Mexico

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Introduction

Civil Law System

Mexico's civil law system derives primarily from Roman law, as later refined in the French or Napoleonic Code of 1804. Mexican commercial law drew heavily from Italian law. Since Mexico was a colony of Spain for nearly 300 years, Spanish colonial law — the Spanish and "Indian" law during Spain's colonization of the areas that became Mexico and other present-day Latin American countries — was another significant influence on Mexico's legal system.[1]

As opposed to Common Law, Mexico's Civil Law system relies heavily on written law (codification). There is a legal principle embodied in the Mexican Constitution stating that authorities (including judges) can only do what they are expressly authorized to do by law. Judges must apply the pertinent provisions of the applicable code, statute, or regulations to render a decision. Thus, the principle of *stare decisis* — the fundamental pillar of the Common Law tradition — is not applied in Mexico.

However, some forms of judge-made law that bind lower courts do exist (*jurisprudencia*). These judicial decisions are quickly distributed and known based on the effective and pervasive use of electronic means of communication. There are two main types of legal precedents at the federal level: *tésis aislada* and *jurisprudencia*. The basic difference is that a *tesis aislada* ruling is persuasive rather than binding authority, whereas a *jurisprudencia* ruling is binding. These precedents are published in the *Weekly Federal Judiciary Official Gazette* (*Gaceta del Semanario Judicial de la Federación*). Additionally, pursuant to General Accord Number 19/2013, issued by the Supreme Court of Justice, the *Weekly Federal Judiciary Official Gazette* (*Semanario Judicial de la Federación*) is permanently accessible through electronic publication.

To qualify as *jurisprudencia*, the case must arise from an *Amparo* proceeding, which is a constitutional and ideally summary proceeding that serves to safeguard a private party's fundamental rights (embedded in the Federal Constitution or in

1 The authors thank Jacobo Enrique Rueda Fernández and Eduardo Lobatón Guzmán of Hogan Lovells (Mexico) for their collaboration in the updating of this chapter.

International Conventions to which Mexico is signatory). The relevant legal issue must be decided with the same result in five consecutive cases by a majority vote of the justices or federal magistrates. Only the Supreme Court (deciding in plenary session or in Chambers) and collegiate courts (and the plenary sessions of these courts, *Plenos de Circuito*) are authorized to create *jurisprudencia*. Such rulings only bind lower courts and administrative courts, not executive administrative agencies, although agencies frequently quote *tesis* and *jurisprudencias* in their resolutions.

Jurisprudencia also is produced when the Supreme Court of Justice resolves a conflict between contradicting or inconsistent *tesis* decisions rendered by any of its Chambers (*Salas*), whereby the highest tribunal decides the conflict by an *en banc* decision. Formerly, the Supreme Court had the authority to resolve all conflicts between contradictory decisions rendered by collegiate circuit courts (which could be resolved by its relevant Chambers), in order to ensure uniformity in the Supreme Court's constitutional interpretation.

However, an amendment to the Federal Constitution, published on 6 June 2011, mandated the creation of the Circuit Plenary Courts (*Plenos de Circuito*), which are specialized bodies whose role is to resolve contradictory decisions that arise from the collegiate courts of the same circuit. Based on the aforementioned amendment of the Federal Constitution, on 3 April 2013, a new statute was enacted to govern constitutional trials (*Juicio de Amparo*). The *Amparo* Law expands upon articles 103 and 107 of the Constitution (*Ley de Amparo Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos*).

In accordance with the new statute, the possibility to produce *jurisprudencia* by substitution also exists, whereby the Collegiate Courts, the Circuit Plenary Courts, and the Chambers of the Supreme Court of Justice are entitled to request, under some circumstances, the substitution of *jurisprudencia.* The enactment of this new statute was of the utmost importance because it substantially widens the scope of action of constitutional suits. Currently, except for some specific cases, both "legal interest" (*interés jurídico*) and "legitimate interest" (*interés legítimo*), including diffusive rights, are protected.

Furthermore, not only are the activities of authorities a cause of action for these constitutional suits, but their omissions as well. Based on these constitutional amendments, the Supreme Court of Justice is entitled to declare that a norm is null and void if it is deemed to contravene the Federal Constitution through constitutional proceedings. However, this is not applicable to tax laws.

Civil and Commercial Law

Mexico's legal system distinguishes between commercial (*mercantil*) and civil proceedings. The Federal Congress has exclusive jurisdiction to enact commercial substantive and procedural law, while the authority to enact civil substantive and procedural law lies with each state of the Mexican Republic. The Federal Congress also has jurisdiction to enact the Federal Civil Code, which acts as a supplementary

law for civil matters not dealt with in other federal rules (*e.g.*, the Commerce Code and Federal Labor Law).

Commercial law is generally of federal nature, as there are no state commercial law statutes. Likewise, commercial proceedings are subject to the jurisdiction of federal courts. Notwithstanding this distinction, the Mexican Constitution includes a principle of concurrent jurisdiction allowing commencement of a commercial procedure before local courts.

The underlying reason for this feature is that at the time the Commerce Code (which includes substantive and procedural rules) was enacted, not enough federal courts existed to hear commercial cases. Today, there are more federal courts, but they devote most of their time to constitutional proceedings and to civil and bankruptcy cases under federal jurisdiction.

Each of the 32 states of the Mexican Republic has its own civil code, most of which mirror the Civil Code of Mexico City.[2] Each of the 32 states also has its own civil procedural code. Finally, the Federal Civil Code and the Federal Code of Civil Procedure apply to federal substantive and procedural issues, respectively. These statutes supplement the substantive and procedural rules of the Commerce Code.

Although there are specific differences between commercial and local and federal civil proceedings, the authors have elected to use the Code of Civil Procedure of Mexico City (the "Code of Civil Procedure") as the basis for this chapter because many state codes have been modeled after it. Indeed, despite differences among the specific rules applied in each statute, the main structure remains the same. Thus, the authors will attempt to identify the main differences when appropriate in this chapter.

Class Actions and Group Claims

On 29 July 2010, an amendment to article 17 of the Political Constitution was published in the *Federal Official Gazette*, incorporating class actions as a remedy available to citizens. Based on the constitutional amendment, a chapter to the Federal Code of Civil Procedure was added as published in the *Federal Official Gazette* on 30 August 2011.

The amendment became effective on 29 February 2012. The new provisions govern all relevant features of this kind of proceeding. The class action amendment referred to above also impacted other federal statutes, including:

2 On 29 January 2016, Mexico City began its transition towards a Federal State. A political reform allowed the Mexican capital (formerly the "Federal District") to become the 32nd state of the Republic, which has been renamed *Ciudad de México*. The new federal entity will have managerial autonomy and its own Constitution, while continuing to be the country's capital. All references contained herein to "Federal District" are applicable to Mexico City.

- The Federal Civil Code;
- The Federal Competition Law;
- The Federal Consumer Protection Law;
- The Federal Environmental Law;
- The Financial Services Law; and
- The Federal Justice System Law.

Based on these amendments, class actions deal with matters related to consumer goods and services, financial services, environmental damage, and antitrust injury. The only individuals or entities authorized to file class action lawsuits are:

- The Consumer Services Agency (PROFECO);
- The Environmental Protection Agency (PROFEPA);
- The Financial Services Agency (CONDUSEF);
- The Federal Antitrust Commission (COFECE);
- The common representative of a class comprised by at least 30 members;
- A non-profit organization created at least one year prior to the claim filed and registered before the Federal Judicial Council; and
- The Attorney General.

The procedure for class actions has certain special and flexible features in comparison with traditional civil procedures, such as the certification of the class, the judge's broad authority to obtain further evidence, opt-in and opt-out rights, the *amicus curiae* institution, caps to attorney's fees, and a conciliation stage. The class action procedure is more flexible than traditional procedures, which has caused some adversaries to the statute to argue that there is an imbalance since it allows the judge to remedy deficiencies of the class.

The "flexible" rules have produced criticism questioning if there is a "level playing field" between a major corporation and a class or whether the concept of a true adversarial procedure and equality before the law is broken. Likewise, it can be questioned whether the proceedings will really change the state of affairs in Mexico, given that the following are not present:

- Full discovery as known in the United States;
- Trial by jury;
- Punitive damages; and
- True oral proceedings.

Thus, there may not be a real incentive to settle these cases. Likewise, the class action statute (contained as a chapter within the Federal Code of Civil Procedure) followed an opt-in, rather than an opt-out, system. In order to obtain relief in a class action suit, each individual must individually assert his claim and damages

suffered in another ancillary liquidation procedure under the "direct and immediate damage test". This fact has contributed to undermine the spur of class actions within the Mexican legal system. The court may issue injunctive relief consisting of:

- An order to refrain from doing certain acts or activities;
- An order to do certain acts or activities that, if omitted, would cause or would necessarily cause an imminent and irreparable damage to the class;
- An order to recall or seize instruments, goods, and products directly related to the irreparable damage they caused; and
- Any other measure the judge deems necessary to protect the interests and rights of the class.

The statute of limitations elapses in three-and-a-half years. The term begins on the day of the causation of the damage. If the damage is ongoing, the term for the statute of limitations starts running on the day the damage ceased.

Distinctions between Civil Litigation in Mexico and Abroad

There are a few important features to keep in mind when trying a civil case in Mexico. As Mexican civil procedural law is considered to be of public order, the parties cannot modify certain provisions (*e.g.*, to request time extensions when the provision specifies time limits).

To date, Mexican civil proceedings are based primarily on briefs and writings rather than on oral appearances in court although, as explained below, there is a slow but apparently firm decision to transition towards a more oral proceeding. In 2012, oral proceedings were included in the Commerce Code and the Code of Civil Procedure of the Federal District, for cases where the amount of damages claimed is lower than MXN $593,712.73.[3] The main purpose of these proceedings is to resolve disputes more quickly.

In January 2017, Mexican legislators took a step further, amending certain provisions of the Commerce Code that introduced oral commercial proceedings across a broader spectrum of cases. The purpose of the reform is to initiate the transition towards oral proceedings in all commercial disputes by 2020. Once the complaint is filed and the opposing party has been served with process, the complaint cannot be amended unless it is a federal civil proceeding. The parties must be careful to comply with formalistic requirements because, as a rule, there is no opportunity to amend substantial mistakes.

The power of attorney process is very formalistic and thus very important, requiring careful drafting. This is especially true for foreign entities, as technical challenges to a claim based on lack of counsel's authority are common. Moreover, there are strict rules regarding evidence filing. Cross-examination is very narrow

3 This amount is annually adjusted based on rates of inflation. The current amount in accordance with Article 1339 of the Commerce Code is $662,957.06.

and limited in scope. There are no trials by jury and no punitive or consequential damages. However, in a recent case dealing with moral damages derived from a tort, a court condemned a hotel company based on its economic situation and introduced some language in its decision that could be interpreted as sanctioning dissuasive or punitive damages.

Although oral hearings must be in the presence of a judge, it is not unusual to have a secretary or court clerk acting as the functional officer of the court. In other words, the judge is not present at the rendering of evidence or other stages of the proceeding; instead, the judge's role is to analyze the merits when issuing a final decision.

Mexican courts have a heavy workload that favors quantity over quality (and form over substance) of the judgments. There is no pre-trial discovery as it is known in the United States; Mexican "discovery" is very limited except for class actions, where the court has broader powers to compel the parties to produce evidence.

Although an initiative for mandatory association already exists, trial lawyers are not bound by a bar association, and there is no real collegiate "lawyer's body" to ensure the ethical behavior of litigators. Notwithstanding, the Mexican Bar Association (commonly known as *La Barra*) compels its members to behave under strict ethical standards. *La Barra* has a statutory ethical proceeding to resolve deviations from proscribed ethical standards. There was a long-standing reform pending the approval of Congress that would provide for compulsory (as opposed to voluntary) membership in a Mexican or any other group of professionals that ensures quality and ethical standards of their membership, which was aborted after the Federal Antitrust Authority rendered an opinion regarding the tension between mandatory collegiality and competition rules.

