

The fourth annual complimentary guide
to understanding DR practices around
the world with an Asia-Pacific focus

LexisNexis® Dispute Resolution Law Guide 2018

Including articles from featured contributor:

大成 DENTONS



大成律师事务所 二十五周年庆

25th Anniversary of Dentons China

**LexisNexis[®] Dispute Resolution
Law Guide 2018**

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1. What is the structure of the court system in respect of civil proceedings?

Mexico is a federal state and therefore its court system is divided into federal and local courts. In addition, commercial matters are distinguished from and governed separately from strictly civil matters. Commercial matters deal with all the legal relationships between corporations and/or individual businessmen, while civil matters refer just to legal relationships between individuals not involved in commercial activities. The Constitution has established that civil law matters, both substantive and procedural, are of local jurisdiction, whereas commercial matters are governed by federal law. Since commercial matters are federal, they are regulated in the Commerce Code, which is applicable to the entire country. On the other hand, since civil matters are local, each state and the federal district has its own Civil Code and Code of Civil Procedures. There is also, however, a Federal Code of Civil Procedures, which applies to the resolution of federal administrative and civil conflicts. Although commercial matters are federal, local judges may resolve commercial disputes. In fact, there are no commercial judges; the judges that resolve commercial disputes are civil judges, both local and federal. Within the civil sphere in Mexico City, there are also judges called Justice of Peace judges, who settle claims involving very low amounts.

In addition to being a dual federal or state system, the court system in Mexico is also divided into civil, commercial, administrative, antitrust, labour, agricultural and criminal areas. Each of these areas has its own set of substantive and procedural rules.

The courts at the federal level include the Supreme Court of Justice with 11 Justices, the Collegiate Circuit Courts, having three magistrates, the Unitary Circuit Courts, having one magistrate, and the district courts, having one judge. Each state has a State High Court and specific courts divided into legal areas such as civil, commercial, family, leasing, labour and criminal matters.

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

The Collegiate Circuit courts were created to exercise powers originally corresponding to the Supreme Court, which is to resolve *amparo* proceedings involving questions of legality of decisions issued by the Unitary Circuit Courts. The latter courts in turn resolve appeals from the District Courts, which are the federal courts of first instance.

Both the District Courts and the Unitary and Collegiate Courts are divided territorially in the number or circuits that the Federal Judicial Board, an administrative body of the judicial power, establishes for the entire country.

2. What is the role of the judge in civil proceedings?

The role of a Judge in a Civil (or commercial) proceeding is to rule on the dispute based on the contractual provisions, on the applicable

law, its legal interpretation and absent a specific legal framework based on the general principles of law.

Pursuant to Mexican procedural law, the parties have the burden to boost the proceeding and to ask the Court to follow up the procedural steps established in the law. If the parties do not ask the Judge to continue with the proceeding for more than 6 months, then the Judge may declare that the proceeding is closed for lack of procedural interest.

Within the duties of the Judge, he/she must invite (i) the parties to conciliate the dispute; (ii) receive the evidence proposed; (iii) attend hearings; and (iv) rule on the dispute through a final judgment.

3. Are court hearings open to the public? Are court documents accessible by the public?

Pursuant to the Commerce Code, hearings must always be held in public (the Commerce Code art. 1080). Pursuant to the Federal Code of Civil Procedures, the general rule is that hearings must be held public, exceptionally of those that the court considers appropriate to be held in private. (Federal Code of Civil Procedures art. 274).

However, court documents are private and only the parties can access the court file and the final judgment. During the trial, parties are requested for their consent to publish the award without their names and all explicit references to them are erased from the copy.

In recent years the Supreme Court declared that all information previous to 2003, relative to federal procedures is public. This statement was issued due to the approval of the Federal Law of Transparency and Public Access to Governmental Information that allows any individual to request any documentation relative to federal trials. Article 8 of the Federal Law of Transparency and Public Access to Governmental Information states that all the

resolutions that are non-appealable shall be made public; nevertheless, the parties may object to the publication of their personal data. Therefore, once the resolution is non-appealable, it becomes public to anyone who wishes to consult it.

