



## *New Amparo Law* *2013*

Dear clients,

Von Wobeser y Sierra, S.C. would like to inform you of the following:

Yesterday, March 20, 2013, the plenary of the Senate of the Republic approved the new Amparo Law, which regulates articles 103 and 107 of the Federal Constitution. The respective decree was sent yesterday to the Federal Executive for its promulgation and publication in the Official Federal Gazette; thus, in the coming weeks the new Amparo Law will enter into force.

The new Amparo Law consists of a complete reform of the amparo proceeding, derived from the constitutional reform that was published in the Official Federal Gazette on June 6, 2011, and which entered into force on October 4th of that year. It is important to recall that from such 2011 constitutional reform 5 fundamental topics were deduced: (i) the expansion of the validity of the amparo against violations of the human rights protected in the international treaties to which Mexico is a party; (ii) the recognition of legitimate individual and collective interests; (iii) the incorporation of the amparo joinder; (iv) the general declaration of unconstitutionality; and (v) the new parameters for the granting of a suspension. All those topics have been materialized in the new Amparo Law, changing the paradigms of constitutional protection and, with that, the relationship between the State and the individual, as explained below.<sup>1</sup>

1. Regarding the expansion of the validity of the amparo against violations of the human rights protected in the international treaties to which Mexico is a party, in the new Amparo Law the sphere of protection of the amparo proceeding is expanded, since the federal courts will resolve all disputes that arise from acts or omissions of the authority that violate the recognized human rights and individual rights granted by the Federal Constitution and by the International Treaties to which the Mexican State is a party.

2. Regarding the recognition of the legitimate individual and collective interests, the new law incorporates the validity of the amparo proceeding for violations of a legitimate interest, the person holding a right or legitimate interest (individual or collective) being considered the injured party in such proceeding, provided such person alleges that the challenged act violates his/her human rights. The amparo will be valid in relation to social, environmental and agrarian rights. However, in the case of acts or rulings issued by the judicial, administrative or labor courts, the complainant must evidence that he/she holds a subjective right and that such right has been affected personally and directly.

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<sup>1</sup>The new Amparo Law has a new structure, divided into 5 titles. The First Title "General Rules"; the Second Title "Amparo Procedure"; the Third Title "Compliance and Enforcement"; the Fourth Title "Court Precedent and General Declaration of Unconstitutionality"; and the Fifth Title "Disciplinary and Enforcement Measures, Liabilities, Sanctions and Crimes".



3. Regarding the incorporation of the amparo joinder, the new Amparo Law specifies that both the party that has obtained a favorable decision and the party that has a legal interest in the survival of the challenged act, may file its own amparo together with the amparo filed by either of the parties involved in the proceeding from which the challenged act emanates.

4. Regarding the general declaration of unconstitutionality, in the new law general effects are granted to the amparo decisions. Thus, the court precedent in which the unconstitutionality of a general law is determined will have general effects. This is not applicable in tax matters. The procedure for the issuance of court precedent that establishes the unconstitutionality of a general law will consist of, basically, 2 stages: (i) the Supreme Court of Justice of the Nation will notify the authority that issued the questioned law to remedy the problem of unconstitutionality (amending or derogating it); (ii) if within a term of 90 calendar days the issuer does not remedy such problem the Supreme Court of Justice of the Nation will issue the general declaration of unconstitutionality, provided it is approved by at least eight votes.

5. Regarding the new parameters for the granting of a suspension, the new Amparo Law adopts the principles that were set forth previously in court precedent, establishing that the suspension will be granted ex officio or at the request of a party. The suspension will be granted ex officio when, among other cases, there is an act that, if completed, would make it physically impossible to restore to the complainant the enjoyment of the right claimed. The suspension will be granted at the request of a party provided that: (i) the complainant requests it; and (ii) neither the social interest nor the public order is violated. The new Amparo Law increases the list (illustrative, not restrictive) of the cases in which the granting of the suspension would violate the social interest or public order. The following among such cases are mentioned: (i) that the proceedings related to the intervention, revocation, liquidation or bankruptcy of financial entities are impeded or interrupted; and (ii) the use or exploitation by the Mexican State of public resources of the Nation is impeded or obstructed; to cite a few examples. Finally, the law in question establishes that for the granting of the suspension, the corresponding judicial body should do an analysis balancing the semblance of the valid right and the lack of harm to the social interest.

Finally, it is important to mention 2 more topics of the new Amparo Law that will have serious implications:

a. The concept of responsible authority is expanded including the possibility of acts of authority issued by individuals that act in exercise of duties granted by a general law, which constitutes a broadening of the scope of the constitutional protection whose limits in practice will have to be defined by our federal courts.

b. The dismissal for procedural inactivity and expiration of the instance is eliminated.

In the coming days, Von Wobeser y Sierra, S.C. will send its client a more detailed analysis of the above mentioned topics, since the entrance into force of the new Amparo Law is, without doubt, an important historic event in the legal life of our country.

*Von Wobeser & Sierra*

Mexico City, March 21th , 2013.