Finally, the doctrine of piercing the corporate veil exists under civil law (and labor and antitrust) in specific circumstances (i.e., to review acts in fraud of law or creditors). This chapter focuses on the analysis of the ordinary civil process pursuant to the Code of Civil Procedure. There are other proceedings for residential lease agreements; probate; family law; commercial, bankruptcy, class actions, and other matters; as well as administrative, tax, labor, and constitutional litigation. Each of these proceedings merits its own specific analysis. Furthermore, Mexico has an extensive network of international treaties dealing with international cooperation, which also play a role in the republic's procedural law.[4]

4 Mexico is a party to several relevant international treaties: the Inter-American Convention on Letters Rogatory; the Inter-American Convention on the Taking of Evidence Abroad; the Inter-American Convention on Conflict of Laws Concerning Letters of Exchange, Promissory Notes, and Invoices; the Inter-American Convention on International Commercial Arbitration; the Inter-American Convention on the Legal Regime of Powers of Attorney to be Used Abroad; the Inter-American Convention on Conflict of Laws Concerning Commercial Companies; the Inter-American Convention on General Rules of Private International Law; the Inter-American Convention on Domicile of Natural Persons in Private International Law; the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitration Awards;

Establishing Jurisdiction

Types of Jurisdiction

Personal Jurisdiction

Natural Persons. Generally, the competent court will be the one that the parties have expressly agreed on to resolve the dispute, but limited to the domicile of one of the parties, the place of payment or performance, or the location of the asset subject-matter of the contract. In the absence of forum selection, the competent court will be that of the defendant's domicile or of the place where the specific duties must be performed. However, for real estate matters, the proper court is that of the place where the real property is located.

Corporations. There are no other specific guidelines in terms of asserting jurisdiction over natural persons or corporations. Corporations are deemed domiciled at their principal domicile or place of business, unless otherwise having contractual addresses where they agree to be subject to jurisdiction or where they perform business activities.

An important requirement is that foreign corporations must be served process abroad even if they have expressly submitted to Mexican courts, unless they agreed to a contractual domicile in Mexico by an express waiver for such purpose or an attorney-in-fact in Mexico accepts such service.

Subject Matter Jurisdiction

Property Claims. Claims on real property fall under the jurisdiction of courts located where the real property is located. However, different courts, depending on the nature of the matter being tried, may assert jurisdiction.

Specialized Courts. Section 48 of the Organic Law of the Tribunals of the Local Forum of the Federal District (the Organic Law of the Federal District) establishes specialized courts with specific jurisdiction. Civil courts have jurisdiction over any voluntary or contentious proceedings that are not otherwise within the jurisdiction of any of the other specialized courts.[5]

Family courts resolve any consensual proceedings dealing with family law, as well as contentious proceedings dealing with marriage, divorce, family estate matters, kinship, alimony, child support, parenthood, adoptions, and similar matters.

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the Washington Protocol on the Uniform Legal Regime of Powers of Attorney; the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards; the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, also known as the *Apostille* Convention; the Hague Convention on the Taking of Evidence Abroad; and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

5 Organic Law of the Federal District, section 50.

They also have jurisdiction over probate proceedings, handicapped and mentally ill persons' rights and representation, and other matters in this area of law. Civil courts have residual jurisdiction, including property claims that are actions *in rem* (i.e., when the issues involved deal with real property, including leases). Stemming from important amendments related to financial matters, published on 10 January 2014, the Organic Law of the Federal Judiciary also was amended in order to create the Federal Commercial District Courts that will handle cases related to:

- Commercial actions;
- Insolvency proceedings;
- Commercial actions in which the Federation or a State are involved as parties;
- Consensual proceedings with specific amounts involved;
- Recognition and foreclosure of arbitral awards and actions to set aside arbitral awards; and
- Commercial class actions.

The amendments became effective six months after 10 July 2014, except for the cases mentioned in the first, fifth, and sixth items, above, which became effective on 10 January 2015. The Commercial District Courts have not been implemented in Mexico City, but some have been already established in other States of Mexico.

A step forward has been the recent Supreme Court's General Accord Number 19/2015, published in the *Federal Official Gazette* on 25 May 2015, which provides that, while the specialized commercial federal courts are created, the District Courts that hear civil/commercial cases or federal civil cases will hear commercial cases when the parties choose to appear at the federal venue. Thus, in those places where Federal Commercial District Courts have not yet been established, these cases are still heard by the same District Courts that heard them prior to the amendment.

Jurisdiction over Violation of Rights

In the case of violation of rights, the court where the defendant is domiciled normally asserts jurisdiction. Unless a forum selection clause has been agreed on or a different special cause for jurisdiction exists, the plaintiff must sue the defendant where the latter resides. This issue is further explored in the following section.

Competence

In General

The term "jurisdiction" under Mexican law should be understood as the power of a court to exercise its dispute settlement authority. A court only has jurisdiction over a specific case when such case is within its sphere of competence; therefore, it could be stated that competence is the limit of a given court's jurisdiction.

Traditionally, there have been four criteria to determine the sphere of competence: subject matter (specific areas of law), territory (geographic area), degree (hierarchy within the judicial system), and amount (monetary compensation). Subsequently, two other criteria also are applied in practice: rotation (random computerized selection of the court to avoid forum shopping) and prevention (the court that first acknowledged a claim would have the authority to hear the case). Regardless of these criteria, the competence of a court is determined according to the rules set forth in section 156 of the Code of Civil Procedure, which establishes, in general terms, that the competent court will be:

- The court located at the place that the defendant has indicated as the proper venue or site to be judicially required to perform its obligations;
- The court located where the agreement calls for the performance of the duties in dispute;
- In the case of real property claims or lease agreements for real property, the court where the land is located;
- In the case of actions over assets or personal claims, the court of the defendant's domicile or, when there are several defendants, the court where the plaintiff chooses to file the claim provided that there is a defendant domiciled therein;
- In the case of probate proceedings, the court of the decedent's last address, of the location of the probate properties, or of the place of death of the deceased, in that order;
- In actions contesting probate rulings, the court of the judge that heard those proceedings;
- For bankruptcy proceedings, the court where the bankrupt person is domiciled;
- The court of the applicant's address in non-contentious proceedings (*jurisdicción voluntaria*), but the court of the property's location for real estate matters;
- For the designation of guardians for minors and mentally handicapped persons, the court of the place where they reside and, if a guardian exists, the court of the guardian's address;
- For matters related to marriage, disputes between spouses, or matrimonial nullity, the court of the matrimonial residence;
- In divorce cases, the court of the matrimonial residence; and
- In alimony cases, the court of the plaintiff's residence or the defendant's residence, at the plaintiff's choice.

Transfer of Competence

According to the Code of Civil Procedure, only competence by territory is extendable, which means that, unless the law restricts their choice (property claims, family law matters, and the like), the parties may freely include a forum selection clause that will render a particular court competent in any dispute that may arise between them.

For commercial proceedings, pursuant to section 1093 of the Commercial Code, the forum selection is restricted to the court of the domicile of any of the parties, the court of the place where the contractual obligations must be performed, or the court of the place where the asset is located.

Service of Summons or Writs

In General

Section 111 of the Code of Civil Procedure recognizes several methods of serving notices to parties in a court procedure. The means of notice included do not necessarily reflect an order of preference. Each method has different requirements that must be met. This is probably one of the most formalistic judicial acts under Mexican law, with the goal of ensuring a fair right to a hearing.

Mail

Postal service is seldom used and then only to serve court experts and witnesses not involved as parties to the lawsuit. The use of certified mail is required, and the expenses incurred must be borne by the party that proffers the corresponding evidence.

Personal Service

For personal service, section 114 of the Code of Civil Procedure sets forth the cases where personal service is required:

- Service of process on the defendant and, in all cases, of first notice of a new proceeding, even in a preparatory stage;
- A ruling that orders the deposition of either of the two parties or the recognition of a document;
- The first ruling issued after the proceedings have been suspended for more than six months, for any reason;
- In the event of an urgent matter;
- A ruling requiring a party to perform a specific act;
- A ruling requiring a tenant to vacate leased premises; and
- All other cases where personal service is expressly required by law.

In each of these cases, the Code of Civil Procedure provides specific rules and requirements that must be followed to perform personal service.

Electronic Means

Parties may authorize the electronic delivery of notices that must be personally executed. To do this, parties should request access to the web page of the Superior Tribunal of the Federal District where, by entering a specific user name, they may review notices or rulings that have been issued and posted.

Consular or Diplomatic Channels

The Federal Code of Civil Procedure, the Law of Foreign Relations, and international conventions (the Hague and the Inter-American conventions) relate to service of process, including that performed through consular or diplomatic channels. Under these provisions, the court requested to perform the service under a letter rogatory must do so according to the Code of Civil Procedure and should abide by the foreign tribunal's request unless Mexican public policy is infringed; and courts requesting or processing foreign court service requests must deliver two copies and keep a copy in the records as evidence of what was processed.

The rules governing all notices that relate to foreign service of process require that such notices be carried out through authorized courts and in collaboration with diplomatic or consular channels. Thus, principles of reciprocity are a key component in any foreign service of process. Service of process and production of evidence or limited discovery may be carried out, but not to the same extent as in Common Law countries.

Publication

The only notices that are allowed by publication are published in the *Judicial Bulletin* when trying a case within Mexico City. Other states publish a list with excerpts of rulings, which are sometimes available by electronic means. The *Judicial Bulletin* is published by the Superior Justice Tribunal of Mexico City and contains information regarding all proceedings where a ruling has been issued, with the purpose of informing the interested parties to go to the relevant court to receive a copy of the ruling.

Likewise, there is a system (SICOR) that allows consultation by electronic means as a transition to use more widely electronic dissemination of information. This system allows consultation of the parties' relevant rulings, but third non-authorized parties cannot access it. According to sections 123 and 125 of the Code of Civil Procedure, if the parties fail to appear at the court to view a writ the day it is published, they will be deemed as duly notified the day following the publication. In practice, trial lawyers use the *Judicial Bulletin* as a method to determine if any rulings have been issued in their ongoing lawsuits.

Once parties have been alerted that a ruling exists, they must appear at the court and request to see the file to get a copy of the ruling. The notice will be considered effective in the terms set forth by section 125 of the Code of Civil Procedure, except when the notice must be given personally by a court clerk.

Only in publications where the particular proceedings are not identifiable due to errors or omissions will a party be able to challenge a notice made by publication in the *Judicial Bulletin*.[6] In practice, a publication error will be sufficient cause to invalidate the notice, thus requiring another publication. To this end, according to section 127 of the Code of Civil Procedure, the court clerk will stamp in every

6 Code of Civil Procedure, section 126.

ruling a "legend" indicating the exact publication date in the *Judicial Bulletin* to provide certainty to the parties.

Currently, in many courts, electronic means of communication are not permitted for filing documents, notices, and consulting a file. Notwithstanding, the recent *Amparo* Law and the Bankruptcy Law (*Ley de Concursos Mercantiles*) allow electronic filings and, even though these statutes are of federal nature, they will likely encourage the transition to a widespread use of electronic means of communication. This transition is ongoing, but electronic filing and communication should be the norm in the very near future.

Edicts

The Code of Civil Procedure also outlines a procedure for notices to unknown persons and to persons whose address is unknown (edicts). These notices are given by publication in newspapers and in the local or *Federal Gazette*. Section 122 of the Code of Civil Procedure provides that notices must be made by edicts in the case of unknown parties, in the case of persons whose address is unknown, once a report from an agency with domicile registries has been secured, and to notify any person who could be prejudiced in a real estate action.

Ascertaining Applicable Law

Regional Law

Apart from the Code of Civil Procedure, each of the other states in Mexico has its own code of civil procedure. Despite a few differences, these codes are substantially similar to the Code of Civil Procedure, which is the code that sets the trend followed by the other states. Commercial proceedings have a Commerce Code that governs such proceedings (ordinary commercial actions, executive proceedings, and summary proceedings). There are no State commercial statutes.

