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Litigation

Mexico
Law & Practice
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MEXICO

Law and Practice

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Contents

1. General

1.1 General Characteristics of the Legal System

Mexico has a civil law legal system and is a federal state. For historical reasons, it has received certain influence from the US legal system, especially in matters related to constitutional law. Proceedings before Mexican courts traditionally followed an inquisitorial model, based mainly on written submissions, but influence from common law systems has become more notable of late; for example, in 2014 the Supreme Court introduced a particular notion of punitive damages, and in 2011 Congress amended the Federal Code of Civil Procedure to allow collective actions.

The inquisitorial model is also becoming a thing of the past, since Congress has passed several amendments to the procedural codes to establish adversarial proceedings conducted through both written submissions and oral argument, with an emphasis on the oral part of the proceedings. This new type of proceedings is already applied to criminal matters and, as of 2020, to most commercial disputes. This model has also been replicated in several states for civil disputes.

1.2 Court System

Mexico is a federal state and therefore the court system is made up of federal and local courts.

The federal court system is four-tiered, as follows:

- district courts, which hear commercial cases, insolvency cases, civil cases with a federal element, and collective actions, and also act as trial courts for amparo proceedings;
- single-judge circuit courts, which are courts of appeal and also have jurisdiction to hear amparo proceedings;
- collegiate circuit courts, which hear amparo complaints and act as courts of appeal for indirect amparo claims; and
- the Supreme Court of Justice, which has jurisdiction to hear direct amparo proceedings under certain circumstances and particularly important and relevant cases.

The states' judicial systems are usually two-tiered, with first instance courts and appellate collegiate courts. However, amparo challenges can be submitted against judgments issued by the appellate courts.

Federal courts have jurisdiction over commercial disputes, but in cases dealing only with private interest, the claimant can choose to file a claim in either a federal or a state court.

Courts are organised by subject matter jurisdiction. It depends on the amount of cases in each circuit or state, but there are usually civil/commercial courts, administrative courts, family courts and criminal courts.

1.3 Court Filings and Proceedings

Court filings are not open to the public; only interested parties have access to the judicial records. However, federal courts publish a summary redacted version of every ruling and a redacted version of the final judgment.

Parties can request the court to keep certain documents confidential, in which case they are not added to the record and access to them is controlled by a court clerk.

1.4 Legal Representation in Court

Only attorneys admitted to practise law in Mexico are allowed to appear as counsel before Mexican courts. To be admitted to practise law before a Mexican court, a lawyer must hold a law degree and a professional licence to practise law issued by the General Director of Professions of the Ministry of Public Education, and must register that professional licence before Federal Courts or the State's Superior Court.

Other representatives can appear before a court, but only as attorneys in fact. Foreign lawyers cannot conduct cases before Mexican courts as an attorney of record.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Litigation funding by a third party is not regulated in Mexico. Since there is no restriction in the applicable laws, third-party funding is generally allowed.

2.2 Third-Party Funding: Lawsuits

Any type of lawsuit is available for third-party funding.

2.3 Third-Party Funding for Plaintiff and Defendant

Third-party funding is available to both the plaintiff and the defendant, although it is more common to see third-party funding for plaintiffs.

2.4 Minimum and Maximum Amounts of Third-Party Funding

Since there is no specific regulation regarding third-party funding, there are no minimum or maximum amounts.

2.5 Types of Costs Considered under Third-Party Funding

Third parties usually fund attorneys' fees and expenses related to factual and expert witnesses, as well as any bonds or other

guarantees that may be necessary if an injunctive measure is obtained.

2.6 Contingency Fees

Contingency fees are permitted under Mexican law. There is no general regulation applicable to contingency fees, but lawyers are not allowed to buy the assets that are the subject of a trial in which they are intervening (Article 2276 of the Civil Code for the Federal District). This prohibition is sometimes interpreted to mean that an attorney cannot acquire any right disputed before a court when he is participating in the case, although there is no binding precedent on the issue.

