

Class/collective actions in Mexico: overview

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A Q&A guide to class/collective actions in Mexico.

The Q&A gives a high level overview of class/collective actions, including current trends, the regulatory framework, limitation periods, standing and the procedural framework for bringing an action, funding and costs, disclosure, damages and relief, settlement, appeals, alternative dispute resolution and proposals for reform.

This Q&A is part of the Class Actions Global Guide.

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Overview of class/collective actions and current trends

1. What is the definition of class/collective actions in your jurisdiction? Are they popular and what are the current trends?

Definition of class/collective actions

In Mexico, a collective action is a type of proceeding that allows a common representative, a non-profit association or a government agency to file a claim to protect a right or interest that belongs to a community or group of individuals, united by a common cause or circumstance, the judgment of which affects all the members of the community or group.

Collective actions can be filed to protect three types of rights:

- **Diffuse rights.** These rights cannot be divided amongst the persons that benefit from them and belong to an undetermined community.
- **Collective rights.** These rights cannot be divided amongst the persons that benefit from them and belong to a determined or determinable community.
- **Homogeneous individual rights.** These are divisible individual rights with a common origin.

Use of class/collective actions

Collective actions have existed in Mexico since 1993, when the Consumer Protection Law gave standing to the Federal Consumer Protection Agency (*Procuraduría Federal del Consumidor*) (PROFECO) to file collective actions on behalf of groups of consumers. However, few collective actions were processed through the years. Until 2011, PROFECO had only conducted ten collective actions. The majority of these actions were filed against airlines and construction companies.

Collective actions were included in the Mexican Constitution on 29 July 2010 and more than a year later, on 30 August 2011, the Federal Congress published amendments to the Federal Code of Civil Procedure and other federal laws to regulate collective actions and determine the types of claims for which they were available, including the:

- Federal Antitrust Law.
- Federal Consumer Protection Law.
- Internal Organisational Law of the Federal Court System.
- Environmental Protection Law.
- Financial Consumer Protection Law.

Those amendments entered into force on 1 March 2012.

Collective actions have not been very popular as a method of settling disputes, partly because they have only been subject to regulation relatively recently. As a result, most lawyers and judges do not have sufficient experience. Collective actions are also limited in their scope to specific areas of law.

Given the small number of collective actions that have been filed before Mexican courts so far, the Federal Court System has issued very few precedents. Therefore, the criteria relating to several aspects of the regulation are still to be defined.

Current trends

Since the collective actions amendment of 2010, there have been important collective actions filed in different sectors, including:

- The Federal Consumer Protection Agency filed four relevant collective actions related to consumer's rights, against:

- Radiomovil Dipsa S.A. de C.V. (commercially known as Telcel), the biggest mobile company in Mexico, due to flaws in the service which occurred on 26 January 2013;
- Nextel, another mobile company, due to improper charging;
- Telmex, the biggest Mexican telecommunications company, also due to improper charging; and
- Corporación GEO, S.A.B. de C.V., a major construction company, and its subsidiaries, due to the sale of real estate lacking the conditions, characteristics and qualities necessary to be offered to the public.

Only the collective action against Telmex has been decided.

One of the current issues being discussed regarding collective actions in Mexico is the effect of collective action judgments issued in other jurisdictions, especially in the United States, in relation to the possibility of enforcing said judgments before Mexican courts and their possible *res judicata* effect for members of the community or group with domicile in Mexico, specifically because of the significant difference between the opt-out mechanism available in the United States and the opt-in mechanism established in Mexico.

Regulatory framework

2. What are the principal sources of law and regulations relating to class/collective actions? What are the different mechanisms for bringing a class/collective action?

Principal sources of law

The principal legal source for collective actions is the Federal Code of Civil Procedure, but there are also some important provisions in the:

- Federal Antitrust Law.
- Federal Consumer Protection Law.
- Internal Organisational Law of the Federal Court System.
- Environmental Protection Law.
- Financial Consumer Protection Law.

Principal institutions

According to the Mexican Constitution, collective actions can only be submitted before Federal Courts. In first instance, Federal District Courts are the competent ones and in second instance, Single-judge Circuit Courts.

The relevant government agencies in relation to collective actions are the:

- Federal Consumer Protection Agency.
- National Commission for the Protection and Defence of Financial Service Users.
- Federal Attorney's Office for Environmental Protection.
- Federal Anti-trust Commission and the Office of the Attorney-General, which have standing to start collective proceedings.