According to section 124 of the Constitution, all powers not expressly granted to the federal government are retained by each state. This provision, along with section 104 of the Constitution, indicates that federal courts have jurisdiction over any civil or criminal dispute as to the enforcement of or compliance with federal laws or international treaties entered into by Mexico; over matters in which the Mexican Republic is a party; or over commercial cases (including bankruptcy and class actions).

In all other cases not contemplated as being under federal jurisdiction, the state courts will have primary subject-matter jurisdiction. Hence, when state courts exercise their jurisdiction, the corresponding state code of civil procedure will govern the proceedings.

National Law

The Federal Code of Civil Procedure of 1943, which is outdated in many respects, governs proceedings before federal courts. The statute notably departs from the

adversarial principle of civil proceedings and grants the judge broader authority to find "the truth", especially in class actions, as mentioned above. The federal courts devote most of their time to the adjudication of constitutional proceedings (*Juicio de Amparo*).

Conflict of Laws Principles

In General

Sections 12–15 of the Civil Code for the Federal District and the Code of Civil Procedure set forth the general criteria about conflict of laws rules in Mexico. The basic conflict of laws rule is contained in section 12 of the Civil Code for the Federal District, which as a general principle indicates that Mexican laws will govern all acts performed in Mexico, all persons located in Mexico (which should be read in conjunction with section 13, described below), and in all cases where any parties have expressly submitted to Mexican law.

However, under the Civil Code for the Federal District, the application of foreign law is permissible when expressly indicated by Mexican law or when required by operative international treaties ratified by Mexico. Under section 13 of the Civil Code for the Federal District, legal situations validly created in any of the states of the Republic or in a foreign state according to its own laws must be recognized. The laws of the place where they have their domicile govern the legal status and capacity of individuals.

The creation, effect, and extinction of real property rights, lease and temporary use agreements, and movable assets will be governed by the laws of the place where they are located, even if their holders are foreigners. The laws of the place where legal contracts are executed will govern their form. Nevertheless, those acts may comply with the forms set forth by the Civil Code for the Federal District if the act is to have effect within Mexico City or anywhere in Mexico regarding federal matters. Subject to these rules, the legal effect of acts and contracts will be governed by the laws of the place where they must be performed, unless the parties have validly agreed upon the application of a different law.

Sections 14 and 15 of the Civil Code for the Federal District govern the application of foreign law (recently amended to conform to the guidelines of the Inter-American Convention on the Application of Foreign Law). A foreign law will be applied as it would be by a judge of the relevant foreign country. The judge may, therefore, avail himself of the necessary information about the text, validity, sense, and scope of that law. Only the substantive foreign law must be applied, except when, given the special circumstances of the case, the conflict of law rules call for the application of the substantive rules of Mexico or another state (*re-envío*).

Foreign law may not be applied when fundamental principles of Mexican law have been artificially avoided (the judge must find fraudulent intent behind the avoidance) and when the foreign law rules or the result of their application are contrary to Mexican public policy and to the fundamental principles or institutions.

Chronological Principle

Newer legislation prevails over older legislation. Upon being published, the new laws establish a mechanism for their implementation in what are known as their "Transitory articles". These articles not only refer to the date when that law will become effective, but also include reference to the statutes or norms that are repealed or modified, as well as any other rule required for their implementation.

Article 14 of the Constitution bans retroactive effect in prejudice to anyone. While transitory articles may miss some of the statutes that would possibly be considered annulled or modified, under this principle, any statute that is inconsistent with the new law is invalid.

Specialty Principle

Special law prevails over general law and special provisions prevail over general provisions. For example, this principle is clearly applied in lawsuits that deal with residential lease agreements because the special provisions of the Civil Code dealing with housing leases govern them, and not those dealing with general lease agreements. This principle also applies in any case in which a specific matter is governed by some special provision that will then take precedence over general rules that apply to general cases.

Hierarchy Principle

A statute higher in the legal hierarchy prevails over a statute that is lower in the hierarchy. This principle is contemplated by article 133 of the Constitution, along with a controversial 1999 Supreme Court judgment (that has generated, in subsequent rulings, a binding *jurisprudencia*) that places international treaties above federal laws but below the Constitution (except for human rights embedded in international treaties that, in accordance with some judicial precedents, are considered to be at the same level of the Federal Constitution, but they cannot contradict it) and, together with federal laws and international treaties, constitutes the Supreme Law.

Hence, the Constitution prevails over any other statute in Mexico, and any law issued by the federal or state congresses must be consistent with the Constitution. State courts must abide by the Bill of Rights set forth in the Constitution. State codes of civil procedure must be consistent with the Constitution by establishing courts that are created prior to the disputes being adjudicated and by ensuring that due process rules always exist.

Competence Principle

The conflict most often presented is the competence between courts to assert their jurisdiction. In this case, the Code of Civil Procedure establishes the rules to determine the competent court and therefore the applicable procedural law.

According to section 163 of the Code of Civil Procedure, there are two ways for challenging the jurisdiction of a court, these being by:

- "Inhibition" (filed before the court deemed competent, requesting the current court to stop trying the case); or
- "Declination" (where the court deemed incompetent is requested to stop hearing the case and to send the file to the court deemed competent).

Commencing Action

Complaint

In General

The complaint is the written document by which a suit is filed. The complaint must state the facts, claims, and relief sought by the plaintiff. Similar to the United States, the complaint contains the essential elements of the lawsuit.

Minimum Content and Attachments

Pursuant to section 255 of the Code of Civil Procedure, a complaint must state:

- The court where it is being filed;
- The complete name of the plaintiff and the address to receive notices;
- The name and address of the defendant;
- The demand for the relief sought or things being sued for;
- A concise and clear statement of the specific factual allegations on which the plaintiff bases its claim, including reference to the documents and witnesses that will prove the allegations, thus allowing the defendant to file its answer to the complaint;
- The type of action being filed and the legal provisions that govern the procedure and the cause of action;
- The amount of the relief sought, if relevant to determine the competent court; and
- The plaintiff's signature or, if the plaintiff cannot sign, the plaintiff's fingerprint.

Additionally, sections 95 and 96 of the Code of Civil Procedure require certain documents to be attached to the complaint. When another person is representing the plaintiff, the power of attorney to evidence the capacity of that representative must be attached to the complaint. When either the plaintiff or the defendant is a foreign entity, special attention must be given to international conventions dealing with the granting of powers of attorney, including notarization and *apostille*.

In the case of commercial disputes, the parties also must attach a copy of their Federal Taxpayers Registry (*Registro Federal de Contribuyentes*) and, in case of individuals, their Unique Code for Population Registry (*Clave Única de Registro de Población*). All documents that support the claim and that entitle the plaintiff to the cause of action must be attached to the complaint. Copies of the

complaint and all the exhibits to be served on the defendant should be filed with the complaint. If these copies are not filed, the court will require the plaintiff to file them within five days, and failure to do so may result in the dismissal of the complaint. Copies of any documents in the plaintiff's possession must be attached to the complaint. Subsequently, no documents will be admitted unless they are supervening.

A clear indication of documents in the opposing parties' or third parties' possession or that have previously been requested from public offices also must be attached to the complaint. The complaint must be prepared in Spanish, and documents in other languages must be filed with their Spanish translation by an expert translator. No abbreviations or unclear corrections in the text of the documents will be allowed or accepted.

The complaint's description of the remedy sought and the facts surrounding the case must be clear. If errors or inconsistencies exist in the text of the complaint, the court will require the plaintiff to correct or complete them within a five-day period; otherwise, the court may dismiss the complaint. If the complaint is dismissed on these grounds, the plaintiff may file a new one.

Statement of Remedy

The Code of Civil Procedure requires that the description of the remedy being sought is consistent with the description of the facts included in the complaint. The complaint must list all remedies being sought because, pursuant to section 31 of the Code of Civil Procedure, omitting any remedy will be considered a waiver of that claim by the plaintiff.

A cause of action stemming from the same facts against the same defendant must be resolved in a single action, with all others being automatically waived. Likewise, section 34 of the Code of Civil Procedure states that, once the complaint has been accepted and the answer filed, the complaint cannot be altered nor modified.

Types of Answer

In General

In principle, the answer must fulfill the same formal requirements as the complaint, in addition to the defenses and counterclaims that may be included.

Denials

Section 266 of the Code of Civil Procedure provides that, in the answer, the defendant must refer to each of the facts included in the complaint. The defendant must either admit the facts as true or deny them, and must indicate which facts are ignored or are not relevant to the case.

Silence or inconsistency by the defendant will be understood as admission of those facts. This rule applies in all cases, save for suits on family matters or when

the defendant was served with process by edicts. Generally, the defendant may use one of the following approaches to respond to the facts alleged in the complaint:

- The fact being answered is true and undisputed;
- The fact being answered is false and is therefore denied; and
- The fact being answered is neither affirmed nor denied as not being part of the case or attributed to the defendant, but rather attributed to a third party.

Additionally, the defendant must state the names of witnesses in its answer.

Affirmative Defenses

Affirmative defenses are types of answers that the defendant makes regarding the facts or cause of action set out in the plaintiff's complaint. These defenses may attack procedural or substantive issues in an effort to avoid liability for the relief sought by the plaintiff.

All affirmative defenses must be filed at the same time as the answer, except for those supplementary defenses that may arise in the course of the trial under circumstances unknown to the defendant at the time the answer was filed or because the facts arose after the answer was filed. In these cases, the defendant may claim the supplementary defense before the final judgment is issued and within three days following the date when he becomes aware of its existence.[7]

As in the case of the type of action, affirmative defenses are valid even if they are not expressly named in the answer, provided the facts on which they are based are clearly set out. None of the defenses will suspend the proceedings. Once the court admits the affirmative defenses, the plaintiff has three days to make any statement it deems necessary. The defendant may claim two types of affirmative defenses: dilatory and peremptory defenses.

Dilatory defenses refer exclusively to procedural matters aimed at thwarting the action filed by the plaintiff without attacking the substance of the claim. If any of the dilatory defenses is ruled applicable, the court will dismiss the complaint without ruling on the substance of the suit.

Only the defenses of lack of competence, lack of capacity of the plaintiff's representative, consolidation, pending claims, and *res judicata* must be resolved prior to trial, allowing the court to avoid hearing an unfeasible process. Peremptory defenses are meant to defeat the cause of action claimed by the plaintiff, thus attacking the substance of the claim. These defenses are ruled on in conjunction with the issues at stake in the suit when the final judgment is issued.

Answer to Complaint

The defendant's response must relate to the facts asserted by the plaintiff. In ordinary actions, the legal term to answer a complaint is 15 business days, which

7 Code of Civil Procedure, section 273.

is non-extendable. The plaintiff will have a three-day period to make its statements regarding the answer and the defenses filed, and will have time to produce its answer if the defendant files a counterclaim.

Amendments to Pleadings

Section 34 of the Code of Civil Procedure does not allow amendments to the pleadings once they have been filed with the court. This rule facilitates the flow of the process and prevents parties from bringing new issues that will delay the issuance of the final judgment.

Supplemental Pleadings

For the same reasons stated under the aforementioned section 34 of the Code of Civil Procedure, it is not possible to file supplemental pleadings. The plaintiff and the defendant must therefore be consistent and thorough in preparing their pleadings, because there is no second chance to include further claims or counterclaims, except for supervening actions.

Consolidation of Claims and Parties

The consolidation of claims in Mexican civil procedure may be obtained through two different motions, *i.e*., "connection of the cause (of action)" or "pending lawsuit". In both cases, the purpose is to consolidate the corresponding lawsuits and to prevent different judgments from being issued regarding the same cause between the same parties.

