

# Legal 500

## Country Comparative Guides 2025

### Mexico

### Insurance Disputes

### Contributor

Colin Vega Fletes  
Abogados



#### José Luis Colin Vega

Partner | [jlcolin@colinvegafletes.com](mailto:jlcolin@colinvegafletes.com)

#### Valentín Garza Davenne

Associate | [vgarzad@colinvegafletes.com](mailto:vgarzad@colinvegafletes.com)

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

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# Mexico: Insurance Disputes

## 1. What mechanism do insurance policies usually provide for resolution of disputes between the insurer and policyholder?

Typically, in addition to the regular pre-judicial claim, Mexican legislation outlines an administrative procedure before the National Commission for the Protection and Defence of Financial Services Users (CONDUSEF). This body is primarily entitled to issue opinions on coverage and other relevant matters in insurance policy claims, although it shows reluctance on this regard. While rarely utilized, CONDUSEF can also act as an arbitrator if the parties agree. However, given the discretionary nature of this alternative dispute resolution system, most unsolved cases end up in court.

CONDUSEF primarily serves for common disputes involving low and medium losses, aiming to halt the running of the statute of limitations period at the insured's peril. This is attributed to its limited experience in managing intricate losses. Consequently, in substantial losses, both in political and economic dimensions, there is typically no inclination from the parties to subject themselves to its rulings.

## 2. Is there a protocol governing pre-action conduct for insurance disputes?

There is no strict protocol governing pre-action conduct for insurance disputes, considering that the insured is free to determine the arena in which the claim should be handled –whether through pre-judicial exchanges, an administrative procedure, or in court.

## 3. Are local courts adept at handling complex insurance disputes?

Mexican courts have proved to still falling short on expertise and technical skills to decide complex or refined (re)insurance disputes. The Supreme Court has issued decisions concerning the handling and resolution of medium and substantial losses. Nonetheless, these standards are often not regarded as jurisprudence, resulting in a lack of clear guidelines and inexperience prevalent in both federal and state courts.

Unlike common law systems, where courts have made

significant strides in developing a robust legal framework through cumulative and consistent efforts, courts in Mexico still lack the sophistication and specificity needed to address the most complex cases—particularly in distinguishing between primary insurance and reinsurance relationships—leading to substantial discrepancies between case law and fundamental insurance and reinsurance principles. As a result, inconsistent decisions have created uncertainty for market underwriters and their insureds/reinsureds.

## 4. Is alternative dispute resolution mandatory?

No, alternative dispute resolution mechanisms remain discretionary in Mexico. However, the most recent constitutional amendments could introduce changes. While it is unlikely that alternative dispute resolution will become legally mandatory, the uncertainty surrounding the outcomes of a newly implemented judicial system—one that will require years of analysis—may encourage the most sophisticated market participants to opt for arbitration.

## 5. Are successful policyholders entitled to recover costs of insurance disputes from insurers?

In Mexico, a policyholder may only recover costs from the insurance company after successfully prevailing in trial, but this is confined to a few specific situations and limited amounts. Otherwise, the insured may have to bear the costs of litigation against the company to bring a claim. Though, insurance legislation not only imposes interests for non-payment but also entails penalties (default interests) and their capitalization due to non-payment. Therefore, the monetary claims against insurers often become substantial after a prolonged process, spanning from the initial claim to the eventual lawsuit.

## 6. Is there an appeal process for court decisions and arbitral awards?

Under Mexican law, insureds have two main recourses in order to challenge court decisions. Depending on case specifics, a party may either file for appeal, or a constitutional petition for review, commonly known as the amparo trial. Regularly, in ordinary commercial

proceedings, a party may initially seek an appeal, yet in insurance disputes, the sole recourse available is to file for the relevant amparo trial.

In the Mexican jurisdiction, nullity actions against arbitration awards are not uncommon, regardless of whether the enforcement process has been properly followed— which itself can also face disruptions. However, in an effort to reduce court workloads and encourage the use of alternative dispute resolution mechanisms, the legislature has significantly tightened the standards for overturning arbitration awards.

