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INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

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PROJECTS

Research Group on Arbitrator Immunity

MEXICO

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INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

SURVEY RESPONSES ON ARBITRATOR IMMUNITY – MEXICO

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MEXICO			
I. Definitions		**Yes/No/NA**	**Comments, if any.**
I.1.	"Arbitrator" For the purpose of this survey, an "arbitrator" is a person appointed by the parties, on behalf of the parties, or by an institution to adjudicate a dispute under an arbitration agreement, either alone or as one member of an arbitral tribunal. When answering the questions in this survey, please include all regulations, standards, or duties that apply to or include arbitrators but not those that apply solely to mediators.	**Yes**	In Mexico, arbitrators perform an activity that is materially jurisdictional in nature; however, they lack *imperium* to enforce their decisions and must therefore rely on the assistance of state courts. Arbitration is contractual (or conventional) in nature, as it is grounded in the parties' autonomy of will and supported by their freedom of contract. Its specific purpose is to vest a third party with authority to resolve a dispute that the parties have elected to remove from the jurisdiction of the state courts; accordingly, by its very nature, an arbitration agreement necessarily contains, or refers to, a procedural framework for the resolution of such dispute. The following isolated thesis (non-binding criteria) issued by the Third Collegiate Civil Court of the First Circuit characterizes **arbitration as a conventional legal institution** created by the express agreement of the parties to resolve disputes through a **procedure that respects essential due process guarantees**, culminating in a **binding arbitral award (laudo)**. The thesis explains that, by virtue of party autonomy, the arbitrator is vested with the authority to resolve a specific dispute and, **for that dispute only**, assumes a role equivalent to that of a State judge. The arbitrator performs an activity that is **materially jurisdictional**, in that they adjudicate rights and obligations through a reasoned decision that binds the parties. However, unlike State judges, arbitrators **lack imperium**, meaning they do not possess coercive enforcement powers and must rely on State courts for execution of the award. The thesis further emphasizes that arbitration is grounded in **freedom of contract and autonomy of will**, and that the arbitral agreement necessarily includes – or refers to – a procedural framework. The resulting award is a **materially jurisdictional act**, binding because the parties freely submitted themselves to the decision of a third party.

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Novena Época

Materias(s): Civil

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Tipo: Aislada

ARBITRAJE. ES UNA INSTITUCIÓN CONVENCIONAL PARA RESOLVER LITIGIOS MEDIANTE UN LAUDO.

El arbitraje es una institución que nace del pacto expreso de dos o más partes para resolver las controversias que surjan o hayan surgido, mediante un procedimiento legal o específico que debe respetar las formalidades esenciales del procedimiento, atribuyendo a un tercero la facultad de resolver el litigio existente mediante un laudo, que tendrá fuerza vinculatoria para ambas partes, como si hubiera resuelto un Juez del Estado; por la voluntad de las partes el tercero se convierte en Juez de esa controversia específica, cuya facultad queda limitada a resolver sobre lo que se le encomienda y que no está reservado al Juez estatal. El árbitro realiza una actividad materialmente jurisdiccional, pero carece de imperium para ejecutar, por lo que debe ser auxiliado por el órgano estatal. El arbitraje es de naturaleza convencional, porque se finca en la autonomía de la voluntad, con sustento en la libertad contractual de las partes, solamente que su objeto específico es otorgar facultades a un tercero para resolver una controversia que puede ser sustraída del ámbito jurisdiccional estatal; de modo que por su propia finalidad el pacto arbitral necesariamente contiene o remite a un procedimiento. El laudo que se dicta es materialmente un acto jurisdiccional, que resulta vinculatorio para las partes contendientes, puesto que se sometieron a la decisión de un tercero en ejercicio de la autonomía de su voluntad, que ha sido libre in causa, lo que le confiere fuerza de obligar. El artículo 1416, fracción II, del Código de Comercio define al arbitraje como cualquier procedimiento arbitral de carácter comercial, con independencia de que sea o no una institución arbitral permanente ante la que se lleve a cabo.

			TERCER TRIBUNAL COLEGIADO EN MATERIA CIVIL DEL PRIMER CIRCUITO. Amparo en revisión 195/2010. Maquinaria Igsa, S.A. de C.V. y otra. 7 de octubre de 2010. Unanimidad de votos. Ponente: Neófito López Ramos. Secretario: José Luis Evaristo Villegas. In sum, this precedent is foundational for Mexican arbitration law because it articulates a coherent doctrinal framework in which the arbitrator is conceived as a private adjudicator exercising jurisdiction by consent, whose authority is binding, procedurally constrained, and judicial in nature, yet structurally dependent on State courts for enforcement.
I.2.	"Legislation" For the purpose of this survey, "legislation" includes laws in force and any draft bills or legislative initiatives that are currently at an advanced stage, including for example if the proposal is before a legislative body for vote or approval. It is helpful to signal the content and status of any such legislative initiatives in this survey, so that readers can also be aware of changes that may be forthcoming.	**Yes**	Laws in force: **Constitución Política de los Estados Unidos Mexicanos** **Commerce Code (Código de Comercio)** – Mexico's primary statutory framework for commercial and international commercial arbitration. **Federal Civil Code (Código Civil Federal)** – Governs general civil liability, including extra-contractual liability potentially applicable to arbitrators in the absence of a specific immunity regime. **Federal Code of Civil Procedure (Código Federal de Procedimientos Civiles)** – Contains general procedural rules and provisions on judicial assistance that may apply on a supplementary basis in arbitration-related matters. **National Code of Civil and Family Procedure (Código Nacional de Procedimientos Civiles y Familiares – CNPCF)** – National procedural framework governing civil and family proceedings, including provisions on civil arbitration, with phased nationwide implementation. As of today, there is no Mexican federal legislative initiative at an advanced stage that specifically creates a statutory "arbitrator immunity" regime comparable to jurisdictions that expressly immunize arbitrators for adjudicatory acts. Mexico does not currently provide express statutory arbitrator immunity in its principal arbitration statutes (commercial arbitration in the Código de Comercio and civil arbitration in the CNPCF). Potential personal liability is therefore analyzed under general civil liability rules (e.g., Código Civil Federal, Article 1910). The most notable arbitration-specific statutory text touching liability is Código de Comercio Article 1480, which attributes responsibility for damages from interim measures to the requesting party and the arbitral tribunal that ordered them.