In this sense, "connection of the cause" is a dilatory defense that, pursuant to section 39 of the Code of Civil Procedure, has as its goal the transfer of the case from the court where the defense has been raised to the court that first participated in the connected cause. The "connection of the cause" defense is used when the causes are identical. The things in dispute and the parties may be different, as long as the actions stem from the same cause of action.

Section 38 of the Code of Civil Procedure provides that a "pending lawsuit" defense is appropriate when another court is already handling another suit filed by the same plaintiff against the same defendant, where the same relief is being requested. The defendant must clearly indicate the court where the first suit is being handled. If the defense is granted, the file is forwarded to the court that is handling the pending lawsuit if it is in the jurisdiction of the same appellate court as the forwarding court. If it is not in the same jurisdiction, the latter suit is simply dismissed.

The difference between the "connection of the cause" and the "pending lawsuit" defenses is that the first joins the suits because they share a common underlying cause, regardless of whether they share the same parties. The second defense applies when the two suits are essentially the same, resulting in dismissal of the second suit rather than joinder.

In the connection defense, the joined suits are processed together and are resolved in a single final judgment, to prevent contradictory rulings. This defense is not applicable when an appellate court is hearing one of the cases, when the courts handling the suits belong to jurisdictions of different appellate courts, or when a foreign court is processing one of the suits. Pursuant to section 39 of the Code of Civil Procedure, the defendant filing the connection defense must produce a copy of the complaint and the answer from the first suit.

The connection defense is not applicable if service of process has not been made, based on the principle that serving the defendant has the effect of granting that court competence to hear the suit between those parties. If the connection exists, the suits will be joined in the court that first served process.

Joinder of Claims by Plaintiff

Only the defendant can file to obtain a joinder of claims. Plaintiffs are not entitled to file for joinder of claims because the defendant files the motion as a defense. The plaintiff decides when and where to file the original complaint, after which he is barred from requesting joinder of claims. If a new suit is filed elsewhere, the defendant in the new suit can file the corresponding joinder of claims defense.

Counterclaim

A counterclaim is any claim that the defendant files against the plaintiff and must be filed in its answer to the complaint, pursuant to section 260 of the Code of Civil Procedure.

Section 272 of the Code of Civil Procedure prohibits a defendant from filing a counterclaim after filing his answer to the complaint. The counterclaim must fulfill the same requirements that are set forth for the complaint pursuant to section 255 of the Code of Civil Procedure. The plaintiff will have a nine-day period to reply to the counterclaim.

Section 261 of the Code of Civil Procedure provides that the counterclaim will be discussed and ruled on in the final judgment, simultaneously with the original complaint. The counterclaim avoids having to hold two separate trials to resolve issues between the same two parties.

Third-Party Claims

In General

Only certain limited third-party motions and interventions are contemplated under the Code of Civil Procedure and the general procedural rules in Mexico. Third parties have a right to participate in proceedings that may affect their rights. Third-party claims as such do not exist as independent actions. When a third party files a claim within an existing lawsuit, the third-party designation ceases and it becomes a party to the action.

To avoid prejudice against absent third parties' rights and interests, third parties have a procedural right to intervene and seek judicial relief. Third parties may file actions to extract their properties or other rights from the encumbrance of legal disputes between other persons.

Impleader

There are two types of third parties: those that are called to participate in the trial but are alien to the cause of action (witnesses and experts) and those that participate because they have some interest in the outcome of the case. An impleaded third party appears in a "third-party action" that, according to section 653 of the Code of Civil Procedure, will be resolved by the same judge as an ancillary issue to the principal suit. Generally, the aim of third-party actions may be either to assist (intervene) or to exclude.

Intervening actions are those by which the third party participates to collaborate with one of the parties because it has an interest that coincides with that party's interest. A third party may file the motion at any stage before final judgment is issued. The third party may perform all acts necessary to defend its corresponding right and may even continue the claim if the party that originally began the process withdraws.

Excluding actions (*tercerías*) refer to motions that seek to withdraw a given property or right claimed by third parties who assert their legitimate entitlement to the property or right. In order to obtain a favorable ruling, the third party must prove that it has a superior right to those properties or rights. The third party must file the documents necessary to evidence its right so that the other parties may have an opportunity to challenge this right and the judge may rule on the motion.

Interpleader

Pursuant to section 32 of the Code of Civil Procedure, no person can be compelled to start an action or file a motion, except in two cases. When a party has a cause of action or a defense that depends on an action that another party is entitled to, the latter can be required to exercise it in order for the issue to be settled.

If the second party refuses to file the action, the other party may proceed with its own action to seek adjudication. When a third-party claim is filed for an amount exceeding the original court's competence, this forces the removal of the matter to a court with proper competence and obligates the third party to pursue the action before the new court.

Obtaining Information Prior to Trial

Types of Discovery

In General

The information that may be obtained prior to the trial is always retrieved as part of the judicial process. One exception is preparatory means for trial (*medios preparatorios a juicios*) that has a very limited specific scope or certain rule within the Federal Code of Civil Procedure that authorizes the court to request certain information from the other party.

Unlike Common Law countries, where it is customary for the parties to seek evidence through proceedings where the courts only participate in a secondary and limited manner, Mexican procedural rules require that all evidence be gathered and prepared under the close scrutiny and participation of the courts. Only evidence that has been offered before a court, admitted by that court, and prepared accordingly may constitute proper evidence for the final judgment. In the international arena, Mexico has made an express reservation against United States-style discovery.

In its purest sense, no discovery takes place under Mexican procedural law. Discovery is, instead, a procedural stage in a lawsuit, after the complaint and answers are filed, where both parties are allowed to file their evidence for admission before the court. This procedural stage normally lasts 40 days.

Depositions

Extrajudicial depositions do not form part of Mexico's procedural rules. Private interviews and records of discussions are inadmissible as statements by a party if they are not made as part of an existing proceeding and with the participation of the court. Admissible depositions are taken before the court in the form of testimony or confessional evidence, depending on whether the person being deposed is a witness or a party to the proceeding.

Interrogatories to Parties

Mexico refers to party-witness interrogatories as "confessional" or "confession" (*see text, below*).

Discovery and Production of Physical Evidence

Pre-trial production of physical evidence is not a procedural step that is contemplated under the Code of Civil Procedure and the general procedural rules in Mexico. The Code of Civil Procedure does, however, set forth certain cases in which it is possible to file evidentiary motions before the lawsuit begins, which are known as "preparatory motions". These motions are requests to obtain declaratory confirmation of a set of facts or circumstances that are necessary to use in a possible successive lawsuit.

The various preparatory motions regulated by the Code of Civil Procedure include preparatory motions for a general lawsuit and preparatory motions for an enforcement action. Preparatory motions for a general lawsuit are available to request the delivery of a movable good that will be the subject of a suit (action *in rem*); to request the delivery of a will under which the applicant believes he has a right as an heir, co-heir, or legatee; and to request delivery of the title to goods that were subject to a title transfer, regardless of whether acting as the seller or the purchaser.

Preparatory motions for a general lawsuit also are available to request that witnesses be interrogated by the court when they are elderly, in imminent danger of dying, or will be soon traveling to locations where communication may be difficult or unduly complicated; to request the examination of witnesses who will not be available at court because of age, sickness, or future absences; and to assist in service of process in proceedings that are held abroad.

To commence a preparatory motion, the applicant must clearly indicate the purpose of the motion and the reasons why the motion cannot wait until the relevant suit is filed. According to the Code of Civil Procedure, the person being requested to deliver goods, documents, or information in a preparatory motion must act with speed and diligence. If that person refuses to act, the court may impose sanctions. If the documents or information are destroyed, the requesting party must indemnify the requested party for damages caused, independently from any criminal liability that may arise from the requested party's actions.[8]

Section 201 of the Code of Civil Procedure regulates preparatory motions for an enforcement action. The enforcement action may be prepared by requesting that the defendant acknowledge the existence of a debt. The court will set forth a given date and time for the hearing to take place. The debtor must be personally served and duly notified of the purpose of the hearing, the amount being claimed, and the origin of the claim.

If the debtor fails to appear without just cause, the court will rule that the debt is valid and exists in the amount claimed by the creditor. The goal of this preparatory motion is that when the admission or the ruling on the existence of the debt is made, the creditor may then use that statement as the basis to file the enforcement action (instead of an ordinary lawsuit).

Use of Discovery at Trial

Use of preparatory motions in trial is meant to provide the evidence about exact facts that have been referred to in those motions, so that they do not need to be evidenced again when the final suit is filed.

The notion of discovery has very limited scope in Mexican procedural rules. The idea that private parties may freely seek to secure information relevant to the trial is contrary to the general thrust of Mexican civil procedure. Mexican courts

8 Code of Civil Procedure, section 200.

govern the gathering of evidence and monitor the preparation of proof during the proceedings.

Interim Protection of Assets Pending Trial

Provisional Attachment

Unlike numerous measures adopted in other jurisdictions, in Mexico the law does not expressly provide for provisional measures except those set forth in the statute. Attachment of goods is a precautionary measure that section 235 of the Code of Civil Procedure allows on limited occasions.

The cases in which a provisional attachment may be ordered are when it is feared that goods potentially subject to a collection action may be withdrawn or given away, or when it is feared that the defendant does not have other assets with which to pay and that the existing ones may be withdrawn or given away.

A provisional attachment may be requested before or during the lawsuit. The court will review the merits of the case to decide if the attachment is necessary. When requesting a provisional attachment, the value of the claim must be indicated, so that the court may set the exact amount that must be secured when the provisional attachment is made against the debtor's assets.

If the request for the attachment is made in any manner other than with a document that in itself is evidence of the existence of a debt, the requesting party must deliver a bond to guarantee possible damages if the attachment is revoked or if the defendant is subsequently released from any liability.

The issuance of the provisional attachment will not be awarded or the debtor may request release if he proves to have other property with which to secure the debt. The debtor may post a security instrument to release the attachment once it has been imposed. The debtor also may challenge the justification for the order through an appeal.

If the attachment is made prior to the lawsuit, the requesting party must file the lawsuit within three days from the day the attachment is made if the suit is to be heard in that same location. If the suit is to be heard elsewhere, that term will be extended at the judge's discretion and the extension will depend on where the action is to be filed. If the suit is not filed within the time set by the court, the attachment will be released immediately.

Injunctive Relief to Maintain Status Quo

Injunctive relief to maintain the status quo is not contemplated under either the Code of Civil Procedure or the Commerce Code. By contrast, section 384 of the Federal Code of Civil Proceedings (only applicable to ordinary civil proceedings) does contemplate it.

This measure was originally not available for commercial proceedings. However, in 2013, the Supreme Court of Justice issued a binding precedent (*jurisprudencia por contradicción de tesis*) stating that, in some cases, this measure is applicable to commercial actions. This type of measure cannot be challenged through an ordinary means of defense unless granted in a commercial action.

Summary Judgments

In General

Under the Code of Civil Procedure and the general procedural rules of Mexico, summary adjudication without full trial is allowed only in limited circumstances. Generally, summary adjudication has been eliminated from Mexico's civil procedure system.

However, there remain special proceedings or trials (special trials) that consist of privileged proceedings different from ordinary proceedings, which are aimed at accomplishing a more expeditious adjudication of certain disputes. These include enforcement actions, special foreclosure actions, and default judgments. Sometimes, certain cases may be resolved through ancillary proceedings that terminate the case without going into the merits.

Enforcement Action

An enforcement action is supported by the existence of an instrument that is self-executing and permits the attachment of assets to exercise the rights evidenced by the instrument at the very moment of serving process. Section 443 of the Code of Civil Procedure lists the following self-executing instruments:

- The first authenticated copy of a public deed issued by a judge or notary public before whom such instrument was granted or the subsequent copies issued by judicial order;
- A private document after it is acknowledged by the person who issued it or caused its issuance, for which it is sufficient that the person acknowledges the signature affixed in the instrument as his own, even if he denies the underlying debt;
- A confession by the debtor or his legal representative of the debt before the presiding judge;
- A settlement agreement executed by the parties or third parties involved in the proceedings before the presiding judge;
- The original drafts of contracts executed with the intervention of a public broker; and
- An accountant's uniform opinion acknowledged or approved by the presiding judge.

