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Mexico
Litigation

Contributor



Creel, García-Cuéllar,
Aiza y Enríquez, S.C.

Litigation Practice Group

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Contacts:

|

Javier Curiel

| javier.curiel@creel.mx

Mauricio Mendoza

| mauricio.mendoza@creel.mx

This country-specific Q&A provides an overview of litigation laws and regulations applicable in Mexico.

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Mexico: Litigation

Kindly bear in mind that this document does not constitute legal advice, is not intended to be exhaustive, and does not necessarily reflect the Firm's opinion on the issued addressed herein. Also, be informed that many of the answers best illustrate regulation and practices in civil and commercial litigation as opposed to administrative or constitutional litigation.

1. What are the main methods of resolving disputes in your jurisdiction?

Disputes in Mexico are mainly resolved through either: (i) jurisdictional proceedings; or (ii) alternative dispute resolution mechanisms, namely, mediation, conciliation, and arbitration.

i. Jurisdictional proceedings are entertained by one or more judges, either in local or federal venues, and mostly cover administrative, civil, commercial, criminal, family, labor, insolvency, and tax disputes.
ii. Alternative dispute resolution mechanisms are entertained by one or more mediators, conciliators, or arbitrators and usually entail civil, commercial, criminal, and family disputes. In recent years, mediation and conciliation have been promoted as a matter of public policy. Some subject matters cannot be submitted to arbitration pursuant to Mexican law. In January 2024, the General Law of Alternative Dispute Resolution Mechanisms was enacted with the goal of establishing guidelines for the nationwide application of said mechanisms by facilitators in both public and private sectors. Besides mediation, conciliation, and arbitration, the Law expressly contemplates negotiation and collaborative negotiation as alternative dispute resolution mechanisms.

2. What are the main procedural rules governing litigation in your jurisdiction?

Applicable procedural rules depend on the nature of the dispute and on the venue in which the relevant dispute is being discussed. Proceedings pertaining to commercial disputes, for instance, are governed by the Commerce Code, regardless of whether the dispute is being entertained by a local or federal court. In turn, proceedings involving civil disputes are governed by either the Federal Code of Civil Procedure or by one of the thirty-two local Codes of Civil Procedure, depending on the particularities of the controversy and the relevant venue. In this regard, it is worth noting that the Constitution was amended in September 2017 to empower the Congress to enact a sole “National Code of Civil and Family Procedure” that will gradually replace all thirty-three codes of civil procedure currently in force and be employed for both federal and local proceedings. Said National Code of Civil and Family Procedure was enacted in June 2023. Federal procedural rules apply when commercial rules are vague or insufficient.

Administrative, criminal, labor, and insolvency matters are subject to specific procedural rules.

All procedural rules have “due process of law” and “prompt and effective access to justice” as their guiding axes. When a procedural law fails to guarantee such fundamental rights, people may resort to extraordinary remedies contemplated in the Amparo Law.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

For local disputes, each of the thirty-two entities comprising Mexico have trial courts and appeal courts. For federal matters, the federation has district courts and appeal courts.

In presence of fundamental rights violations, parties may seek constitutional review through extraordinary remedies found in the Amparo Law. Indirect amparo claims are decided by federal district courts and challenges against their decisions are resolved by federal collegiate courts. Direct amparo claims are decided by federal collegiate courts. Some cases may be decided by the Supreme Court of Justice instead of the federal

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collegiate courts.

In most cases, local and federal courts are specialized in a certain subject matter (e.g., administrative, antitrust, civil, commercial, criminal, labor, or telecom matters).

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

Proceedings usually begin as soon as the relevant claim is filed by the plaintiff and admitted by the competent court. Under normal circumstances, claim admissions occur three to five days after filing.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

In theory, most hearings are public hearings but in practice people other than the parties are rarely allowed to attend or witness said hearings.

Unlike hearings, federal court sessions, that is, meetings in which the members of collegiate courts discuss and decide disputes, may be witnessed by the public.

Generally, court records are only accessible to the parties to the relevant proceeding. Federal courts make available to the public online summaries of their daily resolutions and online versions of their relevant judgements, which are always redacted, thereby eliminating all personal information such as names, addresses, dates, amounts, and counsel.

6. What, if any, are the relevant limitation periods in your jurisdiction?

Statute of limitations for asserting claims in Mexico varies depending on the nature of the claim. For example, statute of limitations for commercial claims ranges from a few days (exceptional cases) to ten years (general rule). In civil matters, one can also find statute of limitations going from a few days to two years.

Often confused with statute of limitations, “expiration of proceedings” is worth having in mind. In Mexico, proceeding may expire if, once commenced, the plaintiff does not move forward or does not cause for the proceeding to move forward after certain amount of time, typically a hundred and twenty days.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Depending on the nature of the claim, the applicable law may provide for certain pre-action requirements to be met before exercising the relevant claim. Failure to meet such requirements may result in the final rejection of the action or refusal of the relief sought, either at the court's own initiative or at the defendant's request.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings are commenced through the filing of the claim. Once admitted, courts are responsible for servicing process on defendants. In practice (specially in local courts), plaintiffs need to collaborate closely with judicial clerks to achieve service of process in a reasonable time. Service of process is a procedural act of the utmost importance under Mexico's legal tradition as it impacts directly on defendants' right to a proper defense. Accordingly, courts have a formalistic and strict approach to all issues prior and during service of process.