4. Do all lawyers have the right to appear in court and conduct proceedings on behalf of their client? If not, how is the legal profession structured?

No, only the lawyers that are authorized through a written brief by a party authorized representative have the right to appear in Court on behalf of the client. In addition, the lawyers must have in place their license and they should be registered also before the Court.

5. What are the limitation periods for commencing civil claims?

Usually the limitation period for civil and/or commercial actions ranges from 5 to 10 years, depending on the nature of the action. However, there are certain specific actions that have a 6-month period, a one-year and a two-year statute of limitation.

6. Are there any pre-action procedures with which the parties must comply before commencing proceedings?

No, under Mexican law a lawsuit is initiated directly through the filing of a written complaint before the Courts. No administrative or formal pre-action procedure is required.

7. What is the typical civil procedure and timetable for the steps necessary to bring the matter to trial?

Under the Mexican civil system there is no distinction between the civil or commercial proceeding and the trial itself. Once the complaint files a lawsuit, the defendant will be summoned and have the right to counterclaim if he wishes to. Afterwards the Court will formally give the

parties the opportunity to produce their evidence and hold as many hearings as required to receive it. After all the hearings are held, then the parties can file their final pleadings in writing. Finally, the Judge will render its judgment in first instance.

8. Are parties required to disclose relevant documents to other parties and the court?

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If the document is identified with precision and there is evidence about its existence, a party may request the Court to order the other party to disclose it. In addition, during a lawsuit, third parties are compelled, at all times, to assist the courts when investigating the truth and shall exhibit all documents and goods in their possession whenever they are required to do so. The courts have the power and the obligation to compel third parties, through any constraining means, to comply with such obligations. However, in the event of refusal, the courts shall hear the third party's arguments and issue a final non-challengeable decision.

9. Are there rules regarding privileged documents or any other rules which allow parties to not disclose certain documents?

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Ascendants, descendants, spouses and those obliged to keep professional privileges, are exempt from such obligation whenever the evidence requested is prejudicial of the party to which they are related (Federal Code of Civil Procedures, art 90).

10. Do parties exchange written evidence prior to trial or is evidence given orally? Do opponents have the right to cross-examine a witness?

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Pretrial discovery/disclosure is not regulated or allowed by Mexican legislation. There are, however, some specific and limited procedures that entitle a party to obtain specific information or testimony for preparing a lawsuit (article 1151, Commerce Code).

During the proceeding, attorneys are entitled to cross-examine any witness, the party or its representative (if it is a company or corporation), if it is requested.

11. What are the rules that govern the appointment of experts? Is there a code of conduct for experts?

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The experts appointed by a party must be have the title and license to act as experts in the corresponding area. Aside from these minimum requisites there are no binding codes of conduct for experts.

12. What interim remedies are available before trial?

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Injunctive relief in principle is limited to attachment of assets or an order regarding the debtor to stay in its domicile.

13. What does an applicant need to establish in order to succeed in such interim applications?

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Injunctive relief may be granted by a court only if the claimant proves a justified fear that the defendant may abscond, or when there is justified fear that the defendant may hide his assets or intentionally lose a specific good (in actions in rem).

14. What remedies are available at trial?

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In general, the remedy for civil tort liability is the restoration of the status quo prior to the damage, when possible, or the payment of damages and lost profits. The basic contract remedies are specific performance or termination of the contract with damages and profits in both cases. If, in a contractual relationship, an interest rate is not specified, the legal interest rate is 9% (per cent) annually in civil matters and 6% (per cent) annually in commercial matters on the principal.

