JURISTnews
Law students reporting the rule of law in crisis

Commentary

After Radical Court Reform, Mexico's Arbitration Protections Face Their First Major Test

Arturo C. Porzecanski | American University
December 19, 2025, 02:05:31 pm
Edited by: **Ingrid Burke Friedman | JURIST Editorial Director**

The author, a research fellow with the Center for Latin American & Latino Studies at American University, argues that a pending Mexican court case brought by a Citigroup subsidiary could upend decades of arbitration-friendly legal precedent, signaling heightened risk for investors in the wake of the country's radical judicial overhaul.

A case pending in a Mexican court has the potential to overturn Mexico's legal standard of deference to arbitration awards—a standard that has helped keep the country attractive to foreign and domestic investors. Banamex, Citigroup's prominent and politically well-connected subsidiary, is seeking nullification of an arbitral award in the Fourteenth Federal District Court for Civil Matters in Mexico City, and the outcome could have major implications for the business and investment climate in post-reform Mexico.

International and local companies operating in Mexico have long insulated themselves from excessively lengthy and potentially corrupt judicial proceedings by agreeing to binding arbitration clauses that preempt the domestic courts.

Past governments have exhibited a commitment to arbitration as an effective dispute-resolution mechanism, for example by approving international arbitration treaties and incorporating UNCITRAL Model Law into Mexico's legal framework. This arbitration-friendly stance has been reinforced by judicial precedents favoring the enforcement of arbitral awards and a tradition of judicial nonintervention in arbitral proceedings.

In the wake of a radical judicial reform that took effect in September, however, a current case – *Banamex v. Axis Asset Management* – is catching investor attention. Citigroup-owned

Banamex **has taken** a routine arbitral award to a federal court asking that it be nullified on the basis of causes which, prior to the reform, would most likely not have qualified for a nullification.

Background

In June 2023, Axis Asset Management, a boutique Mexican investment firm, filed a request for arbitration with the International Court of Arbitration (ICC) seeking to recover damages stemming from Banamex's failure to pay management fees owed to, and expenses incurred by, Axis in connection with its role as administrator of an irrevocable trust.

Banamex, one of Mexico's largest banks, has operated as a Citigroup subsidiary since its 2001 acquisition. After extensive briefing, discovery, and oral argument, the ICC arbitral tribunal rendered an award in favor of Axis in December 2024, as amended in April 2025.

The award has since been recognized by an appropriate Mexican court, the Tribunal Superior de Justicia de la Ciudad de México. Moreover, Axis has recently filed for confirmation of the award by a U.S. federal court, 1:25-cv-07313 (S.D.N.Y.), because such recognition can strengthen the case for, and accelerate the payment of, international arbitral awards. Mexican companies value highly their easy access to U.S. financial and goods markets.

Radical judicial overhaul

Last year the Mexican government pushed through a constitutional amendment intended to increase the democratic legitimacy and accountability of Mexico's judiciary, by making it more responsive to public opinion and to elected politicians.

It is a radical reform that is replacing all judges, from supreme court justices to state and local magistrates, through popular elections for each position. Indeed, it makes Mexico the **only country** in the world where all of its judges are now elected. Earlier this year, applicants for vacancies, including sitting judges, were vetted by the three branches of government, each of which put forth one-third of the names on the shortlist for every opening.

For example, 480 **people bid** for nine Supreme Court seats but only 27 passed muster and were listed on the ballot. About 2,700 openings **were filled** following elections in June, and a similar number will be up for grabs in 2027.

This overhaul has been criticized by many practicing attorneys, academics, think-tanks, and other reputable voices inside and outside Mexico, including the Inter-American Commission on Human Rights and the New York City and International Bar Associations.

The critics warned that at least two-thirds of approved candidates would reflect the preferences of the ruling party, Morena, because **it controls** both Congress and the Executive. And indeed, in the June elections the ballots were stacked with Morena-aligned candidates. Five of nine justices elected for the Supreme Court were closely affiliated with the ruling party, and all nine winners were listed in "cheat sheets" circulated widely by Morena agents **beforehand**.

