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Mexico

CLASS ACTIONS

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This country-specific Q&A provides an overview of class actions laws and regulations applicable in Mexico.

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MEXICO

CLASS ACTIONS



1. Do you have a class action or collective redress mechanism? If so, please describe the mechanism.

In Mexico, there are two important dates for the protection of collective rights to have access to justice: July 29, 2010, and August 31, 2011. The first date saw a reform to the Political Constitution of the United Mexican States, which provided for the Federal Congress to issue laws to protect collective interests, requiring that such laws be specific to the applicable matters and the judicial procedures for filing claims to enforce such rights. It was also determined that the jurisdiction to resolve collective disputes would belong to federal judges.

Based on the constitutional reform referred to above, on August 31, 2011, a Decree was published that reformed various laws to include not only judicial procedures for enforcing collective rights, but also reforms to laws in various matters to determine in which specific issues there would be a right to file a collective action and, if necessary, actively legitimize various Mexican authorities. The applicable matters for collective actions are: Environmental; consumer protection; economic competition; and protection of users of the financial system. The jurisdiction of federal judges was confirmed, and a special procedure in the matter was created.

The impacted legal regulations were:

CÓDIGO CIVIL FEDERAL

LEY FEDERAL DE COMPETENCIA ECONÓMICA

LEY DE PROTECCIÓN Y DEFENSA LA USUARIO DE SERVICIOS FINANCIEROS

LEY GENERAL DE EQUILIBRIO ECOLÓGICO Y LA PROTECCIÓN AL AMBIENTE

LEY FEDERAL DE PROTECCIÓN AL CONSUMIDOR

The respective judicial procedure can be described as follows:

Rights and interests protected by collective actions:

1. Diffuse and collective rights and interests, understood as indivisible in nature, whose ownership belongs to an indeterminate or determinable collectivity of persons related by common circumstances of fact or law.
2. Individual rights and interests of collective incidence, understood as divisible in nature, whose ownership belongs to the individuals comprising a determinable collectivity of persons related by legal circumstances.

Strictly collective action:

It is indivisible in nature and is exercised to protect collective rights and interests, whose ownership belongs to a determined or determinable collectivity based on common circumstances, and aims to legally claim from the defendant the repair of the damage caused, consisting of the performance of one or more actions or refraining from performing them, as well as to cover damages individually to the members of the group, which derives from a common legal relationship mandated by law between the collectivity and the defendant.

Homogeneous individual action:

It is divisible in nature and is exercised to protect individual rights and interests of collective incidence, whose ownership belongs to individuals grouped based on common circumstances and aims to legally claim from a third party the compulsory fulfillment of a contract or its rescission with its consequences and effects according to the applicable legislation.

Steps of the procedure:

a. The Federal Judge will review the following issues and facts:

- That the acts in question harm consumers or users of public or private goods or services or the environment, or that they have harmed

consumers due to the existence of undue concentrations or monopolistic practices, declared to exist by a final resolution issued by the Federal Competition Commission.

- That it concerns common issues of fact or law among the members of the relevant collective.
- That there are at least thirty members in the collective, in the case of collective actions in the strict sense and homogeneous individual actions.
- That there is a coincidence between the object of the action exercised and the harm suffered.
- That the subject matter of the litigation has not been the subject of *res judicata* in previous proceedings as a result of the exercise of collective actions.
- That the action has not prescribed; and
- Any others determined by the applicable special laws.

b. Once reviewed, there are three ways for the procedure to follow: 1.- To admit the lawsuit and serve the defendant. 2.- To prevent the plaintiff to clarify certain issues of the lawsuit. 3.- To dismiss the lawsuit in the following cases:

- That the promoting members of the collectivity have not given their consent in the case of strict collective or homogeneous individual actions.
- That the acts against which the action is directed constitute administrative proceedings followed in the form of a trial or judicial proceedings;
- That the representation does not meet the requirements established in the Federal Consumer Protection Law;
- That the collectivity in the strict collective or homogeneous individual action cannot be determined or determinable based on the affectation to its members, as well as the common circumstances of fact or law of said affectation;
- That its resolution through the collective procedure is not suitable;
- That there is a pending lawsuit between the same type of actions, in which case consolidation will proceed; and
- That the associations that intend to exercise standing in the process do not meet the requirements established in the Federal Consumer Protection Law.

