

Mexico

OLIVARES



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1 Litigation – Preliminaries

1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

The Mexico legal system is governed by civil law. The Mexican Constitution establishes that matters not expressly designated to the Federal Government shall fall under the competence of each Mexican state, including civil matters. As consequence, each Mexican state has its own local Code of Civil Procedure.

However, there is also a Federal Code of Civil Procedures, which may be applicable throughout the country depending on the case. Such Code may also be applied on a supplementary basis whenever the local codes do not regulate a specific situation.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The Civil Court system in Mexico mainly consists of three levels: Courts of First Instance; Courts of Appeal; and Collegiate Federal Courts. The Courts of First Instance and Appeal may be Federal or local, depending on the decision of the plaintiff or if the dispute arises from an agreement in which the parties have agreed to submit it to the jurisdiction of a specific court. However, the three-level structure remains the same.

Courts of First Instance

The local Civil Courts or Federal District Courts are the lowest Mexican Courts to conduct civil proceedings. The decisions of these Courts can be challenged at the Courts of Appeal.

Courts of Appeal

Courts of Appeal are in charge of ruling on the appeals filed by the parties against the decision of the Courts of First Instance. The parties are not allowed to exhibit further evidence unless it is related with a possible cause for rejection of the main action. The decisions of the Appeal Courts can be challenged by the parties through a so-called “Amparo” lawsuit before a Collegiate Court.

Collegiate Federal Courts

Collegiate Courts are always Federal, due to the fact that they oversee the resolution of appeals and means of challenge provided for in Federal laws, such as the “Amparo” law. Just as with the Courts of Appeal, the parties are not allowed to exhibit further evidence unless it is related to a possible cause for rejection of the main action. The cases are heard and ruled by a panel of three Magistrates, whose decision is final.

The Supreme Court

The Supreme Court is the exceptional Court of final appeal in Mexico. It is exceptional because, for this Court to hear a dispute, one of the following situations must exist: (i) the Supreme Court determines to hear an appeal from the Collegiate Federal Courts based on the general public importance of the matter at hand, or on whether the interests of justice require the Court to hear the matter; or (ii) the unconstitutionality of a regulation was brought before the Courts of Appeal.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

The main stages of civil proceedings in Mexico may change slightly depending on the type of proceedings being brought. However, the main stages are normally as follows:

I. Initial brief and response

A regular civil proceeding begins with the filing of the lawsuit with the Court, which may admit, dismiss, or request clarification of the lawsuit. If the lawsuit is admitted, the Court will serve the defendant, granting a statutory term to file the response and possible counterclaim. If the defendant files a counterclaim, the other party will be served to file its brief of response.

At this stage, the parties are obliged to offer all their documentary evidence, detailing which evidence is in their possession and which is not. The evidence they do have must be exhibited together with their brief. Otherwise, the parties must provide reasons as to why they do not have such evidence.

After the initial claim and counterclaim, if any, are responded to, the Judge will set the date of the preliminary hearing in which the parties may discuss and reach an agreement. It is important to consider that this hearing is not contemplated in the Federal Code of Civil Procedures, but it is contemplated in some local codes. Therefore, this stage will depend on the code pursuant to which the civil dispute is being prosecuted.

II. Evidence period

After the response to the initial claim or counterclaim is filed, the Judge will grant the parties a statutory term to offer and exhibit evidence. At this moment, the parties may offer confessional, testimonial and/or expert evidence, besides exhibiting the pending documentary evidence.

Once the evidence has been offered and exhibited, the Judge will rule on whether to admit it and schedule an evidence hearing in which all admitted evidence will be prepared and conducted, e.g. testimonials, confessionals, and experts’ opinions.

III. Final allegations

Once all the evidence has been filed and conducted, the Judge will grant the parties a statutory term to file the brief of final allegations, which are the parties' last declarations before the Judge issues the resolution.

IV. Decision

Once the period of allegations has concluded and the parties have submitted their briefs, the Judge will issue the resolution, which may be challenged at a Court of Appeal. The resolution of such appeal can also be challenged through a so-called "Amparo" lawsuit, which will be resolved by a Collegiate Federal Court.