Different mechanisms

In order to initiate a collective action, a formal claim must be filed before a Federal District Court. The claim must meet certain formal requirements, for example, the name of the representative and its standing, the list of members of the group or community, the determination of the right considered affected, the type of action filed, the reliefs sought, the facts on which the claim is based and its legal basis. Those requirements vary depending on the type of action filed.

There are three types of collective actions:

- **Diffuse actions.** They are not divisible claims brought to protect diffuse rights or interests belonging to an undetermined community. Their purpose is to obtain from the respondent the repair of the damage caused. Such repair can be the restitution of status prior to the damage or, in case this is not possible, the substitute compliance according to the harm caused to the rights and interests of the community. The existence of a legal relationship between the community and the respondent is not necessary.
- **Collective actions in the strict sense.** They are not divisible claims brought to protect common rights or interests belonging to a determined or determinable community or group based on common circumstances. Their purpose is to obtain from the respondent the remedy of the damage (usually through the performance or abstention of certain activities), as well as the compensation for damage for each member of the group. It is required for the members of the group to have a legal relationship with the respondent; the relationship must be established in statutory law.
- **Individual homogenous actions.** They are divisible claims brought to protect individual rights or interests which have a collective impact, belonging to individuals in common circumstances. Their purpose is to obtain from the respondent the specific performance of a contract or its termination along with the applicable legal effects and consequences.

3. Are class/collective actions permitted/used in all areas of law, or only in specific areas?

Under the Federal Code of Civil Procedure, collective actions are limited to consumer relationships of public or private goods or services, and environmental issues.

Anti-trust issues, financial services/consumer redress and product liability are included within the scope of the consumer relationships established in Mexican law.

In order to file a collective action alleging damages caused to consumers due to monopolistic practices or unlawful acquisitions, they must have been previously declared through a final ruling issued by the Federal Anti-trust Commission. Due to this additional requirement, collective actions related to anti-trust law are very uncommon.

Limitation

4. What are the key limitation periods for class/collective actions?

Under the Federal Code of Civil Procedure, collective actions are subject to a three and a half years statute of limitations, starting from the day on which the damage was caused. If it is a continuous damage, the term starts from the last day on which the damage was caused.

Standing and procedural framework for bringing an action

Standing

5. What are the rules for bringing a claim in a class/collective action?

Definition of class

There is no definition of class in statutory law. However, from the requirements for the admission of collective actions, class is understood as a community or group of people holding in common one or more claims, or a group integrated by persons who hold homogenous individual claims.

In the case of collective actions in the strict sense and individual homogenous actions, the class must be composed of at least 30 members (see *Question 2*).

Potential claimant

According to the Federal Code of Civil Procedure, only the following individuals or entities have a right of action or standing:

- A common representative, acting on behalf of a class composed of at least 30 members.
- Non-profit associations duly incorporated at least a year prior to the submission of the claim, whose stated purpose includes the promotion or defence of the interests involved in the action, and properly registered before the Federal Judiciary Council.
- The Attorney General's Office.
- The Federal Consumer Protection Agency, the National Commission for the Protection and Defence of Financial Service Users, the Federal Attorney's Office for Environmental Protection and the Federal Antitrust Commission. These agencies can only bring actions in relation to consumer's rights, financial service user's rights, environmental protection and anti-trust protection, respectively.

Claimants outside the jurisdiction

Collective actions can be filed on behalf of individuals from several jurisdictions. The relevant factor is not the domicile or nationality of the members of the group but their character as holders of the same claim.

Forum shopping is avoided through the traditional rules to determine the competence of courts in Mexican law, which essentially refer to the domicile of the respondent or the designated address for disputes relating to a contract.

Professional claimants

There has been very little experience of this in Mexico regarding collective actions. In principle, litigation rights can be freely assigned to third parties. Therefore, professional commercial claimants can buy consumer's claims and execute an assignment of rights agreement, which would then have to be presented before the court to prove the succession-in-interest.

Other

Individual and collective actions cannot be joined. Therefore, if there is a collective action and one or more individual actions being processed at the same time, the proceedings must remain independent. However, if they have the same subject matter, causes and claims, and are being processed at the same time, the court must give the individual plaintiff the option to withdraw his lawsuit and join the collective action. Once a final judgment is issued in the individual proceeding, the plaintiff is not allowed to join the class or to start a collective action based on the same facts.

