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Litigation



Mexico

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Overview

1. Court system

Describe the general organisation of the court system for civil litigation.

Mexico is a federal state and therefore its court system is divided into federal and local courts. The Constitution has established that civil law matters, both substantive and procedural, are of local jurisdiction, and therefore, each state and the federal district have their own civil code and code of civil procedures. There is also, however, a Federal Code of Civil Procedures, which applies to the resolution of federal administrative and civil conflicts.

The courts at the federal level include the Supreme Court of Justice with 11 justices, the collegiate circuit courts with three magistrates, the unitary circuit courts with one magistrate, and the district courts with one judge. Each state has a state high court and specific courts divided by subject matters such as civil, commercial, family and criminal.

The Supreme Court functions as a full court or in two chambers of five justices each. Among other matters, it resolves conflicts between states and between the federal government and a state, as well as resolving conflicting decisions by the circuit courts. It also addresses challenges to the constitutionality of laws and is the last resort for appeal of certain cases involving constitutional matters.

The collegiate circuit courts were created to exercise powers originally corresponding to the Supreme Court, which is to resolve *amparo* proceedings the legality of decisions issued by the unitary circuit courts. The unitary circuit courts in turn resolve appeals from the district courts, which are the federal courts of first level of dispute resolution.

Both the district courts and the unitary and collegiate courts are divided territorially into the number of circuits that the Federal Judicial Board, an administrative body of the judicial power, establishes for the entire country.

With respect to the federal district, under the Superior Court of Justice are the civil courts that act as courts of first instance, and the civil chambers with three magistrates that resolve civil and commercial cases at second instance. As at the federal level, separate courts handle family, leasing, bankruptcy and labour matters.

Within the civil sphere in the federal district, there are also oral trial courts, who settle hearing claims involving small amount disputes.

No juries are used in the Mexican procedural system.

Courts are part of the judicial power and are independent from other branches of power.

Federal judges are appointed and elected through an examination process.

Courts are not bound by the decisions of other courts; however, they are bound by the judicial precedents established by the Supreme Court of Justice of the Nation, the Circuit Plenaries and the Collegiate Circuit Courts, provided that the decisions of such organs meet the requirements established by the law (article 215-230, Amparo Act).

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2. The legal profession

Describe the general organisation of the legal profession.

In order to be admitted as a lawyer, there are no other legal requirements, aside from obtaining an academic degree. Some courts require the presentation of a professional licence, but such licence is an administrative requirement and does not determine the admissibility of a lawyer.

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3. General

Give a brief overview of the political and social background as it relates to civil litigation.

Civil litigation is widely used in Mexico and therefore, the caseload is very heavy. Even though there are no procedural reforms in progress, procedural law is constantly being amended in order to improve and modernise it.

Additionally, it is a constitutional principle that the courts must grant free and expedite justice. (article 17, Constitution of the United Mexican States).

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Jurisdiction

4. Jurisdiction and venue

What are the criteria for determining the jurisdiction and venue of the competent court for a civil matter?

In federal civil matters, the jurisdiction and venue of the competent court is based on three different criteria, which are territory, level, and substance of the dispute (articles 12 to 32, Federal Code of Civil Procedures).

Notwithstanding the above, the jurisdiction of local courts is determined by the corresponding state law.

Parties may agree upon a specific forum provided, however, that any dispute related to the following matters is subject to Mexican law and to the exclusive jurisdiction of the federal courts (article 568, Federal Code of Civil Procedures):

- land and water resources located in Mexican territory;
- actions of federal agencies and the Mexican state; and
- disputes relating to embassies and consulates.

Parties must be treated equally; therefore there are no considerations if one of the parties is a foreign national.

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5. Forum shopping

Does your jurisdiction commonly attract disputes that have a nexus with other jurisdictions?

Mexican Courts follow a very strict territorial approach and our laws do not empower them to "attract" disputes that may have nexus with other jurisdictions. However, it is common for a dispute to be heard by Mexican courts if it is subject to their jurisdiction, even if the same dispute is being heard at the same time by a foreign court. This is not common, and creates the scenario of parallel litigation in different jurisdictions that may be resolved on a case-by-case basis.

