

Litigation & Dispute Resolution

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Contributing Editor: **Ted Greeno**

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Mexico

Miguel Angel Hernandez-Romo Valencia &
Miguel Angel Hernandez Romo
Foley & Lardner México, S.C.

Efficiency of process

Court procedures in Mexico generally follow the same steps: (a) lawsuit; (b) answer to the lawsuit; (c) evidence period; (d) allegations; and (e) final judgment.

The rules governing the court procedure are different depending on the state where the parties are litigating and the nature of the conflict (civil, criminal, labour).

Mexico is a country that accepts and, to some extent, encourages alternative dispute resolution (ADR) procedures in order to alleviate the overwhelming number of cases that have to be resolved by the courts. Amongst such ADR procedures there is arbitration, mediation, and some other forms of conciliation during the proceedings.

Decisions in Mexico are based on law and not on equity. However, there are exceptions to this rule, and in such exceptions the decision will be based on general legal principles – if and only if there is no applicable law to solve the problem at stake, or if the interpretation of the law would not solve the problem. Also, if there is doubt regarding the interpretation of a contract, and such contract cannot be resolved according to the interpretation rules established in the law, or if such doubts relate to accidental clauses of the agreement, and the agreement is gratuitous, such doubts will be resolved in favour of the least transmission of rights and interests, while if the agreement is onerous, such doubts will be resolved in favour of the major reciprocity of interests. If doubts relate to the main object of the contract, so that the real intent of the parties cannot be established, the agreement will be declared null.

Court procedures in Mexico are efficient, both in time and in essence. Litigation proceedings are not very lengthy, and courts follow the deadlines established by law and render their judgments accordingly.

Integrity of process

The judiciary in Mexico is completely independent of any political or religious beliefs, and its members are impartial when rendering their judgments.

Privilege and disclosure

As a general rule, all documents may be considered privileged, understanding such concept in the sense that parties have no obligation to give such documents to another party, unless they are requested by the authority to do so.

Even though parties have no obligation to open their files to other parties, this general rule has an exception. Such exception exists when one of the parties requests specific documents from the other. The request has to be very clear, i.e. establishing the date, sender, recipient, etc.

Therefore, if parties in litigation do not have certain documents in their possession (documents that are the basis for their claim and/or defence), they can request a certified copy of such documents to the party that has them in its possession. Once the request has been made, the requesting party can prove to the court that it has requested the documents but that they have not been delivered by the other party, and the court can order such party to give the certified copy requested. In case the other party does not want to give such documents, the court can give warning to the other party that if it does not produce the documents requested, the court will consider that the claims made by the requesting party in its lawsuit are true and valid.

In Mexico, full discovery is not permitted.

Evidence

As mentioned, Mexico has an extremely formalistic approach to judicial proceedings. Taking that into consideration, it is important to point out that any kind of evidence is admitted as long as it complies with the following requirements: (i) such evidence must not be offered after the time established by the court; (ii) it must not be contrary to the law or morals; (iii) it cannot be related to facts that have not been contested by the parties; (iv) it must not be related to impossible events; (v) it must not be *prima facie* unbelievable; and (vi) it must be offered according to the formalities required by the law (establishing what is intended to be proven with such evidence and why it is believed that such evidence will prove so, inserting the name and address of the witnesses and experts, and requesting the citation of the counterparty in order to appear before the court in a hearing to answer the questions posed).

Another very important rule with respect to evidence is that in the lawsuit and in the answer to it, the parties have to attach all of the documents they have in their possession related to such lawsuit and answer to it. If the documents are not attached, they will not be accepted by the court, unless such documents are those that are considered “supervening” documents.

In addition to the rule mentioned in the previous paragraph, all of the documents have to be offered during the time allotted by the court for such purpose and the hearings must also take place during the time period established by the court. As a general rule in civil and commercial cases, such time period is 10 days for offering and 30 days for the hearings and obtention of expert evidence.

Costs

In Mexico, costs are typically awarded against the losing party, but not in every case. The law clearly establishes when costs are awarded to the other party. Costs are allocated in different ways depending on the state where litigation takes place. In Mexico City, costs are awarded to the winning party if the counterparty acted in bad faith, falsely or without any basis for its claim. The purpose of costs is to cover the legal costs that the other party has incurred because of the litigation.

However, these legal costs awarded are not based on the real disbursement made by the winning party, but on what the law establishes.