Qualification, joinder and test cases

6. What are the key procedural elements for maintaining a case as a class action?

Certification/qualification

Once a collective action is filed before a Federal District Court, the judge notifies the respondent and grants him five business days to submit commentaries on whether the requirements for the admission of the claim are met. After that period, the judge has ten days to certify that the formal requirements of the claim are met, as well as to analyse the right of action or standing requirements. The judge must consider whether:

- The action concerns acts that damage consumers, financial services users or the environment, or that are related to monopolistic practices and unlawful acquisitions declared by the Federal Anti-trust Commission.
- There are common factual or legal circumstances between the members of the class.
- The class has the minimum number of members, if applicable (see *Question 5*).

- There is a clear relationship between the claim and the damage allegedly suffered.
- The action is barred by *res judicata*, because of a previous collective action.
- The statute of limitations has elapsed.

If the judge considers one of the requirements is not met, he must dismiss the claim. If this is the case, the members of the group retain their rights to file an ordinary action.

Minimum/maximum number of claimants

There is no maximum number of claimants in a collective action.

Regarding collective actions in the strict sense and individual homogenous actions, the minimum number of claimants is 30. That limitation does not apply to diffuse actions because the rights or interests that are the subject matter of the claim belong to an undetermined community or group.

Joining other claimants

Members of the claimant group or community can join the action during the proceeding or up to 18 months after the judgment is considered *res judicata*. Mexican law adopted the opt-in mechanism. Therefore, the acceptance to join the collective action must be express.

The Mexican Congress expressly declined to enact an opt-out class action mechanism. When the Federal Code of Civil Procedure was being amended to permit class actions in Mexico, a proposed bill and congressional declaration of purpose were submitted to the Senate that included the opt-out mechanism for class formation purposes. The bill proposed that the procedure be built under the opt-out system, under the argument that it would give full force and effect to the class actions, because otherwise, that is, in case of adopting the opt-in mechanism, the proceeding could resemble more a procedural figure widely known in the Mexico legal system as the active joint litigation, thereby obstructing the mandate of the Constitution.

The bill provided that any member of the community or group could request his exclusion for the purposes of a particular collective proceeding. The request had to be made in writing to the judge and would be timely when done at any stage of the process before the issuance of the judgment.

However, once the Senate studied this bill, it resolved not to adopt the opt-out mechanism and to implement an opt-in mechanism instead. The decision of the United Commissions of Government and Legislative Studies to modify the bill and to limit the formation of the plaintiff class only through an express statement of consent is consistent with Mexican law and with its domestic public order considerations.

To make sure that all members of the community or group are informed that a collective action has been admitted, the judge can order the notification through the means he considers appropriate, taking into consideration the size, location and other relevant characteristics of the group or community. Said notice has to be economic, efficient and extensive, considering the circumstances of the case.

In order to join the class, members of the group or community have to submit an express communication, through any means, to the common representative or to the legal representative of the plaintiffs, which will be obliged to file the request to the judge. The judge will then analyse the request and issue the corresponding ruling.

In case a person requests to be excluded from the class in any stage of the proceeding, it is interpreted as a withdrawal of the action and said person will not be able to participate in any other collective proceeding related to the same facts.

Test cases

Under Mexican law, there are no test cases, the collective action is analysed as a whole. However, it is not necessary to offer individual evidence for each member of the plaintiff community and the judge has the authority to require the parties, third parties or authorities all the evidence it deems necessary for the analysis of the case.

It is important to mention that under Mexican law, the party who affirms a fact has the burden of proof and negative statements are not required to be proved unless they imply an assertion.

Timetabling

7. What is the usual procedural timetable for a case?

The stages of a collective action are established in the Federal Code of Civil Procedure and therefore they are not modifiable by the parties. However, the judge has the authority to extend the terms during the proceeding, according to the circumstances of the case, for example its complexity.