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6. Pendency in another forum

How will a court treat a request to hear a dispute that is already pending before another forum?

The treatment to the request to hear a dispute that is already pending before another forum may vary depending on the jurisdiction of the court that is already hearing the case. Because the Federal Code of Civil Procedures states that the claims must be accumulated when the decision of one of the claims depends on the other claim. However, the Federal Code of Civil Procedures states that the accumulation is not possible when one of the disputes is being heard in a foreign country (article 72, Federal Code of Civil Procedures).

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7. Deference to arbitration

How will the courts treat a dispute that is, or could be, subject to an arbitration clause or an agreement to arbitrate?

In the event that a court proceeding is initiated despite the existence of an arbitration agreement, the judge before whom such proceeding has been initiated shall, on prior request of either party, remit the parties to arbitration, unless: i) it is proved by the exhibition of a final judicial decision or arbitral award that the arbitral agreement was nullified; or ii) if the nullity, inefficacy or impossibility to enforce the arbitral clause or agreement are notorious (following a restrictive approach) (article 1465 of the Commerce Code). If such an action has been initiated, arbitration may nevertheless be initiated or completed, and an award may be entered while the matter is pending before the judge (article 1424 of the Commerce Code). In addition, the remission of the parties to arbitration shall have the effect of suspending the judicial proceeding initiated.

Once the dispute is finally resolved in the arbitration, then the Judge will reassume jurisdiction and issue a final decision terminating the judicial litigation as per request of any of the parties. However, if within the arbitration it is resolved that the arbitration clause was invalid or that the Arbitral Tribunal lacked jurisdiction, or for any other reason the dispute is not finally ruled totally or partially, then as per petition of any of the parties and hearing the other, the Judge may reassume jurisdiction and rule on the merits of the case.

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8. Judicial review of arbitral awards on jurisdiction

May courts in your country review arbitral awards on jurisdiction?

Yes. First, the arbitral tribunal may resolve on its own jurisdiction a priori or in the final award on the merits. If, prior to the issuance of its final award the tribunal declares itself competent, either party may request a judge to review that decision within 30 days after receiving notice of the declaration. The judge's decision shall not be subject to appeal but it may be challenged through an *amparo* proceeding. In any event, while the petition is pending, the arbitral tribunal may continue to act until an award is rendered (article 1432 of the Commerce Code).

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9. Anti-suit injunctions

Are anti-suit injunctions available?

Mexican law does not contemplate anti-suit injunctions. However, in a recent case a court issued an anti-enforcement injunction to prevent a party from seeking the enforcement of an arbitral award. This injunction was successfully challenged through an *amparo* proceeding which declared that this type of measures is against the fundamental right of access to justice established in the Mexican Constitution.

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10. Sovereign immunity

Which entities are immune from being sued in your jurisdiction? In what circumstances?

Even though there is no specific legislation regarding immunity, sovereign power can be asserted from the Mexican Constitution (articles 39, 40 and 41). Additionally, pursuant to the Federal Code of Civil Procedures, the institutions, services and entities of the Federal Government Public Administration, as well as the states have the same status as any other party in judicial proceedings. Nevertheless, no enforcement or attachment orders can be imposed on them and they shall not be obliged to exhibit any guarantees (article 4, Federal Code of Civil Procedures).

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In 2005 a legislative initiative was received by the Senate entitled Law on State Jurisdiction Immunity, however it has not yet been approved. There are no treaties ratified by Mexico on this subject.

Procedure

11. Commencement and conduct of proceedings in general

How are proceedings commenced? To what extent will a court actively lead the proceedings and to what extent will the court rely on the parties to further the proceedings?

Proceedings are started when a claim is filed in writing before a court that has jurisdiction. However, strictly speaking, the proceeding does not begin until the defendant is given notice of the proceeding, since only then is the tripartite legal procedural relationship formed.