The length of a civil proceeding in Mexico depends on the complexity of the matter and the volume of material that composes the dispute, e.g. the evidence offered by the parties. Additionally, in Mexico any provisional or incidental decisions issued by the Judge can be appealed.

Therefore, it can take from one to three years to obtain a resolution at the first stage of a traditional civil procedure. However, considering the fact that a first instance resolution can be challenged at a Court of Appeal, and at a Circuit Court at the last instance, the whole procedure may take a minimum of two-and-a-half years, or up to four to six years in normal cases. Very complex cases may take more than a decade.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

In Mexico, it is very common in civil acts to agree that, in case of dispute, the parties expressly waive any jurisdiction other than the Mexican Courts, whether Federal or state. If this is the case, the Mexican Courts will have to enforce said clauses based on the freedom of contract, unless a well-founded and motivated reason is found not to do so.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The Mexican authorities are obligated to deal with the costs of the litigation, since the Constitution establishes that justice is free for everyone.

However, every party is responsible for attorney and expert fees, along with other costs relating to the litigation, such as document expenses and the fees of the experts and another diligence. There are some guidelines for Courts to order payment of costs and attorney fees, based on the percentage of the amount expressly claimed.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

There are no rules regarding funding litigation, contingency and conditional fee arrangements. Any clause or obligation in this matter may be arranged and based on arrangements between a financier and the parties.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Mexican regulation does not expressly establish constraints to

assign a claim. However, both the Federal and local Codes that regulate civil proceedings state that only those with an interest in the judicial authority declaring or establishing a right or imposing a condemnation, and those who have a contrary interest, may initiate or intervene in a judicial proceeding.

Therefore, if an assignment of the cause of action is sought, it must be demonstrated that the assignee has the legal interest to participate in the dispute. This becomes relevant if we take into account that surrogacy is permitted and regulated in Mexico.

Finally, Mexican law does not regulate any prohibition regarding the financing of litigation by a non-party.

1.8 Can a party obtain security for/a guarantee over its legal costs?

No, Mexican regulation does not provide the possibility of obtaining security for or a guarantee over legal costs. However, within the trial or prior to its commencement, the seizure of sufficient assets to guarantee the outcome of the trial may be ordered at the request of a party, and as a precautionary measure, exhibiting a guarantee to respond to the possible damages that could be caused to the person against whom the precautionary measure is adopted.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

No. However, in Mexico it is common that in any contract or agreement, the parties are obliged to notify the other party of any possible breach, providing the possibility of remedying it before initiating a civil action.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

In Mexico, limitation periods are treated as procedural law issues, even though they are regulated by the Civil Code and not the Codes of Civil Procedure. There are multiple limitation periods for commencing proceedings, depending on specific cases. However, the Civil Code regulates two limitation periods that are considered general rules and are calculated in years:

- Ten-year period in which to claim compliance with an obligation, counted from the time the obligation could have been demanded.
- Two-year period to claim the following:
 - Damages.
 - Fees, salaries, wages, or other remuneration for the rendering of any service.
 - Civil liability for insults, whether made by word or in writing, arising from damage caused by persons or animals.
 - Civil liability arising from unlawful acts that do not constitute a crime.

Additionally, *res indicata* is recognised in the Civil and Commercial Codes and as a general principle of law.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Once the plaintiff files its initial brief of action, if there are no grounds for dismissal or prevention, the Judge will order that the defendant be personally served. A Court's clerk must appear at the domicile of the defendant to deliver a copy of the initial document of the claim, evidence, and the official communication through which the summons was ordered. This official communication must clearly establish the deadline to answer the claim.

If the domicile of the defendant is not known, the notification will be made by decrees which will be published three times, seven days at a time, in the Mexican Official Gazette and in one of the daily newspapers of mass circulation. If, after 30 days, the defendant does not appear, the trial will be continued in default and the subsequent service will be made through a notice, which will be posted on the door of the Court.

The means of service will depend on what is to be served and the nature of the proceeding. Service can be made personally, by publication in the Judicial Gazette, by edict or by letter rogatory.

As for the deemed date of service, depending on the Code and the type of service, it will become effective on the same day or the day following. This is important because all legal terms shall be counted from the day after the one on which the notification becomes effective.

