

## MEXICO

### 1. The legal system

The Constitution of the United Mexican States establishes a federal democratic republic composed of 31 free and sovereign states plus one Federal District. The hierarchy of sources of law is: the constitution will override all legislation, and codes and laws. International treaties entered by Mexico are in the same hierarchy as Constitution. Codes and laws will override all regulations and regulations will override any customs.

The Commercial Code has wide application in Mexico. It is a federal code because commercial matters fall under federal jurisdiction. Commercial code regulates all commercial activity including commercial contracts, documentary credit, credit institutions, transportation, bankruptcy and arbitration. It also covers procedures for commercial litigation and debt recovery.

### 2. Third party collection:

- **Role of collection agents and lawyers:** In Mexico, it is common to find that the first steps in a collection process are in charge of third parties, usually collection agents and non litigation attorneys.

- **What percentage of work is dealt with initially by non lawyers:** A considerable percentage of the work is done initially by non lawyers such as collection agents. The collection agent calls or visits personally the debtor and tries to collect in a friendly fashion, or at least tries to get a written payment plan or an acknowledgment of debt, promissory note, or some evidence which can be useful to initiate litigation.

### 3. Typical fee structures:

- **Of collection agents:** Collection agents services fees usually are based on a percentage of the total amount of the debt, and ranges from 5 to 20 per cent, generally.

- **Of lawyers:** Lawyers may charge for their services based on an hour fee, a percentage of the total amount of the debt, or by litigation stages.

### 4. Pre- litigation collection procedures:

- **Availability of investigation of financial status of debtor:** Financial information in Mexico is protected under "banking secret" provisions. The secret can be opened only by request of certain governmental entities such as the Federal Attorney's Office (PGR), Treasury Ministry or the Federal Electoral Institute.

- **Availability of verification of corporate identity of debtor:** Corporate identity and corporate information such as articles of incorporation and bylaws as well as any guaranty contract entered by the corporation, are available for any person at the Public Commercial Registry.

- **Restraints on negotiation with the debtor:** There are no statutory restraints on negotiation with debtor.

- **Use of threat of bankruptcy:** It is not prohibited. The requirements for filing a bankruptcy or *concurso mercantil* claim are: (i) general nonfulfillment to obligations; nonfulfillment of obligations with two or more different creditors; (iii) existence of obligations which had expired for 30-days or more or if they represent a 35% of total amount of debt; (iv) bankruptcy assets lower than 80% of total amount of expired obligations.

- **Necessity for demand letter:** In Mexico there are not pretrial proceedings. An out-of-court triggers statutory interest (6%) in case the contract does not provide the rate.

- **Availability of public records:** At the Public Commercial Registry any person can obtain information and data for real estate and certain moveable assets.

#### **5. Accessibility to justice: efficiency and independence**

There are no elected judges in Mexico; they are all appointed by the Federal Judicial Council and confirmed by the Supreme Court. Federal Judges and Magistrates are appointed for six years, and may be confirmed for the same period. Likewise, since 1995, the Federal Judicial Council is the entity in charge of the administration, vigilance, discipline and judicial career of the federal judiciary branch except for the Justices of the Supreme Court and the Electoral Court.

A non-complex commercial ordinary proceeding can take approximately one year to be resolved, without adding any appeal process or *Amparo* proceeding which could last another nine to twelve months. That time could duplicate in a complex commercial dispute. Another fact that should be considered is that many of the State Superior Courts are slow.

#### **6. Jurisdiction of courts: basis outline of the jurisdiction of the various commercial courts by monetary value or some other criteria.**

- Territorial jurisdiction: it is limited to (i) the court located in the residence of any of the parties and (ii) the court of the place where the obligation must be fulfilled or the litigation object is located.

- Subject matter jurisdiction: commonly, Mexican civil courts are competent to hear commercial matters, i.e. there are no commercial courts in Mexico City. But there are some state courts which have created commercial courts. Both Federal and State Courts have jurisdiction over commercial disputes.

- Amount jurisdiction: in proceedings attended by a local or state courts there are trial level courts and minor amount courts (*Juzgados de Paz*), which attend matters under approx USD\$4,300. Otherwise, federal and state courts attend commercial matters of any amount.

- Court Jurisdiction: Courts of ordinary jurisdiction include federal courts and state courts. At the federal level, the Mexican Supreme Court (*Suprema Corte de Justicia de la Nacion*) is the highest court. Next are the Circuit Courts and the Unitary Courts (*Tribunales Colegiados de Circuito y Tribunales Unitarios de Circuito*), which take up cases on appeal and *amparo* cases. Last are the District Courts (*Juzgados de Distrito*), which have jurisdiction also over *amparo* cases, and which function as courts of ordinary jurisdiction on matters of federal law.