II. General		Yes/No/NA	Comments, if any.
II.1.	What standards or duties (including ethical standards or duties) apply to arbitrators in your jurisdiction? Please briefly describe these standards or duties and cite to their legislative, regulatory, jurisprudential, or other basis. [Examples of such standards or duties may include: – Duty to disclose potential conflicts of interest. – Duty of impartiality. – Duty of care/competence. – Duty to respect and maintain the confidentiality of the arbitration. – Duty to conduct the proceeding in an appropriate/fair/judicious manner.	**Yes**	Mexican law imposes clear duties on arbitrators relating to independence, impartiality, disclosure, due process, diligence, and adherence to the arbitral mandate, primarily through the Código de Comercio and supported by jurisprudence recognizing the arbitrator's materially jurisdictional role. Ethical standards are further shaped by institutional rules and widely accepted international guidelines, even though Mexico does not have a standalone statutory code of arbitrator ethics or immunity. **1. Duty of independence and impartiality** Arbitrators must be independent of the parties and impartial throughout the proceedings. They must disclose any circumstances likely to give rise to justifiable doubts as to their independence or impartiality, both at the time of appointment and on an ongoing basis. **Basis: Código de Comercio**, Articles **1428, 1429, and 1430** (based on the UNCITRAL Model Law). **2. Duty of disclosure** Arbitrators have a continuous obligation to disclose any facts or relationships that could reasonably raise doubts as to their independence or impartiality. **Basis: Código de Comercio**, Article **1428**. **3. Duty to conduct the proceedings with due process and procedural fairness** Arbitrators must ensure equality of the parties, grant each party a full opportunity to present its case, and respect the essential formalities of the procedure. **Basis: Código de Comercio**, Articles **1434 and 1435**. **4. Duty to act within the scope of the arbitral mandate** Arbitrators must decide only the issues submitted to them and within the limits of the arbitration agreement. Exceeding their mandate may expose the award to annulment. **Basis: Código de Comercio**, Articles **1435, 1457**, and **1460** (grounds for setting aside).

			5. Duty of diligence and proper conduct of the proceedings Arbitrators are expected to conduct the proceedings efficiently, avoid unnecessary delay, and issue the award within the agreed or legally prescribed timeframe. **Basis: Código de Comercio**, Articles **1436** and **1445**. **6. Duty of confidentiality (where agreed or applicable)** While confidentiality is not absolute under Mexican law, arbitrators must comply with any confidentiality obligations arising from the arbitration agreement, applicable institutional rules, or the nature of the proceedings. **Basis:** Party autonomy under the **Código de Comercio**. Institutional rules (e.g., ICC, CAM, CANACO) and contractual undertakings. In practice, arbitrators seated in Mexico routinely adhere to internationally recognized ethical standards, including integrity, competence, independence, impartiality, and confidentiality. Basis: Arbitration institutional rules (e.g., ICC Rules, CAM Rules, CANACO Rules). **IBA Guidelines on Conflicts of Interest** (non-binding but persuasive and widely relied upon). General principles of international arbitration practice.
II.2.	In cases of potential arbitrator misconduct of a civil (as opposed to criminal) nature, what remedies or disciplinary measures are available in your jurisdiction *vis-à-vis* the arbitrator? Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**Yes**	In Mexico, civil (non-criminal) arbitrator misconduct is addressed primarily through procedural remedies within the arbitration and court-control mechanisms over the award, and only secondarily through civil liability claims or institutional/contractual measures. There is no specialized state "disciplinary body" for arbitrators comparable to a judicial council. Mexico's main "remedies" for civil arbitrator misconduct are: (i) challenge/recusal (and court review), (ii) set-aside, (iii) refusal of enforcement, and – more exceptionally – (iv) civil damages claims, with a notable arbitration-specific reference to damages tied to interim measures.

II.3.	Is there anything in the legislation of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?	**No**	Mexican legislation does not recognize a general statutory principle of *arbitrator immunity*, and does contain general principles that could, in theory, provide a legal basis for personal civil liability of arbitrators, although such liability is exceptional in practice and tightly constrained by the arbitration framework. However, wrongdoing or willful misconduct may give rise to (i) civil liability actions under the Federal Civil Code and (ii) setting aside of the award under Article 1457 of the Commerce Code, if the wrongdoing or willful misconduct entails lack of impartiality or denial of due process. In that regard, some arbitrators have included in the Terms of Reference or in Procedural Order No. 1 the following wording when the arbitration is governed by Mexican law: *Neither Arbitrator, nor the Secretary, nor any member of the ICC Court or Secretariat, shall be required to be a party to, or appear as a witness in, any judicial or other proceeding arising out of this arbitration.* *Save for conscious and deliberate wrongdoing or willful misconduct:* *The Parties waive any claims and undertake not to initiate legal proceedings against, or otherwise affect the independence and/or immunity of, an Arbitrator, the Secretary, or any member of the ICC Court or Secretariat, in respect of any act or omission related to this arbitration;* *The Parties agree to limit any liability arising out of this arbitration that may be attributed to an Arbitrator to the amount of the fees received or that would be payable to the Arbitrator;* *Neither Arbitrator, nor the Secretary, nor any member of the ICC Court or Secretariat, shall be liable to either Party for any act or omission relating to any matter connected with this arbitration;* *The Parties agree to jointly and severally indemnify any or all Arbitrators, the Secretary, or the members of the ICC Court or Secretariat, in respect of any liability, cost, or claim arising in connection with this arbitration;*