15. What are the principal methods of enforcement of judgment?

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If a party refuses to comply with a judgment, the Court may order the attachment of assets or even the intervention of the administration of the debtor to get the payment. The assets then may be sold through a public auction to obtain the amount due. If the obligation consists in the performance of certain task, then if the party refuses to do it, the Court may award damages and lost profits and consequently attach assets to get them enforced. To obtain the enforcement, a specific ancillary proceeding must be brought asking the Court for the enforcement. This proceeding may take from three to six months.

16. Are successful parties generally awarded their costs? How are costs calculated?

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The Mexican system for attorney’s fees awarded for the prevailing party in litigation is always fixed.

In commercial disputes, the Commercial Code does not establish clear rules as to how to determine the quantum. However, there are judicial precedents that clearly establish that the local law determines the way to liquidate costs.

The local law in Mexico City establishes that the first instance costs shall be calculated according to the following basis:

- (a) When the amount of the suit does not exceed the equivalent to three thousand minimum wages in the Federal District, it will be calculated at 10% (per cent).
- (b) When the amount of the suit exceeds the equivalent to three thousand minimum wages in the Federal District and is up to six thousand minimum wages in the Federal District, it will be calculated at 8% (per cent); and
- (c) When the amount of the suit exceeds the equivalent to six thousand minimum wages in the Federal District it will be calculated at 6% (per cent),

If the dispute were to be ruled by a second instance the percentages will be raised by a further 2% (per cent).

Most of the other state codes of procedure follow the same rules.

17. What are the avenues of appeal for a final judgment? On what grounds can a party appeal?

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First-instance judgments can be appealed before an appellate court. The appellate court stands in a superior hierarchical level to the court that issued the judgment.

According to the Commerce Code art. 1337, the appeal can be made in the following cases:

- (a) whenever the unsuccessful party adduces a violation of rights or a grievance;
- (b) when the successful party, even though it has succeeded pursuant to the first instance judgment, has not been awarded with the indemnification of damages and losses, the payment of costs or the restitution of products;
- (c) when the successful party wishes to adhere to an appeal previously filed; or
- (d) a third party with legitimate interest, whenever the final resolution affects him.

When the first-instance judgment is final, the appeal must be filed before the court that issued it, within nine days following the date on which such first-instance judgment was notified to the parties.

18. Are contingency or conditional fee arrangements permitted between lawyers and clients?

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Under Mexican law the parties are free to agree with their lawyers as to the amount of their fees. Thus, among other compensation schemes, the lawyers’ fees can be calculated based on a contingency or success fee. Normally, in this scenario the fees are calculated either:

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

19. Is third-party funding permitted? Are funders allowed to share in the proceeds awarded?

Under Mexican law, there is no limitation on third-party funding. However, this practice has not really been adopted in the Mexican forum yet. In any event, if there is a third-party funding the third party will not be deemed as part of the proceeding, unless there is a formal assignment of litigation rights in its favor. Thus, at the end, the sharing in the amounts awarded should be made by the party that was funded in compliance with the agreement it may have executed with the third-party funder.

20. May parties obtain insurance to cover their legal costs?

Yes, there is no restriction to obtain it. However, it is not usual to have it in Mexico.

21. May litigants bring class actions? If so, what rules apply to class actions?

Article 17 of the Mexican Constitution recognises “collective actions” in Mexico, providing that federal judges would hear these proceedings and mechanisms in an exclusive manner. This type of action is registered in the Federal Code of Civil Proceedings; Federal Civil Code; Federal Law of Economic Competence; Federal Law of Consumer’s Protection; Organic Law of the Federal Judicial Power; General Law of

Ecological Equilibrium and Environmental Protection; and Law of Protection to the User of Financial Services.

Mexican Law limits collective actions to matters related to the consumption of goods or services, public or private, and those related with the environment, specifically those related to the following matters:

- (a) consumer protection;
- (b) environmental protection matters;
- (c) protection and defence of the users of financial services; and
- (d) antitrust matters.