Service outside Mexican jurisdiction works through a special procedure carried out through international collaboration between national authorities and foreign authorities. In this procedure, the Mexican authority sends a letter of request to the other country informing of the procedure.

To execute this procedure, parties should include in their lawsuit that it will be necessary to use this international collaboration. Once this notification is served, the procedure will continue.

It is important to say that the procedure depends also in the country of the foreign party, since there are different international treaties that may apply, thus, the analysis and study of the case to determine which treaty is applicable is an important point that the plaintiff must consider before filling the claim.

Nonetheless, the Supreme Court ruled on a landmark case that if the defendant is a foreign legal person but has a branch domiciled in Mexico, Court documents can be served to its branch.

There is no preferred method of serving documents in Mexico in relation to foreign proceedings.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

In Mexico, precautionary injunctions are an interim remedy that can be applied for either prior to or during a claim. This interim remedy is considered an ancillary proceeding of the main claim.

The Federal Code of Civil Procedures provides some precautionary injunctions, such as: seizure of sufficient assets to guarantee the outcome of the trial; deposit or insurance of the objects, books, documents, or papers related to the lawsuit; and preventing the defendant from carrying out specific acts or omissions.

Such injunctions are required to be in accordance with the law; i.e., the plaintiff must *prima facie* prove grounds for its claim, danger of delay and the proportionality of the measure. In

addition, there must be a cause that justifies such measures, and the solicitor will very likely be required to post a guarantee to answer for any damages that could be caused to the defendant.

3.3 What are the main elements of the claimant's pleadings?

It is important to distinguish the initial claim pleading from pleadings that are filed after the claim is under prosecution.

The initial claim pleading must contain the following, at the minimum: names and address of the parties; competent Court; type of proceeding; narration of facts; cause of action; grounds of the claim; and evidence (including Power of Attorney, if the plaintiff is acting through a legal representative). Furthermore, the plaintiff can authorise lawyers and clerks to participate in the trial, so that they may have access to the judicial file.

In subsequent pleadings, it is sufficient to mention the parties, type of proceeding, file number and the Court to which it is addressed.

Every pleading must be signed by the claimant or its legal representative.

3.4 Can the pleadings be amended? If so, are there any restrictions?

The general rule states that it is not possible to make any amendment to an initial claim pleading once it has been submitted to the Court. The only exception is provided where there are supervening facts.

However, the Court will allow amendments to the initial claim pleading where they are necessary to determine the issues in dispute between the parties.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Pleadings can be withdrawn at any stage of the civil proceeding. The consequences may vary, depending on the type of pleading, and the stage and type of proceeding.

For example, the Code of Civil Procedure of Mexico City states that the withdrawal of the claim obliges the claimant to pay the defendant the costs incurred as of the date on which the withdrawal is filed. Another example is that if one of the parties file an appeal against a first instance judgment and ultimately withdraws, it is obliged to pay the costs incurred by the other party for having had to participate in this stage of appeal.

Finally, Mexican jurisdiction establishes that any withdrawal must be ratified by the interested party, either personally before the Court staff or in writing. Also, depending on the stage of the proceeding, if the claimant files for the withdrawal of the action, it will require the authorisation of the defendant; otherwise, the proceeding must continue.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The answer to the lawsuit must contain mainly the following: the address to hear and receive notifications; the so-called "exceptions" or defences (for example, the lack of legal representation of the claimant); the counterarguments to the lawsuit; the

answer to all of the facts of the claim (which otherwise will be considered true); the refutation of the plaintiff's evidence; and, if necessary, the evidence offered by the defendant to rebut the plaintiff's arguments.

In the defence, the document that attests the personality must be attached, and in case of offering any evidence, it is also necessary that such evidence is also attached.

The defendant may bring a counterclaim or defence of set-off. In each case, it must be brought at the moment of filing the statement of defence.

4.2 What is the time limit within which the statement of defence has to be served?

Depending on the type of proceeding (civil/commercial, written/oral), the law establishes the deadline within which the statement of defence must be submitted. However, this time limit does not exceed 15 business days.

Strictly speaking, the plaintiff must be served with the statement of defence within the third or fourth day of the day on which the Court receives the statement. However, this period may be extended at the Judge's discretion.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

There is no such mechanism. If the defendant believes that there is a third party to pass on to or share liability, this must be raised as a defence before the Court, exhibiting the evidence to sustain its request. In this case, the Judge will analyse the defendant's request and determine what is appropriate.