Judges will, if possible, determine the amount of the costs awarded to the winning party; however, if it is not possible to award a specific amount, the parties will have to start an ancillary proceeding in order to quantify the costs.

Costs will only be awarded to the parties if they prove that they were aided by an attorney.

In Mexico City, costs are awarded on the following basis:

- If the amounts claimed are identified, first instance costs will be awarded as follows: (a) if the amount of the litigation is not higher than 3,000 times the minimum daily wage in Mexico City, costs will be 10% of such amount; (b) if the amount of the litigation is between 3,000 and 6,000 times the minimum daily wage in Mexico City, costs will be 8% of such amount; and (c) if the amount of the litigation is higher than 6,000 times the minimum daily wage in Mexico City, costs will be 6% of such amount.
- Second instance costs will be increased by 2% (i.e.: 10% will be increased to 12%; 8% will be increased to 10%; and 6% will be increased to 8%).
- If the amounts claimed are not identified, costs will be awarded according to a chart established in the Internal Law of the Superior Tribunal of Justice of Mexico City.

Litigation funding

The agreement between clients and attorneys for their fees can be agreed very openly, without limitation, including contingency fees, third-party funders, and insurance.

Class actions

Class actions are duly regulated in Mexico in the Federal Code of Civil Procedure.

The main guidelines for class actions are as follows:

- (1) The competent courts to review class action claims are the federal courts.
- (2) Class action claims can only be brought with respect to relations of consumers of goods or services, private or public, and environmental.
- (3) The entities or persons that can bring a class action are very limited.
- (4) There are only three types of class action: “diffuse” class actions; class actions “in the strict sense”; and class actions of an “individual homogeneous nature”. (i) Diffuse class actions are indivisible and are brought to claim diffuse rights, and the holders of such rights are an undetermined collective with the purpose of claiming the repair of the damage caused to a group of persons. (ii) Class actions in the strict sense are indivisible and are brought to claim rights and collective interests, and the holders of such rights are a determined or determinable collective with the purpose of claiming the repair of the damage caused to individuals within such a group. (iii) Actions of an individual homogeneous nature are divisible and are brought to claim rights and individual interests that have a collective incidence, with the purpose of obtaining from a third party forceful compliance with an agreement or its rescission.
- (5) Class actions can be of a declarative, constitutive or condemnatory nature.
- (6) In class actions, interim measures can be requested, and the judges have the authority to issue interim measures.

Interim relief

Interim remedies can be requested and granted by the court if there is a threat that: (a) the person against whom the lawsuit will be filed or has been filed will hide or leave the place where litigation is taking place; (b) the assets will be hidden or deteriorate in such cases when an *in rem* action will be brought; or (c) the assets will be hidden or sold in such cases where a personal action will be brought, and those are the only assets of the debtor.

The only interim remedies available are: (a) confinement; and (b) provisional seizure of assets. In order for the confinement to take place, the party requesting it should post a bond in order to guarantee possible damages and loss of profits that could be caused to the other

party due to such order. The amount of the bond is established by the judge at his discretion. In order for the provisional seizure of assets to take place, the party requesting it should express the value of the claim or of the thing that is claimed, and the judge will determine the amount of the seizure. If the provisional seizure is not claimed based on an executive title, the plaintiff has to post a bond in order to guarantee the possible damages and loss of profits that might be caused. If the defendant deposits the value or object claimed, or posts sufficient bond or proves that it has sufficient assets (real estate) to pay the amounts claimed, the judge will either deny the interim injunction requested, or leave without effect the interim injunction previously granted. If the interim remedy is requested and granted before the litigation takes place, the party that requested it has to file the lawsuit within the following three days if the litigation will take place in the same jurisdiction; if it is in a different jurisdiction, the court will extend such period of time according to the distance to the place in which the litigation will take place (one additional day for each 200 kilometres or fraction exceeding 100 kilometres).

Interim injunctions can be obtained without prior notice to the defendant, but not on the same day they are requested.

Confinement is a mandatory interim injunction that compels a party not to leave the place where the litigation is taking place without leaving a sufficiently instructed representative, and with sufficient funds, to be responsible for the outcome of the case.

In Federal Civil Procedures, the judge can grant all of the appropriate injunctions in order to maintain the *status quo*. These kinds of injunctions are granted without prior notice to the defendant.