The judge may verify compliance with these

requirements during the procedure *ex officio* or at the request of any interested party.

- c. An appeal is available against the admission or dismissal of the lawsuit, which must be processed immediately.
- d. The defendant will have fifteen days to respond to the lawsuit from the date the order admitting the lawsuit is served. The judge may extend this period for an equal period at the request of the defendant.
- e. Once the lawsuit is answered, the plaintiff will be given a five-day period to respond.
- f. A pretrial and conciliation hearing must take place.
- g. If the parties do not reach any agreement in the preliminary and conciliation hearing, the judge will proceed to open the trial for a period of sixty business days.
- h. Once the written evidence is presented, the legal representative must ratify it under oath before the judge.
- i. The order admitting the evidence will set the date for the final hearing of the trial, in which, within a period not exceeding forty business days, the evidence will be examined and can be extended by the judge.
- j. Once the evidence has been presented, the judge will give the parties a period of ten business days to argue what they deem appropriate.
- k. The judge will render a judgment within thirty business days following the final hearing.

2. Who may bring class action or collective redress proceeding? (e.g. qualified entities, consumers etc)

In Mexico, the actively legitimate entities that can file collective actions are the following public bodies, associations or groups:

- Regarding environmental matters: The Federal Attorney for Environmental Protection.
- Regarding economic competition matters: The Federal Economic Competition Commission.
- Regarding consumer protection matters: The Federal Consumer Protection Attorney.
- Regarding financial services matters: The National Commission for the Protection and Defense of Users of Financial Services.

These are the subjects in which collective claims could

be raised.

Moreover, it is possible for groups of at least thirty people to file collective claims, provided that all of them can demonstrate the collective interest, meaning that in order to be part of the group, they must be directly related to the damage allegedly caused to the community.

Finally, non-profit civil associations may file actions on behalf of collectives; they must fulfill specific requirements, such as having been established at least one year before the collective action is presented, having a clear connection to the defense of rights related to the subject matter of the action (environment, consumer protection, financial services, competition), and certainly not pursuing profit.

3. Which courts deal with class actions or collective redress proceedings?

The Mexican federal courts have jurisdiction over class actions or collective redress proceedings.

4. What types of conduct and causes of action can be relied upon as the basis for a class action or collective redress mechanism?

Pursual to the terms of the Mexican Federal Civil Code the conduct and causes base for a for a class action or collective redress mechanism, are:

- Article 1910- The person who, acting unlawfully or against good customs, causes damage to another, is obligated to repair it, unless they can prove that the damage was caused as a result of the victim's fault or inexcusable negligence.
- Article 1913- When a person uses mechanisms, instruments, devices, or substances that are dangerous in themselves, due to the speed they develop, their explosive or flammable nature, the energy of the electric current they carry, or other analogous causes, they are obligated to respond for the damage they cause, even if they do not act unlawfully, unless they can prove that the damage was caused by the victim's fault or inexcusable negligence.

The person who causes damage to a collective or group of people is obligated to indemnify them.

5. Are there any limitations of types of claims that may be brought on a collective basis?

Due the reforms to our Constitution and several federal laws, its spirit is to grant the right to bring collective procedures only in specific matters.

There are specific limitations of the types of claims that may be brought on a collective basis, which are:

- Matters related to environmental damages.
- Damages cause due to illegal actions sanctioned by the Federal Antitrust-Competition Law.
- Damages cause due to illegal actions sanctioned by the Federal Law of Consumer Protection.
- Damages cause due to illegal actions sanctioned by the Federal Law for the protection of users of services rendered by the financial sector.

6. How frequently are class actions brought?

Unfortunately, in Mexico, collective actions have not been used as frequently as desired. When the debate began regarding the need to grant collectives the right to defend their rights collectively, it was thought that they would be used as frequently as in other jurisdictions. In practice, this has not been the case. Collective lawsuits have been filed specifically in areas such as environmental pollution, consumer protection for users of telecommunications services, as well as in other service provider sectors.