Another possibility is for the defendant to continue with the lawsuit and, once it is concluded and found liable, bring an independent action against the third party that was not called to trial, seeking retribution for what it had to pay or do.

It is also possible for the defendant to request the Judge to call a third party at the time of the enforcement of a judgment, if it is proved that said party is liable.

4.4 What happens if the defendant does not defend the claim?

In case the defence is not filed and the defendant does not participate in the trial, then the lawsuit will continue to be processed, considering only the plaintiff's claims.

In general terms, if there is no response, all facts and causes of actions are considered accepted by the defendant, unless they would be contrary to the law.

4.5 Can the defendant dispute the court's jurisdiction?

Yes. The defendant may claim that the Judge does not have jurisdiction to decide the matter. This may be done by stating so in the statement of defence. In this scenario, the Court is constrained to rule on the jurisdiction matter before dealing with the merits of the case. If the defendant's claim is decided as grounded, the Court would refrain from hearing the case. The ground of this challenge can be the territory (defendant domicile), subject matter or the economical amount under dispute.

In some cases, there is a possibility of filing the response or motion directly to the Judge considered to have proper jurisdiction.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party may join ongoing proceedings.

The Federal Code of Civil Procedures states that the interested parties may bring a third party to the proceeding only if this third party has a dispute with one or more of the parties, and the ruling of the proceeding may affect said dispute. Either the interested parties or the third party will file their claim within the same proceeding.

Another possible circumstance is where a third party appears because the resolution affects them directly, or the third party's interest is affected by the prevailing of one of the parties. Such third party may even oppose the execution of the resolution, which must be resolved by the Judge.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Yes, the Mexican system allows consolidation of proceedings. Two or more proceedings may be consolidated only if:

- The proceedings are not ready for the final hearing at first instance.
- There are common questions of law or facts.
- The same dispute must be resolved.
- The resolution of the claims could lead to opposed rulings.

5.3 Do you have split trials/bifurcation of proceedings?

There are no split trials or bifurcation proceedings in the Mexican legal system.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

Yes, it is. Civil Courts of First Instance in Mexico are located in different domiciles and premises throughout the states. Depending on the amount of the claim and type of proceeding (oral or written), the claimant must go to the appropriate Court location. In each of these premises, there is a Common Office in charge of receiving the claims, randomly assigning them to one of the Courts, and providing the file number.

As a result of the COVID-19 pandemic, the Mexican Judiciary implemented an electronic appointment system, which, as it appears, will continue to be used. A claimant can access the Judicial webpage in order to request an appointment to file their claim; they will also need to provide related information, such as the amount of the claim, type of procedure, etc. After doing so, the claimant will receive a document setting out the appointment and containing the address of the Court.

Finally, it is worth noting that if an appeal is filed in a proceeding (either against the final decision or any procedural resolution), a Higher Court superior will oversee ruling on such appeal. If further appeals are subsequently filed in connection with the same

original proceeding, these appeals must be referred to the same Higher Court, based on the general rule of “prior knowledge of the case” of the Mexican jurisdiction.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Each Court may implement case management rules that allow it to better control cases, always seeking to comply with the deadlines and time limits established by law and with the principles of procedural economy and expeditiousness.

The Courts are mainly integrated by the Judge/Magistrates in charge of the cases and the drafting of the decrees and decisions, assisted by clerks. However, nothing can be served to the parties without the revision and signature of the Judge and/or Magistrates.

There are no formal interim applications that the parties are able to make. However, in Mexico it is customary to carry out lobbying efforts with the Judge/Magistrates and clerks, aimed at discussing the case. This activity is free of charge.

6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?

The COVID-19 pandemic prompted a major change in Mexico in the use of electronic and online tools. Because of the sanitary measures adopted by the Courts, the online filing of actions and prosecution became very important and, in some cases, necessary.

Now, it is possible to present writs, consult legal resolutions and review judicial files electronically, although authorisation of the Judge and, in most cases, an additional tool called the “electronic signature” of the involved parties, are necessary.