2.7 Time Limit for Obtaining Third-Party Funding

There are no time limits by when a party to the litigation should obtain third-party funding. It could be done before the trial starts or at any point during the proceedings.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

In general, Mexican law does not impose any rules on pre-action conduct, although there are some exceptions – for example, if the contractual right is not yet enforceable because the agreement did not establish a deadline for payment, in which case the party has to require payment judicially or before a Notary Public or two witnesses and wait 30 days before filing a lawsuit. However, this has more to do with the substantive right than with the procedural steps that must be taken before initiating a trial.

There are certain pre-trial motions (*medios preparatorios*) that the parties can file before they submit a claim, usually to prepare evidence or obtain relevant information for their case under very specific circumstances. For example, they may seek the examination of witnesses who are elderly or in imminent danger of dying, or the judicial inspection of assets.

3.2 Statutes of Limitations

In commercial disputes, the general statute of limitations is ten years (Article 1047 of the Commerce Code). The relevant exceptions include actions derived from a company's by-laws or against the liquidators, which have a statute of limitations of five years (Article 1045 of the Commerce Code). However, other exceptions apply.

Other types of claims have specific statutes of limitations – for example, the statute of limitations for collective actions is three and a half years, starting from the day on which the damage was caused. Also, the general rule for claims based on tort is two years.

3.3 Jurisdictional Requirements for a Defendant

For commercial and civil disputes, if there is no forum selection clause agreed upon between the parties, the judge with jurisdiction to hear the case will be the judge of the place that the defendant selected to be judicially required to pay, of the place designated in the contract for the fulfilment of the obligation, or of the domicile of the defendant. If there are multiple defendants, the judge of the domicile of one of the defendants can exercise jurisdiction over all of them (Article 1104 of the Commerce Code and Article 156 of the Code of Civil Procedure for the Federal District). In civil matters, this may vary depending on the state legislation and on the type of action.

3.4 Initial Complaint

According to the Commerce Code, an initial complaint must contain the following information:

- the court before which the lawsuit is submitted;
- the name, domicile and tax identification number of the plaintiff;
- the name and domicile of the defendant;
- a list of claims;
- the facts on which the action is based, indicating the documents and witnesses that support each fact;
- the legal basis and type of action;
- the value of the claim;
- all documentary evidence and evidence that the plaintiff is planning to produce; and
- a signature (Article 1390 Bis 11 of the Commerce Code).

There is no opportunity to amend the complaint after it has been filed, unless there are supervening facts.

3.5 Rules of Service

Service of process is done by an authorised court clerk called an actuario. The court clerk must go to the domicile of the defendant indicated by the plaintiff, and demand to see the defendant, or his representative or agent. If the clerk cannot find the defendant or his legal representative, the clerk can serve a relative, employee or any other person that lives there, once he has confirmed that it is the defendant's domicile.

Service of process includes a writ indicating the date and time of the notice, the kind of proceedings, the names of the parties, the court hearing the dispute, a transcription of the relevant court's rulings, and the name of the receiving party. Copies of the complaint and documents submitted by the plaintiff are attached to that writ (Article 1390 Bis 15).

If the plaintiff does not know where the defendant lives, the court may request information from certain authorities or companies; if no domicile can be found, the court can order the

service of process through publications in a newspaper (Article 1070 Bis).

3.6 Failure to Respond

According to the Code of Civil Procedure for Mexico City, if the respondent fails to file an answer to the complaint, the facts are considered admitted if process was served on the defendant or his legal representative. If process was served on someone else (for example, an employee or a relative), the facts are considered denied (Article 332 of the Code of Civil Procedure for the Federal District).

Even if the facts are considered admitted, the plaintiff still has to prove all the affirmative statements made in its claim, which serve as the basis of the action. The defendant also has the opportunity to offer evidence.

3.7 Representative or Collective Actions

Collective actions have been permitted in Mexico since 2011. Federal courts have exclusive jurisdiction to hear this type of claim. Pursuant to the Federal Code of Civil Procedure, only class actions concerning the protection of collective interests or rights related to consumer relationships or environmental matters are allowed. Matters related to antitrust issues, financial services, product liability and consumer redress are considered included within the scope of consumer relationships.