A case starts with the submission of the claim and continues with the following procedural steps:

- If the claim is not clear or there are formal requirements missing, the judge grants the plaintiff five days to make the corresponding amendments.
- Within the next three days, the respondent is notified and has five days to submit comments regarding the requirements for the admission of the claim.
- Once the respondent submits his comments, the judge has ten days to certify that the formal requirements of the claim are met, as well as to analyse the right of action or standing requirements.
- The judge's ruling on the admission of the claim has to be notified to the legal representative of the plaintiff, who has to ratify the claim, and to the community or group through the means the judge considers appropriate.
- A conciliation hearing has to be scheduled within the next ten days.
- Starting from the admission of the claim, the respondent has 15 days to submit his answer to the claim.
- Once the answer to the claim has been submitted, the plaintiffs have five days to make statements.
- In case the parties fail to reach an agreement in the conciliation hearing, the judge starts the probationary period, which lasts 60 days.
- After the parties submit their respective writs offering evidence, the judge issues a ruling in which it decides whether the evidence is admitted. Also, in that ruling the judge schedules a hearing for the reception of evidence within the next 40 days.
- Once all the evidence has been presented or the corresponding terms have elapsed, the parties have ten days to submit their closing arguments.
- The judge has 30 days to issue the final judgment, starting from the date of the hearing.

If all the terms referred to above are observed, a collective action could be processed in less than 200 days. However, this outcome is rare because of the judge's authority to extend terms during the proceeding.

It is important to keep in mind that subsequent instances and challenges may prolong the proceeding significantly. An appeal is usually processed in around four to six months and a direct *amparo* in around six months, but this can vary significantly depending on the court's burden of work and the complexity of the case.

Even if the law establishes specific statutory periods for the different stages of the proceeding, the length of class action trial is difficult to predict.

Effect of the area of law on the procedural system

8. Does the applicable procedural system vary depending on the relevant area of law in which the class/collective action is brought?

The collective action proceeding applies to all areas of law. However, there are some minor differences depending on the type of action, this is, on whether the action filed is diffuse, collective in the strict sense or individual homogenous. These differences are specially related to the mechanisms to join the action.

Funding and costs

Funding

9. What are the rules governing lawyer's fees in class/collective actions?

Each party in a collective action must pay the fees of its lawyers and class representatives. If the claim is successful, the plaintiff can pay such fees out of the judgment, but the unsuccessful party is never required to pay the fees of the other party's lawyers.

The Federal Code of Civil Procedure establishes caps for plaintiffs' attorneys and common representative's fees, based on amounts linked to the minimum wage in Mexico City. These caps were established to discourage plaintiffs' attorneys from filing frivolous claims and converting collective actions into a business.

The caps are as follows:

- In case the damages total up to 200,000 times the minimum daily wage in Mexico City (in July 2015, approximately MXN14 million or US\$864,000), fees can be up to 20 % of the award.
- In case damages total between 200,000 and 2 million times the minimum daily wage in Mexico City (In July 2015, between MXN14 million and MXN140 million or between US\$864,000 and US\$8.6 million), fees are capped to 20% of the first 200,000 times the minimum daily wage and to 10% of the excess.
- In case damages exceed 2 million times the minimum daily wage in Mexico City (In July, 2015 approximately MXN140 million Mexican pesos or \$8.6 million United States dollars), fees are limited to 11% of the damages up to that amount and to 3% of the excess.

Those caps apply even if a settlement between the plaintiff class and the respondent is reached.

10. Is third party funding of class/collective actions permitted?

In principle, there is no limit for third party funding of collective actions. Additionally, conditional fee arrangements and damages-based arrangements, which are very common, usually include "third party funding" in the sense that law firms bear part or all the costs of litigation unless the claim is successful. In any case, the arrangements are subject to the caps referred to in *Question 9*.

Institutional third party funding is still uncommon in Mexico and we do not know of a collective/class action being funded by the companies in this business.

11. Is financial support available from any government or other public body for class/collective action litigation?

Financial support from the Mexican government is available in collective actions filed by the:

- Federal Consumer Protection Agency.
- National Commission for the Protection and Defence of Financial Service Users.
- Federal Attorney's Office for Environmental Protection.
- Federal Anti-trust Commission.
- Office of the Attorney-General.

In case of collective actions filed by common representatives or non-profit associations, in principle there is no financial support available.

However, in all kinds of collective actions, if there is a social interest involved, the costs can be assumed by the fund managed by the Federal Judiciary Council, which includes all the resources derived from collective action judgments.

12. Are other funding options available to claimants in class/collective actions?

Given there are no express limitations regarding funding for collective actions, claimants have access to other funding options.

Costs

13. What are the key rules for costs/fees in class/collective action litigation?

According to the Federal Code of Civil Procedure, a provision on costs and expenses has to be included in the final judgment of a collective action. The only cap applicable is the one which referred to the fees of the attorneys and common representatives.

