

# THE ROLE OF ARBITRATION IN JUDICIAL REFORM

## PART 2: WHAT TYPES OF CASES ARE ARBITRABLE?

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### Executive Summary:

- **Radical Transformation of the Judicial System:** On September 15, 2024, a reform that drastically redefines Mexico's judicial system was published in the Federal Official Gazette. This reform, which amends the Political Constitution of the United Mexican States and several key laws, profoundly alters the structure and functioning of the Judiciary. The magnitude of these changes has raised concerns about the independence and effectiveness of the judicial system, creating a climate of uncertainty for litigants and investors.
- **Arbitration as a Strategic and Reliable Alternative:** Amid this transformation and emerging challenges, arbitration presents itself as a robust and reliable solution for conflict resolution. However, it is important to clarify that although arbitration has been promoted as a universal solution for all types of disputes, not all cases are arbitrable. It is crucial that arbitrability requirements are met and that all parties involved have given their consent to submit to this process. Arbitration provides an efficient avenue for resolving conflicts in the new judicial context, if these principles are respected.

On September 15, 2024, the President of Mexico published the reform that radically transforms the judicial system in the Federal Official Gazette. This reform, which was tumultuously approved by the Congress of the Union and the majority of state legislatures, amends the Political Constitution of the United Mexican States and several key laws, redefining the organization and functioning of the Judiciary.

The magnitude of these changes raises serious concerns about the independence and effectiveness of the judicial system. As a result, litigants and investors are worried about how these modifications will impact access to justice and trust in the judiciary, creating an environment of uncertainty that requires

or effective solutions. In my previous article in this Newsletter[1], I addressed the role of arbitration as an alternative mechanism for conflict resolution. In the current context, arbitration emerges as a reliable tool that offers an efficient solution for handling disputes that may become complicated due to changes in the judicial system.

However, it is crucial to emphasize that arbitration is not a universal solution applicable to all types of conflicts. Although some voices promote arbitration as a viable alternative for any dispute, this view does not always conform with practical reality.

Arbitration has limitations, and not all matters are suitable for resolution through this mechanism, a point

1 The aforementioned article can be consulted at the following link: [1] [El artículo mencionado puede ser consultado en el siguiente enlace: https://www.santamarinasteta.mx/publicaciones-y-eventos/articulo/el-rol-del-arbitraje-ante-la-propuesta-de-reformar-el-poder-judicial/](https://www.santamarinasteta.mx/publicaciones-y-eventos/articulo/el-rol-del-arbitraje-ante-la-propuesta-de-reformar-el-poder-judicial/)

that is sometimes overlooked in discussions of its scope and application.

For a case to be resolved through arbitration, it is necessary for the parties involved to have agreed to submit to this mechanism, whether at the start of the contractual relationship, at a later point, or even after the conflict has arisen. The consent of all parties is essential. Therefore, it is highly recommended to establish arbitration as the method of dispute resolution from the beginning, as this can prevent future complications and ensure an efficient resolution in the event of a conflict.

In summary, for a case to be arbitrable, it is necessary that all parties have consented to arbitration. An arbitrator's decisions are binding, based on the principle of *pacta sunt servanda*<sup>[2]</sup>, and no one can be forced into arbitration without their consent. However, it is important to note that once accepted, the parties are committed and obligated to follow the arbitral process.

Additionally, there are matters that cannot be subject to arbitration proceedings because their resolution is exclusively reserved for the state jurisdiction. In Mexico, there are no uniform rules regarding what matters are arbitrable. The general rule is that if the matter involves freely disposable rights, it is arbitrable.

According to legal doctrine and the precedents of the Federal Judiciary, the following factors must be considered when determining arbitrability: (i) the subject matter must not be excluded by law; (ii) it must involve freely disposable rights; (iii) it must not affect public interest; and (iv) it must not involve third-party rights.

Based on these points, as an example, some matters that are not arbitrable in our legal system include labor disputes, family law issues, alimony, parental

authority, marriage, guardianship and custody of minors, disputes related to civil status, criminal liability or offenses, tax law, insolvency and bankruptcy proceedings, among others. These areas are reserved for state jurisdiction due to their complex nature and the need to safeguard fundamental rights and principles.

In conclusion, arbitration presents itself as a relevant and powerful alternative in light of the Judicial Reform. Since the reform introduces significant changes that could affect the independence and quality of the judicial system, arbitration offers an effective and reliable solution. However, it is essential to ensure that arbitrability requirements are met and that the parties have expressed their consent to resolve their disputes through arbitration.

I reiterate that for arbitration to thrive, it is necessary for the parties and their legal advisors to adapt their strategies to the new judicial environment. For arbitration to be truly effective, it must be established from the outset or, at the very least, agreed upon preventively for future disputes. Moreover, the effectiveness of arbitration requires arbitrators to maintain impartiality and independence, and for the parties to commit to respecting and complying with arbitral awards, regardless of the outcome, provided that the arbitral process has been properly followed.

If these principles are adhered to, arbitration can minimize the need to resort to state courts, ensuring the resolution of disputes impartially, expertly, and efficiently.

<sup>[2]</sup>"Pacta sunt servanda" is a fundamental principle of law that states that contracts and agreements between parties must be respected and executed according to the agreed terms..