However, in order to file a collective action for damages caused to consumers in relation to monopolistic practices or unlawful acquisitions, it is necessary to first obtain a final ruling from the Federal Antitrust Commission, declaring the existence of that practice or acquisition.

The Mexican Congress decided to adopt the opt-in mechanism for collective actions, which means that the intent of a member of the class to join the collective action must be expressly declared. This consent can be declared during any stage of the proceedings or up to 18 months after the judgment issued is considered final.

3.8 Requirements for Cost Estimate

Under Mexican law, there are no requirements to provide clients with a cost estimate of the potential litigation at the outset.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

It is possible to obtain interim injunctions before a full trial, in the specific cases in which provisional remedies are available (see **6.1 Circumstances of Injunctive Relief**).

4.2 Early Judgment Applications

A party cannot apply for early judgment on some or all the issues in dispute, nor for the other party's case to be struck out before a trial or substantive hearing of the claim.

However, if the defendant confesses and agrees to the terms of the claim, the court shall summon the parties directly to the trial hearing in which a final judgment shall be rendered (Article 1390 Bis 19).

Additionally, if there is only documentary evidence, the court might decide to concentrate the whole procedure in the preliminary hearing (instead of appointing a new date for the trial hearing) and to enter a final judgment directly (Article 1390 Bis 37).

A case can also be concluded before trial if certain matters – such as lack of authority, lack of representation, lack of subject matter or territorial jurisdiction, lis pendens – are resolved in the preliminary hearing or in ancillary proceedings. Most issues that can lead to an early conclusion of a trial have to be alleged as a defence when the answer to the complaint is filed (Article 1127 of the Commerce Code).

4.3 Dispositive Motions

No dispositive motions are usually made before trial, other than the ones related to the application for interim relief to maintain the status quo, typically consisting of the attachment of assets.

4.4 Requirements for Interested Parties to Join a Lawsuit

Any party who may be affected by the judgment has the right to be heard in the proceedings. In that case, the third party may become involved in the proceedings by being summoned by one of the parties or by appearing voluntarily before the court.

4.5 Applications for Security for Defendant's Costs

In a commercial or civil action, a defendant cannot apply for an order for the plaintiff to pay a sum of money as security for the defendant's costs.

4.6 Costs of Interim Applications/Motions

Courts do not impose costs on interim applications or motions. However, they can consider whether they are frivolous or only meant to delay the proceedings when they decide if one of the parties must pay the costs of the trial (Article 1082 of the Commerce Code).

4.7 Application/Motion Timeframe

In practice, the timeframe for a court to deal with an application or motion depends on the issue presented to the court. If it is related to defences such as lack of authority, lack of representa-

tion, lack of subject matter or territorial jurisdiction, obtaining a ruling usually takes between three and six months from the answer to the complaint being filed.

A party may not request for a motion to be ruled on an urgent basis, except for emergency interim measures (see **6.2 Arrangements for Obtaining Urgent Injunctive Relief**).

5. Discovery

5.1 Discovery and Civil Cases

Discovery is not regulated or allowed under Mexican law, which means that parties do not have the opportunity to depose potential witnesses or further investigate or develop the facts of the case once a complaint has been filed. The only exception that allows a party to obtain documents from the opposing party is if they identify the specific documents and declare to the judge that they are unable to produce them, asking the judge to issue an order against the party who has the document (Article 1061, Section III, of the Commerce Code).

5.2 Discovery and Third Parties

The only way to obtain documents from third parties that are not named as a plaintiff or defendant is to make the same declaration as explained under **5.1 Discovery and Civil Cases**, so that the judge can issue a production order against the third party. However, the scope is limited.

5.3 Discovery in This Jurisdiction

Discovery is not required, and is in fact not even allowed under Mexican law.

5.4 Alternatives to Discovery Mechanisms

The only alternative to discovery, but with a very limited scope, is to start preparatory proceedings before the court, in which the plaintiff can request, for example, the examination of witnesses, a judicial inspection, a declaration from the opposing party, or the showing of a chattel. This type of preparatory proceedings is not used often, because the law imposes strict limits – for example, a party may only request to examine witnesses if they are elderly or at risk of death. Each party is required to exhibit all the documentary evidence to support their case with the complaint, answer to the complaint (and counterclaim, if applicable), and reply to the answer.