			The Parties agree that the Arbitrators shall not be liable for any interim measures that the Tribunal may issue. Accordingly, the Parties expressly waive their rights under Article 1480 of the Mexican Commercial Code. *Any dispute, claim, or controversy that may arise between the Parties, any or all Arbitrators, and/or the Secretary, in relation to these Terms of Reference, the appointment, performance, or liability of the Arbitrators or the Secretary, or any other matter related to their mandate or role in this arbitration, shall be finally resolved by arbitration under the ICC Rules. The dispute shall be resolved by a sole arbitrator appointed by agreement of the parties. In the absence of agreement, the sole arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration. The sole arbitrator shall decide the dispute in accordance with these Terms of Reference and the substantive laws of the Netherlands. The seat of arbitration shall be The Hague (Netherlands), and the language of the arbitration shall be English.* This is only an example of the wording typically used. Such waiver may also be used in other types of arbitration, and is not limited to ICC arbitration.
II.4.	Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?	**No**	Mexican jurisprudence does not recognize a general principle of arbitrator liability. Instead, it consistently channels allegations of arbitrator misconduct into procedural remedies against the award – primarily annulment for serious due process violations – while excluding both merits review and routine personal liability of arbitrators. The courts conceive arbitrators as private adjudicators whose duties are enforced through control of the arbitral process and award, not through civil actions for damages. Mexican jurisprudence significantly limits the circumstances in which an arbitrator could realistically be subject to suit or found personally liable. Registro digital: 162067 Instancia: Tribunales Colegiados de Circuito Novena Época Materias(s): Civil Tesis: I.3o.C.944 C Fuente: Semanario Judicial de la Federación y su Gaceta. Tomo XXXIII, Mayo de 2011, página 1231

			Tipo: Aislada NULIDAD DEL LAUDO ARBITRAL POR INDEBIDA NOTIFICACIÓN O ESTADO DE INDEFENSIÓN GRAVE (FRACCIÓN I, INCISO B), DEL ARTÍCULO 1457 DEL CÓDIGO DE COMERCIO). El artículo 1457, fracción I, inciso b), del Código de Comercio, sanciona con la nulidad del laudo arbitral cuando una de las partes no fue debidamente notificada de la designación de un árbitro o de las actuaciones arbitrales, o no hubiere podido, por cualquier otra razón, hacer valer sus derechos. Se regulan tres supuestos de nulidad en este caso; el primero deriva de que una de las partes no haya sido debidamente notificada de la designación de un árbitro, lo cual deriva del especial interés que puede provenir para ejercer el derecho a recusarlo y garantizar un tribunal arbitral idóneo, imparcial e independiente. Así se desprende de lo previsto en los artículos 1428 y 1429 del Código de Comercio, con arreglo a los cuales la persona a quien se comunique su posible nombramiento como árbitro deberá revelar todas las circunstancias que puedan dar lugar a dudas justificadas acerca de su imparcialidad e independencia, quien podrá ser recusado si existen circunstancias que den lugar a dudas justificadas respecto de su imparcialidad e independencia o si no posee las cualidades convenidas por las partes. Además, las partes pueden acordar el procedimiento para llevar a cabo esa recusación y a falta del mismo, quien desee recusar a un árbitro debe enviar un escrito en el que exponga los motivos de la recusación al tribunal arbitral dentro de los quince días siguientes a aquel en que tenga conocimiento de su constitución o de circunstancias que den lugar a dudas justificadas respecto de su imparcialidad e independencia o si no posee las cualidades convenidas por las partes. También se regula como causa de nulidad del laudo arbitral que una de las partes no haya sido notificada de las actuaciones arbitrales, como reflejo del derecho contenido en el artículo 1434 del Código de Comercio, relativo a que debe tratarse a las partes con igualdad y darse a cada una de ellas plena oportunidad de hacer valer sus derechos de modo tal que pueda ejercer su derecho fundamental de defensa que tutela el artículo 14 de la Constitución Federal. El penúltimo y último párrafos del artículo 1440 del Código de Comercio, disponen que debe notificarse a las partes con suficiente antelación la celebración de las audiencias y las reuniones del tribunal arbitral para examinar mercancías u otros bienes o documentos y, además, de todas las declaraciones, documentos probatorios, peritajes o demás información que una de las partes suministre al tribunal arbitral se dará traslado a la otra parte.