There is no firm criterion regarding the possibility of carrying out procedural acts remotely, since this must be requested and justified by the interested party. Furthermore, carrying out procedural acts remotely depends on the nature of such act, and whether the Judge considers it possible and that it will not affect the rights of the involved parties. For example, until recently, it was not possible to conduct the hearing of testimonial evidence or experts’ opinions by electronic means. However, in some cases, experts appointed by the parties have been permitted to accept the charge and ratify their technical opinion via videoconference.

The use of electronic tools also depends on the Court and the instance of the proceeding. For example, before the pandemic, the Federal Collegiate Courts ruled matters in public sessions to which the parties could have access. The only prohibition was that they could not record such sessions, although the video of the session was subsequently uploaded to the official website of the Judicial Branch. Now, these sessions are held by videoconference and are also transmitted live.

Furthermore, the Judicial Authority has worked on alternative methods to make the use of electronic resources even more efficient, such as lobbying efforts through electronic means.

6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court’s orders or directions?

The range of sanctions is wide and depends on the conduct of the party, as well as the nature of the order: procedural; or administrative.

For example, if the Court orders a party to clarify the content of its pleading and fails to do so, the Judge may dismiss the motion. Another sanction could be losing some procedural rights; e.g., if the Judge orders one of the parties to exhibit certain document to support its claim but it refuses to do so, then the interested party will no longer be allowed to exhibit said document.

As for administrative orders, sanctions may range from fines to expulsion from the Court premises, depending on the order and severity of the disobedience.

6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

Mexican Courts have the power to strike out part of the statement or dismiss a case entirely at any stage, even when issuing the decision. The circumstances may vary: Courts may strike out part of the claim if they consider it irrelevant, or if the claimant fails to exhibit evidence to support that part of the claim. The Court can also rule that the claimant lacks legal standing, capacity and/or interest to file the claim, dismissing the case entirely. In addition, the Court may partially or entirely dismiss a claim if the plaintiff’s right has been precluded.

6.6 Can the civil courts in your jurisdiction enter summary judgment?

Mexican civil legislation does not provide for summary judgment. However, this type of proceeding and judgment is available in commercial and administrative matters.

6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Mexican Courts may stay the proceedings. For instance, a Court may stay the proceedings if an appeal against a procedural resolution is filed, and it considers that the eventual ruling on the appeal could have inherence in the final judgment.

Likewise, if the Courts become aware of the existence of another proceeding that could have an impact on the merits of the case, the Court may order the stay of the proceeding until such dispute is finally resolved or settled.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

It is not possible to obtain pre-action disclosure to prepare a claim or defence, as this is not a concept regulated as such in

Mexico. Disclosure in Mexico will always depend on the Judge, which implies that it is updated until the civil proceeding is under prosecution.

The parties are obliged to exhibit evidence to support their claim and defence. However, there are documents that, by law, are not within their reach. Therefore, once the trial has begun, the parties may request the Judge to require an authority or even a third party to exhibit it. If the Judge considers that such document is related to the merits of the case and does not go against the law, it must request its disclosure within the proceeding. If the document contains confidential information, the necessary measures will be taken to preserve its confidentiality. This includes electronic documents.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

As with disclosure, privilege is not regulated in Mexico. Nonetheless, a party cannot be compelled to disclose evidence unless ordered by the Judge, and only if it is information necessary for ruling on the dispute. In this scenario, the Judge may adopt measures so that the document remains confidential. These measures can range from allowing the parties to consult the document on one occasion only, without taking notes or reproducing it by any means, or even preventing it from being consulted by the party that did not offer it.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

As detailed in the answer to question 7.1, if a document is in the possession of a third party and the Judge considers that such document is necessary to resolve the dispute, he/she may order the third party to produce it.

Mexican regulation allows the Judge and the parties to rely on/offered documents in possession of a third party. The only limitation is that the document must be recognised by law and strictly related to the merits of the case. If, by disclosing the document, damages may be caused to the third party, the party offering such evidence shall be liable for these damages.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

Mexican Courts have the power to compel and order the disclosure of information and documents, on its own initiative or at the request of either party. Nonetheless, the Court must ensure that disclosure of the information and/or documents is necessary to resolve the dispute.