5.5 Legal Privilege

Mexican law recognises the concept of legal privilege, but its regulation is not as developed as in other countries. The applicable provisions are scattered throughout different acts and regulations, and the Federal Judiciary has issued very few precedents on the topic. This often presents challenges for determining the scope of legal privilege.

The Professions Law imposes a generic obligation on every professional to keep matters that are revealed to them by virtue of their profession confidential, and Federal Courts have held that attorney-client privilege is a consequence of the constitutional rights to privacy and defence. In fact, Procedural Codes protect those that receive information through the exercise of their profession and exempts them from testifying as witnesses in trial, and the Criminal Codes make the violation of professional secrecy a crime.

There is no specific statutory regulation of attorney-client privilege, so in principle the same obligations apply to external and in-house counsel. However, certain court precedents seem to suggest that attorney-client privilege is only applicable to external counsel.

5.6 Rules Disallowing Disclosure of a Document

A party that is ordered to produce a document by a judge may only refuse to disclose said document if it is considered to be privileged.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Under the Commerce Code, interim injunctions are only available on the following two grounds:

- if there is reason to believe that a person may disappear or hide to avoid being summoned before the court; or
- to preserve assets if the defendant has no other assets and there is a reason to believe that the assets the defendant possesses could be hidden or disposed of.

The Commerce Code provides a limitation on the type of remedies that can be granted, but some federal courts have held that the judge may grant other precautionary measures regulated in supplementary procedural laws if the circumstances to grant an interim measure are different from the ones described in the Commerce Code. Also, federal courts have stated that the two grounds established by the Commerce Code should be interpreted in an ample and flexible manner.

Mexican law does not expressly contemplate anti-suit injunctions to prevent parallel proceedings.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

A party may request a motion for obtaining injunctive relief to be dealt with on an urgent basis, even without hearing the other party, if the circumstances support the urgent nature of the measure. In that case, courts usually rule on the issue within a week.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Once a trial has started, injunctive relief can generally only be obtained after notice of the request has been given to the respondent. However, Mexican courts have granted injunctive relief ex parte if the plaintiff can demonstrate a certain urgency that justifies not waiting to notify the opposing party. However, once the injunctive relief has been granted, the respondent still has the opportunity to be heard, and to submit challenges to reverse or modify the order.

6.4 Liability for Damages for the Applicant

The applicant can be held liable for the damages suffered by the respondent if the respondent successfully discharges the injunction and proves that he or she suffered damages. In fact, in order to obtain injunctive relief, the applicant must submit a guarantee for the potential damages caused to the party against whom the injunction will be issued.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Injunctive relief can be granted against the worldwide assets of the respondent. However, the enforcement of that relief outside Mexico would require international judicial assistance from the judges of the place where the assets are located.

6.6 Third Parties and Injunctive Relief

In principle, injunctive relief is only granted against the parties to the dispute. However, in some cases the court can order third parties to co-operate – for example, it can order a bank to freeze banking accounts or a debtor of the respondent not to pay him or her and instead deposit the money before the court.

6.7 Consequences of a Respondent's Non-compliance

If the respondent fails to comply with the terms of an injunction, the court may impose different sanctions, which can range from a fine to administrative detention for contempt of court. Ultimately, the defiance of a court order may constitute the crime of judicial disobedience.

7. Trials and Hearings

7.1 Trial Proceedings

In practice, there are no jury trials in Mexico; they are all bench trials. An oral trial proceeding in Mexico has four stages: the pleadings stage, the preliminary hearing, the trial hearing and the final judgment.

To start an ordinary oral commercial action, and the pleadings stage, the claimant must file a complaint before the court, along with all the relevant documents and the names of any witnesses the plaintiff intends to call. Once the complaint is admitted, the defendant is served with process and has nine business days to file an answer and a counterclaim. The defendant must also submit all the documents to prove his defences and indicate the names of any witnesses he intends to call. The plaintiff then has three business days to respond, or nine days if a counterclaim was filed.

