CAN YOU BE FORCED INTO ARBITRATION?
NEW JUDICIAL CRITERION OPENS THE DOOR TO CHALLENGE IT

MARCH 2026

On February 27, 2026, the Mexican Supreme Court published in the Federal Judicial Weekly a new judicial criterion that could have significant implications for parties involved in commercial disputes: **a court order suspending litigation in order to refer the parties to arbitration may be immediately challenged through an amparo proceeding**.

The case that gave rise to this precedent is relatively straightforward. One party filed a commercial lawsuit against another. The defendant, however, argued that the parties had previously agreed to resolve any disputes through arbitration -what is commonly known as an arbitration clause. Based on that argument, the Judge ordered the suspension of the court proceedings and referred the parties to arbitration.

The claimant, who had originally chosen to bring the dispute before state courts, challenged that decision by filing an amparo action. The District Court dismissed the claim outright, arguing that the order referring the dispute to arbitration did not constitute an "irreparable act," which is a legal requirement for an indirect amparo to proceed against acts issued within an ongoing judicial process.

However, the Fifth Collegiate Court in Civil Matters of the First Circuit overturned that decision when resolving a complaint appeal. In its isolated precedent I.5o.C.221 C (11th era), the Court held that an order suspending judicial proceedings in order to refer the parties to arbitration does constitute an irreparable act, and therefore may indeed be challenged through an indirect amparo.

The Court's reasoning rests on two main pillars. First, referring parties to arbitration is not merely a procedural or technical matter, since it directly affects the parties' autonomy of will. In other words, the right of individuals to decide where and how their legal disputes will be resolved is a substantive right, not merely a procedural one. When a Judge forces someone into arbitration, that decision interferes with a fundamental aspect of personal autonomy in structuring legal relationships.

Second, the Court acknowledged a practical reality: arbitration involves significant costs. Unlike the state judicial system in Mexico, which is free of charge, arbitration typically requires the payment of arbitrators' fees, administrative costs of the arbitral institution (in institutional arbitration), and often the fees of specialized counsel. Depriving a party of the option to litigate before state courts and forcing it to incur those costs may create an immediate economic burden that cannot later be fully remedied, even if the party ultimately prevails.

This criterion represents an important counterbalance to the pro-arbitration approach that has characterized Mexican jurisprudence over the past decades. It does

not suggest that arbitration is problematic or that arbitration clauses are invalid; rather, it reinforces the idea that submitting disputes to arbitration must be a genuinely voluntary decision.

That said, the decision is not without criticism. From a practical perspective, it may open the door for one party (particularly one that originally agreed to an arbitration clause but later failed to comply with its obligations) to use the amparo proceeding as a delaying tactic to postpone or even avoid arbitration. Given the procedural stages, suspensions, and potential appeals involved in an amparo, the time required to resolve the dispute could increase significantly. This is somewhat ironic, considering that one of arbitration's main advantages over ordinary courts is precisely its speed.

There is also a risk that this criterion could weaken the legal certainty that arbitration clauses are intended to provide. Parties that negotiate and sign a contract containing an arbitration clause do so with the legitimate expectation that any dispute will be resolved through arbitration. If one of them can later resort to state courts and challenge the referral to arbitration through an amparo proceeding, the predictability that arbitration seeks to ensure may be undermined. In the context of international commercial transactions where certainty about the forum for dispute resolution is crucial, such developments could potentially raise concerns about Mexico as a seat of arbitration.

For companies and individuals entering into contracts with arbitration clauses, this criterion serves as a reminder that such provisions may still be challenged if there are defects in consent, ambiguity in the clause, or circumstances that make arbitration inequitable. Although this precedent is not yet binding, it opens a path to immediately challenge a court order referring a dispute to arbitration, without having to wait until the end of the proceedings to contest it.

Arbitration remains a valuable tool for resolving commercial disputes, particularly in international contexts or in industries where the technical expertise of arbitrators is especially useful. However, its legitimacy ultimately rests on the informed consent of the parties. This new judicial criterion reinforces precisely that principle: no one should be forced into arbitration without having validly agreed to it, and anyone who believes arbitration is being improperly imposed now has a procedural avenue to challenge it -albeit one that may carry its own procedural complexities and consequences.

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