Furthermore, section 444 of the Code of Civil Procedure deems final judgments, judicial agreements, and agreements executed before the Federal Consumer

Protection Agency and the awards that it grants to be self-executive documents. Enforcement actions may be carried out with documents that evidence the obligation to pay, perform, or deliver. The purpose of the enforcement action is to enforce the right evidenced by the instrument that is the subject of the cause of action.

When an enforcement action is filed to claim payment of a liquid debt and once the complaint is admitted, the court will order the debtor to pay the debt. If a debtor refuses to comply with the payment order, the court clerk who requested the payment is authorized to attach those debtor's assets that are sufficient to guarantee the outstanding amount. After the attachment of assets, the debtor has a period of 15 business days to appear before the court, either to pay the debt or to make the necessary pleas or allegations in his defense.

An enforcement action is divided into two parts. The first part ("principal docket") includes the complaint, the answer to the complaint, and the final judgment. The second part ("execution docket") will include the attachment of the debtor's property and all acts related to such attachment. After the attachment of the debtor's property, the enforcement action will be handled according to the rules governing ordinary actions.[9] If the judgment reached in the enforcement action favors the plaintiff, the court will order a public auction of the attached property, with the proceeds of the auction delivered to the creditor-plaintiff.[10]

Special Foreclosure Action

This proceeding is held for the creation, extension, severance, or registration of a mortgage, as well as for demanding and securing the cancellation or acceleration of payment of a mortgage. If the proceeding is held for demanding and securing the payment of the mortgaged credit, the mortgage must be evidenced through a public deed duly recorded with the Public Registry of Property where the property is located. Likewise, the mortgaged credit must be due.[11] The public deed evidencing the mortgage must be attached to the complaint.

Upon filing the complaint, the judge will order the issuance and registration of a mortgage bond. The court will serve the debtor with process, who will then have 15 business days to appear before the court to make the necessary pleadings and to present a relevant defense to the complaint. After these steps are taken, the proceeding will follow the rules governing ordinary actions.

The mortgage bond must include a brief description of the public deed evidencing the mortgage. Moreover, the mortgage bond must include an order to the public or any authority not to foreclose, take possession of, or take any other action over the mortgaged property that might interrupt the course of the proceeding or violate the rights acquired by the creditor plaintiff. For publication purposes, the

9 Code of Civil Procedure, section 453.
10 Code of Civil Procedure, section 461.
11 Code of Civil Procedure, section 468.

mortgage bond must be recorded with the Public Registry of Property. The person in possession of the property will be the legal depository.

All the benefits or products resulting from and any object found on the property will be kept with the property. For these purposes and if requested by the debtor, the court will keep an inventory of all the benefits, results, or objects found related to the property and stored by the depository. Upon delivery of a judgment in favor of the creditor plaintiff, the court will order the public auctioning of the property.

Default Judgments

Sections 637–651 of the Code of Civil Procedure set forth the rules for default judgments. These rules provide for cases where the defendant is absent. The court will make a statement that the case is being heard with the defendant not appearing in the process, although the defendant was properly served.

Section 637 of the Code of Civil Procedure provides that in all suits where the defendant does not appear before the court after being served, no further notice will be delivered to summon him. All rulings issued after this time will be notified by publication in the *Judicial Bulletin*.

When the court orders the commencement of the evidentiary period, hearings to prepare evidence, and hearings to give final judgment, it must publish the orders twice, at three-day intervals, in the *Judicial Bulletin* or in a local major newspaper of the court's choosing. Finally, as an additional measure in these proceedings and based on the plaintiff's request, the judge may order an attachment of the defendant's assets until the trial ends. If service of process was performed by publication, the final judgment will be enforced after three months from the last publication, unless the defendant posts a bond to guarantee possible damages.

Other Means of Termination without Plenary Trial

Voluntary Dismissal

In General

There are two classes of dismissal, i.e., dismissal of the action and dismissal of the proceedings.

Dismissal of Action

The legal effect of dismissal of the action is that the plaintiff waives, at his own prejudice, all rights against the defendant for the cause of action being exercised through the suit filed with the corresponding court. Dismissal of the action may be performed at any stage of the process, and the defendant does not need to consent to the dismissal for it to be valid.

However, if the dismissal is filed after service of process is carried out, the plaintiff must pay the attorneys' fees and litigation costs, unless otherwise agreed.

Dismissal of Proceedings

Dismissal of the proceedings, also known as the dismissal of the complaint, returns everything to the *status quo* by dismissing, without prejudice, the lawsuit (complaint) filed by the plaintiff. Thus, the plaintiff maintains the right to file a lawsuit against the opposing party in the future subject to the corresponding statute of limitations.

If the dismissal of the proceedings is made after service of process was carried out, the plaintiff must pay the attorneys' fees and litigation costs, unless otherwise agreed. Additionally, if the dismissal is filed after service of process was made, the defendant must consent to it; otherwise, the proceedings must continue.

Dismissal for Failure to Prosecute

The expiration of the proceedings (*Caducidad de la Instancia*) is governed by section 137 *bis* of the Code of Civil Procedure, which provides that the proceedings will be declared as dismissed at any stage if no action is taken by either party within a period of 120 working days. Any filing by the parties or any action by the court interrupts the term for this dismissal.

This cause for dismissal is a matter of public order and cannot be waived and is not subject to agreement between the parties. The judge may declare the dismissal directly or at the request of either party. This dismissal extinguishes the proceedings, but not the cause of action. Thus, the plaintiff may file a new lawsuit, subject to the applicable statute of limitations.

Dismissal for failure to prosecute will render void all acts performed during the dismissed proceedings, except for final rulings as to competence, existing suits, and connection to the cause of action, authority, and capacity of the parties. During appellate proceedings, this dismissal will cause the appealed rulings to be considered final. This type of dismissal does not apply to bankruptcy or probate proceedings. It also does not apply to non-contentious proceedings, family law actions, or actions pursued before Justices of the Peace.

Judicially Assisted Settlement

Judicial settlements are agreements that the parties enter during a proceeding to resolve the conflict and that are ratified in the presence of the court presiding over the proceeding. The court will review the agreement to make sure that it contains no provision contrary to law, after which it will be approved and granted the status of a final judgment, binding on both parties under the principle of *res judicata*.

If the judicial agreement is not complied with by either of the parties, the other party may request enforcement through court order, which functions as if it were a final judgment issued by a court. The enforcement action will be conducted in a summary procedure. There is a general trend to foster alternative dispute resolution as a means to resolve disputes through mediation or arbitration and

diminish the court's workload. Thus, most of the States of the Mexican Republic have one or a combination of the following:

- Mandatory conciliation or mediation talks as pre-requisite before continuing litigation;
- Creation of supportive services for mediation and arbitration under the auspice of the State Appeal Courts; and
- Continuous training of judges (or persons assisting the judges as professional conciliators) to perform activities as "conciliators" in the early stages of the proceeding.

Trial

Hearing

Setting Case for Trial

Setting the case for trial means that only those facts contested by the parties are adjudicated by the court. Facts alleged by the plaintiff that are not challenged by the defendant, including the defendant's silence or evasive comments, will be considered admissions, and only the contested facts will be subject to proof by each party at the evidentiary stage.

Based on the contents of the defendant's answer, the court may determine the issues in conflict. If the only conflict pertains to the application of the law and not the facts, the court may summon the parties to an arguments hearing to issue a final ruling; otherwise, the evidentiary stage will be opened at the parties' request or if the court deems it necessary.

Scope and Order of Trial

The purpose of a trial is to settle the dispute between the parties. The judgment issued by the court will be considered a public order ruling that will bind both parties. The trial and the final decision cannot encompass issues other than those raised by the parties' pleadings, such as the complaint, the answer, the counterclaim and reply, and similar pleadings.

Submission of Evidence

In ordinary civil proceedings, the judge will call for a conciliation hearing; if no settlement is reached, the parties have a 10-day period to offer evidence, commencing when the court opens the evidentiary period. The courts have great freedom in evaluating the evidence.

In finding the facts underlying the litigation, the court may take into account the testimony of any party in the action or of a third person, or any document, be it one in the parties' possession or not, with no limits other than applicable legal

restrictions and moral limitations.[12] The parties have the burden of proving the facts on which they base their claims. The party denying a fact must prove the assertion implied by that denial only when there is no other way to ascertain the facts.

Only factual issues, and not the law, are subject to evidentiary proof. The exception is foreign law.[13] Notorious facts need not be proven and the court may refer to them in its determinations. Parties may not waive their rights to offer evidence. Finally, parties may only offer evidence designed to prove the parties' factual allegations.

Role of Trial Judge

Under Mexican procedural law, the judge plays a primary role during the evidentiary stage. While it is the parties that offer evidence to prove their assertions, the judge is allowed and expected to gather any evidence necessary to find the truth about the disputed facts.

At any stage and regardless of the nature of the claim, the judge may order any act that is necessary to ascertain the truth about the issues in dispute. The judge will act as he deems fit in order to obtain the best results without harming the parties' interests and based on an equal treatment of their rights. While the judge may perform these additional acts, the parties retain the principal burden of proving their allegations.

The judge must accept all evidence filed by the parties that is authorized by law and relevant to the matters in dispute. The court has full authority to compel third parties to testify or produce any type of evidence required to uncover the facts. To this end, the court may employ the necessary sanctions to compel cooperation.

Evidence

Nature and Purpose of Evidence

The goal of evidence is to determine the truth about the facts contested by the parties. Therefore, the evidentiary period involves the processes and actions engaged in by the parties, third parties, and the court to find the truth about the contested facts in order to issue a final judgment.

Kinds of Evidence

In General. All means that may show the truth about the challenged facts may be offered as evidence.[14] Without limiting other avenues, the Code of Civil Procedure lists as possible means of evidence: admission of facts, documents, expert testimony, judicial inspection, witness testimony, as well as other means

12 Code of Civil Procedure, section 278.
13 Code of Civil Procedure, section 284.
14 Code of Civil Procedure, section 289.

of capturing data (photographs, copies, electronic data, and the like) and legal presumptions.

Admissions. Admissions of facts always involve the deposition of one of the parties, be it the plaintiff or the defendant. They must refer to facts connected with the party being deposed. The nature of this evidence is to accept or recognize facts that the party being deposed may know.

This evidence may be offered in both the complaint and the answer, and until 10 days before the legal hearing.[15] The party to be questioned must be personally summoned at his address to appear before the court. The questions that the deposed party must answer (*posiciones*) must meet the requirements set forth by section 311 of the Code of Civil Procedure:

- They must be formulated in clear terms;
- They can include only one fact and must relate to the party being deposed;
- They cannot be confusing or misleading or try to induce an admission of a fact contrary to reality;
- They must be formulated in a positive sense and not involve a denial of a fact; and
- They may relate only to facts of the dispute between the parties.

Once the evidence has been offered, the court will designate a specific date and time for the deposition of the party to take place. The party to be deposed will be personally summoned and warned that if he fails to appear without just cause, the facts in question will be deemed as admitted as true. The judge will review the questions to determine which, if any, meet the requirements, and will strike those that do not.

The deponent will be warned to answer truthfully under penalty of perjury. The deponent may not be aided by an attorney, representative, or any other person, and will not be given a copy of the interrogatory or time to discuss it. However, if the deponent needs a translator, one appointed by the court may assist.

Next, the judge will instruct the deponent to answer the questions asked in a categorical affirmative or negative manner and, subsequently, add explanations that he may deem necessary or those that the judge may require. If the deponent refuses to answer or answers evasively, the judge will issue a warning that he will be deemed to have admitted the facts if he persists with the refusal to answer or continues to answer evasively.

