases of organized crime to protect the judge, and guarantee impartiality.
- *Administration of the judiciary.* The Federal Judiciary's Council (*Consejo de la Judicatura Federal*) will disappear, and its powers will be divided between an administrative office within the judiciary branch and a newly-created Judicial Disciplinary Tribunal (*Tribunal de Disciplina Judicial*), which will be in charge of adjudicating disciplinary matters within the judiciary and whose members will also be elected by popular vote. However, the same body will be responsible for the investigation and resolution of corruption cases within the judicial system.
- In 2025, all justices will be elected, together with half of the federal magistrates and judges, with the remaining half being elected in 2027. The amendment provides that the first judiciary election will be held on June 1, 2025. The application process is currently closed. Two days before the deadline, the required percentage of candidates was not met.

## The Amendment and Its Effects on Arbitration

As we mentioned, there has been more than one voice advocating for arbitration in view of the possible harmful effects of the judicial amendment. But is this true and possible in light of the proposed judiciary landscape?

Although arbitration is an alternative means of dispute resolution, it is not conceivable to regard arbitration as an entity that does not have an interrelation with justices and judges. Arbitration can flourish in a legal system that guarantees autonomy, accuracy, fairness, and efficiency. In more dramatic terms, arbitration can only develop where there is rule of law, and an independent judiciary, under the assumption of the division of power of the branches.

Arbitration and an effective judiciary are interdependent. Arbitration relies on the judiciary when, for example, the parties need assistance for the constitution of the tribunal, the claimant requests provisional relief or intends to enforce it or, perhaps the most important, when one of the parties seeks to enforce an award. In Professor **George A. Bermann's** words:

*“[t]he very efficacy of arbitration depends importantly on the attitudes of other actors, most notably courts and legislatures (and of course users). If nothing else, the attitudes of those decision makers largely determine whether agreements to arbitrate will be respected and whether arbitral awards will be recognized and enforced. To perform its function, the international arbitration regime needs these other actors to take positions and adopt practices that are favourable to the arbitration enterprise”.*

## How Can Arbitration Help?

It is unquestionable that, in view of these reforms, arbitration will become a very attractive alternative to traditional judicial proceedings. However, to maintain Mexico as an attractive arbitration seat, it will be important that the judiciary provides sufficient guarantees for the harmonious development of arbitration.

Given the context, we have identified the following opportunities: Some are more idealistic, but they can help us promote arbitration in the proposed judiciary landscape:

- *Avoid overregulation.* We should work to avoid overregulation that undermines the autonomy and flexibility of the arbitration process by turning it into a replica of the judicial process. Instead, we should focus on maintaining a minimal regulatory framework.
- *Strengthen arbitration institutions.* We must also strengthen our arbitration institutions and chambers of commerce, that promote efficiency, confidentiality, and specialization. These institutions are responsible for assisting the parties in logistical, administrative and regulatory ways to conduct arbitration.
- *Promote expedited arbitration proceedings.* We can promote expedited arbitration proceedings to make arbitration accessible, time-efficient, and cost-effective.
- *Foster an extrajudicial culture.* We should foster an extrajudicial culture of voluntary compliance of arbitral awards.

## Conclusion

Amid concerns about Mexico's judicial reform, arbitration stands as a powerful alternative. For arbitration to succeed, it needs a legal framework that ensures autonomy, fairness and efficiency. To keep Mexico attractive for arbitration and ensure an efficient resolution of disputes, we must focus not only on an institutional framework that avoids overregulation and strengthen our arbitral institutions, but also by fostering a culture (driven by governmental and non-governmental institutions) that upholds the highest standards of voluntary compliance of awards. Despite the challenges that this juncture represents for Mexico, this situation also gives us an invaluable opportunity to rethink arbitration in our country.

*The opinions expressed herein reflect the views of the individual attorneys and do not, in any way, represent the official stance of Galicia Abogados, S.C.*

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