The law establishes the specific procedural rules to which both the court and the parties are bound. Therefore, neither the courts nor the parties can lead the proceedings and they must strictly follow the procedural stages established by the law.

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12. Statement of claim

What are the requirements for filing a claim? What is the pleading standard?

With the initial pleading, all facts and arguments shall be submitted. Additionally, all documents existing in the possession of the claimant and which shall serve as evidence shall be annexed to such pleading (article 324, Federal Code of Civil Procedures).

Notwithstanding the above, further documents and evidence may be filed after the submission of the initial pleading, provided that such additional documents and evidence refer exclusively to the defences filed by the respondent or are deemed to be supervening (article 324, Federal Code of Civil Procedures).

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13. Statement of defence

What are the requirements for answering claims? What is the pleading standard?

The claim shall be answered by denying it, confessing it or opposing any defences. The defendant must follow a very formalistic formula in its response. It shall make reference to each of the facts contained in the claim, by admitting them, denying them, expressing which of those facts are not known by him or by expressing the specific circumstances in which they took place. Any facts not referred to by the defendant shall be deemed admitted and no evidence shall be admitted to prove otherwise (article 329, Federal Code of Civil Procedures).

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14. Further briefs and submissions

What are the rules regarding further briefs and submissions?

After the filing of the claim, and provided that such claim is not clear or is irregular, the court shall grant the claimant a three-day period to make any amendments as requested by the court (article 325, Federal Code of Civil Procedures).

Additionally, after the admission of the claim by the judge, the claimant may broaden the claim at any time during the proceedings, provided that the final hearing has not taken place. The right to broaden the claim shall only be exercised once by the claimant, and in such event the rules governing the proceeding shall apply as if the parties had initiated a new proceeding (article 71, Federal Code of Civil Procedures).

As a general rule, once the claim has been answered and no counterclaim has been filed, the answer to the claim cannot be changed, unless supervening defences have arisen. In the event of supervening defences, the answer to the claim may be changed once at any time before the final hearing (article 330, Federal Code of Civil Procedures).

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15. Publicity

To what degree are civil proceedings made public?

Hearings are public, unless determined otherwise by the court (article 274, Federal Code of Civil Procedures)

Final decisions issued by the Federal Judicial Power must be made public, however, the parties may oppose the publication of their personal information (articles 8 and 18, Transparency Act).

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Pretrial settlement and ADR

16. Advice and settlement proposals

Will a court render (interim) assessments about any factual or legal issues in dispute?

What role and approach do courts typically take regarding settlement? Are there mandatory settlement conferences between the parties at the outset of or during the litigation?

Even though the Federal Code of Civil Procedures is silent in this regard, some local laws, such as the Code of Civil Procedures of the Federal District, establish that after the claim has been answered, the judge shall summon the parties to a conciliation hearing (article 272 A, Code of Civil Procedures of the Federal District).

However, in practice, the courts have not made much effort in this regard. In addition, courts are not allowed to make any preliminary assessment about any factual or legal issue.

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17. Mediation

Is referral to mediation or another form of ADR an option, or even mandatory, before or during the litigation?

Mexican federal laws do not regulate referral to mediation or any other form of ADR within an existing litigation before courts, therefore, the conduction of ADR is not mandatory. However, recently with the Federal District Civil Procedural Code provides oil and gas reform, ADRs were expressly allowed as an option to resolve disputes with PEMEX (the existence of a mediation stage in every ordinary proceeding (article 272-A of state oil company) or CFE (the aforementioned codestate electricity company)).

In addition, the Federal District Civil Procedural Code provides a phase of judicial mediation at the beginning of the proceeding. If it is not successful, the judge should also inform the parties of the benefits of private mediation and invite them to use it. If the parties agree to use the mediation, then the proceeding will be suspended for two months to allow the parties to reach an agreement. If the agreement is reached, then it will be considered as *res judicata*.

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Interim relief

18. Forms of interim relief

What are the forms of emergency or interim relief?

Before the commencement of the proceedings or during their development, the court may grant any measures to maintain the status quo (article 384, Federal Code of Civil Procedures).