During the proceeding or before it, the judge can grant interim injunctions consisting of: (a) seizure of assets in order to guarantee the outcome of the case; and (b) deposit or seizure of things, books, or documents that are the subject matter of the litigation. These interim injunctions can be granted if the party that requests them guarantees the possible damages and loss of profits that the defendant may suffer.

Enforcement of judgments/awards

The Federal Code of Civil Procedure establishes that foreign judgments can be enforced in Mexico as long as they comply with the following rules: (a) formalities related to letters rogatory were complied with; (b) they were not issued in an *in rem* action; (c) the foreign judge had jurisdiction according to international rules consistent with those mentioned in Mexican law; (d) the defendant was notified or served personally; (e) such judgment cannot be overturned or modified by any means in the jurisdiction where it was issued; (f) the action brought in such jurisdiction is not pending, between the same parties, before Mexican courts, and in which Mexican courts had heard first about such case; (g) the fulfilment of the obligation ordered is not contrary to Mexican public policy; and (h) the judgment fulfils the conditions required to be considered authentic (*apostille*).

Mexican courts can deny the execution of foreign judgments, even if they comply with all of the requirements mentioned above, if it can be proven that Mexican judgments are not enforced in the jurisdiction where the judgment was issued.

In order for a foreign judgment to be executed, it has to be requested through letters rogatory, and such letters rogatory have to comply with the following: (a) have an authentic copy of the judgment, award or judicial resolution; (b) have authentic copies proving that summons were served personally and that the judgment cannot be overturned or modified by any means; (c) must be translated into Spanish; and (d) the party that wishes to execute such judgment must mention an address where the homologation will take place.

The competent court to enforce a foreign judgment is the court of the domicile of the defendant, or where the defendant has its assets.

Once the court receives the request for executing the foreign judgment, it will grant the defendant a period of nine days in order to put up a defence or exercise their rights. If they offer evidence, the court will set a date for a hearing. After the hearing, the court will issue its judgment.

Mexican courts are very open to assisting foreign courts. The Federal Code of Civil Procedure has a chapter devoted to assisting foreign courts, which establishes that requests from foreign courts do not have to be legalised if they are transmitted by official authorities, but they do have to be translated into Spanish.

Mexican courts can assist foreign courts in any aspect, since the Federal Code of Civil Procedure does not establish any prohibition on assistance.

Letters rogatory have to be delivered to the required authority either through the parties, judicially or by diplomatic or consular agents, or by the central authority of any of the countries involved in this process.

Once the letters rogatory are received by the court that will assist the foreign court, such court will assist the foreign court according to the applicable laws, but the foreign court can request the local court to avoid local formalities or to use specific formalities that differ from local formalities, if this is not harmful to Mexican public policy.

Mexico is a signatory to several conventions related to the execution and enforcement of judgments and awards, including the New York Convention.

Cross-border litigation

The Commercial Code establishes that letters rogatory received from abroad will be carried out according to Mexican law, but local courts can simplify local formalities or act according to formalities other than Mexican, if this is requested by the court that issues the letters rogatory or by the interested party, as long as such lack of formalities or additional formalities are not contrary to public policy and constitutional rights.

It is easy to obtain orders in Mexico in support of proceedings elsewhere, as long as such orders are not contrary to Mexican public policy.

A very important limitation when obtaining evidence in Mexico relates to documents – Mexican law clearly states that when documents have to be given to a foreign tribunal, the request of such documents cannot be generic, but rather very specific.

International arbitration

The following bodies are used to resolve large commercial disputes in Mexico:

- (a) The International Chamber of Commerce.
- (b) The American Arbitration Association.
- (c) The Arbitration Center of Mexico.

The legislation applicable to arbitration is the Commercial Code.

Mexico has incorporated the UNCITRAL Model Law into the Commercial Code, with a few modifications. For example, the Commercial Code has a full chapter on costs and fees of arbitration tribunals.

The parties are free to agree on the procedural rules that the arbitrators will follow. If they do not agree, the arbitrators will guide the arbitration in a manner they deem appropriate

(this includes determining the admissibility, appropriateness and value of the evidence). However, the parties must be treated equally and be granted the full opportunity to express their rights (Commercial Code), and the arbitration proceedings must reflect this.