On other hand, state law establishes the structure and function of the courts in each state in Mexico. In general, state courts are organized in the following manner: the highest court is known as the Superior Court of Justice (*Tribunal Superior de Justicia*); this court is followed by the Courts of First Instance (*Tribunales de Primera Instancia*).

#### **7. Establishing jurisdiction:**

- **necessity of physical presence of the debtor**: Debtor physical presence is not necessary, because jurisdiction depends on a territorial basis attending the place expressly appointed by the parties, or the place where the obligation must be complied. Commercial cases can proceed in absentia of the debtor.

- **sufficiency of assets of the debtor within jurisdiction or carrying on business**: it will only be important for seizure purposes, but it does not have influence in jurisdiction (except on whether the case will go to an ordinary trial level court or a minor court (*Juzgados de Paz*)).

- **other criteria for the court to take jurisdiction**: Court may refuse to take jurisdiction only by reason of a lack of material or territorial jurisdiction. There is no *forum conveniens* under Mexican law.

#### **8. Effect of “choice of law” and exclusive jurisdiction of certain courts**

Mexican courts have exclusive over real estate located in Mexico. Both state and federal courts have jurisdiction over commercial disputes. Federal courts have exclusive jurisdiction over certain matters such as those regarding Federation assets, Choice of law agreements are enforced by the courts unless they represent “fraud of law”. Absent specific agreement by the parties, choices of law rules in Mexico represent the traditional continental view, and do not involve interest analysis or similar methods.

#### **9. Effect of arbitration clause on instituting legal proceedings**

If a matter is subject to an arbitration clause, the judge must refer the parties to arbitration as soon as one of them requests it, unless the agreement is void. Mexico is party to the United Nations and Interamerican conventions.

#### **10. Basis requirements for filing suit:**

- **Basic commercial documents required:** plaintiff should exhibit all documents such as contracts, promissory notes, checks, invoices, and any other which prove the actions claimed and the facts of litigation. In general no documents are allowed after filing
- **Need for Power of Attorney/letter of authorization:** Power of attorney is needed for companies and any other collective person. Natural persons can also be represented by third parties through a power of attorney, or can authorize lawyers to act in their behalf in trial.
- **Need for official translations:** Always needed.

#### **11. Authentication of documents:**

- **Method for authentication:** Any document transmitted over an official conduct do not need authentication; also, public documents from a foreign country with a treaty or agreement with Mexico which exempts for authentication, only the apostille is needed. Otherwise documents should be legalized through a notary or consulate agent.

#### **12. From law suit to judgment:**

##### **(A) general overview of filing of commercial claim**

There are two main commercial proceedings: executive or expedited and ordinary. Both procedures have five stages: (i) filing of complaint, (ii) probatory stage, (iii) conclusion stage, (iv) appeal stage, and (v) enforcement stage. In general there are no pre-trial process in Mexico.

In ordinary proceedings the creditor does not rely on a credit or title document (executive document) and therefore, does not allow for immediate measures to secure proper execution of a final judgment, unless the judge grants a pre-judgment according to very specific rules and against bond. It is a relatively longer proceeding.

Executive proceedings are used to enforce executory documents (promissory note, check, acknowledgment of debt). Also it allows an immediate prejudgment attachment order without placing bond. And finally it is rather a summary proceeding in which evidence admission and proposals are limited to the initial stages through complaint and answer's briefs.

The process of litigation is generally initiated by filing a formal complaint, and by proper service of process upon defendant, allowing him from 5 days in executive proceedings or 9 days in ordinary proceedings to answer. After the answer is filed, the plaintiff is given a 3-day period to reply to any argument made by the defendant, and 5 or 9 days to reply to any counterclaim that the defendant might sustain in an Ordinary proceeding. It is during this stage that an attachment order will be executed in Executive proceeding, mostly during the service of process phase and without placing bond. The service of process must be executed through an official court clerk, and most fully comply with procedure rules.

##### **(B) The right to make special demands:**

- **Claim for interest, statutory and contractual:** plaintiff may request both of them.
- **Claim for administrative charges:** This is not applicable in Mexico
- **Claim for recovery of attorney or collection charges:** plaintiff may request payment of lawyers fees, which are capped.
- **Right to claim court costs and any other expenses, e.g. witness's travel costs:** There are no court costs in Mexico; all other costs can be claimed by the winner. Usually, the loser party is condemned to costs payment.
- **Right to claim exemplary or punitive damages:** This is not applicable in Mexico

**(C) Delay for debtor appearance/default to contest:** The period granted for defendant to answer suit is unextendable. If defendant fails to contest or contest after this period; the trial will continue in absence.

##### **(D) Defenses available to the defendant (debtor):**

- **Overview of contested claims procedure and delays:** Not applicable in Mexico.
- **Deposition/examination of parties before and alter defense:** This is not applicable in Mexico; save insignificant exceptions there are no pre-trial procedures, and there is no discovery either.