Among other, interim relief consists of the following (article 389, Federal Code of Civil Procedures):

- the attachment of sufficient assets to secure the result of the proceeding; and
- the deposit or seizure of the items, books, documents or papers which constitute the subject matter in dispute.

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19. Obtaining relief

What must a petitioner show to obtain interim relief?

Even though there is no specific requirement provided by law, several judicial precedents, as well as doctrine, have established that one of the main principles of provisional relief is based on the appearance of the likelihood of success. The above implies that courts grant provisional remedies based on a prima facie analysis in order to anticipate the lawfulness of the petitions filed by the party requesting the corresponding remedy and also the need for or urgency of the measure requested.

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Decisions

20. Types of decisions

What types of decisions (other than interim relief) may a court render in civil matters?

In civil matters a court can render two types of decisions. One which decides formal elements of the proceeding and is known as, interlocutory resolution, and the other decision, which decides the substance of the proceeding, known as, a definitive judgment (article 268, Federal Code of Civil Procedures).

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21. Timing of decisions

At what stage of the proceedings may a court render a decision? Are motions to dismiss and summary judgment available?

Decisions on the merits must be supported by the undertaking of the whole proceeding, in compliance with all due process requirements (article 14, Constitution of the United Mexican States).

Motions to dismiss and summary judgments are not regulated by Mexican law.

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22. Default judgment

Under which circumstances will a default judgment be rendered?

In the event that the defendant is duly summoned to the proceedings and does not answer the claim filed against him within the term provided by law (article 332, Federal Code of Civil Procedures).

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23. Duration of proceedings

How long does it typically take a court of first instance to render a decision?

Civil and commercial proceedings have strict deadlines (no extensions are allowed) for the parties which theoretically should result in having a decision rendered in five or six months. However, in practice and due to the current workload of federal and local courts, they are slow in issuing the corresponding procedural orders and final rulings, so it can take approximately one year to obtain a first instance ruling. However, this can vary from state to state, and from case to case.

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Parties

24. Third parties – joinder, third-party notice, intervenors

How can third parties become involved in proceedings?

Any third parties who may be indirectly affected by the final decision have the right to be heard in the proceedings. In such event, third parties may become involved in the proceedings either by being summoned by one of the parties or by appearing before the court without being called to assert their rights.

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Evidence

25. Taking and adducing evidence

Will a court take or initiate the taking of evidence or will it rely on the parties to request the taking of evidence and to present it?

The parties are compelled to file the evidence to support their case (article 81, Federal Code of Civil Procedures).

However, the judge can rely on any person, item or document of the parties or of any third party, provided that such evidence is recognised by the law and is directly related to the facts that are subject to the controversy. In this regard, the courts are not bound by any time limitations to order the filing of any evidence they may consider indispensable to know the content of the dispute (article 79, Federal Code of Civil Procedures).

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26. Disclosure

Is an opponent obliged to produce evidence that is harmful to it in the proceedings? Is there a document disclosure procedure in place? What are the consequences if evidence is not produced by a party?

There are no provisions in Mexican law establishing the documents which the parties must disclose. A judge can, in exceptional circumstances, order a party to disclose specific documents that may be relevant.

Generally, each party produces the documents that it seeks to rely on in evidence. However, failure to produce a document requested by the other party can lead to the other party's allegations being considered as true.

Generic disclosure proceedings are not regulated nor allowed by Mexican law.

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27. Witnesses of fact

Please describe the key characteristics of witness evidence in your jurisdiction.

The statement of a witness of fact is presented orally during the witness examination and there is no need to present written questions for the witness. The questions must be asked orally and directly during the

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examination by the parties or their counsel. Each one of the parties can interrogate the witness and the judge can also formulate any questions (article 173, Federal Code of Civil Procedures).

28. Expert witnesses

Who appoints expert witnesses? What is the role of experts?

