THE 2011 AMENDMENTS TO MEXICAN ARBITRATION LAW

Francisco González de Cossío[*]

2011 witnessed an important facelift to the Mexican arbitration statute, which is reaching two decades. The development is noteworthy not only because of its content, but also because of the message it sends: arbitration received an important legislatively endorsement.

This note summarizes the development.

THE AMENDMENTS – IN GENERAL

The January 2011 amendment separates the wheat from the chaff. It crystallizes best practices and corrects mistakes extant in the (nearly) 20 years of experience since the modern Mexican arbitral regime was born.

THE AMENDMENTS – SPECIFICS

Enforcement of arbitration agreements

Albeit arbitration agreements are generally swiftly enforced, instances of doubt existed as to the exact procedure to follow. By and large, practice varied given the open texture of Mexican *lex arbitri* on point, which echoed UNCITRAL Model Law canons. As a result, the current amended regime is pristine clear: arbitration agreements are to be immediately enforced deferring to the arbitral tribunals' authority under *compétence*.

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* GONZÁLEZ DE COSSÍO ABOGADOS, SC (www.gdca.com.mx) Mexico City. Arbitrator and advocate in national and international cases. Views welcome at fgcossio@gdca.com.mx

Enforcement of arbitration awards

Albeit experience involving arbitration awards was praiseworthy (as a rule they are respected and enforced, correctly applying the New York Convention canons), a textual wrinkle existed that raised procedural questions in setting-aside and enforcement proceedings and impacted negatively constitutionally related remedies (namely, *amparo*). Not only was the scalpel taken to said proviso, but an entirely new, clear and assertive procedure was devised which better caters to the most important need in said field: respect and speedy enforcement of arbitral awards. Although experience has yet to evolve (all current enforcement and nullity actions need follow the abrogated regime), practitioners are in unison that expectations are positive.

Judicial cooperation in arbitration

Questions and difference of opinion existed as to the specific procedure to follow involving certain procedural steps where assistance from the Mexican *juge d'appui* was required. Ranging from designation of arbitrators absent party-compliance, court assistance in taking evidence, challenges to arbitrators, requests involving arbitrator fees, practice varied and practitioners had different takes on the proper procedure. The 2011 amendment puts the matter to rest. A procedural regime was provided for which can generally be characterized as quick and chicanery-discouraging.

Interim measures

The most exciting and controversial developments involve interim measures of protection. The steps taken in this regard are threefold.

First, *arbitrator*-issued measures are now *judicially* enforceable irrespective of their origin. The UNCITRAL 2006 enforcement model (articles 17-H *et seq* of the Model law as amended in 2006) was mimicked: the current regime provides a fast

enforcement procedure, limited UNCITRAL-flavored causes to deny enforcement, as well as the same creditor-friendly regime.

Second, the scope of the interim measures judicially obtainable has been amplified. What used to be an anachronic regime is now state of the art. And practice has followed suit: recently measures never seen before in Mexico have been ordered. And where litigated, the judicial response has thus far been positive: endorsement (as well as enforcement) of the regime echoing its utility.

Finally, liability is provided where abusive measures are requested or issued by parties or arbitrators. This last proviso —which is the last sentence of the entire amendment, foisted therein at the last minute without much discussion— has attracted attention, both locally and internationally. The reason is easy to understand: a clear mistake from an arbitration-friendly jurisdiction is a glowing paradox.

Interestingly and counter intuitively, practice has done without said textual blemish. The amount of interim measure requests has swelled impressively—both before Mexican courts and arbitral tribunals. This author has experienced, issued and litigated more interim measure-requests in the last six months than in the last six years! (And this appears to be the tip of the iceberg.)

FINAL COMMENT

The 2011 amendment to Mexican arbitration law is as exciting as it is praiseworthy. Moreover, it is promising. Arbitration in Mexico has flourished since the UNCITRAL Model Law was adopted in 1993. Since then, not only has the *quantity* of cases increased, but the *quality* of the arbitration practice. But good law cannot take the entire credit. The judiciary has played a pivotal role: the Mexican Supreme Court has issued a string of well thought-out, researched and opined decisions, which send a clear message: arbitration is to be fostered. And lower

courts followed suit. That the legislative branch has joined in is both telling and momentous.

The canvassed landscape lends itself to a predictable outcome: arbitration in Mexico is bound to maintain its winning streak.