After the pleadings stage, the court shall appoint a date for the preliminary hearing, which is an oral hearing with the following purposes:

- the refinement of the proceeding;
- conciliation or mediation;
- the establishment of agreements on undisputed facts;
- the establishment of probatory agreements;
- the qualification of the admissibility or not of the evidence; and
- the citation for the trial hearing.

In addition, the judge, among other things, shall hear the procedural defences, receive evidence on such regards and rule on them (except for matters of lack of jurisdiction).

In the trial hearing, the court will process the evidence and then grant the floor to each of the parties to make their arguments. Then, the court shall enter its decision, briefly explaining orally the factual and legal grounds of the decision and the specific rulings.

These rules shall vary regarding special or summary proceedings.

7.2 Case Management Hearings

In the preliminary hearing, the judge, among other things, shall hear the procedural defences, receive evidence on such regards and rule on them (except for matters of lack of jurisdiction). Additionally, the preliminary hearing works similarly to a case management hearing (see **7.1 Trial Proceedings**).

In commercial matters, it should be remembered that parties can freely agree the proceedings under which they want their dispute to be heard, and therefore could establish a case management hearing. Parties usually follow statutory proceedings without agreeing on any modifications to the rules.

7.3 Jury Trials in Civil Cases

There are no jury trails in civil or commercial cases.

7.4 Rules That Govern Admission of Evidence

Any evidence that may convince the judge about the disputed facts is admissible; the scope is very general. The burden of proof rests with the party making an affirmative statement (Article 1194 of the Commerce Code).

All documentary evidence must be submitted with the complaint or the answer to the complaint or reply; otherwise, it will not be admitted, unless it is supervening. Witnesses and expert witnesses must also be identified by name in the complaint or answer to the complaint. In the preliminary hearing, the judge rules on the admissibility of the evidence, reviewing whether it is appropriate and whether the legal formalities for its offering were followed; for example, indicating the facts that the offering party intends to prove.

7.5 Expert Testimony

Expert testimony is permitted at trial, but only in cases in which ruling on the dispute requires special knowledge of science, arts or an industry. Each party can appoint an expert and prepare an interrogatory report for both experts to answer. If the reports are completely contradictory, the court may appoint a third expert witness.

The court may seek expert testimony itself if it needs guidance on a technical issue, because the Federal Code of Civil Procedure allows it to request any additional evidence to reach a more informed decision (Article 598 of the Federal Code of Civil Procedure).

7.6 Extent to Which Hearings are Open to the Public

In commercial proceedings, all hearings are public (Article 1080 of the Commerce Code). Other bodies of law, such as the Federal Civil Procedure Code, establish that the court will determine in which cases the hearings shall not be public (eg, in family matters or when one party is a minor).

7.7 Level of Intervention by a Judge

Previously, judges were supposed to preside over every hearing, review the interrogatories for witnesses and experts, encourage the parties to reach a settlement, etc. However, in practice, judges often delegated much work to their staff and intervened only when there was a conflict over a procedural decision. Judgments are reserved to a later date.

However, in the new oral proceedings, which will apply to every commercial dispute from 2020, judges must be more involved in the case, as they personally have to preside over the hearings. Judgments are supposed to be notified at a hearing. However, in more complex cases, the judge shall suspend the hearing and appoint a later date to enter the final judgment.

7.8 General Timeframes for Proceedings

Obtaining a first instance judgment in a typical oral commercial proceeding takes around five to six months on average from the complaint being submitted. The duration may vary depending on the complexity of the dispute.

8. Settlement

8.1 Court Approval

Settlement agreements do not need to be certified or approved by the court. However, there are significant advantages of obtaining a certification of the agreement – mainly that the agreement will be authenticated and considered res judicata, and could be enforced like a final judgment.

8.2 Settlement of Lawsuits and Confidentiality

Settlement agreements between the parties are not a matter of public record. Even if the settlement agreement is certified or approved by the court, it is not a document that is considered public information, and therefore only interested parties can have access to it. However, a specific provision must be included in the agreement in order for the document to be considered confidential, thereby imposing specific obligations on the parties.

