

# Mexico

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## I. Arbitration

In April 2008, the Suprema Corte de Justicia de la Nación (Supreme Court) ruled that an arbitral award is not considered a final ruling for the sole purpose of filing an amparo (a form of constitutional protection).<sup>1</sup> Due to the technicalities of Mexican civil procedure law, this decision confirms Mexico's position that arbitral awards cannot be substantively challenged. Moreover, a proposed draft of amendments to the Federal Commercial Code<sup>2</sup> prepared by the Instituto Mexicano del Arbitraje (Mexican Arbitration Institute) at the request of the President of the Tribunal Superior de Justicia del Distrito Federal (Mexico City's Superior Tribunal of Justice), is currently being studied. The amendments will regulate judicial intervention in arbitration proceedings.

Moreover, recent procedural amendments to the Federal Commercial Code are likely to result in higher arbitration proceedings. These procedural amendments to the Federal Commercial Code entered into force on July 16, 2008.<sup>3</sup> The amendments focus on four topics that apply to commercial proceedings: (1) the supplemental judicial regime; (2) the appeal system; (3) due dates for answering a commercial complaint; and (4) the offering and rendering of evidence.<sup>4</sup> Some litigators in the Mexican community believe that the implementation of the amendments will cause judicial proceedings to be longer, more

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1. See LAUDO ARBITRAL. NO CONSTITUYE UNA SENTENCIA DEFINITIVA PARA EFECTOS DE LA PROCEDENCIA DEL JUICIO DE AMPARO, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, 9a. Época, tomo XXV, Mayo de 2007, Tesis P./J. XIX/2007, Figura 15 (Mex.).

2. Commercial arbitration is regulated in Title IV of the Federal Commercial Code from both a substantive and a procedural perspective.

3. See Código de Comercio [Cod.Com.] [Commercial Code], *as amended*, *Diario Oficial de la Federación* [D.O.], 30 de Diciembre de 2008 (Mex.).

4. *Id.*

complicated, and more costly. These practitioners are recommending the use of alternative dispute resolution methods such as arbitration.

The above-mentioned Supreme Court ruling, together with the draft amendment proposal to the Federal Commercial Code and the procedural amendments to the Federal Commercial Code that entered into force on July 16, 2008, demonstrate Mexico's commitment to arbitration.

## II. Renewable Energy

Following the lead of other Latin American countries, in early 2008 Mexico adopted its first biofuels legislation: the Law for the Promotion and Development of Biofuels.<sup>5</sup> The Biofuels Law marks the separation of the biofuels industry from the oil and gas industry, which is a monopoly in the hands of the state-owned company Petroleos Mexicanos (PEMEX) and is sanctioned by the Mexican Constitution.<sup>6</sup> Before the Biofuels Law, the rights of private parties to produce and trade biofuels seemed to overlap in a gray area with PEMEX's overwhelming presence. The law clarifies that biofuels are not a PEMEX business, and that, unlike oil and gas, the biofuels industry is open to private investment both national and foreign.

The Biofuels Law focuses primarily on organizing and giving specific authority to a new inter-secretarial Biofuels Commission<sup>7</sup> in which the Secretary of Energy has a prominent role. The Biofuels Law, however, "falls short of delivering immediate incentives to promote the development of . . . alternative fuels in Mexico."<sup>8</sup> The Congress and the Biofuels Commission now have the responsibility and the challenge to enact regulations to advance the purposes of the Biofuels Law.

## III. New Regulation on Credit Unions

For years, credit unions were precariously regulated in the Mexican financial market, which led to cases of misadministration and the loss of confidence among their clientele. A recently enacted Credit Unions Law<sup>9</sup> stands for a modern regulation of the credit unions' business. Under this law, credit unions are treated as specialized financial intermediaries,<sup>10</sup> closely supervised by Mexico's federal securities commission (Comisión

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5. See, e.g., Ley de Promoción y Desarrollo de los Bioenergéticos [L.P.D.B] [Law for the Promotion and Development of Biofuels], Diario Oficial de la Federación [D.O.], 1 de Febrero de 2008 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LPDB.pdf>.

6. See, e.g., Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, art. 28, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>.

7. See, e.g., Law for the Promotion and Development of Biofuels, *supra* note 5, at art. 8.

8. See Raúl Felix, *Assessing the Impact of Mexico's Biofuels Law*, BIODIESEL MAGAZINE, May 2008, [http://www.biodieselmagazine.com/article.jsp?article\\_id=2297&q=Mexico&category\\_id=18](http://www.biodieselmagazine.com/article.jsp?article_id=2297&q=Mexico&category_id=18).

9. See, e.g., Ley de Uniones de Crédito [L.U.C.] [Credit Unions Law], Diario Oficial de la Federación [D.O.], 20 de Agosto de 2008 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LUC.pdf>.

10. See *id.* art. 14.

Nacional Bancaria y de Valores).<sup>11</sup> Additionally, higher standards of corporate governance are now required for credit unions.<sup>12</sup>

The Credit Unions Law allows credit unions to take loans and credits only from its members, private financing and investment sources, credit institutions, insurance and bonding companies, other credit unions, foreign financial institutions, and other credit unions' providers.<sup>13</sup> Under this new law, credit unions may also facilitate loans, credits, and guarantees to their members.<sup>14</sup> Moreover, the new law provides for new minimum paid capital for credit unions<sup>15</sup> and a maximum ten percent equity stake by each member.<sup>16</sup> The law broadens the sources of funding for credit unions to include capital contributions from Mexican companies wholly owned by foreign nationals.<sup>17</sup> Finally, the Credit Unions Law sets forth clearer and simpler rules for the merger, split,<sup>18</sup> and liquidation<sup>19</sup> of credit unions.

#### IV. Insurance Law

In June 2008, the *Diario Oficial de la Federación* (Official Gazette of the Federation) published amendments to the General Law of Insurance Institutions and Mutual Companies (*Ley General de Instituciones y Sociedades Mutualistas de Seguros* or LGISMS after its acronym in Spanish).<sup>20</sup> The LGSIM regulates the operation of insurance companies in Mexico. The new amendments create an obligation on insurance companies to offer, as part of their services, basic and standardized insurance coverage packages for common risks including death, personal accidents, medical insurance, health coverage, and civil liability. The purpose of creating such obligation is to allow insurance users to compare the options available in the market in terms of service level and premium costs through basic insurance products with uniform covered risks, exclusions, insured amounts, deductibles, terms of the coverage, and premium payment schedules.

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11. *See id.* art. 75.

12. *See id.* arts. 24 to 36.

13. *See id.* art. 40(I).

14. *See id.* art. 40(IV).

15. Pursuant to Article 18 of the Credit Unions Law, the minimum paid capital for a credit union ranges between the equivalent in Mexican pesos to 2,000,000 investment units (UDIS), and 5,000,000 UDIS, depending on the scope of the transactions that the credit union is authorized to carry out.

16. *See Credit, supra* note 9, at art. 21.

17. *See id.* art. 21.

18. *See id.* arts. 37-8.

19. *See id.* arts. 100-02.

20. *Ley General de Instituciones y Sociedades Mutualistas de Seguros* [L.G.I.S.M.S] [Insurance Law], as amended, *Diario Oficial de la Federación* [D.O.], 28 de Junio de 2008 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/ref/lgisms.htm>.

