

ADVANTAGES OF THE CONTRACTUAL AGREEMENT OF A COMMERCIAL CONVENTIONAL PROCEDURE BEFORE JUDICIAL COURTS

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Executive Summary:

- There is currently a need to settle commercial disputes in judicial courts with an increasingly agile, fast and efficient manner.
- The Commercial Conventional Procedure (“CCP”) is a method to ventilate and decide disputes arising from a commercial act either before the Judicial Courts or before an arbitrator, with the main characteristic that it’s designed by the parties as opposed to those contemplated in the legislation.
- The advantages of the contractual agreement of a CCP before Judicial Courts mainly focus on the simplification of a process and benefits the protection of personal information.

INTRODUCTION

In Mexico, it’s a common knowledge that the courts that process commercial lawsuits, both at the local and federal level, are saturated with workloads for various reasons that cause significant delays in the administration of justice.

Likewise, it is increased in the current context of the work stoppage of the Federal Judiciary in protest to the so-called “Judicial Reform” of the Federal Constitution, which at Santamarina + Steta, S.C. we have analyzed it in another publication that we invite you to consult.

Similarly, the applicable commercial procedural legislation, i.e., the Code of Commerce, establishes procedures that, at times and in the opinion of the governed, generate practical complications and considerable time investment.

An example of this is the initial notification to trial, when a commercial lawsuit is admitted, because it requires the investment of considerable time for the management of the notification in the traditional method contemplated. This basically consists of a judicial official going personally to the address of the defendant. This dynamic not only involves time, but also takes even longer if the party is no longer located there.

In contrast to the above, it’s clear that there is an increasingly need for people engaged in commerce to have access to a judicial procedure to settle their disputes in an agile, fast and efficient manner. As well as, as far as possible when being immersed in a judicial process, to take care of their personal information.

Therefore, it’s relevant to contemplate as part of a solution to the aforementioned problems in a judicial process, the contractual agreement of a Commercial

Conventional Procedure to resolve commercial disputes between parties.

DEFINITION AND REQUIREMENTS

The CCP is a method to ventilate and decide disputes between parties in connection with an act of commerce, regulated in articles 1051 to 1054 of the Commercial Code, in which the parties are empowered to freely agree on a procedure and rules governing their actions before the courts or an arbitration proceeding.

In the CCP agreement, the parties are free to design a procedure different from those contemplated in the Commercial Code, with rules adapted to their preference, regarding past, present and future disputes.

Only under the limitation of respecting the essential formalities of the proceeding, which in summary are: i. notification of the proceeding; ii. opportunity to offer and present evidence; iii. opportunity to plead; and iv. the issuance of a judgment resolving the differences; as well as the requirement that such agreement, be recorded in a public deed before a Notary Public (local or federal).

NOTABLE ADVANTAGES OF THE CCP BEFORE JUDICIAL COURTS

+ For the process, the parties are entitled to agree to exclude any means of evidence.

This can be beneficial in, for example, preventing a key person from testifying or refraining from providing personal information even when pretended by any of the parties, such as accounting books and tax returns.

It would also be possible, for example, to limit the number of expert witnesses, such as reducing them to only one expert, even identifying already who it would be from the agreement (instead of the traditional three expert witnesses).

+ The parties may modify the terms and time limits to be followed during the trial (e.g., shorter than those provided by law).

+ The parties may also modify or waive the legal challenges provided for in the regulations during the course of a proceeding (but must ensure that the essential formalities of the proceeding would not be infringe).

+ It's possible to make notifications by e-mail in a CCP, including the initial notification to trial, prior verification by the Judge, through his respective personal, of its remission and/or reception (Jurisprudence with registry 2019966).

CONCLUSIONS

Therefore, the contractual agreement of a CCP before judicial courts, under a language of the clause that meets the requirements, benefits in the simplification of a judicial process and can protect the personal information of the parties.

Although the agreement of a CCP before the courts is not very common in contracts, it's not excluded that soon it will be use with more frequency and to the extent that people are aware of its convenience, since it represents part of a solution to the problems mentioned in the introduction to this article.

Likewise, it's important to mention that even if there is a clause of a CCP in a contract, there's still the possibility for the parties to challenge its validity, either due to its own defects or due to the violation of the essential formalities of the procedure, through incidental procedure and without suspension of the main trial.

Finally, for more information on the Commercial Conventional Procedure, we invite you to contact our experts.

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