8.3 Enforcement of Settlement Agreements

Settlement agreements certified by a judge or an authorised mediator, under the Law of Alternative Justice for the Federal District, are enforced through an independent summary proceeding or by initiating the enforcement stage before the judge who originally heard the case. The proceedings are designed to be abbreviated and efficient, and injunctive measures are available.

8.4 Setting Aside Settlement Agreements

In principle, a settlement agreement can only be set aside by filing a lawsuit asking a judge to declare the agreement null and void. The circumstances in which a settlement may be set aside are limited, because the law recognises settlement agreements as being fully enforceable. It would only be possible if the party seeking to set aside the settlement agreement alleges,

for example, that there was fraud or violence, or that the person who signed the agreement had no powers of representation, etc. The parties may jointly modify the settlement agreement at any time.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

Successful litigants can obtain declarative judgments and orders for specific performance. The remedies available are very broad, and typically involve damages and lost profits.

9.2 Rules Regarding Damages

Compensatory damages under Mexican law must be a direct and immediate consequence of a breach of contract or an illegal act (Article 2110 of the Civil Code for the Federal District). Pain and suffering damages (moral damages) are also available as a remedy. In 2014, the Supreme Court introduced a particular notion of punitive damages for certain specific cases.

9.3 Pre and Post-Judgment Interest

A party may only collect interest based on the period before a judgment is entered, according to the interest rate agreed upon by the parties or the statutory legal interest rate that is applicable. Once the judgment is issued, interest keeps accruing until the respondent makes a payment. However, interest is not awarded on costs. Also, in certain types of actions, interest can only be awarded from the date the judgment was issued and onwards.

9.4 Enforcement Mechanisms of a Domestic Judgment

The mechanism to enforce a judgment depends on the nature of the decision. First, if the order refers to a monetary payment to the prevailing party, these decisions can only be enforced through the seizure of assets. That seizure can be made through attachment proceedings or through a new summary action, which is a separate trial and can be filed before a different court (Articles 400, 407 and 421 of the Federal Code of Civil Procedure).

If the decision involves an order against the losing party to do something that only he is capable of doing, such as executing a contract, the judge can sign the contract in lieu of the party if that party refuses to comply with the order (Article 421 of the Federal Code of Civil Procedure).

Finally, if the losing party is obliged to perform an obligation that someone else can do and he or she refuses to comply with the order, a third party can be designated to perform the obligation at the expense of the losing party (Article 421 of the Federal Code of Civil Procedure).

9.5 Enforcement of a Judgment from a Foreign Country

Foreign judgments are recognised and enforced in Mexico (Article 569 of the Federal Code of Civil Procedure). Mexico is a party to the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, and accordingly foreign judgments are enforced, provided that:

- they comply with all the formal requirements necessary for them to be deemed authentic in the state of origin;
- the judgments are duly translated into Spanish;
- they are duly legalised;
- the judge or tribunal rendering the judgment is competent in the international sphere to try the matter;
- the plaintiff has been summoned or subpoenaed in due legal form;
- the parties had an opportunity to present their case;
- the judgments are final or are considered res judicata; and
- they are not contrary to the principles and laws of Mexican public policy.

Also, Mexico is a party to the Hague Convention on Choice of Court Agreements. If applicable, this convention facilitates the enforcement of foreign judgments in a significant manner.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

Under Mexican law, commercial oral judgments cannot be appealed.

In other specific cases (for example, summary proceedings), there might be only one level of appeal, unless the value of the claim is below a certain threshold. Appeals against an order issued by a district court go to a single-judge circuit court, and appeals against an order issued by a local first instance judge go to a collegiate court.

If it is not possible under the applicable law to file an appeal, or even after the appeal has been resolved, the parties can file a constitutional protection action (amparo), alleging violations of the Mexican Constitution.

10.2 Rules Concerning Appeals of Judgments

An appeal against a final judgment must be filed within nine days of the judgment being notified to the party. An appeal may be filed by the losing party, by the wining party who did not

obtain damages and lost profits, costs or other ancillary claim, or by an interested third party.