Plaintiffs cannot serve process, either directly or through process agents, to defendants. In recent years, discussions have raised as to whether process can be served on agents on behalf of defendants.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

When determining if they assert jurisdiction over a claim, courts rely on factors such as express submission stipulations, territory, subject matter, nature of the claim, amount in dispute, parties' domicile, and asset location.

10. How does the court determine which law governs the claims in your jurisdiction?

Procedural law is dependent on the subject matter and the venue in which the dispute is being entertained. Substantive law is also dependent on the subject matter but may be chosen by the parties. In absence of choice of substantive law, Mexican law indicates which law shall apply.

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11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

Claims are rarely disposed of without a full trail. However, proceedings may terminate before a judgement on the merits is entered when: (i) a settlement is reached; (ii) the proceeding expires due to inactivity; (iii) the object or purpose of the litigation is lost; (iv) plaintiff is not properly represented in court from a procedural standpoint; among other cases.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

Typically, interim remedies include: (i) freezing of assets; (ii) travel restrictions for people; and (iii) cease and desist of actions. Interim remedy referred to in item (iii) is quite controversial as many parties and courts use it to "keep things the way they are" until the relevant proceeding is finally decided. This generality sometime translates into the prohibition of making and receiving payments, terminating agreements, taking or surrendering possession of assets, etc.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

Traditionally, defendants submit a written response to the claim. Later, plaintiffs submit a written replica to the response. In some proceedings, parties offer evidence in their initial filings (claim and answer to the claim) while in others they have an additional opportunity to do so. Likewise, in some proceedings, parties file written closing arguments. Appeals and most challenges are also submitted in writing.

It is worth noting that Mexico's federal and local procedure laws have been moving –for some time now– towards oral proceedings, turning away from written proceedings that have long dominated the litigation scene in most civil law legal systems. Notably, the Commerce Code has incorporated both ordinary oral proceedings and summary oral proceedings with the idea of gradually replacing most written proceedings.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Parties may ask the courts to order counterparties to produce documentation associated with the litigation. If counterparties do have the documentation, they are compelled to hand it in. If they do not hand it in, courts may infer that what the requesting party is trying to demonstrate through said documentation is true. When the counterparties do not have the relevant documentation, courts may order third parties or authorities to produce it. Law and case law are clear in the sense that documentation requests cannot be fishing expeditions or general inquiries. Documentation needs to be properly identified and requests must be reasonable in terms of temporality and relevance for the dispute. In Mexico, there is no discovery as in other jurisdictions.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Generally speaking, witnesses must be identified in initial filings (claim and answer to the claim), as well as the events they supposedly witnessed. If the witness evidence is admitted, witnesses are summoned to appear before the courts on a certain date and time. In the presence of a judicial clerk, parties may ask all sorts of questions to the witnesses in direct relation to the events they witnessed. Strict rules apply to the way the questions must be formulated. Exceptionally, high ranking government officials may render written testimony instead of appearing before the courts.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Yes. Usually, each party appoints an expert and pays for his or her fees. If they render contradictory or inconsistent reports, then the court appoints a third-party expert to settle the discord. Parties pay their fees in equal parts. The offering and production of expert evidence is quite formalistic. Experts must prove their credentials, accept their appointment, render and ratify their report, and appear before the court to explain their conclusions and answer court and parties' questionings. All within tight timeframes.

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17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Yes. As a general rule, final and interim decisions may be challenged, either through appeals and/or amparo claims (not simultaneously). Typically, parties have three, six or nine business days to appeal, depending on the nature of the decision being contested. Parties have fifteen business days to file an amparo claim. In all cases, the non-contesting party may express its view on the relevant challenge.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

Mexican courts may enforce judgments entered abroad as far as certain requisites are met. These requisites include, but are not limited to: (i) compliance with international treaties regulating the exchange of letters rogatory; (ii) competence of the foreign court to entertain and adjudicate the relevant claim, according to international laws on the matter, which must be consistent with Mexican laws; (iii) personal service or summon to defendant ensuring his or her right to be heard and to defend him or herself within the foreign proceeding; (iv) finality of the relevant foreign judgment (*res judicata*); (v) absence of a pending proceeding in Mexico dealing with the same parties and the same subject matter decided abroad; (vi) compliance with public order in Mexico; and (vii) compliance with authenticity provisions –which are typically met through legalization, apostille and/or notarization of documents–.

If the requisites described above are met, Mexican courts may still deny the enforcement of judgments entered abroad if they receive proof that the country where the judgments were entered does not enforce foreign judgments in similar cases.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

Parties do have the right to recover costs of litigation from the other side under certain circumstances.