In principle, each party has to bear his own costs and expenses, as well as the fees of his attorneys. Therefore, there is not a "loser pays" principle, unlike other kinds of proceedings. The same rule applies if the plaintiff discontinues the action before it is concluded or if the parties reach a settlement before the issuance of the final judgment.

The costs can be assumed by the special fund managed by the Federal Judiciary Council, in case there is a social interest involved in the action that justifies it.

Key effects of the costs/funding regime

14. What are the key effects of the current costs/funding regime?

The funding regime in Mexico is quite flexible, therefore it does not constitute a limitation to bringing collective actions before a court. Additionally, given there are government agencies that have right of action or standing who can act on behalf of consumers and undetermined communities, a collective action can be brought without any cost for the people affected by the damage caused by the respondent. This is a significant advance because some kinds of claims, especially the ones related to consumer's rights, would probably not be filed otherwise, because of the small amounts corresponding to each individual claim.

However, the caps on the attorney and representative fees have discouraged the involvement of certain law firms in this kind of proceeding. This is because some firms consider collective actions a complex and time-consuming kind of proceeding that requires a significant investment and if the amount claimed is not significant enough, the caps limit the possibility of obtaining profits.

Disclosure and privilege

15. What is the procedure for disclosure of documents in a class/collective action?

Before litigation

Before litigation, there is not a procedure for disclosure of documents to be used in a collective action.

Nevertheless, in order to obtain documents from the counter-party, from third parties or from authorities, parties can file a pre-trial action requesting a judge to order the submission of documents. To obtain the admission of the pre-trial action, the party must explain why the documents are necessary for the submission of a collective action. In case the requested counter-party or third party refuses to submit the documents, the judge has the authority to use enforcement measures.

Once the corresponding documentation has been obtained, the collective action must be filed within the following five days.

During litigation

In Mexico, although disclosure of evidence is not regulated as it is in other jurisdictions, the Federal Code of Civil Procedure allows the judge to request third parties and authorities to submit relevant evidence. Additionally, the parties can inform the judge that there is a document in the possession of their counter-party to which they do not have access, and request the judge to obtain it through enforcement measures.

In case a judge requests the submission of evidence from one of the parties and the requested party refuses to submit it, the judge applies enforcement measures and if the document is still not submitted, usually judges consider the facts that the party who offered the evidence was trying to prove, as accepted.

16. Are there special considerations for privilege in relation to class/collective actions?

In Mexico, there is no concept of "privilege" as known in other jurisdictions. Nevertheless, private communications are protected by the Constitution and in order to be revealed to third parties or presented before an authority or court, the consent of at least one of the parties involved is necessary. Otherwise, the communication is considered inadmissible evidence.

The Constitution guarantees the protection of the inviolability of communications and privacy, therefore, federal judges tend to be very careful with any kind of evidence that can be considered a breach of those fundamental rights.

There are no special considerations related to privilege in the context of collective actions. General rules of the Mexican legal system are applicable. Professional secrecy rules are applicable to legal professionals.

Evidence

17. What is the procedure for filing factual and expert witness evidence in class/collective actions?

All kinds of evidence can be offered in a collective action proceeding, including expert witness evidence. There are no special provisions for their filing regarding collective actions. Therefore the rules of ordinary proceedings apply.

Pre-trial witness statements and reports are not required nor admitted as evidence in the probationary stage.

Expert witness evidence must be offered during the probationary stage, stating why it is necessary and what the offering party is trying to prove with it. It can be offered to prove all kinds of technical facts, but it can never refer to legal issues.

When offering expert witness evidence, the offering party has to appoint an expert and include a questionnaire on which his report will be based.

The judge grants the counter-party the opportunity to make statements regarding the pertinence of the expert witness evidence, to appoint an expert and to extend the proposed questionnaire. Subsequently, the judge decides whether to admit the expert witness evidence and gives the parties three days to present their experts before court to accept their designation. Once this occurs, the judge gives the experts a reasonable period to file their reports and if there are significant discrepancies between them, the judge appoints an independent expert.

Parties can choose the expert they consider appropriate, the only requirement is to certify his expertise through suitable means. However, the independent expert appointed by the court, in case of discrepancies, must not be linked with the parties and can be disqualified if there are elements to assume he is not impartial.