Likewise, the Judge is obliged to maintain the confidentiality of the documents and information, and is able to implement measures it considers pertinent for this purpose.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

Generally, the only restriction is that such information and/or documents may not be used outside the proceedings, since they were disclosed precisely for use within the lawsuit.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

A party who asserts a fact is obliged to prove it. The plaintiff is not obliged to prove negative facts. There are some documents that have presumption of validity, which means that the content of the document will be considered authentic unless proven otherwise.

All evidence legally exhibited by the parties will be evaluated and assessed by the Judge, who will analyse their arguments and verify whether the plaintiff's claim is proven, or if, on the contrary, the defendant has proved their defences.

As mentioned, the general rule is that all evidence will be evaluated by the Judge in the final resolution, but it is important to note that some points should be considered depending exclusively on the type of evidence submitted.

First, the evidence must be pertinent to the case, and the parties must provide arguments to justify it. In addition to this, the evidence must be offered according to the applicable law, since all evidence is regulated by particular rules; therefore, if the evidence is not submitted according to the law, it can be dismissed.

Moreover, all documents must be filed in Spanish (or in the original language, with its translation), and if there are international documents, they must be duly apostilled and notarised.

It is important to consider that all public documents submitted as evidence will have presumption of validity; this means that the content will be considered true, and documents without such nature will not have this full value as evidence.

To conclude, even though there are specific rules for the execution of every type of evidence and its evaluation by a Judge, the value of the evidence may depend on the Judge's analysis according to its specifications; the Judge will use the logical rules as support for his/her final decision.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

The Federal Code of Civil Procedures recognises the following as admissible evidence: confessional; public and private documents (such as notarised facts, affidavits, invoices); expert opinions; judicial recognitions or inspections; storage devices (containing videos, photographs, music, etc.); witnesses; and presumptions.

The only limitations, as stated in question 8.1, are that the evidence must be recognised by law and that it must be immediately related to the merits of the case.

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

The calling of witnesses of fact must be offered either on the initial claim or statement of defence or during the evidence period, mentioning the witness or witnesses who will participate in the trial.

The witnesses will be summoned on a specific date to appear before the Judge. Depending on the Code under which the proceeding is being conducted, there may be a limit on the number of witnesses per fact, and the questions must be in writing or given orally at the time. In either case, the Judge will have to qualify the questions as legal before they are answered by the witness.

Witnesses will be interrogated separately and successively, without being able to listen to the statements of the other witnesses. If the witness does not answer or does so with contradictions or inconsistencies, the Judge, by his/her own motion or at the request of the parties, may demand the corresponding clarifications.

The questions asked and the answers should be recorded verbatim in the minutes of the hearing. Once the interrogation is concluded, the witness shall sign his/her statement, which may not be changed.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Expert witness evidence in Mexico must be offered either on the initial claim or statement of defence, or during the evidence period. It will be only applicable when specialised knowledge is required. The parties must provide the name of their expert and his/her expertise, capabilities or academic degrees. The proof should be prepared establishing the justification of the evidence and providing the questions that will be answered in the expert's report. The other party can put forward its own expert and additional questions.

Expert witness evidence will have presumption of validity on its content. If the opinions of the experts appointed by the parties are contradictory, the Judge will name a third expert. The Judge can use any part of the opinions to provide his/her final decision, and so may take elements from all of the opinions given.

The deadlines for carrying out each stage of the giving of expert evidence depend on the Civil Code governing the procedure.

The expert owes his/her duties to the party, unless it is the third expert appointed by the Judge that owes his/her duties to the Court. However, the fees of the third expert must be covered equally by the parties.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Broadly speaking, we can summarise three type of judgments:

- Decrees: those related to procedural issues, i.e., receipt of any brief, orders and requirements to the parties.
- Incidental/interim resolutions: those issued regarding precautionary measures and/or preliminary injunction proceedings, as they are ancillary to the main claim.
- Judgments: related to the merits of the case.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Even though both the Federal and state Codes establish that the losing party is obligated to pay the costs and expenses incurred by the winning party throughout the litigation, the ruling on costs is a discretionary power of the Court, considering the requirements that need to be met.