Questions may be asked orally and directly during the presentation of the evidence. Nevertheless, it is a good practice to submit a questionnaire prior to the deposition hearing because if the deponent fails to appear without cause, the court may then declare that party as having affirmed those questions that have

15 Code of Civil Procedure, section 308.

been filed with and admitted by the court. Answers will be transcribed in a separate document that will be prepared during the hearing before the court. If the party does not agree with the transcript, he may ask the judge to correct it. The judge will decide which corrections should be made. Nevertheless, once the deponent signs the document, it cannot be modified.[16]

Documentary Evidence. There are two types of documentary evidence based on the different sources they may come from: public documents and private documents. Public documents are issued by public authorities in the exercise of their official functions and within their jurisdiction as provided by law. Section 327 of the Code of Civil Procedure enumerates these types of documents.

Private documents are documents written, signed, or caused to be written and signed by private parties or signed by public officials, but not in the exercise of their authority. Parties must deliver the documents when the complaint (or the answer) is filed. If the documents are not directly available to the party offering them, the interested party must name the file or place in which the originals are located.[17] According to sections 95, 96, and 255 of the Code of Civil Procedure, no additional document may be filed by the plaintiff or defendant unless:

- The document was issued at a subsequent date;
- The interested party had no knowledge of the document's existence at the time of the filing; or
- It was not possible to obtain the document earlier, due to reasons beyond the control of the interested party.[18]

Documents essential to the parties' cause of action or defense must be filed together with the complaint or answer. Parties may object to the use and evidentiary value that the offering party assigns to the documents. If a public document is challenged, the court may proceed to order its certification by the authority that issued it.

Expert Testimony. Expert testimony is given by a third party whose participation has been requested by the parties or by the judge, and who has specific knowledge of an item or discipline related to the matter being tried. Each of the parties must name its own expert. Once an expert has accepted his nomination, he should give his expert opinion regarding the issues within his area of expertise, according to his own knowledge and understanding.

The expert opinions can be objected to based on their content, but not based on the knowledge or techniques used by the expert. In the event that expert opinions are inconsistent, the judge will name a third expert, whose opinion usually prevails. If a party does not designate an expert, the judge will name one on behalf

16 Code of Civil Procedure, sections 319 and 320.
17 Code of Civil Procedure, section 95.
18 Code of Civil Procedure, section 98.

of the party. However, if the party does not accept the court-appointed expert, it will be deemed to accept the other party's expert report. If both parties' experts fail to present their reports, the court will appoint an expert, whose report will be final. Each party covers its own expert's fees and both parties cover the third expert's fees.

Judicial Inspection. Judicial inspection involves the direct examination by the judge of the real estate, goods, or persons involved in the action in order to determine their status, location, situation, or any other related fact that might be relevant to the action.

Subjective considerations may not be used during the judicial inspection. The court will keep a record of the inspection, which will be signed by everyone in attendance. Likewise, the court may accept any additional documents that might better serve the record, such as photographs or descriptions of the place where the property or the goods are located.

Witness Testimony. Testimony of witnesses is evidence brought by third parties who have knowledge of the facts that the parties are required to prove. The testimony is given in court and only in special cases (*e.g.,* elderly or sick witnesses or public officials) may it be given at the witnesses' domiciles.

The parties are obliged to present their own witnesses. When this is not feasible, the party must expressly declare the reasons making presentation of the witness infeasible, in order to allow the court to rule on the issue. However, the court may still order the witness to appear before the court.[19] Sometimes, testimonial evidence is offered for the sole purpose of slowing down the trial, such as by giving false or imprecise addresses of witnesses or using other techniques that make it difficult to find a witness.

If this is the case, the party providing incorrect information may be fined and the evidence will be dismissed. The evidence also will be dismissed if the offering party does not present the witness at the indicated hearing date or if the witness does not appear even after being fined. Witnesses will be questioned in a direct and oral fashion. The questions must be directly related to the issues involved in the trial and they must be clear and specific, making sure that each question deals with one fact only.[20] The witness will be asked questions with the purpose of establishing the suitability of the person as a witness and to prevent biased testimony that might benefit one party to the detriment of the other party.

Witnesses may deal with questions regarding time and place and circumstances that are directly related to the issues involved in the trial. Testimony may never include subjective considerations. Thus, words such as "I think . . .", "I believe . . .", "they told me . . .", "I guess . . .", or any other similar formulations result in a presumption that the witness does not know or is unsure of the facts being declared.

19 Code of Civil Procedure, section 357.
20 Code of Civil Procedure, section 360.

Witnesses will be examined separately and successively. Witnesses' answers will be transcribed in a separate document and, in case there are contradictions or ambiguities, the parties can call this to the attention of the judge in order to obtain the necessary clarification.[21] At the end of the examination, each witness should explain the basis for its statement (an explanation of the origin of its knowledge as declared in the testimony given). The statement will be reflected in the corresponding document.

In the case of witnesses who reside outside the jurisdiction of the judge in charge of the trial, the taking of the evidence will be done through letters rogatory sent to the judge that has jurisdiction at the witness's place of residence. The letters rogatory will be sent with the questionnaire and cross-examination questionnaire, to be processed pursuant to the civil procedure law of the corresponding state. A witness offered by a party also can be cross-examined by the other party. This means that new questions may be formulated with respect to the answers given by the witness to the original questions posed.

Reproduction Evidence. The Code of Civil Procedure also regulates cinematography, videos, and any other photographic reproductions. All other types of evidence such as fingerprints, audio registers, and other elements that serve to attest to a state of affairs are admissible evidence. The party that presents this evidence should provide the court with the equipment or elements necessary for the evaluation of such evidence.

Presumptions. A presumption is a conclusion that the law or the court deduces from a known fact to discover an unknown fact. Both legal presumptions (by operation of law) and human presumptions (by the reasoning of the court) are permitted.[22]

Judgment and Kinds of Relief

In General

The final ruling that settles the dispute by resolving the issues in controversy is the substantive judgment. A ruling is not final until it is no longer subject to appeal or other recourse.

This ruling is issued once the evidentiary stage has expired and the hearing on the allegations (an opportunity for each party to make a summary of the arguments that support the judge in issuing his final determination based on the merits of the case) has been concluded. Parties may request an amendment for typographical or arithmetical errors only.

21 Code of Civil Procedure, section 365.
22 Code of Civil Procedure, sections 379–383.

Entry of Judgment

Section 79 of the Code of Civil Procedure provides that there are different types of rulings: those that are issued throughout the suit and that govern the development of the trial, those that decide interim issues, those that may be decided on peremptory matters that put an end to the proceeding, and the final judgment that ends the case by settling the dispute between the parties.

Pursuant to section 14 of the Constitution, all rulings must be properly based on legal provisions (founded) or principles that justify the application of those rules. Judges may not vary or modify their rulings after they are signed, but may clarify some concept or complete any omission as to an issue in dispute. These clarifications may be made directly by the court or at the request of one of the parties, within a certain period of time.

Final Judgment

In General

The judgment is the act that settles the dispute of the matter subject to adjudication. The judgment may rule against the defendant, as long as the plaintiff has proven the accuracy or truthfulness of the facts on which the action was based and the defendant has not proven his defenses. The defenses considered valid will defeat the plaintiff's action either totally or partially.

Judgments must be consistent with the points being litigated. If the defendant loses, the extent of the judgment will depend on the type of relief requested and the actions to enforce that relief. In principle, the judgment will grant the defendant a period for voluntary compliance with the ruling, which is usually five working days, depending on the relief granted. If the ruling is not complied with in accordance with its terms, enforcement may be carried out pursuant to the plaintiff's request.

Normally, the parties must exhaust all actions and appeals allowed by local and federal laws before the ruling is considered final. The judgment becomes final and binding because the law mandates it or because the parties do not exhaust all available remedies within the statute of limitations. When the defendant does not comply voluntarily, the plaintiff must seek enforcement through the court, pursuant to sections 500–533 of the Code of Civil Procedure. Measures such as precautionary attachment are available in an enforcement action. Section 501 of the Code of Civil Procedure requires that enforcement of a judgment be sought before the same court that issued the judgment.

Specific Performance

If the judgment orders the specific performance of an act, the court will grant a reasonable period to comply with the order. If the term elapses without compliance, the court will adopt specific measures for each type of non-compliance. If the act is strictly personal, the court will administer all measures necessary (fines or

arrest) to force compliance, without prejudice to any claim for corresponding damages.

If the act is not strictly personal, the court will appoint a person to perform the act at that party's cost. If the act is the granting of any instrument or the execution of a specific act, the court will perform it on behalf of the non-compliant party, indicating this fact in the document. In general, most of the matters filed with the courts fall within these categories, but there may be other acts, such as the rendering of accounting records, the division of an asset, or the obligation not to perform an act or to repossess personal property or real estate.

Monetary Awards

The Code of Civil Procedure indicates that when the judgment includes a monetary award, enough assets will be attached to satisfy the judgment, without prior notice to the defendant. If the assets attached are liquid funds, the plaintiff will be paid immediately.

If the assets are not liquid, they will be appraised and publicly auctioned. The judgment may include other relief as well, but monetary awards are immediately satisfied upon attachment. The interested party must file an enforcement request with a list of the funds against which enforcement is sought, after which the other party will have the opportunity to review the request for three days, in order to argue against enforcement.

The court ruling will be based not only on the arguments filed by both parties, but also on the contents of the final judgment. This ruling may be appealed but will not stop execution. The condemned party in the judgment must pay all expenses incurred in connection with its enforcement. The law grants a term of 10 years to request enforcement of the judgment, starting from the date when the term for voluntary compliance expires.[23]

Construction, Transformation, or Rescission

Based on the relief sought by the parties and the contents of the judgment, the court may rule on the termination or avoidance of obligations between the parties or the interpretation of what should be considered a valid obligation between them. The process for enforcement is the same as described in cases where a specific act is required of the obliged party.

Declaration Concerning Legal Relations

The court's judgment may simply decide the status of the legal relations between the parties, based on the contents of the complaint and the answer. The court may communicate the terms of the ruling to third parties as may be necessary for the proper enforcement and satisfaction of the declaratory judgment.

23 Code of Civil Procedure, section 529.

Oral Commercial Proceedings

On 25 January 2017, a reform to the Commerce Code was approved by the Federal Congress. The most relevant change in this reform is the establishment of the oral commercial proceedings as the "default rule". Before the reform, oral proceedings could only be pursued if the amount claimed was lower than MXN $593,712.73.[24]

After the reform, pursuant to section 1390 *bis* of the Commerce Code, all commercial disputes shall eventually be settled by an oral commercial proceeding, regardless of the amount claimed. As mentioned, the purpose of such reform is to initiate the progression to oral proceedings. Thus, the maximum amount of the claim that would allow an oral commercial proceeding to ensue will be increased each year.

The only cases that cannot be orally tried are those that have special proceedings established in the same Commerce Code, or cases without a determined amount at issue. The proceedings are governed by the principles of oral communication, publicity, equality, immediacy, contradiction, continuity, and concentration. The judgments entered in these trials cannot be challenged by any ordinary means of review (*e.g.*, appeal or revocation). Introducing oral proceedings for all commercial disputes (which have unchallengeable decisions) has an evident purpose of reducing the time and costs of entering the judgment.

Oral Complaint

Section 1390 *bis* 11 of the Commerce Code establishes the minimum requirement of a complaint in an oral commercial proceeding. Surprisingly, the requirements are more detailed than the ones set out for an ordinary commercial proceeding (which are currently still in force). Pursuant to the provision, the complaint must state:

- The court where it is being filed;
- The complete name of the plaintiff and the address to receive notices;
- The complete name of the defendant and its address;
- The relief sought or things being sued for;
- A concise and clear statement of the facts on which the plaintiff bases its claim, including reference to the public or private documents and witnesses that will prove its allegations;
- The legal provisions that govern the procedure and the type of action being filed;
- The amount of the relief sought;
- The proffer of evidence intended to be used in trial; and
- The plaintiff's signature or, if the plaintiff cannot sign, the plaintiff's fingerprint.