			Según lo dispone el artículo 1448 in fine del mismo ordenamiento, después de dictado el laudo el tribunal arbitral lo notificará a cada una de las partes mediante entrega de una copia firmada por los árbitros de conformidad con el primer párrafo del mismo precepto. Esto último es relevante porque es a partir de esa notificación que, en términos del artículo 1450 del Código de Comercio, dentro de los treinta días siguientes a la notificación del laudo, salvo que se haya acordado otro plazo, se podrá pedir al tribunal, corrija el laudo de cualquier error de cálculo, de copia, tipográfico o de naturaleza similar; lo cual también podrá hacer el tribunal arbitral dentro de los treinta días siguientes a la fecha del laudo sobre un punto o parte concreta del mismo, que formará parte del laudo. Finalmente, se regula como hipótesis de nulidad la que se refiere a que por cualquier razón una de las partes no pudo ejercer sus derechos, que no se encuentra prevista en los casos anteriores pero que, por su especial magnitud, justifica su revisión en la vía de nulidad. TERCER TRIBUNAL COLEGIADO EN MATERIA CIVIL DEL PRIMER CIRCUITO. Amparo en revisión 195/2010. Maquinaria Igsa, S.A. de C.V. y otra. 7 de octubre de 2010. Unanimidad de votos. Ponente: Neófito López Ramos. Secretario: José Luis Evaristo Villegas. Registro digital: 2025652 Instancia: Primera Sala Undécima Época Materias(s): Civil Tesis: 1a. XXXII/2022 (10a.) Fuente: Gaceta del Semanario Judicial de la Federación. Libro 20, Diciembre de 2022, Tomo II, página 1246 Tipo: Aislada NULIDAD DE LAUDO ARBITRAL. LA CAUSA PREVISTA EN EL ARTÍCULO 1457, FRACCIÓN I, INCISO B), PARTE FINAL, EN RELACIÓN CON EL DIVERSO 1434, AMBOS DEL CÓDIGO DE COMERCIO, SE REFIERE A LA IGUALDAD DE TRATO Y LA PLENA OPORTUNIDAD DE HACER VALER LOS DERECHOS DE LAS PARTES DURANTE LA SUSTANCIACIÓN DEL PROCEDIMIENTO DE ARBITRAJE.

			Hechos: Dos personas morales instaron un procedimiento especial sobre transacciones comerciales y arbitraje, en el que solicitaron la declaración de nulidad de un laudo arbitral; demandaron a tres personas morales que resultaron favorecidas en el laudo, así como a los tres árbitros que lo emitieron. El Juez de Distrito emitió fallo en el que declaró la nulidad por estimar actualizada la hipótesis establecida en el artículo 1457, fracción I, inciso b), parte final, en relación con el numeral 1434, ambos del Código de Comercio, estimando que en el procedimiento arbitral se vulneró el derecho de las demandantes a la igualdad de trato y la plena oportunidad de hacer valer sus derechos, porque en su apreciación, hubo pruebas aportadas por ellas que no se valoraron por los árbitros con el mismo estándar e idénticas exigencias con las que se apreciaron las de la parte contraria, y porque los árbitros no tomaron en cuenta una prueba documental ni ponderaron un argumento formulado por las inconformes. La sentencia fue impugnada en juicio de amparo directo, y el Tribunal Colegiado de Circuito concedió el amparo a la parte demandada a partir de una interpretación de los dispositivos legales referidos, en la que estimó que los aspectos examinados por el Juez de Distrito implicaban el fondo de la decisión arbitral y no actualizaban la causa de nulidad. En el amparo directo en revisión se controvierte esta interpretación, y se impugnan como inconstitucionales e inconvencionales dichos preceptos. Criterio jurídico: La Primera Sala de la Suprema Corte de Justicia de la Nación determina que la causa de nulidad de laudo arbitral prevista en el artículo 1457, fracción I, inciso b), parte final, en relación con el diverso 1434, ambos del Código de Comercio, se refiere a la violación a los derechos a la igualdad de trato y de defensa mediante la plena oportunidad de hacer valer los derechos de las partes en la sustanciación del procedimiento de arbitraje comercial, y no a violaciones que se atribuyan a la decisión arbitral sobre el fondo del laudo. Justificación: La línea doctrinal de la Suprema Corte de Justicia de la Nación en materia de arbitraje comercial ha considerado que el debido proceso y la legalidad del procedimiento arbitral, incluida su decisión final, no están directamente regidas por las garantías de los artículos 14 y 16 constitucionales que regulan los actos de las autoridades públicas, de modo que al proceso judicial y al arbitral, no les son aplicables idénticas exigencias.

			No obstante, en el arbitraje es posible una aplicación por analogía del parámetro constitucional del debido proceso y el derecho de audiencia conforme a la doctrina jurisprudencial del Alto Tribunal, siempre y cuando la interpretación de las reglas y los principios arbitrales admitan claramente la compatibilidad o se hicieran las modulaciones apropiadas y necesarias para respetar la naturaleza, fines y particularidades esenciales del arbitraje, considerando que éste, por su índole voluntaria y privada, ha de apegarse al acuerdo arbitral y demás normatividad que lo rija, sobre la premisa básica de la voluntad de las partes como principio toral que les da la libertad de diseñar en consenso el propio procedimiento o de sujetarse a uno establecido en reglamentos arbitrales de carácter privado. Ahora bien, los artículos 1434 y 1457, fracción I, inciso b), parte final, del Código de Comercio tienen una connotación de garantía procedimental. Bajo un argumento formal de sedes materiae, estatuyen derechos dirigidos a exigir su respeto y prevalencia en la sustanciación de las actuaciones del procedimiento arbitral, a efecto de que las partes, con igualdad procesal, tengan las mismas oportunidades para hacer valer ante el árbitro o árbitros, todos los actos inherentes a su defensa; mientras que el laudo regido por otros principios y derechos, tanto formales como para la decisión de fondo. Asimismo, bajo un argumento material, porque el derecho de defensa es primordialmente de naturaleza instrumental, cuyo ejercicio atañe a las partes y cuyo respeto recae en el árbitro o inclusive en la contraparte, para no obstaculizar o privar de su ejercicio a ninguna de ellas durante los actos del procedimiento, previos a la emisión del laudo. En consecuencia, dichos preceptos permiten analizar violaciones de procedimiento que hubieren impedido el pleno ejercicio de esos derechos, o incluso violaciones cometidas en el laudo pero directamente vinculadas con la oportunidad de defensa en la sustanciación de las actuaciones arbitrales previas. Sobre esa base, consideraciones en el sentido de que el o los árbitros no valoraron pruebas, que no las apreciaron con el mismo estándar o con idénticas exigencias o que no dieron respuesta expresa a un argumento formulado por alguna de las partes, son aspectos que atañen al ejercicio del arbitrio en la decisión de fondo; por ende, no actualizan la hipótesis de nulidad de laudo examinada. Amparo directo en revisión 7790/2019. Spectrum Trim, Limited Liability Company y otras. 5 de agosto de 2020. Cinco votos de las Ministras Norma Lucía Piña Hernández y Ana Margarita Ríos Farjat, y los Ministros Jorge Mario Pardo Rebolledo, Alfredo Gutiérrez Ortiz Mena y Juan Luis González Alcántara Carrancá. Ponente: Ministra Norma Lucía Piña Hernández. Secretaria: Laura Patricia Román Silva. Esta tesis se publicó el viernes 09 de diciembre de 2022 a las 10:21 horas en el Semanario Judicial de la Federación.