As a general rule, each of the parties can appoint an expert witness, however, if the parties' experts' statements are not in agreement with each other or are contradictory, the court can appoint a third expert. (article 145, Federal Code of Civil Procedures). The role of the expert witnesses is to inform the court about a science or art which goes beyond the knowledge of Mexican law.(article 143 of the Federal Code of Civil Procedures)

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29. Party witnesses

Can parties to proceedings (or a party's directors and officers in the case of a legal person) act as witnesses? Can the court draw negative inferences from a party's failure to testify or act as a witness?

Mexican law establishes two different types of witnesses. The first refers to the testimony to be granted by the interested parties of a proceeding. This testimony is called a 'confession' and if a party fails to appear before the court to render it, the court must consider that all facts attributed by the other party to the defaulting party are true and correct.

The second refers to persons that are not party to the proceedings but that may know about the facts argued in the proceedings. In this case, courts cannot draw negative inferences from a party's failure to testify or act as a witness.

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30. Foreign law and documentation

How is foreign law or foreign-language documentation introduced into the proceedings and considered by the courts?

All documents written in a language other than Spanish have to be filed along with the corresponding translation into Spanish (article 271, Federal Code of Civil Procedures) made by a court-certified translator.

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31. Standard of proof

What standard of proof applies in civil litigation? Are there different standards for different issues?

The standard rests the burden of proof entirely with the parties. Therefore, the court cannot assume any facts or documents that are not provided by the parties (article 81, Federal Code of Civil Procedures).

Notwithstanding, the court may invoke any well-known facts, even if they have not been raised or proven by the parties (article 88, Federal Code of Civil Procedures).

The court has some discretion to evaluate the evidence presented to it, but there are some rules that give more weight to a certain type of evidence, such as public documents (issued by authorities or granted before notaries public) and confessions made by the parties during the procedure.

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Appeals

32. Options for appeal

What are the possibilities to appeal a judicial decision? How many levels of appeal are

there?

First instance judgments may be subject to appeal when the amount of the dispute cannot be determined or when the amount is superior to one thousand Mexican pesos (article 231 and 237, Federal Code of Civil Procedures).

Strictly speaking there is only one level of appeal; however, after the appeal judgment has been rendered, the parties can also access a constitutional rights proceeding (amparo proceeding) to challenge the constitutionality of the appeal decision.

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33. Standard of review

What aspects of a lower courts' decisions will an appeals court review and by what standards?

The appeals court may confirm, revoke or modify the first instance court's decision, provided however that the appeals court can only review such decision under the arguments made by the appellant (article 231, Federal Code of Civil Procedures).

The appeals court reviews any mistakes on fact or law contained in the first instance judgment.

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34. Duration of appellate proceedings

How long does it usually take to obtain an appellate decision?

Due to the fact that the law does not establish a specific term, and given the workload of domestic courts, obtaining an appellate decision may take approximately six months.

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Special proceedings

35. Class actions

Are class actions available?

Under Mexican law, there is a recent trend that has led to legal reforms of the Federal Code of Civil Procedures, establishing some types of class actions for the defence and protection of any collective rights and interests in the following matters (article 578, Federal Code of Civil Procedures).

- consumer protection; and
- environmental protection matters.

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36. Derivative actions

Are derivative actions available?

Derivative actions are not contemplated by Mexican law and therefore are not available.

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37. Fast-track proceedings

Are fast-track proceedings available?

Mexican law does not regulate fast-track proceedings. However, there are some special summary actions, which have reduced deadlines for the filing of briefs and evidence and which may grant the claimant some specific privileges, such as the possibility of attaching assets from the beginning of the procedure to guarantee the result of the proceeding. For instance, when a party has a promissory note he or she can use the executive trial, that allows him or her to attach assets before the defendant can address the claim.

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(article 1391 of the Commerce Code).

38. Foreign-language proceedings

Is it possible to conduct proceedings in a foreign language?

No, all judicial proceedings and briefs shall be conducted in Spanish. All documents written in a different language have to be filed along with the corresponding translation into Spanish (article 271, Federal Code of Civil Procedures).

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Effects of judgement and enforcement

39. Effects of a judgment

What legal effects does a judgment have?

