Mexico

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The Mexican legal system is based in the civil law tradition, which finds its roots in Roman law. As a Roman influenced system, the Mexican legal system is a codified organizational institution that bases itself in written law and is essentially formalistic. The Mexican legal system finds its main sources of law in law, custom, jurisprudence, doctrine, and general principles of law. It is a system in which the law sets limits on the role of judges as they interpret and apply the law. In Mexico, as a civil law jurisdiction, codes play a primary role in defining the legal rights and obligations of parties, whether individuals or corporations. Mexico has various codes that regulate civil, criminal, commerce, tax, civil procedure, and criminal procedure, among other areas of law.

In addition to the federal codes, each Mexican state has its own codes. The Federal Civil Code governs across Mexico in federal matters covering family law, real estate, movable property, trusts and estates, contracts, and civil obligations, including rules for negligence, strict liability and damages.

Mexican law provides two types of damages for breaches of obligations of a civil nature: material damages and moral damages. Damages mainly consist of an monetary awards based on wage rates and the extent of injury caused.

A. Material Damages

Federal Civil Code Section 1915—liability arising out of illegal acts—provides the injured party with the right to claim damages, which shall, at the election of the injured party, be either the restoration of the injured party to their previous condition, if possible, or the payment of a liquidated amount for damages and losses. Section 2108 of the Federal Civil Code defines "damages" as the loss or decrease of assets suffered as a result of the failure to comply with an obligation, and Section 2109 of the Federal Civil Code defines "losses" as the deprivation of lawful gains that would have resulted had there been compliance with an obligation. Losses are related to incidental and consequential damages, as such terms are understood in common law jurisdictions.

Redressable damages and losses must be a direct and immediate consequence of the failure to comply with an obligation, whether such damages and losses have already occurred or will necessarily occur. The Federal Civil Code does not differentiate consequential or indirect damages; there are also no punitive damages under Mexican law. A Mexican court will evaluate and determine the real amount that can be claimed as damages and losses by applying the principles contained in the legal provisions described above.

In Mexico, contributory negligence bars a plaintiff's recovery. Section 1910 of the Federal Civil Code provides that whoever, by acting illicitly, causes damages to another shall be obligated to compensate, unless there is a finding that plaintiff's injury was the result of the plaintiff's own inexcusable negligence.

B. Moral Damages and Punitive Damages

Moral damages in Mexico compensate non-pecuniary harm, such as injury to feelings, affections, beliefs, honor, decorum, reputation, privacy, and physical appearance, which are distinct from material losses. Mexican courts determine the amount of damages taking into account violated rights, the defendant's degree of responsibility, the economic situations of both parties, and the specific circumstances of the matter. Loss of consortium and pain and suffering fall within scope of Section 1916 of the Federal Civil Code.

Mexican civil law does not explicitly recognize punitive damages as a standalone category, but courts incorporate the deterrent function of punitive damages within moral damages awards. Punitive elements of moral damages are limited to certain extra-contractual claims. Mexican law provides for both consequential and incidental damages relating to moral damages in breach of contract matters.

C. Liquidated Damages

In Mexico, liquidated damages clauses allow parties to agree in advance on compensation for breaches, provided they are reasonable estimates of anticipated harm. Sections 1840 to 1850 of the Federal Civil Code regulate liquidated damages, where the parties may agree a penalty in the event a party fails to comply with the agreement. A liquidated damages provision is presumed valid and will replace any claims for damages and losses. On claiming such penalty, the person entitled to it is not required to prove that he suffered damages, nor may the obligor raise as a defense that the claimant was not damaged by the breach of an agreement. However, the liquidated damages award cannot exceed in value and amount the principal obligation under the agreement.

D. Statute of Limitations

Under Federal Civil Code Sections 1161(V) and 1934 the statute of limitations for most causes of action do not expire until two years from the date the damage occurred.

E. Attorney's Fees

Attorney's fees in Mexico are primarily regulated by the Federal Civil Code, the Federal Code of Civil Procedure, and the codes in each of the states in Mexico, including Mexico City. These codes generally do not impose strict caps on fee agreements between lawyers and clients, allowing flexibility such as hourly rates, flat fees, or contingency arrangements. Attorney's fees are regulated in litigation when courts award them as costs to the prevailing party, typically calculated as a percentage of the claimed amount. In practice, judicial enforcement governs the collection of court-awarded attorney's fees. Awards are mandatory in cases of frivolous claims, bad faith, or unsuccessful appeals.

F. Unique Remedies

Mexican law provides unique remedies like *Amparo* proceedings and injunctions. The *Amparo* proceeding is Mexico's primary constitutional remedy, protecting individuals against violations of constitutional rights (violations to due process or property rights) by government authorities or the impact of unconstitutional laws.

Prejudgment attachment and seizure of property is a remedy available under Mexican law as a precautionary measure. Under the Federal Code of Civil Procedure, plaintiffs may request such precautionary measures before or during a judicial proceeding to preserve assets and guarantee the outcome of such proceeding when a resolution is issued. Commercial Code Sections 1397 to 1402 also permit similar precautionary measures against negotiable instruments or debts, allowing seizure during service of process. Bonds may apply as a substitute for physical seizure.