The length and scope of the expert witness reports is not limited, but must comply with the questionnaires prepared by the parties.

Defence

18. Can one defendant apply to join other possible defendants in a class/collective action?

Joining other defendants

There are no special provisions regarding the possibility to join other possible defendants in a collective action. Therefore, according to the general rules of civil procedure, defendants cannot join other defendants to the claim, given the ones entitled to determine against who they file a claim are the plaintiffs.

It is arguable that a defendant can request to join other parties as third parties summoned to trial, which only has the effect of informing them of the trial and preventing them from alleging in the future that the judgment issued has no effect on them.

Usually defendants prefer to maintain separate defences to benefit from the possibility to offer more evidence and present alternative arguments.

Rights of multiple defendants

Multiple defendants can enter into joint defence agreements or other arrangements, and can choose to establish a single representation and strategy, or can act separately.

The possibility to instruct joint experts depends on whether they decided to act jointly or separately during the proceeding. We had one case at the firm where there were multiple defendants and each was represented by its own counsel and relied on different evidence.

Damages and relief

19. What is the measure of damages under national law in the field of class/collective actions?

Damages

Mexican law recognises the possibility to claim both damages and lost profits arising from unlawful conduct. According to the Federal Civil Code, damages are losses suffered to the assets due to the failure to comply with an obligation, while lost profits are the deprivation of any lawful gain that should have been obtained with the compliance with the obligation.

To file an action for damages it is necessary for the plaintiff to prove immediate, direct and necessary causation between the breach of the contractual obligation and the damage and/or lost profit produced.

The Federal Civil Code, case law and judiciary criteria regarding its interpretation, and different legal commentators, have expressly adopted the position that the wrongful act must be the direct and immediate cause of the damages and lost profits that a person suffers. The general rule is that the originator of an action based on a contractual or legal breach must not support the range of damages that result as a consequence of the wrongful act, but only those that are direct and immediate consequence of such action or omission.

In Mexico, it is not possible to claim indirect, consequential, punitive or exemplary damages. The only exception in statutory law is environmental law, in which punitive damages are allowed.

However, during 2014 and despite not having an statutory legal ground, the Supreme Court of Justice issued significant precedents condemning respondents to pay not only direct but also punitive damages. Therefore, there could be significant changes in the regulation of damages in Mexico within the next years.

There are no caps on the quantum that can be recovered, either from a single defendant or overall.

Damages are apportioned between the claimants according to the guidelines the judge establishes in the final judgment. All members of the plaintiff group have to file an ancillary claim to prove they suffered the alleged damage during the year following the issuance of the judgment.

Recovering damages

Damages paid by one defendant in a collective action can be subsequently recovered from other persons responsible for the conduct complained of, but in order to do that he has to file the corresponding action before a Court and obtain a judgment in which the responsibility of the other persons is declared. This is a proceeding completely independent from the collective actions and depends on the legal relationship between the defendant and the other responsible persons.

Interest on damages

There is no special rule regarding interests in the field of collective actions, therefore the annual legal interest of 9%, provided in the Federal Civil Code, is applicable. The interest is generated starting from the date on which the payment obligation arises.

20. What rules apply to declaratory relief and interim awards in class/collective actions?

Declaratory relief

Declaratory relief is available in collective actions and it can only be applied for when the claim is filed. It is usually applied for, but not in an isolated fashion, but as part of a multiple claim that includes damages.

Interim awards

The most relevant interim awards available in the field of collective actions are the ones related to preventative measures. At any stage of the proceeding and upon request, the judge can order preventive measure which can include:

- The order to cease acts or activities that are causing or will cause an imminent and irreversible damage to the community.
- The order to perform acts or activities, the omission of which has caused or will cause an imminent and irreversible damage to the community.
- The recall from the market or attachment of instruments, goods and products directly related to the irreparable and imminent damage.
- Any other measure the judge considers appropriate to protect the rights and interests of a community.

Settlement

21. What rules apply to settlement of class/collective actions?

Settlement rules

Settlement is encouraged by the legal framework applicable to collective actions. After the admission of the claim and the certification of the class, the judge summons the parties to a conciliation hearing where he must propose solutions for the dispute, being allowed to be assisted by the experts he deems appropriate.

Irrespective of the result of the hearing, parties can reach full or partial agreement at any stage of the proceeding, but they have to be reviewed and approved by the judge to ensure that the interest of the community of group are duly protected.