- **Security for costs examination of deponent to affidavit:** This is not applicable in Mexico
- **Need to offer travel expenses to deponent:** This is not applicable in Mexico
- **Need for production of exhibits and expert reports:** This is not applicable in Mexico
- **Counter claims:** Counter claim may be filed by defendant in his answer writ (only for ordinary proceedings). A 9-day period to respond is granted to plaintiff. Counter claim will be attended at the same trial.
- **Forum non conveniens:** This is not applicable in Mexico
- **Availability of Comission Rogatoire (examination of debtors in foreign jurisdiction):** Debtor may be served in a foreign jurisdiction and examination shall be done by a Mexican consular agent. The serve should be done through letter rogatory.
- **Limitation periods:** Defendant must respond claim in a 9-day period on ordinary proceedings, and 5-day period in executive proceedings. This is an unextendable term but for the supervening defenses.

Defenses available in Mexican commercial proceedings: (i) Jurisdictional plea; (ii) Res Judicata; (iii) *Division* (by a guarantor against a creditor when there is more than one guarantor and it so not join the tria); (iv) *Excusion* (guarantor defense that creditor has failed to exhaust his remedies against debtor); (v) *Litispendencia* (based on the fact that claims are already being litigated on another in suit); (vi) *Conexidad* (same parties different actions, or same actions but different parties); (vii) Lack of standing to sue or failure to name the proper party defendant or the plaintiff is not legally represented; (viii) Failure of obligation or condition term; (ix) Payment.

**(E) Availability of extra-ordinary remedies:**

- **seizure/attachment before judgment**
- **injunctions restraining disposition of goods or on assets generally**
- **security/bond to be put up in order to obtain these remedies**

The Mexican Commercial Code provides only two precautionary measures: attachment of goods order (*embargo or secuestro*) and security of defendant (ensure that defendant does not leave jurisdiction without appointing representative).

Although attachment is available to all creditors, there are certain requirements that must be complied with:

- a) the petition for an attachment order as a precautionary measure has to be well supported by documents or witnesses showing that (i) petitioner has a *prima facie* underlying claim on the merits; and (ii) there's a potential risk that debtor will hide or transfer ownership rights on his real or personal property.
- b) once the attachment order is granted, the creditor must post a bond that will indemnify the debtor for damages if there's any wrongful attachment, or if creditor fails to obtain judgment in the suit. The attachment will be then executed only after the bond is posted. (The amount required for the bond is left to the court's decision)
- c) the attachment will be ineffective if there's no suit filed within three days of the execution. Such term can be extended if the suit has to be filed or followed in any foreign jurisdiction.

**(F) Trial:**

- **Need for witnesses:** Witnesses must be named in initial filing. There is an examination hearing before the judge. Both parties may formulate questions.
- **Use of affidavits in lieu of witnesses:** This is not applicable in Mexico
- **Use of video conferencing:** It is permitted but is not conclusive evidence.
- **Extent of cross-examination:** Scope limited to questions in direct examination.
- **Official languages:** Spanish. Translators are needed for assistance of witnesses and parties who do not speak Spanish.

In the probatory stage any evidence that might support a cause of action (documents, witnesses, experts, etc.), must be first proposed to the court and asked for its admission; once allowed it should be rendered within 15 days. During Ordinary Procedures, parties must request for a 10 day period to file a petition proposing evidence, after which they will have 30 days to render all evidence in full.

After all evidence has been rendered and the probatory stage has ended, parties are given a 3-day period to make allegations, through formal briefs. Following, the Judge will have 15 days to decide its case on Ordinary Procedures, and 8 days in Executive Procedures. However this time limit is almost never complied with.

**(G) The judgment:**

- **General conclusions, delays and special conclusions:** Judgments have three parts: (is) brief summary of the case; (ii) reasoning (jurisdiction, merits) and (iii) Rulings.
- **Awarding of lawyers fees and costs to the winner and/or loser:** Executive proceedings winner is always awarded costs and fees. Other cases: winner fees and costs, or if counterparty litigated in bad faith.
- **Enforcement notwithstanding appeal:** A pending appeal prevents enforcement.

**13. Enforcement of judgment:**

The enforcement of judgment will only be possible when the resolution is final (no appeal or *amparo* pending) and has the force of *res judicata*. During this phase there is generally a 5-day period granted to the defendant to voluntarily comply with the judgment. After such period has expired, an execution process will begin, starting with the seizure of defendant's property (if this did not happen before) and proper sale by judicial auction.