			Registro digital: 2025648 Instancia: Primera Sala Undécima Época Materias(s): Civil, Constitucional Tesis: 1a. XXX/2022 (10a.) Fuente: Gaceta del Semanario Judicial de la Federación. Libro 20, Diciembre de 2022, Tomo II, página 1244 Tipo: Aislada LAUDO ARBITRAL. LOS ARTÍCULOS 1457, FRACCIÓN I, INCISO B), PARTE FINAL, Y 1434, AMBOS DEL CÓDIGO DE COMERCIO QUE REGULAN LA CAUSA DE NULIDAD POR VIOLACIÓN A LA IGUALDAD DE TRATO Y LA PLENA OPORTUNIDAD DE HACER VALER LOS DERECHOS EN EL PROCEDIMIENTO ARBITRAL, NO SON INCONSTITUCIONALES POR NO PERMITIR UN CONTROL JUDICIAL DEL FONDO DEL LAUDO BAJO SUS HIPÓTESIS NORMATIVAS. Hechos: Dos personas morales instaron un procedimiento especial sobre transacciones comerciales y arbitraje, en el que solicitaron la declaración de nulidad de un laudo arbitral; demandaron a tres personas morales que resultaron favorecidas en el laudo, así como a los tres árbitros que lo emitieron. El Juez de Distrito emitió fallo en el que declaró la nulidad por estimar actualizada la hipótesis establecida en el artículo 1457, fracción I, inciso b), parte final, en relación con el numeral 1434, ambos del Código de Comercio, estimando que en el procedimiento arbitral se vulneró el derecho de las demandantes a la igualdad de trato y la plena oportunidad de hacer valer sus derechos, porque en su apreciación, hubo pruebas aportadas por ellas que no se valoraron por los árbitros con el mismo estándar e idénticas exigencias con las que se apreciaron las de la parte contraria, y porque los árbitros no tomaron en cuenta una prueba documental ni ponderaron un argumento formulado por las inconformes. La sentencia fue impugnada en juicio de amparo directo, y el Tribunal Colegiado de Circuito concedió el amparo a la parte demandada a partir de una interpretación de los dispositivos legales referidos, en la que estimó que los aspectos examinados por el Juez de Distrito implicaban el fondo de la decisión arbitral y no actualizaban la causa de nulidad. En el amparo directo en revisión se controvierte esta interpretación, y se impugnan como inconstitucionales e inconvencionales dichos preceptos.

			Criterio jurídico: La Primera Sala de la Suprema Corte de Justicia de la Nación determina que los artículos 1457, fracción I, inciso b), parte final, y 1434, ambos del Código de Comercio, que regulan la causa de nulidad de laudo arbitral por violación a los derechos a la igualdad de trato y de defensa mediante la plena oportunidad de hacer valer los derechos en la sustanciación del procedimiento de arbitraje comercial, no son inconstitucionales por el hecho de no albergar en sus hipótesis la posibilidad de realizar un control judicial del fondo de la decisión arbitral. Justificación: Los dispositivos legales referidos estatuyen el derecho a la igualdad de trato y a la plena oportunidad de hacer valer los derechos como garantía procedimental, para que sean respetados y prevalezcan en la sustanciación del arbitraje; por tanto, permiten examinar como causa de nulidad violaciones de procedimiento que hubieren impedido el pleno ejercicio de esos derechos, o incluso violaciones cometidas en el laudo pero directamente vinculadas con la oportunidad de defensa en la sustanciación de las actuaciones arbitrales previas. Ahora bien, el hecho de que no sea posible analizar el fondo de la decisión arbitral al cobijo de dichas normas legales, no las torna inconstitucionales a la luz del derecho a un debido proceso arbitral, aplicando por analogía el núcleo duro de formalidades esenciales del procedimiento que prevé el artículo 14 constitucional para el proceso judicial; ello, pues si bien es cierto que en el arbitraje comercial comúnmente no se prevé una revisión del fondo del laudo por diverso tribunal arbitral, en forma semejante a un recurso ordinario de apelación en proceso jurisdiccional ante autoridad pública, también lo es que no existe prohibición o imposibilidad jurídica para que las partes, al diseñar el procedimiento arbitral, pacten esa posibilidad conforme al principio de convencionalidad; y el hecho de que en la propia legislación mercantil no se prevea un control judicial sobre la decisión que constituye el fondo del laudo a través de recurso ordinario, es acorde a la naturaleza y los fines del arbitraje como medio alternativo de solución de controversias reconocido constitucionalmente. Amparo directo en revisión 7790/2019. Spectrum Trim, Limited Liability Company y otras. 5 de agosto de 2020. Cinco votos de las Ministras Norma Lucía Piña Hernández y Ana Margarita Ríos Farjat, y los Ministros Jorge Mario Pardo Rebolledo, Alfredo Gutiérrez Ortiz Mena y Juan Luis González Alcántara Carrancá. Ponente: Ministra Norma Lucía Piña Hernández. Secretaria: Laura Patricia Román Silva. Esta tesis se publicó el viernes 09 de diciembre de 2022 a las 10:21 horas en el Semanario Judicial de la Federación.