24 This amount was updated every year according to the corresponding accumulated inflation. The current amount in accordance with Article 1339 of the Commerce Code is $662,957.06.

Oral Hearings

The hearings must be held in the presence of the judge, who has the power to direct the debate. Currently, it is not uncommon to have a secretary or court clerk as the functional officer of the court; however, this may change in the future when oral commercial proceedings are fully implemented. There are only two hearings in this proceeding, *i.e.*, preliminary hearing and trial hearing. The preliminary hearing deals with:

- The depuration of the procedure (*i.e.,* legitimation issues and dilatory defenses, as explained above);
- A conciliation stage; and
- The admission of evidence by the Court.

The trial hearing is where the evidence is heard by the court and the parties can — orally — make their closing statements. Pursuant to section 1390 *bis* 38 of the Commerce Code, the final judgment must be rendered immediately by the judge at the end of the trial hearing. It remains to be seen how this will operate once the reform is fully implemented.

Oral Commercial Enforcement Actions

As with the enforcement action described above, a commercial enforcement action is supported by the existence of an instrument that is self-executing and permits the attachment of assets to exercise the rights evidenced by the instrument. Pursuant to section 1391 of the Commerce Code, such instruments are:

- Final judgments with authority of *res judicata* and non-appealable arbitral awards;
- Public instruments, their testimonies, and certified copies, issued by public attestor;
- Judicial confessions of the debtor;
- Negotiable instruments;
- Decisions made by an expert in insurance matters, which establishes the amount to be paid;
- Invoices or any other instrument signed and recognized by the debtor; and
- Agreements executed before the Federal Consumer Protection Agency and the arbitral awards that it grants.

With the commercial reform, commercial enforcement actions will be settled orally if the amount of the debt is higher than MXN $593,712.73,[25] but lower than MXN $4,000,000.

25 This amount was updated every year according to the corresponding accumulated inflation. The current amount in accordance with Article 1339 of the Commerce Code is $662,957.06.

Post-Trial Motions

Attacks on Judgments

Judgments can only be challenged through an appeal. Depending on the type of proceedings, the final judgment may permit other attacks, but only an appeal truly addresses the substance of the ruling. The court that originally tried the case cannot revoke its own determinations. The ruling by the appellate court may in turn be challenged by a constitutional suit that would be heard by a federal collegiate circuit tribunal.

Grounds for New Trial

Under Mexican procedural rules, a lawsuit and its corresponding judgment will preclude the possibility of a new trial as to those issues that have been adjudicated. No new trials will be allowed, and whatever the plaintiff originally claims in its complaint will be considered a waiver of any other relief or benefit sought from the defendant for that specific cause of action.

Notwithstanding these limitations, if the judgment was fraudulently obtained, it is possible to request the "nullity of concluded trial". At one time, failing to prevail in this action could result in criminal liability, thus discouraging its use. Currently, there is no crime for failing to prevail in this action.

Once the final judgment has been issued, it cannot be modified or revoked by the court that issued it, pursuant to section 98 of the Code of Civil Procedure. Any newly discovered evidence must be submitted during the proceedings, i.e., from the time the complaint is filed and until the court orders the file to be prepared for issuance of the final judgment. The evidentiary impact of any new evidence that is filed in a timely manner will be subject to the other party's objections and arguments.

Although newly discovered evidence is not a ground for a new trial, it may disclose or prove important facts that were unknown to the parties and it may facilitate the court's decision. Newly discovered evidence that was not otherwise available or known by the parties may be admissible in appellate proceedings. The court will assist the parties in securing the additional evidence.

Even in the case of fraud, retrying the case is not allowed without irrefutable evidence that the original suit was based on fraudulent and deceitful bases, as determined in a nullity action filed to challenge the merits of the original trial. The parties make all filings and statements to the court under oath. A false statement could be made in the personal hearings or when the parties personally appear in court for the main hearing. If this occurs, the statement may constitute sufficient grounds to initiate criminal proceedings and, possibly, a civil action for damages. While this is the subject of a different proceeding, it would certainly affect the way the court adjudicates the original case if the deceit were discovered prior to its judgment. In practice, however, such fraud is seldom prosecuted, because it is often difficult to prove.

Enforcement and Execution of Judgments

Writs of Execution

A writ of execution is a court order instructing the parties to comply with the terms of the final judgment. The court is allowed to order attachment of assets to guarantee enforcement of the judgment when the parties do not voluntarily comply with its terms.

Bankruptcy or Liquidation

The court that issued the final judgment will not have the authority to declare a party bankrupt or subject to liquidation, even if it is clear that the party is insolvent. As has been stressed before, some of these actions do lie within the competence of federal commercial courts, which will need to adjudicate the need for bankruptcy or liquidation if the party has not met its duties according to the original enforcement order.

Administration Orders

An administrator is normally appointed by the court to manage the business of a party that is required to make payments in a given lawsuit when it is believed that party is likely to hide its assets.

The administrator has the duty to keep the records of the debtor. However, this is only the case when a judgment orders payment of a cash amount that is to be satisfied by the debtor's business proceeds and because of the attachment of the debtor's assets.

Arrest

Arrest is not a part of the judgment or the relief included in the judgment, but a way in which to achieve enforcement of the court's ruling. Generally, the Code of Civil Procedure does not contemplate the possibility of arrest as a measure to sanction a party's non-compliance with enforcement of the judgment. However, the court may order house arrest whereby the debtor is not allowed to leave the premises until the judgment is fully carried out.

International Cooperation

Sections 604–608 of the Code of Civil Procedure deal with international cooperation, including the taking of evidence, the enforcement of foreign judgments and arbitration awards, and other acts by which a Mexican court will assist a foreign court in its jurisdictional activities as they relate to parties located in Mexico.

Generally, a Mexican court will act according to a letter rogatory, pursuant to the instructions indicated and the authority referred to by the foreign court. The Mexican court, however, will only act based on local procedural requirements and not according to foreign law.

The enforcement of foreign judgments and arbitration awards will generally be recognized and accepted by Mexican courts without retrial or examination of the merits of the case, provided all requirements set forth by the Code of Civil Procedure, the Federal Code of Civil Procedures, and the Commerce Code, when applicable, are met. Accordingly, it is required that a foreign judgment not violate Mexican public policy, be filed before a Mexican court in documents complying with all formalities clearly evidencing their authenticity, not derive from an action *in rem*, and issue from a foreign court with validly asserted jurisdiction according to internationally accepted principles as recognized by Mexican law.

In addition, the defendant must have been duly served with process to ensure that the judgment complies with the constitutional rights of evidence and prior defense before judgment, the foreign judgment must be final and not subject to any review or legal recourse (*i.e.*, it must be *res judicata*), and the issue resolved is not being contested among the same parties in a Mexican court, provided that, in the ongoing process, the foreign party was duly served. Even if all these requirements are met, the Mexican court can deny enforcement if it is shown that the country where the judgment was issued would not reciprocate if asked to enforce a Mexican court judgment.

Appeal

An appeal asks a superior court to confirm, revoke, or modify the ruling of an inferior court. Section 689 of the Code of Civil Procedure provides that the parties may appeal a ruling if they believe they have suffered a violation of legal rights. The right to appeal also is granted to third parties that may be harmed by a particular judicial ruling. A partial appeal of the ruling is allowed. A party that has obtained all relief sought cannot appeal a ruling.

Parties may appeal interim resolutions and the final judgment. The appeal must be filed in writing. Depending on the appealed ruling, appeals may be admitted in two different manners: on a return basis and on a suspension basis. An appeal admitted on a return basis means that the principal suit will not be suspended during the appellate process. Nonetheless, if the appeal is ruled on favorably, anything done in the principal suit that is inconsistent with the appeal will automatically be revoked and lose validity.

An appeal admitted on a suspension basis means that while the appeal is in process, the principal suit will be suspended and a complete stay of execution is mandated. An appeal submitted on a return basis could be processed immediately or preventively, depending on the appealed ruling, while an appeal submitted on a suspension basis is always processed immediately.

An appeal of immediate process must include the legal arguments to challenge the lower court's decision. It must be filed within eight working days from the effective date of notice of the appealed ruling in the case of writs or interim rulings, and within 12 working days in the case of a final judgment. According

to section 692 *bis* of the Code of Civil Procedure, an appeal filed against specific rulings must be processed immediately in cases involving:

- Dismissals of the motion by which a party challenges the service of process or against the ruling whereby the court declared such service of process valid or null;
- Rulings that solve peremptory defenses;
- Writs or rulings whereby it is considered that the initial complaint or a counterclaim has been answered or unanswered;
- Writs or rulings whereby the court imposes a sanction or a compulsion measure;
- Writs that dismissed a counterclaim;
- Resolutions issued to foreclose the final judgment; and
- Definitive resolutions that suspend or finish the proceedings.

These appeals are admitted on a return basis, with the exception of an appeal against definitive resolutions that suspend or finish the proceedings, which is admitted on a suspension basis. In cases not foreseen by section 692 *bis*, the parties may file a preventive appeal. This appeal must be filed within three working days from the effective date of notice of the appealed ruling.

A preventive appeal need not include the legal arguments to challenge the appealed ruling, but only an expression of inconformity. A preventive appeal is processed jointly with the appeal filed against the final judgment; therefore, when it is time to appeal the final judgment, the party that filed a preventive appeal against an interim ruling should submit the legal arguments to challenge it.

If the parties do not file an appeal within the corresponding term, they are deemed to have accepted the ruling, and the ruling therefore becomes *res judicata*. The superior court immediately above the court that issued the ruling will process the appeal. Rulings issued by civil courts will be appealed before the Chambers of the Superior Justice Tribunal of the corresponding state. Once the appeal is admitted, the inferior court gives the other party a term to answer the appeal (three days in the case of writs and interim rulings, and six days in case of final judgments), after which the court will order initiation of appellate proceedings.

If an appeal is accepted on a suspension basis, the original file will be sent to the superior court and, if admitted on a return basis, only copies of the current file will be sent to the superior court. When the file or the corresponding copies reach the superior court, the latter will decide whether to hear the appeal and whether the way in which the lower court originally admitted the appeal for process is correct.

If the appeal is ruled inadmissible, the file will be returned; if only the procedural means are changed, an exchange of documents between the lower and the superior court will need to take place to adjust to the correct means. In appeals of final judgments, the parties may only offer new evidence if it is relevant to a supplementary defense that is not alien to the subject matter of the dispute.

Issues Subject to Review

The superior court will only review the records of the proceedings in the lower court. No additional elements may be put forward for review that would introduce issues outside the scope of the lower court judgment that is being reviewed.

The superior court must review the original case according to the appellate arguments filed by the appellant. If a party fails to make an argument as to an issue that is to its detriment, the superior court may not remedy that deficiency *sua sponte* (on its own motion).

Review of Proceedings

The review of facts will cover the proceedings from the initial complaint up to the appealed ruling. The appellate arguments may deal with facts throughout the proceedings. All unchallenged rulings must be considered final and are not subject to additional review.

Adhesive Appeal

According to section 690 of the Code of Civil Procedure, the party that has prevailed in the final judgment may adhere itself to the appeal motion that the losing party has filed. The purpose of an adhesive appeal is to express arguments for improving the reasoning of the final judgment.

Further Appeal

Once the appeal is resolved and the superior court issues its determination, the appellate ruling is only subject to a constitutional procedure (*Juicio de Amparo*) that may be filed by either party before the federal courts. These constitutional proceedings are governed by a federal statute and follow very specific procedural rules concerning a final ruling by a collegiate circuit court that is not subject to any further appellate review, unless extraordinary circumstances are met.