- **Examination of judgment debtor:** This is not applicable in Mexico
- **Types of seizure and sale of moveable and immoveable assets:** there must be done by an official of the court.  
Likewise, under Mexican law, if no buyer shows up for the auction, the creditor is entitled to keep the property at the asking price.
- **Exemptions from seizure:** family property, debtor's assets of daily use (not luxury); governmental employee's wages, farmer machinery, machinery and stuff needed for debtor's profession, rights of use, habitation and usufruct; debtor's essential business assets.
- **Garnishment in hands of third party:** It is possible but is difficult because third party can file an *Amparo* against garnishment, although it will have to prove the existence of a right over the assets.
- **Attachment of debtor in employment wages:** Not possible in Mexico
- **Use of bankruptcy/liquidation threat:** Not prohibited. The requirements for filing a bankruptcy or *concurso mercantil* claim are: (i) general nonfulfillment to obligations; nonfulfillment of obligations with two or more different creditors; (iii) existence of obligations which had expired for 30-days or more or if they represent a 35% of total amount of debt; (iv) bankruptcy assets lower than 80% of total amount of expired obligations.

**14. Right of appeal:**

- **with permission from the court**
- **without permission from the court**

In Mexico the right of appeal is not subject to a permission of the court. There is a 9-day period to file a petition for an appeal process by which the proceedings or the judgment itself can be reviewed by an Appeals Court, generally the State Superior Court, when in state court, or a Federal Appeals Court (*Tribunal Unitario de Circuito*) when on a Federal Court.

**15. Currency:**

- **Suing in foreign currency:** It is possible, but debtor has the right to pay in Mexican pesos at the official rate on the day of payment.
- **Currency control and withholding taxes:** Court does not withhold taxes.

**16. Recognition of foreign judgments:**

- **Acceptance of validity of foreign jurisdiction**
- **Power of the court to review merits of foreign judgment**
- **Effect of pending appeal or other proceedings**
- **Prescriptive period for enforcement of foreign judgment**

According to article 1347-A of the Commercial Code recognition and enforcement of a foreign judgment will take place only when the following conditions are met:

- I. Requested via Letter Rogatory.
- II. Judgment is not the result of an *In Rem* action, only personal claims.
- III. The court rendering the judgment had proper jurisdiction to try the matter and to pass judgment on it, based on standards set forth in international conventions.
- IV. Defendant was served personally.
- V. The judgment must be final and have the force of *res judicata*.
- VI. There must be no case before a Mexican court with the same legal actions.

- VII. The judgment must not be contrary to Mexican public order.
- VIII. The judgment must be filed in original or certified copy.
- IX. The court may refuse recognition on lack of comity grounds.

These rules mirror the rules set forth in international conventions to which Mexico is party. The Inter-American Convention on Extraterritorial Validity of Judgments and Arbitral Awards obviate the need for letter rogatory. To date, the following countries have ratified this Convention: Argentina, Bolivia, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

**17. Recognition of foreign arbitration awards:** Any foreign arbitration award will be recognized. It may be enforced and executed by a written request to court. Original arbitration award must be exhibited with an official translation.

**18. Statute of limitations**

- Ten years for ordinary causes of action.
- Three years for promissory notes, bills of exchange and similar executory documents.
- Two years for torts.

**19. Which Hague conventions and International Treaties relating to commercial matters is your country a signatory?**

- United Nations Convention on International Promissory Notes and International Bills of Exchange.
- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- United Nations Convention on Contracts for International Sale of Goods
- United Nations Convention on Representation on International Sale of Goods;
- United Nations Convention on Prescription regarding the International Sales of Goods;
- The Hague Convention regarding the Obligation of Evidence from Abroad in Civil or Commercial Matters;
- Convention suppressing the Legalization Requirement of Foreign Public Documents;
- Inter-American Convention on Letters Rogatory
- Inter-American convention on the Legal Regime of Powers to be Utilized Abroad
- Inter-American convention on domicile of natural persons in private international law
- Inter-American convention on general rules of private international law
- Inter-American convention on proof of and information on foreign law
- Inter-American Convention on Extraterritorial Validity of Judgments and Arbitral Awards
- Inter-American Convention on the Personality and Capacity of Juridical Persons in Private International Law
- Inter-American Convention on International Commercial Arbitration
- Inter-American Convention on the Law applicable to International Contracts.
- Inter-American Convention on Competence in the International Sphere for the Extraterritorial Validity of Foreign Judgments
- North American Free Trade Agreement

**20. Court direct mediation:**

**(A) Is mediation and arbitration available prior to litigation? If so, what is the process?** It is possible. Process is conventional.

**(B) If court proceedings have been commenced, can the court direct the parties to mediation? If so, what is the procedure?** Only required in civil actions.

**21. Special features: unique circumstances particular to your jurisdiction**

The *Amparo* is a constitutional injunction procedure that can supersede any other type of proceeding or resolution. An *Amparo* can be filed whenever a fundamental human right provided under our Constitution is allegedly infringed by any government agency, including courts in general. *Amparo* allows defendant to greatly delay enforcement.