II.5.	Is there anything in the jurisprudence/ other secondary sources of law of your jurisdiction that could provide a basis for an arbitrator generally to be subject to suit or found liable personally for acts or omissions in relation to an arbitration?	**Yes**	In the absence of statutory immunity, arbitrators are not categorically shielded from suit. Mexican courts and doctrine accept that general tort principles may apply where a claimant can establish unlawful conduct or omission, damage, and a causal link. This derives from Article 1910 of the Federal Civil Code, which imposes an obligation to repair damage caused by illicit acts or omissions. Jurisprudence characterizing arbitrators as private adjudicators exercising materially jurisdictional functions by consent (rather than state officials) supports the conclusion that judicial immunity does not extend to arbitrators, leaving room – at least theoretically – for civil claims in cases of serious misconduct. Mexican arbitration law contains a narrow, express recognition of potential arbitrator liability in connection with interim measures. The Commerce Code (Article 1480) provides that the party requesting an interim measure and the arbitral tribunal that orders it are responsible for resulting damages. This provision is frequently cited in doctrine as evidence that Mexican law does not exclude arbitrators from civil responsibility per se. At the same time, Mexican case law consistently channels complaints about arbitrator conduct toward procedural remedies – challenge or removal of the arbitrator, annulment of the award, or refusal of enforcement – rather than personal liability. Supreme Court and collegiate court decisions emphasize that errors of judgment or evaluation of evidence do not give rise to liability and generally cannot even support annulment unless they amount to serious procedural violations affecting the right of defense. Accordingly, although the Commerce Code does not grant arbitrators immunity and general tort law could theoretically support a civil claim, Mexican jurisprudence treats personal liability of arbitrators as exceptional. In practice, only conduct amounting to bad faith, gross negligence, or acts clearly outside the arbitral mandate, and accompanied by proven damage and causation, could realistically expose an arbitrator to personal civil liability.
II.6.	If your answer to question II.3, II.4 or II.5 is yes, is there a corresponding statute of limitations or similar time-limit in your jurisdiction for the initiation of a claim against an arbitrator?		Mexico has no arbitration-specific statute of limitations for claims against arbitrators. Any claim would be governed by the general limitation periods under civil law, depending on how the claim is characterized. **1. Civil (tort-based) liability claims** If a claim against an arbitrator is framed as extra-contractual civil liability (tort), the applicable limitation period is: – Two (2) years from the date on which the injured party became aware of the damage and of the person responsible.

			– Legal basis: Federal Civil Code, Article 1934 (general statute of limitations for civil liability arising from illicit acts). This is the most likely limitation period that would apply to a personal claim against an arbitrator, given the absence of a specific statutory regime. **2. Contractual liability claims (less common)** In the unlikely event a claim is characterized as contractual liability (e.g., based on an alleged breach of the arbitrator's agreement): – General limitation period: Ten (10) years. In practice, Mexican courts tend to analyze arbitrator conduct primarily under extra-contractual liability, not contract.
II.7.	If your answer to question II.3, II.4 or II.5 is yes, is there anything in the legislation or jurisprudence/other secondary sources of law of your jurisdiction that addresses the possibility of joint liability among the members of the tribunal, either *vis-à-vis* the parties or among themselves?		Mexican arbitration legislation and jurisprudence do not expressly regulate joint or several liability among members of an arbitral tribunal. However, general civil-law principles on joint liability (responsabilidad solidaria) could theoretically apply in exceptional cases, depending on how liability is framed and proven.

III. Limitations of Liability		Yes/No/NA	Comments, if any.
III.1.	Is there a general principle of arbitrator immunity (*i.e.*, whereby an arbitrator is immune from civil liability for his or her activities undertaken as arbitrator) in your jurisdiction? If yes, is this immunity less than, equivalent to, or greater than the immunity, if any, afforded to judges or members of the judiciary? Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**No**	Mexico does not recognize a general principle of arbitrator immunity. Arbitrators are not granted statutory or constitutional protection from civil liability comparable to that afforded to judges, who benefit from judicial immunity as public officials. Arbitrators are private adjudicators acting by consent and, in theory, may be subject to civil liability under general tort principles. The parties may agree to limit an arbitrator's liability; however, such limitation: – is confined to the contractual sphere of the arbitration; – does not amount to absolute immunity; and – does not preclude claims based on extra-contractual (tort) liability in cases of wrongdoing or willful misconduct, even where a waiver or exculpatory clause exists. This understanding is consistent with the approach under Mexican law, which does not recognize a general principle of arbitrator immunity, but instead channels ordinary arbitrator liability through contractual arrangements, while reserving tort claims for truly exceptional circumstances.
III.2.	Is there anything in the legislation of your jurisdiction that otherwise limits an arbitrator's personal civil liability?	**No**	Mexican law does not otherwise limit an arbitrator's personal civil liability through legislation. Any practical limitation results from the high threshold imposed by general civil liability principles and the arbitration system's preference for procedural remedies, rather than from an express statutory cap or immunity.
III.3.	Is there anything in the jurisprudence/ other secondary sources of law of your jurisdiction that otherwise limits an arbitrator's personal civil liability?	**No**	