## **7. How much information is the policyholder required to disclose to the insurer? Does the duty of disclosure end at inception of the policy?**

Concerning the underwriting process of the policy, under Mexican law, a policyholder must disclose all relevant facts to the insurance company to allow an accurate risk assessment. This information is often delivered using questionnaires designed by insurers so as to guide insureds on the topics or aspects they consider most relevant for such purpose.

This requirement largely depends on the type of risk the insurer is underwriting. The greater the insurer's expertise in a particular risk, the less information it will require. For example, in health insurance, insurers typically ask policyholders only material questions to assess the impact of their inclusion in the insured pool. However, for more complex risks, the insurer will almost certainly require extensive information to properly evaluate its potential underwriting exposure.

## **8. What remedies are available for breach of the duty of disclosure, and is the policyholder's state of mind at the time of providing the information relevant?**

A policyholder's breach of duty to disclose all relevant information would entitle the insurer to render the insurance policy void. Mexican law provides that such duty extends to every relevant fact that the insured knows or should have known. Thus, the aforementioned questionnaires are key to give guidance on whether certain information should be considered pertinent and disclosable.

## **9. Are certain types of provisions prohibited in insurance contracts?**

In recent years, Mexican law and jurisprudence have leaned towards affording more protection to insureds regarding unfair provisions contained within insurance policies. In that vein, provisions that would jeopardize the insureds' consumer rights are generally prohibited.

Furthermore, certain provisions have long been recognized as illegal, including restrictions on the insured's right to appoint experts for damage assessment, modifications to the statutory limitations period—whether to extend or restrict it—and the deprivation of a grace period for premium payment, which would otherwise prevent the automatic termination of the policy.

## **10. To what extent is a duty of utmost good faith implied in insurance contracts?**

Mexican law does not explicitly recognize a duty of utmost good faith requiring the insured to disclose all relevant facts related to the risk. Rather, policyholders are still subject to an implicit duty of utmost good faith, which begins with providing truthful and accurate information about the risks being underwritten. Failure to comply with this obligation may result in policy rescission.

However, the prevailing judicial criteria established by higher courts suggest that insurers, as experts in the field, have an obligation to provide clear and unambiguous questionnaires to insureds for risk assessment. In cases where ambiguity in these questionnaires leads to a covered peril, the insurer bears responsibility for the associated risk.

## **11. Do other implied terms arise in consumer insurance contracts?**

Various implicit obligations stem in consumer insurance agreements. Specifically, the ambiguity rule dictates that in cases of unclear policy terms, the interpretation should lean in favour of the policyholder. Additionally, insurers, being the experts and possessing the most comprehensive knowledge in the contractual relationship, are consistently held accountable for any shortcomings arising from said relationship or upon any unfair behaviour before the insured or beneficiaries.

## **12. Are there limitations on insurers' right to rely on defences in certain types of compulsory insurance, where the policy is designed to**

## respond to claims by third parties?

Mexican law imposes restrictions on insurers' ability to invoke defences in specific compulsory insurance categories, basically meant to address claims from third parties. These limitations prevent insurers from rescinding an insurance policy, even if the insured breaches the duty of disclosure. In such instances, insurers retain the right to seek compensation from policyholders. Furthermore, Mexican courts are increasingly prone towards upholding the rights of third parties, even to the extent of invalidating exclusions that might undermine the effectiveness of the insurance policy concerning the compulsory risk it is designed to cover.

### 13. What is the usual trigger for cover under insurance policies covering first party losses, or liability claims? Are there limitation periods for the commencement of an action against the insurer?

The common triggers for insurance policies covering first-party losses or liability claims are twofold: i) per occurrence, and ii) claims-made. The per occurrence trigger applies to claims arising from events that occurred during the policy period, regardless of when the claim is actually filed. In contrast, the claims-made trigger provides coverage for specific liability insurance only if the claim is made within the policy period.

First-party losses, such as health or property claims, are typically covered on a per occurrence basis. However, third-party liability insurance, such as Directors & Officers (D&O) policies, commonly follows a claims-made structure due to the nature of the risk, as liability often arises after the policy term has ended.

The statute of limitations for insurance claims provides that policyholders have five years to bring a claim against their insurer for life insurance policies, while all other types of insurance are subject to a two-year limitation period. Nonetheless, higher courts have recently begun extending these periods to align with the circumstances of specific losses. For instance, in third-party liability cases, the beneficiaries of injured/deceased parties may have up to five years to file claims, reflecting the courts' broader trend of ensuring coverage and indemnity.