10.3 Procedure for Taking an Appeal

The appeal must be filed before the judge that issued the order, expressing all the grievances arising from the judgment. The judge then gives the opposing party the opportunity to make allegations, and finally sends the appeal to the superior court. Once the superior court receives the appeal, it confirms the admission and summons the party for a final judgment.

10.4 Issues Considered by the Appeal Court at an Appeal

The appeals court may review any alleged violation of the applicable law. Typically, there is no re-hearing. If the appeals court determines that there was a violation that had an impact on the judgment, it may reassess the claims and the evidence produced, and issue a new judgment. However, if the appeals court considers that certain evidence shall be taken, it might order a re-hearing.

New issues or arguments that were not explored at first instance cannot be introduced at an appeal.

10.5 Court-Imposed Conditions on Granting an Appeal

Courts cannot impose conditions on granting an appeal. When appeals are allowed under the law applicable to the specific type of proceedings, then the parties can exercise this right without any conditions.

10.6 Powers of the Appellate Court after an Appeal Hearing

The appellate court has limited powers, since it must rule only on the grievances exposed by the parties. However, if one of those grievances is enough to reverse the first instance judgment, the appellate court may study the entire record, reassess the evidence, and issue a completely new judgment.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

There are no court fees or costs to file a civil or commercial lawsuit, and in principle each party must bear the costs of attorneys and other related expenses. However, the losing party is required to reimburse the prevailing party when the court considers that the losing party acted with temerity or bad faith, or if that party did not provide any evidence to justify his action or defence, submitted false evidence, lost a summary action, obtained two unfavourable identical judgments in the first instance and the appeal, filed improper claims or made unwarranted defences (Article 1084 of the Commerce Code). The prevailing party must prove all the costs with proper evidence during an ancillary proceeding. Also, depending on the applicable rules, costs may be awarded based on a percentage of the amount in dispute.

11.2 Factors Considered When Awarding Costs

The main factors considered when awarding costs are whether the losing party provided any evidence, whether the action or defence was frivolous or unwarranted, whether there was any false evidence, and whether the first and second instance judgments against the losing party were identical.

11.3 Interest Awarded on Costs

Generally, once the judgment awarding costs is final, it accrues interest under the general 6% rate if it is under the Commerce Code (Article 362), or 9% if it is under the Civil Code (Article 2395).

12. Alternative Dispute Resolution

12.1 Views of Alternative Dispute Resolution within the Country

Alternative dispute resolution is becoming more common in Mexico, especially because judges are supposed to encourage the parties to engage in some methods – mainly mediation. There have been substantial efforts to professionalise the practice – for example, a few years ago, the Superior Court of Justice of Mexico City started to train and certify mediators.

The most popular ADR method in Mexico is still arbitration, both domestic and international.

12.2 ADR within the Legal System

The Mexican legal system promotes ADR, and the Mexican Constitution expressly acknowledges ADR as a valid method to resolve disputes (Article 17 of the Mexican Constitution). Many procedural laws establish a conciliation hearing as part of the proceedings. For example, in commercial oral proceedings, the judge has express powers to mediate during the initial hearing (Article 1390 Bis 2 of the Commerce Code). Likewise, in civil proceedings, the judge and the conciliator have powers to mediate between the parties during the whole process (Article 55 of the Code of Civil Procedures for the Federal District). However, there are no sanctions for refusing ADR – costs are not even awarded against a party who refuses to participate in ADR.

12.3 ADR Institutions

In Mexico, institutions offering and promoting ADR are well organised. In arbitration, the Mexican Arbitration Centre (CAM) and the Chamber of Commerce of Mexico City

(CANACO) are among the most important domestic institutions. In mediation, the better organised institution is probably the Alternative Justice Centre, which is part of the structure of the Superior Court of Justice of Mexico City.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

The law governing commercial arbitration proceedings and the enforcement of arbitral awards in Mexico is Book Five, Title Four of the Commerce Code. This body of law incorporates the United Nations Commission on International Trade Law (UNCITRAL) Model Law on arbitration (1985), with only minor modifications. It is a federal law that applies in the whole country, making the regulation of arbitration consistent everywhere in Mexico.