III.4.	If your answer to question III.1, III.2, or III.3 is yes, are there any exceptions to that immunity or limitation of liability? For example, is there any exception to an arbitrator's immunity from suit or limitation of liability where the arbitrator's alleged misconduct involves fraud, bad faith, negligence, or intentional wrongdoing (to the extent these concepts are recognized in your jurisdiction's legal framework)? Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**Yes**	The parties may agree to limit an arbitrator's liability; however, such limitation: – is confined to the contractual sphere of the arbitration; – does not amount to absolute immunity; and – does not preclude claims based on extra-contractual (tort) liability in cases of wrongdoing or willful misconduct, even where a waiver or exculpatory clause exists.
III.5.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers the effectiveness of limitation of liability clauses found in arbitral institution rules? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The relevant limitation of liability language and its source (*i.e.*, UNCITRAL Arbitration Rules 2010, American Arbitration Association Commercial Arbitration Rules, etc.).	**No**	There is no Mexican jurisprudence directly addressing the effectiveness of limitation-of-liability clauses in arbitral institution rules. Nonetheless, Mexican secondary sources and general civil-law principles support the view that such clauses are effective as contractual limitations, but cannot exclude liability for intentional or egregious misconduct, nor create a regime of arbitrator immunity.

	– A summary of the court's findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator's liability.		
III.6.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers the effectiveness of limitation of liability clauses or indemnity clauses (*i.e.*, clauses by which the parties to the arbitration agree to cover any losses or damages suffered by the arbitrators in a potential suit, or to otherwise hold the arbitrators harmless) found in an arbitration's procedural materials – *i.e.*, Terms of Reference, Terms of Appointment, Procedural Order No. 1, etc.? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The limitation of liability or indemnity language found in the relevant procedural material (if available). – A summary of the court's findings as to the effectiveness of the limitation of liability or indemnity clause in limiting or excluding an arbitrator's liability.	**No**	There is no Mexican jurisprudence directly addressing the effectiveness of limitation-of-liability or indemnity clauses included in arbitral procedural materials. However, Mexican secondary sources and general civil-law principles suggest that such clauses are effective as contractual arrangements, subject to public-policy limits and without creating absolute arbitrator immunity or barring tort claims in exceptional cases.

III.7.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers the effectiveness of a clause limiting the arbitrators' liability found in the parties' arbitration agreement? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The relevant limitation of liability language in the parties' arbitration agreement. – A summary of the court's findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator's liability.	**No**	There is no Mexican jurisprudence directly considering the effectiveness of a clause limiting arbitrators' liability in the parties' arbitration agreement. Nonetheless, Mexican secondary sources and general civil-law principles suggest that such clauses would be treated as contractual risk-allocation mechanisms, effective only within the bounds of contract law and without conferring absolute immunity on arbitrators.
III.8.	If your answer to question III.5, III.6, or III.7 is yes, does any of this jurisprudence/secondary sources of law comment on whether the *source* of the limitation of liability or indemnity language (*i.e.*, institutional rules v. procedural order v. terms of reference v. arbitration agreement) was relevant to the court's finding? If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.	**N/A**	

III.9.	If your answer to question III.5, III.6, or III.7 is yes, does any of this jurisprudence/secondary sources of law comment on whether the particular language used in the relevant limitation of liability or indemnity clause was relevant to the court's finding? If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.	**N/A**	
III.10.	If your answer to question III.5, III.6, or III.7 is yes, does any of this jurisprudence/secondary sources of law comment on whether the moment in the arbitration when the relevant limitation of liability or indemnity clause was agreed to was relevant to the court's finding, *i.e.*, whether it was agreed to *ex ante* (in advance of the relevant arbitration proceeding having been initiated) or after the arbitration was commenced? If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.	**N/A**	

III.11.	To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction (*i.e.*, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability apply in proceedings in which a party is requesting interim relief (interim injunction, conservatory or similar temporary measures), as distinct from final relief (including damages), from an arbitrator? Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**No**	
III.12.	To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction, (*i.e.*, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority (for example, in enforcement proceedings)? Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**No**	

III.13.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers whether a limitation of liability clause found in arbitral institution rules, procedural materials, or the parties' arbitration agreement operates to permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source.	**No**	
III.14.	To the extent an arbitrator is permitted to be called upon to act as a witness in your jurisdiction but is otherwise bound by confidentiality obligations related to the underlying arbitration, is there any guidance (found in jurisprudence or elsewhere) as to how the arbitrator should proceed?	**No**	
IV. Effectiveness of Professional Indemnity Insurance		**Yes/No/NA**	**Comments, if any.**
IV.1.	Does the legal framework in your jurisdiction mandate professional indemnity insurance coverage for arbitrators?	**No**	
IV.2.	Is there any legislation or jurisprudence/other secondary sources of law in your jurisdiction which considers whether acting as an arbitrator counts as an act constituting the practice of law?	**No**	

IV.3.	Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister's chambers covers activities undertaken by a member of that firm/chambers as arbitrator where the arbitrator has been appointed in an individual capacity (*i.e.*, rather than as a representative of the firm/chambers)? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The relevant language of the professional indemnity insurance policy of the arbitrator's law firm or barrister's chambers (if available). – A summary of the court's finding as to the scope of that policy's coverage *vis-à-vis* the arbitrator's activities as an arbitrator.	**No**	

<table>
<tr>
<td>IV.4.</td>
<td>If your answer to question IV.3 is no, is there any jurisprudence/other secondary sources of law in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister's chambers covers activities undertaken by an employee or partner of that firm/chambers as a board member of an external organization (i.e., a corporation, charity, etc.)?