Local courts can intervene to assist arbitration proceedings. The competent court is the judge of first instance (local or federal) of the place where the arbitration takes place. If the arbitration takes place outside of Mexico, the competent court for the recognition and execution of the judgment is one of the following:

- (a) a federal judge of first instance;
- (b) a local judge of first instance of the domicile of the party against whom the judgment is rendered; or
- (c) a judge where the assets are located.

If requested by one of the parties, local courts can adopt provisional interim measures, even if an arbitration agreement exists and the arbitration proceedings have begun. If the arbitration tribunal or one of the parties (after obtaining approval from the arbitration tribunal) requests it, local courts can intervene to assist arbitration by taking or obtaining evidence.

Arbitration proceedings and awards cannot be appealed before local courts, but they can be challenged. The only challenge that Mexican law accepts in arbitration is the challenge against the award on the basis of nullity of the award.

After the arbitration tribunal has issued the award, the parties can try to nullify it. The award may be nullified if:

- (a) One of the parties to the arbitration agreement was incapacitated.
- (b) The arbitration agreement is not valid under the law chosen by the parties or under Mexican law.
- (c) One of the parties was not duly notified of the appointment of an arbitrator or of the arbitration proceedings, or if for any other reason it was not able to exercise its rights.
- (d) The award refers to an issue outside the scope of the arbitration agreement or makes decisions outside the terms of the arbitration.
- (e) The composition of the arbitration tribunal or the proceedings was not in line with the agreement of the parties.
- (f) The judge confirms that under Mexican law, the subject matter of the dispute cannot be subject to arbitration or that the award is contrary to public policy.

The party that claims nullity should file a writ before the court claiming such nullity, and a summary proceeding will be initiated. In such proceeding, the parties have the right to present evidence and prove the nullity or not of the award. Furthermore, the defendant may counterclaim recognition and enforcement of the arbitral award. The parties cannot appeal against the decision issued by the trial court; the only existing avenue to try to modify it is through *Amparo* proceedings (a remedy for the protection of constitutional rights in Mexico).

With respect to arbitral awards, the parties cannot waive their rights to request the nullity of the proceeding or the *Amparo* proceedings.

Mediation and ADR

Over the last decade, Mexican courts have been vouching for the use of mediation to solve civil, commercial, family and criminal (damages) disputes, but ADR only applies if the parties agree. Courts cannot compel the parties to use ADR to solve disputes.

Mediation that has been supported by Mexican courts has its own set of rules.



Miguel Angel Hernandez-Romo Valencia

Tel: +52 55 5214 5000 / Email: mhernandezromo@foley.com

Mr Hernandez-Romo Valencia obtained his law degree from Escuela Libre de Derecho in Mexico City in 1992 and studied at the Southwestern Legal Foundation in 1993, before obtaining his LL.M. from the University of Texas at Austin in 1994. He worked as a summer clerk in Washington, D.C. for Hogan & Hartson and in Houston, Texas, for Fulbright & Jaworski as an intern. He attended post-degree studies at Escuela Libre de Derecho for the Obligations (Torts), Commercial Law and International Business Transactions course, is the author of an article related to insurance law, and is Professor of the Introduction to the Mexican Legal System course and of Procedural Law at Universidad Iberoamericana. He has been practising law since 1992, specialising in civil, commercial, insurance and family litigation, international arbitration and bankruptcy proceedings. He joined Foley & Lardner México, S.C. as head of the litigation group in the Mexico City office in September 2017.



Miguel Angel Hernandez Romo

Tel: +52 55 5214 5000 / Email: mromo@foley.com

Mr Hernandez Romo obtained his law degree from Escuela Libre de Derecho in Mexico City in 1960, and his LL.M. from Harvard Law School in 1961. He is a professor of law and has been practising law since 1961, specialising in civil, commercial, arbitration and bankruptcy proceedings. He studied in Rome, Italy, for three years at the Pontifical Gregorian University (1952–1955). He is the former Dean of Escuela Libre de Derecho in Mexico City (1993–1998) and is a member of the American Law Institute, where he was the chair and co-reporter for the Transnational Insolvency Project, Mexico. He is also a member of the American College of Bankruptcy and has written several articles on Mexican civil, commercial and procedural law.

Foley & Lardner México, S.C.

Blvd Manuel A. Camacho No. 36-1802, Lomas de Chapultepec, Ciudad de Mexico C.P. 11000, Mexico

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