A collective claim can be filed by public entities such as the Federal Protection Consumer Office, Federal Protection Environmental Office, National Commission for the Protection and Defense of the Users of Financial Services and the Antitrust Federal Commission; the legal representative of the collectivity affected, provided it is formed by at least 30 members; and non-profit civil associations legally formed at least one year prior to the filing of the collective action.

The resolution will benefit all the members of the affected group and each member must liquidate and prove the damage caused.

Finally, the Amparo Law establishes the possibility of bringing in one single procedure a constitutional action against some decisions of the authorities, which may affect several persons.

22. What are the procedures for the recognition and enforcement of foreign judgments?

In accordance with international treaties (enforcement of domestic judgments abroad) and the Federal Code of Civil Procedures, article 571, Mexican courts are willing to recognise and execute a foreign judgment, provided that:

- (a) the formalities and conditions regarding rogatory letters have been met;

- (b) the resolution did not result from the exercise of an action in rem;
- (c) the foreign court had correctly assumed jurisdiction;
- (d) the claim was properly served on the defendant;
- (e) the foreign judgement is non-appealable and res judicata in the country in which it was rendered;
- (f) the action that gave rise to the resolution is not a pending matter between the same parties in Mexican courts; unless a letter rogatory had been processed and delivered to the Foreign Ministry or to the authorities of the state where the claim should be served; and
- (g) the judgment does not conflict with a mandatory law or Mexican public policy.

23. What are the main forms of alternative dispute resolution?

The main alternative dispute resolution method in Mexico is arbitration. Arbitration has a good reputation in Mexico and is seen by large corporations as a good and effective method of resolving disputes.

In the past, mediation was considered a waste of time. However, recent legislative reforms, as well as state policies promoting ADR, have begun to gain traction. Consequently, it is more common to find companies willing to mediate to solve their disputes. Recent legal reforms have strengthened the possibility of enforcing any agreement reached in conciliation or mediation proceedings.

24. Which are the main alternative dispute resolution organisations in your jurisdiction?

At the international level and dealing with large arbitration disputes, the ICC and the ICDR are the most important organisations in Mexico. They both have active presence in Mexico.

Local arbitral institutions have gained some traction and reputation for medium-sized local disputes. The facilities are excellent and the service they provide is high quality, in general. The main arbitral bodies based within Mexico are the following: the Arbitration and Mediation Commission of the Mexico City Chamber of Commerce (CANACO), a non-profit organisation based at Paseo de la Reforma no. 42, Delegación Cuauhtémoc, CP 06040, Mexico City, Mexico City (see www.arbitrajecanaco.com.mx); and the Mexican Arbitration Center (CAM), created in 1997, with its offices in Tecnológico de Monterrey, Campus Santa Fe, Av. Carlos Lazo No. 100, Edificio Aulas 1, Nivel 5, Col. Santa Fe, México, Mexico City, CP 01389.

25. Are litigants required to attempt alternative dispute resolution in the course of litigation?

Litigants are not obliged to attempt ADR's during litigation. However, the Courts encourage them to mediate or conciliate the dispute during each phase of the proceeding.

26. Are there any proposals for reform to the laws and regulations governing dispute resolution currently being considered?

Yes, currently there is a trend adopted by the Mexican government to try to modernize and expedite the lawsuits to make them more alike to the U.S. system. In this context, ADR are being promoted and several legal reforms have been adopted to implement them in a more widespread manner. In addition, there is also a trend to have more oral proceedings (since traditionally the lawsuits in the Mexican legal systems are carried out through written briefs) and facilitate quick decisions.

27. Are there any features regarding dispute resolution in your jurisdiction or in Asia that you wish to highlight?

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In Mexico a conscious effort has been made to give more certainty to foreign investors modernizing the legal framework, entering Bilateral Investment Treaties and promoting ADR's and transparency and quickness in the resolution of Court proceedings. Moreover, Mexico has explicitly characterized arbitration as a manifestation of the fundamental right of freedom. Thus, I would encourage any Asian company to have confidence in the Mexican legal system and in the potential enforcing of arbitral awards in our Country.

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