Critics also raised the concern that the dismantling of the preexisting merit regime would result in a less experienced and thus **less reliable** judiciary. Indeed, candidates **needed to have** only a first degree in law plus three-to-five years of attorney practice, whereas 70% of ousted federal judges

had either a Master's or Doctorate and all had at least 16 years' experience before their appointments to the bench. Worse yet, candidates included on the ballots **were not tested** on their legal knowledge – not even for the specific position they sought.

Implications for arbitrations

Consequently, a major risk now for business and investors in Mexico is that, whether because of inexperience, lack of good judgment, or personal loyalties, the new judges will start to deviate from precedents when they are not aligned with popular demands or the interests of their voters, private benefactors or government sponsors – thereby fostering damaging **judicial uncertainty**.

Binding arbitration of commercial disputes is popular and one of the **most critical protections** for local and foreign investors in Mexico. The Commercial Code dictates that an arbitral award, regardless of the country where it originated, must be recognized as binding, and the award must be enforced following a written petition to a judge. And Mexican judicial precedents have repeatedly asserted the significance of enforcing arbitral awards and of minimizing judicial intrusion into arbitral proceedings.

Losing parties occasionally **have sought** to nullify arbitration awards by appealing to the courts, but the scope of their review has been very limited, and the merits of awards generally have not been reexamined. The one claim that many losers have made is that the award runs contrary to public policy, a situation envisaged by the Code's Art.1457, incorporated in 1993, but with **no explanation** of the meaning of "public policy."

However, in every instance the highest courts **have ruled** that such public-policy claims are without merit. A landmark 2011 decision by Mexico's Supreme Court specified that an award deemed contrary to public policy **must be** "offensive," "grave," and jeopardize "the fundamental interests of Mexican society." That decision has since been cited many times, and so far it has proven an impossibly high threshold to reach.

The question is whether the newly appointed courts will continue to interpret the Code in an arbitration-friendly manner, consistent with dozens of legal precedents even though virtually all of them guide judges as "soft law."

A recent review of the 92 pro-arbitration precedents publicly issued since 1995 **concluded** that 75 percent originated from Collegiate Circuit Courts, which typically carry less normative weight, and a mere 22 percent were issued by the Supreme Court, either in plenary session or through its First Chamber.

The problem is that **only two** out of the 92 pro-arbitration precedents set a binding precedent. These are binding on all inferior courts within the judicial hierarchy, but they do not bind the issuing court itself. And of course, a binding precedent from the Supreme Court is mandatory for all lower courts but not for itself, so it is entirely within the realm of possibility that the newly constituted, very different Supreme Court might decide to abandon its own pro-arbitration record.

A test case emerges

In this connection, the small and relatively obscure *Banamex v. Axis Asset Management* case becomes notable. Citigroup's prominent and politically well-connected subsidiary is seeking

nullification of an arbitral award from before the reform using public-policy grounds in a post-reform environment. It has the air of testing the new boundaries.

Under normal circumstances, since Banamex alleges that the arbitrators were unfair and did not adhere to customary Mexican interpretations of contracts, the petition would be ripe for dismissal. But in the wake of the judicial reform, sensible court rulings cannot be taken for granted, and thus, as it proceeds, this case may set a new, worrisome precedent.

If a prominent financial institution like Banamex succeeds in using the public order argument, until now a very high threshold, to persuade a newly elected judge to nullify an arbitral award, then chances are that it will encourage other new judges to go rogue and do likewise. That would cast a dark cloud over the future of enforcing arbitration awards in Mexico.

Therefore, should the award in favor of Axis Asset Management be overturned on what traditionally have been flimsy grounds, domestic and foreign investors in Mexico will likely start to recalculate the risk of doing business in that country, with potentially grave consequences for the investment climate and thus the potential for economic growth.

Arturo C. Porzecanski, a Research Fellow with the Center for Latin American & Latino Studies at American University, was previously a professor of international economics (2005-2021) at AU, and before that a chief emerging-markets economist at several major Wall Street firms (1977-2005).

https://www.jurist.org/commentary/2025/12/after-radical-court-reform-mexicos-arbitration-protections-face-their-first-major-test/