

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

MEXICO

Responses submitted by:

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Location: Mexico City, Mexico

1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Civil code jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

Adversarial.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Adjudicators are judges appointed by the judicial branch of each state or the federation. They are required to (i) hold a law degree; (ii) have at least 5 years of legal practice experience; (iii) have a good reputation; and (iii) not have been convicted for any property crime.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Yes. In Mexico there are civil, commercial, family, tax, administrative, labor, criminal, electoral and military courts.

5. Is arbitration an option and when? If so, what rules are typically used?

Yes. Parties are allowed to arbitrate any civil or commercial dispute. Arbitration is also used in physician-patient controversies, and consumers' rights related claims. ICC rules are widely used, as well as the rules of local private institutions, such as the Arbitration Center of Mexico (*Centro de Arbitraje de México*), or the Arbitration and Mediation Commission of the Mexico City Chamber of Commerce. By rule, absent an agreement on the procedural rules to be used, all provisions set forth in the Code of Commerce (based on the UNCITRAL Model Law on International Commercial Arbitration) are to be used.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes.

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7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

No.

8. What is the process for pre-hearing fact discovery (if any)?

Discovery is not available in Mexico. However there is a limited and formalistic option available to “prepare” a future claim called *Medios Preparatorios* (see question 10).

9. What is the process for pre-hearing expert disclosure (if any)?

(a) *Are expert reports or written summaries required to be exchanged?*

Yes.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

Yes.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

Yes.

10. Are there other notable discovery rules?

No. However the procedural laws establish a pre-trial procedure (*medios preparatorios*) which allows the parties to request from their counterparties specific information or documents, or testimony from a witness if necessary to prepare their claim.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

No.

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12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

No.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

All evidence is either admitted or rejected prior to the hearing. Parties produce their evidence in two ways: documents have to be filed with the complaint or answer, and witnesses have to be named in these filings as well; all other evidence is submitted after, once the court formally “opens” the trial’s evidentiary period. After the parties offer their evidence in writing, the court rules on their admissibility. After that, the hearing is held where the court will hear all admitted evidence.

14. What is the standard for admissibility of expert evidence?

It is mandatory to prove the need for said expert evidence, as well as the expertise in the subject-matter of the evidence.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

Yes. When the experts appointed by the parties file opinions that are substantially contradictory, to the point that the court cannot reach a conclusion. The Court can appoint an expert in the same subject.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Civil and criminal statutes forbid attorneys to disclose all kinds of information (data and documents) obtained from their clients. Disclosure of confidential information without the consent of their owner by a person who had access to such information is considered as both a crime and a tort.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

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Privilege is protected in Mexico as mentioned in the previous answer. Furthermore, regarding privacy, Federal Law on Transparency and Access to Public Government Information provides what kind of public information is deemed to be reserved or confidential. Also, Industrial Property Law regulates trade secrecy; Financial Institutions Law regulates banking and fiduciary secrecy; and Tax Federal Code regulates tax secrecy.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

Civil and criminal courts, local and federal, determine privilege disputes.

19. Briefly describe the trial process?

(a) Are there opening submissions, in what form and of what length?

Yes, the process initiates with a written complaint and then the defendant has the opportunity to file a written answer to the complaint. There is not limit in the length.

(b) What is the order of presentation of witnesses?

There is no order established in the law; however, typically plaintiffs' witnesses will be presented first, followed by the defendants' witnesses.

(c) Who conducts examination and in what order?

The judge must conduct the hearing and the examination of the witnesses. The offering party typically examines their witnesses first; afterwards, their counterparty will have the opportunity to examine them.

(d) What is the process for closing submissions?

After the closing of the trial hearing the Court grants 3 business days to the parties to file their final written arguments.

20. Please identify any other notable trial procedures.

In most of the civil and commercial procedures the plaintiff has the opportunity to respond to the answer to the complaint, and to offer more documentary evidence.