The amount of the condemnation will be calculated based on percentages that will be applied depending on the dispute. It will also depend on other factors, such as whether the prevailing

party acted in bad faith, the amount claimed, the instance in which the dispute was resolved, etc. Even the number of pages of each pleading filed by the prevailing party may be considered. This may include expert witness fees and expenses for obtaining evidence.

9.3 How can a domestic/foreign judgment be recognised and enforced?

Domestic judgments in Mexico can be enforced before the same Court that hears the dispute once they become *res iudicata*.

The prevailing party shall request the Judge to enforce the judgment, who shall require the losing party to comply. If it fails to do so, depending on the merits of the case, the Judge may order: (i) the seizure of assets to cover a liquid amount or the damages; or (ii) the losing party to perform a certain act (delivery of an asset or document, signing of a document). If none of these options are available, the prevailing party may request the payment of damages.

Decisions issued in other jurisdictions can be enforced through the Mexican Courts. Preparation of execution requires a notice to the Court with proper jurisdiction depending on the case. Once the Court has this notice, it will notify the parties, providing a nine-day term to file a brief of allegations and submit all the evidence they have, so that the Court can decide if the foreign decision can be executed in Mexico or not. During this procedure, the Court will only evaluate if this decision can be executed in Mexico, since the determination contained has become *res iudicata*.

Considering this, the Mexican Court will issue a decision declaring if the foreign resolution will be enforced or not. It is important to mention that this resolution (which declares the possibility of executing the decision in Mexico) can be challenged by means of an Amparo lawsuit (constitutional action).

Mexican legislation contains dispositions regarding international cooperation and the obligation for Mexican authorities to collaborate with the execution of foreign resolutions, but there is a different procedure for enforcing foreign judgments.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

In Mexico, it is possible to appeal the main decision of the proceeding, as well as any provisional or incidental decisions issued by the Judge.

Decisions on the merits can be challenged through an ordinary appeal that will be ruled by the Courts of Appeal. The appeal must be submitted before the Court that issues the judgment. The term to appeal varies depending on the Code of Civil Procedure.

When the Court of First Instance receives the appeal, it will serve the opposing party with the brief, granting a term to file pleadings and/or cross-appeal. Following the legal procedures, the Court of First Instance will forward the file to the Court of Appeal, which must issue a judgment within a period of two to three months.

The resolution of such appeal can also be challenged through a so-called Amparo lawsuit, which will be resolved by the Federal Circuit Court.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

In some local Codes of Civil Procedure, after the defendant

files its statement of defence, a date is set for a pre-conciliation hearing, where the parties may reach an agreement to settle the dispute. Additionally, these Codes state that, at any moment and prior to the issuance of the ruling, the Judge has the power to encourage the parties to reach a settlement.

11 Alternative Dispute Resolution

11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Based on the freedom of contract, the parties can agree that any dispute can be submitted to any method of alternative dispute resolution (ADR). The most frequently used and available methods of ADR in Mexico are:

- **Negotiation:** the parties in the dispute communicate directly to reach an agreement and settle a dispute. Generally, what has been agreed will be embodied in a formal document, which will contain the consequences of not complying with what has been negotiated and agreed. The negotiation may take place with or without the assistance of a third party.
- **Mediation:** a confidential process in which a neutral third party intervenes to bring the disputing parties to a consensual agreement that resolves the dispute. Normally, the mediator does not have the authority to impose a solution on the parties. It is a non-binding procedure unless an agreement is reached. In Mexico, the Judiciary of each state offers mediation services, each with its own requirements.
- **Conciliation:** a process through which a conciliator attempts to help parties resolve a dispute by improving communications between them and providing technical assistance. In general, the conciliator is usually more interventionist than a mediator. The particularity of this ADR method is that it is foreseen as a procedural stage in civil proceedings under local codes after the claim is answered.
- **Arbitration:** an ADR method that is gaining popularity in Mexico to settle complex commercial disputes between national and international companies. It is regulated by the Commercial Code. The parties are free to designate the number of arbitrators; if they do not reach an agreement, there shall be one arbitrator. The procedure is very similar to that of a proceeding before the Courts, although the parties are free to agree on special rules. However, the arbitrator(s) may determine whether such rules are applicable to the arbitration. Arbitral decisions are final, binding and their enforcement may be requested before a Court.