7. What are the top three emerging business risks that are the focus of class action or collective redress litigation?

The three sectors that are the focus or potential focus of collective actions in Mexico are:

1. The financial sector, including banks or other companies that provide financial services.
2. Telecommunications companies, particularly those that have concessions to provide cellular phone services.
3. Manufacturers and marketers of products that may represent a risk to health, including those whose industrial activities can cause harm to the environment, such as mining; manufacturers of solvents and chemical

products; basic and secondary petrochemicals.

8. Is your jurisdiction an “opt in” or “opt out” jurisdiction?

Mexico can be considered an “opt-in” jurisdiction, as the process by which members of a class in a class action must take active steps to “opt-in” to the lawsuit. In other words, they must take action to express their consent to be part of the class and participate in the class action. This is different from an “opt-out” process, in which class members are automatically included in the class action unless they take active steps to “opt-out” of participating.

9. What is required (i.e. procedural formalities) in order to start a class action or collective redress claim?

The procedural formalities to start a are:

1. The court before which the lawsuit is filed.
2. The name of the legal representative, indicating the documents with which they prove their authority.
3. In the case of strictly collective and homogeneous individual actions, the names of the members of the collective promoting the lawsuit.
4. The documents with which the plaintiff proves their representation in accordance with this Title.
5. The name and address of the defendant.
6. The specification of the diffuse, collective, or homogeneous individual right that is considered affected.
7. The type of action being brought.
8. The corresponding claims of the action.
9. The facts on which the claims are based, and the common circumstances shared by the collective regarding the action being filed.

10. What remedies are available to claimants in class action or collective redress proceedings?

The defendant shall be ordered to repair the damage caused to the collective, which may consist of restoring the affected things to their original state if possible. If restoration is not possible, the defendant shall be ordered to fulfil the obligation according to the damage caused to the interests of the collective. The restoration may consist of one or more actions or refraining from

certain actions.

Any payment resulting from the settlement process shall be made to the members of the collective as ordered by the judgment, and not through the representative. Each member of the collective may file a settlement process, in which they must prove the damage suffered.

The judge shall establish in the judgment the requirements and deadlines that the members of the group must comply with to file the settlement process.

11. Are punitive or exemplary damages available for class actions or collective redress proceedings?

In Mexico the final judgment might include Punitive or exemplary, that is: monetary damages awarded to a plaintiff that go beyond compensating for actual harm suffered and are instead intended to punish the defendant for their wrongful conduct and to deter similar conduct in the future.

These damages are considered loss of profit and could be based on the income that the plaintiff did to get due to the particular damage caused.

12. Are class actions or collective redress proceedings subject to juries? If so, what is the role of juries?

The judicial procedure in Mexico for collective actions is not resolved through juries. The procedure is conducted and ultimately resolved by a federal judge who has full jurisdiction and competence to do so. The parties (the collective and the defendant) have the right to appeal the judgment.

13. What is the measure of damages for class actions or collective redress proceedings?

The way to assess damages by the federal judge who hears the case is based on the claims made by the collective at the time of filing the lawsuit, the evidence presented, and the defense raised by the defendant. There is no rule that limits, restricts, or determines a specific parameter for assessing damages, as such assessment will depend on the evidence and facts presented.

14. Are there any jurisdictional obstacles

to class actions or collective redress proceedings?

In our opinion the jurisdictional obstacles are:

1. The system of integrating the collective to effectively prove its existence and its right to bring the lawsuit.
2. To prove that there is actually a damage caused to a collective or an affected diffuse interest.
3. The assessment of both the integration of the collective and its representation are at the discretion of one person: the federal judge.

15. Are there any limits on the nationality or domicile of claimants in class actions or collective redress proceedings?

No, there are not limitations of the nationality of the claimants to file a class actions or collective redress proceedings.

The domicile must be related with the type of class action.

16. Do any international laws (e.g. EU Representative Actions Directive) impact the conduct of class actions or collective redress proceedings? If so, how?