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21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

Generally the plaintiff has the burden of proof. In general the party who asserts a fact always has to prove it, unless it is a negative fact. In Mexico it is necessary to prove the illegal conduct, the damages suffered, and the causation.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Compensatory damages, interests accrued until the judgment is fully paid, as well as attorney's fees and trial expenses.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive damages are not applied in Mexico.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

The general statute of limitation established in the law for bringing claims is 10 years, however in specific cases the statute of limitations is 1 or 5 years.

For responding to claims the ordinary timeframe is 15 business days; however, for summary trials there are shorter timeframes.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

The law establishes expressly the rules to establish jurisdiction, however, it is possible that the parties agree about it. The defendant is allowed to challenge the jurisdiction elected by the plaintiff.

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26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes, the defendant is allowed to request to the court, when producing his answer, to bring potentially responsible parties into the proceeding. Actually, the court is even obliged to do so when potential additional parties are identified.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

Firstly it is necessary to clarify that there are not fees for having access to the Mexican Judicial System. Legal costs are recoverable, but to a certain limit. Each Mexican state is allowed to fix the amount of the recoverable legal cost; it may be down to 10% of the amounts claimed.

28. Are contingency fees allowed?

Yes.

29. Is third party funding of claims permitted? Under what circumstances?

Yes. It is permitted as long as there is no objection by the represented party.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Yes. They may be brought when the rights of a collectivity or class are harmed (e.g., suitable environment, public transportation users' rights), or when the individual rights of many persons are harmed under common circumstances, in which case each individual could commence a separate action, but choose to group and commence a class action (e.g., under adhesion or "boilerplate" contracts).

They can only be brought in the following areas: consumption or usage of goods or services (including financial), environmental protection, antitrust, and civil torts.

Additionally, extraordinary constitutional remedies (*amparo*) may be brought by a collectivity. These proceedings are more relevant under administrative (non-jurisdictional) matters.

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31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Yes. Civil Associations that meet all the legal requirements and appear under a specific registry may commence a class claim.

Additionally, the following federal public bodies may also commence class actions under their scope of influence: the Attorney General, the Office for Consumers' Rights, the Office for Environmental Protection, The Office for Financial Services Users' Rights, and the Competition (Antitrust) Commission.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

To get to trial final hearing could take between 4 to 6 months. Factors that affect timing are (i) the service of process to the defendant, (ii) the production and taking of evidence, and (iii) the workload of the court.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

Yes. Appeals against interlocutory orders and final judgment are available. The appeals are heard by a court of appeals integrated by 3 appeal judges (*magistrados*). The courts of appeals are pre-established with the only purpose to hear appeals. The selection of the court of appeal is by an electronic random system.

The most relevant qualifications required for being an appeal judge are (i) to have at least 10 years of legal practice experience; (ii) to have a good reputation; and (iii) to have been out of office for at least a year if served as Governor, State Attorney General, member of the local or federal congress.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

The parties have the right to offer any type of proofs regardless of its complexity. However, the party who offers such proof has the burden to present to the court the necessary tools to reproduce it during the trial hearing.

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36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Yes, the lawyer at trial can be the same as the one responsible for pre-trial procedures. In Mexico there is no distinction between a solicitor and a barrister.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

- a) There are no contributory negligence statutes in Mexico.
- b) The law does not establish a fault assessment, however the courts could assess fault. On the other hand, the law does establish joint and several or proportionate liability among tortfeasors.
- c) Yes it could be determined by the court.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

It cannot be served by informal means and not necessarily the Hague Convention has to be followed. The complaint can be served by means of a rogatory letter processed by a court located in the country where the defendant has their domicile.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

There have been some amendments to the procedural laws in order to create civil and commercial oral trials which aim to reduce the length of litigation of low amount disputes in Mexico.

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41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

(i) The procedural defenses (in civil trials) which allow defendants to halt the procedure should be eliminated. (ii) Pre-trial request of document evidence or information to the counterparty should be broadened.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

In the beginning of this year with the Financial Reform, the Commercial Code was amended in order to improve the foreclosure of securities and to reduce the length of trials. However there are some issues that should be subject of further amendments.