There are three kinds of legal judgments:

- (i) declarative judgments, which declare or deny a right;
- (ii) constitutive judgments, which create a new legal status; and
- (iii) condemnatory judgments, which tend to impose an obligation.

Generally, it is the parties to the proceeding that are bound by the judgment, but there can be judgments that affect third parties.

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40. Enforcement procedure

What are the procedures and options for enforcing a domestic judgment?

The mechanism to enforce a judicial decision depends on the nature of the decision. The enforceable decisions can be of three different types.

First, the ones that consist of a monetary payment to the prevailing party, these decisions can only be enforced by seizing assets and selling them. Such seizure can be made through an attachment proceeding or through an executive trial, which is a separate proceeding (articles 400, 407 and 421, Federal Code of Civil Procedures).

The second type of decisions are those that involve the need for the losing party to do something that he or she is the only one capable of doing, like signing a contract, if the losing party does not do what it should do, the judge should perform the act that the losing party must have made (article 421, Federal Code of Civil Procedures).

The third type of decisions are those that oblige the losing party to perform something that someone else can do, and in case that the obliged does not preform the act that he/she is obliged to perform the court designates a third party to perform the act at the expense of the losing party (article 421, Federal Code of Civil Procedures).

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41. Enforcement of foreign judgments

Under what circumstances will a foreign judgment be enforced in your jurisdiction?

Foreign judgments are valid and shall be recognised within Mexico, provided that they do not contravene domestic public policy (article 569, Federal Code of Civil Procedures).

Additionally, in accordance with the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention) ratified in 1987, foreign judgments can be enforced, provided that:

- they fulfil all the formal requirements necessary for them to be deemed authentic in the state of

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origin;

- the judgment, award or decision and the documents attached thereto are duly translated into Spanish;
- they are presented duly legalised;
- the judge or tribunal rendering the judgment is competent in the international sphere to try the matter and to pass judgment on it in accordance with Mexican law;
- the plaintiff has been summoned or subpoenaed in due legal form substantially equivalent to that accepted by Mexican law;
- the parties had an opportunity to present their defence;
- they are final or, where appropriate, have the force of res judicata in the state in which they were rendered; and
- they are not manifestly contrary to the principles and laws of Mexican public policy.

Costs

42. Costs

Will the successful party's costs be borne by the opponent?

The losing party shall reimburse the procedural costs to its opponent. In this regard, the successful party is the one whose petitions are accepted by the court totally or partially. However, the amount of legal costs recoverable is limited to certain rates and amounts established by the law of each state.

If two parties lose reciprocally, the court may exempt them from such obligation, either totally or partially (article 7, Federal Code of Civil Procedures).

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43. Legal aid

May a party apply for legal aid to finance court proceedings? What other options are available for parties who may not be able to afford litigation?

In Mexico it is a constitutional principle that the courts must grant justice in a free and expedited manner. In a civil action, therefore, the following are not charged:

- legal adviser fees (if its participation is requested by a party in the proceedings) (Public Defenders Federal Act, article 14);
- court fees; and
- costs for court activities conducted outside the place of the trial.

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44. Contingency fees

Are contingency fee arrangements permissible? Are they commonly used?

Contingency fee arrangements are permissible and due to the worldwide economic situation, contingency fees are common in Mexico.

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45. Third-party funding

Is third-party funding allowed in your jurisdiction?

There is no provision in Mexican law regarding the funding of litigation. Consequently, the parties are completely free to accept or implement any third-party funding.

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46. Fee scales

Are there fee scales lawyers must follow? Are there upper or lower limits for fees charged by lawyers in your jurisdiction?

There are no fee scales regulated by the law. In a civil action, therefore, the parties' lawyers' fees can be calculated:

- as a percentage of the amount of the claim or of the amount recovered. The percentage is agreed on between the lawyer and the client, and is based on the specific circumstances of the case and can vary according to:
 - the complexity of the matter;
 - the client's economic situation; and
 - the reputation of the lawyer.
- as an hourly rate for time spent; or
- as a fixed fee depending on the amount of the claim.

However, there are no upper or lower limits for fees charged by lawyers.

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