In some cases, costs of litigation are a percentage of the amount claimed. In other cases, costs of litigation are calculated based on fixed fees.

Generally speaking, an order to pay costs of litigation may be entered when, in the court's view, a party acted in bath faith or recklessly. In turn, costs of litigation shall be awarded when a party offers no evidence to support its case or submits false documentation or testimony, when a party fails to prove the merits of its claim or defense within a summary or executive proceeding, when a party is condemned through two identical judgments (trial judgment and appeal judgment), or when a party exercises rights or defenses or files challenges or incidents without any merits.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Class actions are indeed available. They can be exercised for the protection of rights belonging to a group of people (class actions in strict sense and diffuse class actions), as well as for the defense of individual rights of the members of a group of people (homogeneous individual actions). Class actions are typically constrained to consumer relationships and environment issues. They are entertained by a federal district court, who reviews and certifies the class before moving forward with the proceeding.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Parties may be called to an ongoing proceeding either as defendants or as interested third parties. Calls are usually at the request of one of the original parties. Defendants directly bear the result of the litigation, while interested third parties merely acknowledge said result.

Likewise, two or more sets of proceedings may be consolidated at a certain point, either through the lis pendens (*litispendencia*) or the connectedness (*conexidad*) procedural figures. Lis pendens means that when a lawsuit is pending before a court, any subsequent actions or proceedings related to the same subject matter should be stayed or suspended until the first lawsuit is resolved. Connectedness is a legal concept that determines whether multiple lawsuits or proceedings should be joined together or heard jointly. It arises when two or more cases share a close relationship, typically involving common parties or common issues of fact or law.

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22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

There is no prohibition for third-party funding, so we would say it is allowed. There are no rules governing it and much less ordering its disclosure. We would hardly see a judgment holding third-party funders liable for the costs of litigation incurred by the other side. Costs of litigation would rather be imposed on the reckless or losing party (not its funder).

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

Not every aspect of the COVID-19 pandemic has been negative. Shortly after the outbreak, the Mexican legal system experienced an accelerated transition into electronic trials and files. Mexican courts were closed for five out of the twelve months of 2020. When they resumed activities, they did so on an extremely limited basis, especially in aspects concerning attendance to courts; that is, filing of paper writs, reviewing hardcopy files, speaking with judges and judicial clerks, holding hearings, etc. All this put together caused a huge delay in the administration of justice. Fortunately, federal courts and some local courts, including Mexico City courts, rapidly enhanced existing tools and enabled new mechanisms to allow the filing of electronic writs, digitalization of existing hardcopy files, integration of new electronic files, and holding of videoconference meetings and hearings with both judicial clerks and counterparties.

This considerably shortened the timeframes contemplated in the federal and local judicial branches' electronic-migration agendas. As of today, some federal claims and proceedings may be entirely pursued and handled electronically. Resolutions may be served or notified by email or other electronic means. Similarly, sessions of federal collegiate courts may be watched live through streaming platforms.

Hopefully, the technological revolution of the Mexican judicial system will continue in the coming months, especially in local courts.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

As an advantage, one could say that Mexico has a rich body of substantive laws, consistent with international commercial practices, and a functional set of procedural laws, aligned with the much praised “due process of law” and “prompt and effective access to justice” principles. A point often overlooked is that Mexico City courts are specially well versed on commercial disputes, which contributes to true administration of justice because judges actually understand most of the features and implications of commercial transactions.

On the negative side, we would highlight service of process. The design of procedural rules and case law built around them sometimes allow potential defendants to elude service of process for several months, thereby delaying the course of the proceedings.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

We see commercial litigation thriving in the next five years, specially, if the new oral proceedings continue to prove to be more agile and effective than the traditional written proceedings. A country with a population exceeding 120 million people is naturally faced with a significant volume of both plain and complex commercial disputes.

We also see conciliation and mediation thriving because, as previously mentioned, both alternative dispute resolutions mechanisms are being pushed by the Mexican government as a matter of public policy in order to ease the workload of judicial courts and facilitate justice to the people.

Commercial arbitration also looks promising as judicial courts continue to honor their pro arbitration tradition while assessing award-enforcement or award-annulment claims.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

As indicated above, since the pandemic, the technology revolution on commercial litigation has been remarkable. Our expectation is for that revolution to continue through the enhancement of current electronic platforms and protocols to an extent that parties prefer to handle all filings and stages of the proceedings electronically, with the exception –maybe– of certain evidence hearings.

It is worth noting that the General Law of Credit

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Instruments and Operations was amended in March 2024 to incorporate regulation on the execution, guaranteeing, and transferring of credit instruments, including promissory notes, through electronic means. We trust that the amendment will provide further comfort to both creditors and debtors when documenting business transactions through electronic credit instruments. Eventually, commercial litigation, particularly within the financial sector, will migrate from hardcopy to electronic credit instruments, with all the probatory and technological challenges that the migration will bring along.

Contributors

Litigation Practice Group
Contacts:
Javier Curiel javier.curiel@creel.mx
Mauricio Mendoza mauricio.mendoza@creel.mx

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