Mexico is also a party to the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), the Inter-American Convention on International Commercial Arbitration (the Panama Convention), and the Inter-American Convention for Extraterritorial Validity of Foreign Judgments and Arbitral Awards (the Montevideo Convention). Furthermore, Mexico is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID).

13.2 Subject Matters Not Referred to Arbitration

Under Mexican law, the following subject matters cannot be referred to arbitration:

- personal and commercial bankruptcy (Article 1 of the Bankruptcy Law);
- criminal liability (Article 1 of the National Code of Criminal Procedure);
- disputes regarding the management of Mexican embassies, consulates and government agencies (Article 568 of the Federal Code of Civil Procedure);
- territorial resources and waters (Article 568 of the Federal Code of Civil Procedure);
- exclusive economic zone area resources (Article 568 of the Federal Code of Civil Procedure);
- sovereign decisions and acts of authority (Article 567 of the Federal Code of Civil Procedure);
- labour disputes (Article 123, Section XXXI, of the Mexican Constitution);
- agrarian disputes (Article 27, Section XIX, of the Mexican Constitution);
- family and civil status issues (Article 52 of the Superior Court of the Federal District Organisational Act);
- administrative rescission of exploration and extraction agreements between a private contractor and the National Commission of Hydrocarbons (Article 321 of the Hydrocarbons Law);
- administrative rescission and early termination of public purchase and sale, lease and service agreements (Article 80 of the Law of Acquisitions, Leases and Services of the Public Sector);
- administrative rescission and early termination of public works contracts (Article 98 of the Law of Public Works and Related Services);
- taxes (Article 14 of the Tax and Administrative Federal Court Organisational Law); and
- other matters as recognised by applicable statutory law.

13.3 Circumstances to Challenge an Arbitral Award

Parties can file a petition to set aside an award within three months of notice of the award being given. The challenge can only be based on limited and specific causes that mirror the ones provided in the UNCITRAL Model Law, as follows:

- a party to the arbitration agreement was under some incapacity, or said agreement is not valid under the law to which the parties have subjected it;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present his case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; or
- the court finds that the subject matter of the dispute is not capable of settlement by arbitration, or the award is in conflict with public policy.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

The Commerce Code provides for a specific proceeding to enforce arbitral awards. The proceedings begin with a complaint, which the defendant can answer within 15 working days. After the response is filed, the court receives the evidence offered by the parties. After all the evidence is received, the court holds a hearing on the merits within the next three days. Finally, the judge renders a final judgment. The proceedings to enforce an award usually take between six and 12 months.

14. Recent Developments

14.1 Proposals for Dispute Resolution Reform

The oral adversarial commercial proceeding fully came into force in Mexico in 2020. This proceeding was previously limited to small claims.

In addition, the Constitution was reformed in 2017, granting the federal Congress powers to legislate on civil and family procedural matters, which were previously reserved to each state. However, at the time of writing, Congress has not yet enacted any legislation. This law will likely replicate the oral commercial proceeding.

14.2 Impact of COVID-19

Due to COVID-19, federal courts were closed from 18 March 2020 to 2 August 2020, except for urgent matters and certain cases. State courts followed a very similar pattern. Access to courts is still somehow restricted at the time of writing (for example, it is necessary to make appointments).

Additionally, courts and lawyers have been pushed to create or begin using electronic services, such as e-filings, which were previously seldom used.

Von Wobeser y Sierra, SC was founded in 1986 and is one of the foremost Mexican law firms offering full-service legal solutions. The firm has more than 80 attorneys and covers more than 30 different practice areas, including specialised desks with a strong roster of international and national clients. The firm's lawyers are renowned for their expertise in advising and fortifying leading companies in establishing and conducting day-to-day business related to entering and expanding their operations in Mexico and internationally. Von Wobeser has built a broad and diverse team of litigators and arbitration practitioners from the best law schools in Mexico, the USA and Europe.

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