Amparo Claims

An *Amparo* claim is a constitutional challenge that initiates a proceeding aimed at protecting the fundamental rights that may have been harmed or violated by an act of a state entity or "authority". The judgments entered at trial (whether at a local or federal level) or in an appellate proceeding, being issued by a court deemed as an "authority", are subject to challenge through *Amparo*.

Depending on the "authority act" that is being claimed in *Amparo*, there are two different types of *Amparo* proceedings: direct *Amparo* and indirect *Amparo.* Direct *Amparo* claims are admissible against final judgments, awards, or resolutions that end a trial. Indirect *Amparo* claims are admissible against all other "authority acts" that violate fundamental rights, but are not final judgments. This section will only address direct *Amparo* claims, as this is the appropriate proceeding to challenge a court ruling on constitutional grounds.

Parties have 15 business days to file their *Amparo* claim once the notice of the respective judgment is received. The dispute in *Amparo* proceedings is no longer between the parties to the original court proceeding, rather, the petitioner challenges the judge's or magistrate's decision, arguing why it believes the judgment is in violation of its fundamental rights. Federal Collegiate Circuit Courts usually hear direct *Amparo* claims unless the Supreme Court decides to attract the case. Collegiate Circuit Courts are formed by three magistrates. One of the magistrates is entrusted with the case and drafts a judgment project, which is then voted in a plenary session, approved by simple majority.

Stay of Proceedings

The petitioner of *Amparo* can request a stay order over the challenged judgment. This stay prevents the opposing party in the court proceeding to enforce said judgment until a final decision has been reached in the *Amparo* proceedings. In these cases, the judge or magistrate that issued the challenged resolution may request that the petitioner place a security for the stay, with failure to post such security rendering the stay ineffective.

The amount of the security to be posted is determined by the judge or magistrate that issued the challenged resolution, and it should be enough to cover the damages that the stay order may cause to the opposing party during the course of the *Amparo* proceedings.

Adhesive *Amparo*

The counterpart in the original court proceeding, who is now opposing the *Amparo* petitioner, is entitled to argue in favor of the challenged decision through a mechanism known as *Amparo adhesivo*.

Similar to the adhesive appeal described above, the purpose of the adhesive *Amparo* is to improve the reasoning of the final judgment in which the adhering party prevailed. Additionally, through an adhesive *Amparo*, the counterpart of the *Amparo* petitioner may challenge any procedural violation incurred within the ordinary proceeding that may have an impact on the way the merits of the case are solved.

Conclusiveness of Judgment

Res Judicata

Pursuant to section 426 of the Code of Civil Procedure, a judgment is subject to *res judicata* when it can no longer be challenged by further appeal or revocation action. Likewise, by provision of law, judgments that become final are rulings that admit no further review mechanisms.

To date, these are rulings issued in lawsuits where the amount in dispute does not exceed MXN $593,712.73,[26] save for those rulings issued regarding residential lease agreements and family law controversies; judgments issued by a superior court by which appeals are finally resolved; and rulings that resolve a complaint against a judge (action to seek a sanction against a judge for improper or unfair conduct).

According to section 1390 *bis* of the Commerce Code, the judgments entered in oral commercial proceedings do not allow for any motions for review either. This means that once the commercial reform is fully implemented in 2020, *ceteris paribus*, commercial proceedings will be unchallengeable through any ordinary means.

These types of judgments can only be challenged through *Amparo* proceedings that may be brought before federal district courts or circuit courts, depending on the judgment being challenged. These federal courts will review the lower court rulings to determine their consistency with the principles and the Bill of Rights contemplated under articles 1 to 29 of the Constitution, as explained above.

Additionally, based on a specific judicial declaration pursuant to section 427 of the Code of Civil Procedure, a judgment or other ruling may be declared as subject to the principle of *res judicata* for rulings that have been expressly agreed to by the parties or their representatives; rulings that, after notification, are not challenged by the parties within the legal term for doing so; and, for rulings that have been challenged, when the challenge is not pursued or when the corresponding appeal is withdrawn.

The judicial declaration of the applicability of *res judicata* can be made directly by the court or at the express request of a party. This resolution cannot be appealed, except through a special action against the court itself.

Case Law

The Mexican legal system is not based on the *stare decisis* doctrine. The courts are expected to resolve issues based on the provisions included in the codes enacted by the legislature. The decisions issued by the courts generally have no binding power over other courts and set no precedent for future cases.

However (as noted above), there is a concept known as *jurisprudencia* that is understood as the criteria applied to solve a particular issue that should be used by all lower courts. In the Mexican judicial system, only the Supreme Court of Justice of the Nation and the collegiate circuit courts (and the plenary sessions of these courts, *Plenos de Circuito*) are authorized to set these criteria of interpretation.

26 This amount is updated every year according to the corresponding accumulated inflation. The current amount in accordance with Article 1339 of the Commerce Code is $662,957.06.

Recent Amendments to Procedural Rules (Commerce Code)

In General

In early January 2017, a number of amendments were introduced to the Procedural Rules in the Commerce Code.

Elapsing Timeframes and Procedural Right Expiration

A new feature is facing the lack of procedural activity tending to promote the stages of the proceedings, which will be punished by ordering the expiration of the party's procedural rights. Specifically, the amendment was introduced in respect to three specific situations:

- Appeal motions;
- Proceedings held before Appellate Tribunals; and
- Ancillary proceedings.

Pursuant to the new regulation, lack or absence of impulse in such stages from the interested party will bring the expiration of the respective procedural activity, motion, or stage — for proceedings related to the appeals stage or before a second instance superior tribunal, inactivity entailing 60 business days and, for ancillary proceedings (*incidentes*), 30 business days. The expiration rule for the principal proceedings remains the same: 120 working days.

The expiration will produce the extinction of the means of defense or ancillary proceeding, and the inferior ruling which was subject for review by the Appellate Court will be considered valid and with the authority of *res judicata*. When the proceedings are declared expired (*declaración de caducidad*), courts will allocate to the non-prevailing party costs and expenses pursuant to the tariffs established in the respective organic laws, pursuant to rules of the place where the trial took place. Expiration occurs upon the elapsing of the specific term of each legal hypothesis subject matter to study, and courts are meant to observe it mandatorily.

Ordinary Commercial Procedures, New Additional Requirements for Initial Lawsuit

Initial claims must observe new requirements. There must be an indication of the taxpayer ID number of the plaintiff, a reference to the Entity Registry Code (CURP), and an indication related to the "offering of the evidence that is meant to be rendered alongside the proceedings".

This new provision has raised concern among judges and practitioners, considering that, pursuant to the Ordinary Procedural Commercial Rules, there is a specific timeframe during which parties are entitled to offer evidence that differs from that of the initial stage.

Amendments to Article 73 of the Constitution

Article 73 of the Mexican Constitution enlists the powers of the Federal Congress. In 2017, section XXX of Article 73 was included to give the Federal Congress powers to enact laws on civil and family proceedings. The National Code of Civil and Family Proceedings has not been enacted by the Federal Congress to this date.

New National Law for Asset Forfeiture (*Ley Nacional de Extinción de Dominio*)

On 9 August 2019, the Mexican Congress enacted the National Law for Asset Forfeiture ("NLAF"). Such law regulates Article 22 of the Mexican Constitution and provides the rules for the forfeiture of assets in favor of the State. The NLAF was enacted in order for Mexico to abide by its international commitments in the fight against organized crime, corruption, and drug cartels. The NLAF abrogated the previous Federal Law for Asset Forfeiture and the local asset forfeiture laws.

Asset forfeiture is defined by the NLAF as the loss of rights in connection with an asset, as declared by a court, without receiving in exchange any type of compensation or consideration.

The NLAF contains a Chapter regarding the proceedings that must be followed to forfeit an asset. Such civil proceedings are independent of any related and possible separate criminal proceedings dealing with the responsibility for actions performed by the corresponding parties.

Essential Elements for the Exercise of the Asset forfeiture Action

Article 9 of the NLAF provides that to prevail in an asset forfeiture civil proceeding, the plaintiff (prosecution office) needs to prove: (i) the existence of a wrongful act (*hecho ilícito*); (ii) the existence of an asset with an illicit origin or purpose; (iii) a causal link between the wrongful act and the asset; and (iv) that the holder of the asset knows or ought to have known the illicit origin or purpose of the asset. The only party with standing to file an asset forfeiture action is the federal prosecution office (*Ministerio Público*).

Competent Court

The NLAF sets forth the creation of specialized federal judges (Asset Forfeiture Judges) in a six-month term that will solve the asset forfeiture civil proceedings; meanwhile, the existent Federal Civil Judges will have jurisdiction to rule on such. Harmonization of individual State-related laws will take place in the months to come.

Amendment of State Laws

The Federal Congress, through the NLAF; has required State Congresses to harmonize their corresponding local laws to adjust to the principles outlined in the new federal legislation.

Overview of the Proceeding

The asset forfeiture proceeding has two main phases: (i) a preparatory phase and (ii) a judicial phase.

In the preparatory phase, the prosecution office (*Ministerio Público*) will conduct the investigation and seek to evidence the elements for the exercise of the action.

Then comes the judicial phase, which is divided into the following stages: (i) filing of the lawsuit, (ii) its admission, (iii) answer to the lawsuit, (iv) the initial hearing, (v) the main hearing, (vi) issuance of the judgment, (vii) appeal, and (viii) the enforcement of the judgment.

Furthermore, during the proceeding or before its commencement, the Court may order provisional measures requested by the prosecution office (*Ministerio Público*), to secure the assets that will be subject to the proceeding, to avoid their concealment, disposal, or squandering.

The proceeding formally begins with the filing of the lawsuit by the plaintiff (*Ministerio Público*). The lawsuit must contain all the necessary evidence and records to prove the asset forfeiture action.

Then, the defendant will be served with process and will be given a 15-day term to answer the lawsuit. The defendant also must file all the necessary evidence and records to sustain its defense.

The proceeding provides for two hearings: the initial hearing and the main hearing. In the first hearing, the judge resolves on the admissibility of evidence and determines the issues in dispute. In the second hearing, the parties will present the evidence and present their closing arguments orally.

The court must render judgment after hearing the closing arguments and exceptionally within eight days after such. The parties can appeal the judgment within the nine following days.

The interested or affected party is entitled to access to two different types of constitutional protection remedies alongside the sequel of the proceedings: intraprocedural violations affecting substantive rights *(amparo indirecto)* and the second instance ruling, which could be subject to constitutional review through the so-called *"amparo directo"* claim.

It is worth mentioning that the procedural regime and framework concerning these proceedings will be impacted once the new National Civil Procedural Code is enacted, which is still being subject to discussions in the Federal Congress as part of the Constitutional Reform on effective access to justice (in force since September 2017).

Effects of the Judgment

If the court decides that the plaintiff proved its case, it must declare the loss of rights of the defendant with regards to the assets involved in the illicit activity, without compensation.

If the defendant prevails, it can initiate a separate damages action against the prosecution. In addition, if the asset was sold in an anticipated manner, given the specific legal scenarios provided by the NLAF, the defendant has the right to be reimbursed with the value of the asset at the time of the judicial selling process (not market value), an aspect that has raised concerns about the due process consistency of this aspect of the law.

Commentaries and Concerns regarding the NLAF

The NLAF has certain shortcomings that deserve discussion. First, the proceeding has extremely short time periods, which will result in very little time for attorneys to file and prepare properly their defense remedies.

Second, there are many cases in which the anticipated sale of the assets is authorized, even when the illicit origin of the assets has not been evidenced with the court.

Third, the NLAF also authorizes that, in case the action is unsuccessful, the value of the asset to be reimbursed to the defendant will be less than the actual value of the goods.

Fourth, the decree of enactment of the NLAF provides that within the year following its implementation, the Mexican Attorney Generals Office shall call the public to make a constitutional and legal review of the asset forfeiture framework and suggest amendments.

Finally, the fact that the asset forfeiture civil action may be successful, even if the criminal proceeding is unsuccessful, generates concerns about possible inconsistencies in due process and evidence standards.