11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Article 17 of the Mexican Constitution states that every law shall provide ADR mechanisms. Therefore, based on this constitutional mandate, Mexican law generally provides that parties are free to submit their disputes to ADR methods. Moreover, each state has its own Alternative Dispute Resolution Mechanisms Law. As for the rules, based on the freedom of contract, the parties may agree on the rules to be followed in ADR proceedings unless they are contrary to any law that does provide specific rules.

The Commercial Code regulates arbitration from a commercial point of view; however, in practice it is also used for disputes

of other natures. Likewise, the Federal Code of Civil Procedures establishes the rules by which Courts can enforce non-commercial arbitration awards.

Regarding conciliation, in November 2020, the Federal Law for the Protection of Industrial Property came into force, in which conciliation was included as an ADR method in infringement proceedings. Likewise, the National Code of Criminal Procedures establishes the possibility of implementing ADR methods, including conciliation.

As for the mediation, the Judiciary of each Mexican state has an auxiliary agency called the Alternative Justice Center, whose purpose is to promote and regulate the application of ADR methods; however, these agencies are focused on mediation only. Each Center has its own guidelines and regulations to ensure that users reach a mutually satisfactory agreement.

11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Generally, ADR methods can be used to settle any dispute in Mexico, based on Article 17 of the Mexican Constitution and freedom of contract. However, there may be disputes of public order and social interest that, by law, must be resolved before the Courts.

11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

While it is true that the purpose of ADR is for two or more parties to overcome a conflict outside the Courts, the Judiciary of each Mexican state has an auxiliary agency called the Alternative Justice Center to promote and regulate the application of ADR methods.

Also, according to the applicable civil legislation, the Judge is always obliged to invite the parties to reach an out-of-court settlement; even the local Codes of Civil Procedure provide for a prior conciliation hearing.

If the parties agreed that, prior to filing a claim before a Court, an ADR method must be exhausted, it has to be complied with. If this is not done, the affected party may raise it in the statement of defence before the Court, which may result in the dismissal of the action.

11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

An arbitration award is final and binding. However, it may be annulled by a competent Judge upon proof that:

- Either party was affected by any incapacity.

- Proper notice of the appointment of the arbitrators was not given.
- The award relates to a dispute not provided for in the arbitration agreement.
- The arbitral Court did not comply with the agreement entered between the parties.
- A Judge proves, in accordance with Mexican law, that the subject matter of the dispute was not arbitrable or that the award is contrary to public order.

As for a resolution arising from mediation or conciliation, it is binding on the parties and can be enforced by the Courts in case of non-compliance.

Sanctions cannot be imposed on the parties if they refuse to mediate, as in Mexico it is not mandatory to resort to ADR methods.

11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

The Mexican Arbitration Center, created in 1997, and Alternative Justice Centers of each Mexican state are the major dispute resolution institutions in Mexico.



Armando Arenas is a Partner at OLIVARES, having joined the law firm in 2000, and he now leads the Civil and Commercial area. He has experience working on a range of IP matters, including consulting and litigation on patents, unfair competition, trade dress protection, civil and administrative actions related to IP matters before the Mexican Institute of Industrial Property (IMPI), Federal Court for Administrative Affairs (FCA), Federal Circuit Courts (FCC), the Supreme Court of Justice (SCJ) and Civil Courts (CC), handling relevant cases such as:

- Civil actions for damages in order to obtain payment of compensation for violating clients' industrial property rights.
- Securing a judgment declaring the unconstitutionality of Article 167 *bis* of the Health Supplies Regulation, as it does not provide the right of the titleholder of a patent to be heard during the prosecution of the marketing authorisation.

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OLIVARES' Civil and Commercial Litigation team has acquired extensive experience in tackling overly complex civil litigation, where the firm has achieved, through the implementation of sophisticated strategies, notable and often unprecedented results, including compensation for damages arising from the violation of intellectual property rights that have allowed clients to recover a percentage of sales made illegally. In addition, the firm has successfully defended improper claims for damages, representing clients from various industries.

OLIVARES' practice includes counselling clients and client representation at the local and Federal levels, seeking compensation for damages, non-pecuniary damages, payment of royalties, homologation of judgments, contractual disputes, corporate conflicts, breach of commercial agreements and contracts, among others.

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