Separate settlements

In case there is more than one defendant, they can settle separately and the only effect is that the corresponding agreement are considered partial settlements and the proceeding can continue against the defendants that failed to reach a settlement.

Appeals

22. Do parties have a right to appeal decisions relating to class actions, such as a decision granting or denying certification of a class action?

During the proceeding, only the admission or dismissal of the claim can be appealed. However, other rulings that may cause irreparable damage and that could constitute fundamental rights breaches may be challenged through an indirect *amparo* action, which is a constitutional action alleging the violation of rights committed by the government or by a court of law and which is filed before Federal District Courts.

Against the final judgment issued in a collective action, parties can file an appeal which will be ruled by a Single-judge Circuit Court and against the judgment issued in the appeal, parties can file a direct *amparo* action before a Collegiate Circuit Court.

Review of judgments by the Supreme Court of Justice is extraordinary and limited to constitutional issues.

Alternative dispute resolution

23. Is alternative dispute resolution (ADR) available in class/collective actions?

Alternative dispute resolution (ADR) is not available in collective actions, because the Constitution and the Federal Code of Civil Procedure establish that Federal Courts have exclusive competence regarding the defence and protection of collective rights or interests.

Proposals for reform

24. Are there any proposals for reform concerning class/collective actions?

The most recent bill presented to Congress regarding collective actions was presented in 2013, proposing an amendment of the Constitution to limit the areas of law in which collective actions are allowed to consumer protection, financial services/consumer redress and environment. Those limits are already established in statutory law. However, they are not specifically stated in the Constitution. This bill was ultimately dismissed by Congress.

There are no pending proposals for reform regarding the current funding/cost regime or any other aspect of collective actions.

Online resources

Website of the Federal House of Representatives

www.diputados.gob.mx/LeyesBiblio/index.htm

Description. Official website of the Mexican Federal House of Representatives, which contains up-to-date PDF, Word and zip versions of all federal laws. It does not include English translations.

Website of the Supreme Court of Justice

www.scjn.gob.mx/normativa/paginas/legislacion.aspx

Description. Official website of the Mexican Supreme Court of Justice, which contains up-to-date Word versions of all federal and state laws, as well as the corresponding legislative processes and amendments. It does not include English translations.

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Areas of practice. Anti-corruption and compliance; civil and commercial litigation; commercial arbitration; constitutional *amparo* and administrative proceedings; energy and natural resources; foreign investment; government procurement and public works; investor-state arbitration; oil and gas; public-works arbitration.

Recent transactions

- Regarding environmental protection, our law firm was involved in a collective action filed by a group of scholars, farmers and consumers against the main producers of genetically modified corn seeds, arguing, among other things, the potential irreparable damage to native ecosystems in Mexico. It is a very important case given the relevance of corn production for the Mexican economy. The ruling is still pending.
- Our law firm was contacted to conduct a thorough analysis and issue a detailed opinion regarding enforcement of US judgments in Mexican collective actions. However, the issue has not yet been submitted to the Mexican courts.

Languages. Spanish, English

Professional associations/memberships. Chair of the Arbitration Committee of the Mexican Bar Association (BMA); Member by invitation of the Argentine Centre for International Studies (CAEI), Global Advisory Board, International Centre for Dispute Resolution; Y&I (2007 to 2010); Executive Board Member of International Centre for Dispute Resolution; Y&I (2010 to 2013).

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Professional qualifications. Law Degree (J.D.), magna cum laude, Escuela Libre de Derecho (ELD), Mexico City

Areas of practice. Bankruptcy and restructuring; civil and commercial litigation; commercial arbitration; constitutional *amparo* and administrative proceedings; foreign investment, government procurement and public works; investor-state arbitration; public-works arbitration.

Languages. Spanish, English

Professional associations/memberships. Young International Arbitration Group of the London Court of International Arbitration (LCIA); ICC Young Arbitrators Forum (ICC YAF); International Centre for Dispute Resolution Young & International (ICDR Y&I); Young Singapore International Arbitration Centre (YSIAC).

Resource information

Resource ID: 9-618-1165

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Products: Class Actions Global Guide, PLC Arbitration, PLC Cross-border, PLC EU, PLC UK Corporate, PLC UK Dispute Resolution, PLC UK Law Department, PLC UK Public Sector, PLC US Law Department, PLC US Litigation

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