If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:

– The type of misconduct alleged.

– The relevant language of the professional indemnity insurance policy of the member's law firm or barrister's chambers (if available).

– A summary of the court's finding as to the scope of that policy's coverage vis-à-vis the member's activities as a board member.</td>
<td>N/A</td>
<td></td>
</tr>
</table>

IV.5.	Assuming that there is coverage of the types envisioned in questions IV.3 and IV.4, is there any jurisprudence/other secondary sources of law in your jurisdiction which considers whether that coverage extends to breaches of cybersecurity and data privacy laws? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The nature of the alleged cybersecurity/privacy breach. – The relevant language of the professional indemnity insurance policy (if available). – A summary of the court's finding as to the scope of that policy's coverage *vis-à-vis* the alleged cybersecurity/privacy breach.	**N/A**	
IV.6.	Assuming that there is coverage of the type envisioned in question IV.3, please provide sample language from commonly used insurance policies that were found by those courts or secondary sources to cover work undertaken independently as an arbitrator.	**N/A**	

IV.7.	Are there any other issues that, in your view, a prospective arbitrator should be aware of in ensuring that their work as an arbitrator in your jurisdiction is covered by their law firm's or chamber's professional indemnity insurance policy?	**N/A**	
V. Involvement of Arbitral Institutions		**Yes/No/NA**	**Comments, if any.**
V.1.	Is there any jurisprudence in your jurisdiction where an arbitral institution has been sued alongside an arbitrator?	**No**	
V.2.	Is there any jurisprudence in your jurisdiction where an arbitrator has been sued and then an arbitral institution subsequently intervened in the proceeding?	**No**	
V.3.	If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the arbitrator and arbitral institution defend the suit jointly, or did the arbitrator defend the suit on his/her own behalf, separate from any defense mounted by the institution? If the suit(s) was/were defended jointly, in your experience or, to the extent this information is publicly available, did the institution pay for the arbitrator's counsel fees?	**N/A**	
V.4.	If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the suit result in a settlement?	**N/A**	

<table>
<tr><th colspan="2">VI. Procedural Issues</th><th></th><th></th></tr>
<tr><td>VI.1.</td><td>Is there any <u>jurisprudence</u> in your jurisdiction where an arbitrator and/or arbitral institution was sued by a party, and the arbitrator or arbitral institution objected on the grounds of improper forum or venue?

If yes, please provide a brief description of case(s), limited to one paragraph per case, including:

– The parties.

– The type of misconduct alleged.

– The nature and basis of the arbitrator's or arbitral institution's objection to venue.

– The outcome of the objection (i.e., whether the case proceeded to be heard or was dismissed for improper forum or venue) and the court's reasoning for the same.</td><td>No</td><td>We did not find any cases in which the arbitrators or arbitral institutions alleged grounds of improper forum or venue. This is because the majority of cases in which arbitrators and institutions are sued are cases of (1) actions for conflict of jurisdiction; (2) actions to set aside an arbitral award and; (3) actions for the civil liability of arbitrators.

These three actions, a priori, are indisputably within the jurisdiction of the judiciary in Brazilian law, according to the BAA and the Code of Civil Procedure.</td></tr>
<tr><td>VI.2.</td><td>Is there any <u>legislation</u> or <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the potential consequences if a suit against an arbitrator is unsuccessful?

For example, if a suit against an arbitrator is unsuccessful, what remedies would be available to the arbitrator? Moreover, would any sanctions be applicable to the unsuccessful party who brought the suit if it is found that the suit was frivolous?</td><td>No</td><td></td></tr>
</table>

VI.3.	While this survey generally focuses on the civil liability of arbitrators, if there is any relevant information from your jurisdiction related to claims for criminal liability brought against arbitrators, please include such information.	**No**	
VI.4.	Is there any other information about your jurisdiction not already provided in your responses to the questions in this survey that is relevant to understanding and explaining arbitrator liability in your jurisdiction?	**No**	

ICCA
INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

ICCA RESEARCH GROUP ON ARBITRATOR IMMUNITY

Goals

The primary goal of the Arbitrator Immunity Research Group is to study questions of arbitrator liability and immunity, and to raise practitioners' and arbitrators' awareness of the current legal landscape. The project's goals include investigating the limits of arbitrator immunity, evaluating the effectiveness of language limiting arbitrator liability in procedural orders and institutional rules, and examining the impact and limitations of professional indemnity insurance.

Methodology

To understand the current global landscape of arbitrator immunity, the Research Group designed a detailed survey and selected sample jurisdictions for inclusion. The Research Group compiled a list of survey respondents for each jurisdiction by seeking recommendations for responsive, high-quality contributors who had previously participated in ICCA research projects, as well as recommendations from arbitral institutions and colleagues in the international arbitration community. After receiving the completed surveys, the research team collaborated with the respondents in two rounds of edits to improve clarity, understanding, and formatting.

Citations to this Research

Researchers and authors using this data should use the following citations to refer to this research:

- General citation to the project website: 'ICCA Research Group on Arbitrator Immunity' (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), https://www.arbitration-icca.org/research-group-arbitrator-immunity

- Citation to the individual survey response: 'Survey Responses on Arbitrator Immunity for Mexico', in ICCA Research Group on Arbitrator Immunity (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), https://www.arbitration-icca.org/research-group-arbitrator-immunity

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- **Viewpoints Disclaimer:** The survey responses do not represent the viewpoints, opinions, or research of ICCA, its Governing Board or members, or the Research Group in general, or its individual members. The Research Group's editing process focused solely on enhancing clarity, comprehension, and formatting.

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