In terms of collective actions in Mexico, the applicable law is Mexican law, with no foreign law being applicable. In the case of international treaties, they can only apply to specific matters if they are formed by Mexico and ratified by the Senate of the Republic.

17. Is there any mechanism for the collective settlement of class actions or collective redress proceedings?

There is procedurally the possibility of a conciliation agreement. Once the notification of the admission of the claim has been made to both the representative and the collective, the judge shall immediately set a date and time for the preliminary and conciliation hearing, which shall take place within the next ten days. At the hearing, the judge shall personally propose solutions to the dispute and urge the parties to settle and may be assisted by experts deemed appropriate. The collective action may be resolved by a judicial agreement between the parties at any time during the process before it becomes final. If the parties reach a total or partial

agreement, the judge shall review ex officio that it is legally valid and that the interests of the affected collective are properly protected. After a ten-day notice to the organs and organizations referred to in Section I of Article 585 of the Federal Code of Civil Procedure and to the Attorney General of the Republic, and after hearing any statements from the members of the collective, the judge may approve the agreement, elevating it to the category of res judicata.

It is important to note that the judicial agreement must be approved by the judge and carefully reviewed to ensure that it meets legal requirements and protects the interests of the community involved in the litigation. In addition, it is necessary to notify the corresponding bodies and listen to the statements of community members before the judge approves the agreement and makes it final.

If a conciliatory agreement is not reached, the judicial process will continue and the evidence stage will take place, where the evidence provided by the parties to support their positions will be presented and assessed. Finally, the judge will issue a judgment resolving the dispute.

18. Is there any judicial oversight for settlements of class actions or collective redress mechanisms?

Yes, the Federal Judge who presided over the proceedings has jurisdiction to supervise and monitor compliance with the terms of the agreement through which the controversy arising from the collective action was resolved.

19. How do class actions or collective redress proceedings typically interact with regulatory enforcement findings? e.g. competition or financial regulators?

In the event that administrative proceedings are resolved, determining sanctions issued by the following authorities: Federal Consumer Protection Agency, Federal Commission of Economic Competition, Federal Environmental Protection Agency, or the Federal Commission for the Protection of Financial Services Users, and these find that there are affected collectives by the actions of the individuals or companies sanctioned administratively by such authorities, they may actively be legitimized to demand through the civil route as common representatives of the allegedly affected collective. In this case, it is the administrative authorities themselves who will represent the collective

in the respective judicial proceedings.

20. Are class actions or collective redress proceedings being brought for 'ESG' matters? If so, how are those claims being framed?

Any environmental damage could be the base of a collective redress proceedings, Environmental damages could include pollution, resource depletion, and damage to biodiversity, which can harm ecosystems, disrupt communities, and affect the health and well-being of people.

Environmental issues are included and covered by class actions' legal procedures in México.

Social damages could include violations of human rights (Right to a clean environment), and negative impacts on local communities.

Overall, damages arising from ESG issues can have significant impacts: Therefore, it is essential for companies to address and manage ESG risks effectively to mitigate these damages and promote sustainable business practices.

21. Is litigation funding for class actions or collective redress proceedings permitted?

There is not a specific prohibition for funding for class actions or collective redress proceedings.

In the case of non-profit associations that might represent collectivities in these type of procedures such

association will need to prove that the purpose of the same is not commercial and that it is incorporated for social purposes and pro-bono causes.

22. Are contingency fee arrangements permissible for the funding of class actions or collective redress proceedings?

There is not a specific prohibition for contingency fee arrangements permissible for the funding of class actions or collective redress proceedings.

23. Can a court make an 'adverse costs' order against the unsuccessful party in class actions or collective redress proceedings?

Each party in a collective process must bear its own expenses and costs. There is no provision in Mexican legislation that provides for the condemnation of expenses and costs in the event that a collective action is unsuccessful.

24. Are there any proposals for the reform of class actions or collective redress proceedings? If so, what are those proposals?

As far as we know and from publicly available information, there are no proposals or initiatives in Mexico either by the government, the Congress of the Union, or civil society organizations that propose to reform the legislation applicable to class actions.

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