### 14. Which types of loss are typically excluded in insurance contracts?

Insurance policies are far from limitless, but the

insurance market is vast, and insurers can typically tailor their products to meet policyholders' needs—for the right price. Exclusions generally stem from the nature of the risk itself or the underwriter's unwillingness to assume certain exposures, primarily due to their high liability potential, significant financial impact, or inherent unpredictability.

With that in mind, the most common exclusions in the market, unless specifically covered by endorsement, include intentional acts, war and terrorism, nuclear events, pandemics, wear and tear, and asbestos-related harm, among a broad range of other risks, causes, and consequences.

### 15. Do the courts typically construe ambiguity in policy wordings in favour of the insured?

Similar to the approach in common law systems, particularly in the United States, Mexican courts tend to apply the contra proferentem interpretation standard, meaning that any ambiguities in the policy are construed against the drafter—in this case, the insurer—and in favor of coverage, ultimately benefiting the insured. Given that insurers, as drafters, are more sophisticated and better positioned to understand the policy wording, courts are generally reluctant to excuse drafting errors to their detriment.

To resolve ambiguity and vagueness in insurance contracts, Mexican courts adopt a contextual approach, considering all relevant elements from the negotiation process to determine the intended meaning of insurance provisions. However, if the plain meaning is sufficiently clear, courts will adhere to it, avoiding unnecessary interpretation.

### 16. Does a 'but for' or 'proximate' test of causation apply, and how is this applied in wide-area damage scenarios?

Under Mexican law and precedents, the proximate cause test is employed for assessing causation. According to this test, only damages directly associated with a specific action or event are considered eligible for recovery.

### 17. What is the legal position if loss results from multiple causes?

If a loss arises from multiple causes, liability is typically apportioned based on the contribution of each cause to the overall loss. In Mexican law, as in many jurisdictions,

courts will analyze whether the causes are concurrent, independent, or sequential to determine the appropriate allocation of responsibility. If one cause is deemed predominant, it may override others in determining liability. However, if multiple causes contribute equally or substantially, liability may be divided proportionally among the responsible parties.

In the insurance context, causation analysis plays a key role in determining coverage, especially when a policy includes exclusion clauses or when different factors contribute to the loss. If both covered and excluded events are involved, courts may assess which factor was more decisive in bringing about the loss. When uncertainty arises, courts often interpret policy terms in a way that favors coverage, particularly if the insurer's wording lacks clarity.

#### **18. What remedies are available to insurers for breach of policy terms, including minor or unintentional breaches?**

Despite the protectionist stance taken by the courts in recent years, insurers still possess specific remedies when the insured breaches policy conditions. The nature of these remedies, hinges on the technical aspects of the breached covenant. Insurers may retain the right to deny coverage for the loss or declare the insurance fully void.

#### **19. Where a policy provides cover for more than one insured party, does a breach of policy terms by one party invalidate cover for all the policyholders?**

According to Mexican law, there are specific provisions indicating that a breach of policy terms by one party will not nullify coverages for all policyholders. Instead, it will solely have consequences for the breaching party, leaving the others unaffected.

#### **20. Where insurers decline cover for claims, are policyholders still required to comply with policy conditions?**

If an insurer declines coverage for a claim, the policyholder is generally no longer bound by policy conditions related to that specific claim, such as cooperation or subrogation clauses. This means the insured is free to pursue other legal remedies, including negotiating a settlement independently or initiating legal action against the insurer to challenge the denial.

However, the insured must still comply with other ongoing policy obligations, such as premium payments, to maintain coverage for future claims. Additionally, if the insurer's denial is later overturned, the insured may need to demonstrate compliance with certain conditions, such as providing timely notice of the claim or mitigating damages, to secure coverage retroactively.

#### **21. How is quantum assessed, once entitlement to recover under the policy is established?**

In order to assess quantum once entitlement to recover under the policy has been established, one must first distinguish the type of insurance the claim arises from. For property insurance, the policy wording is crucial. As a general rule, quantum will be assessed upon the actual value of the damaged goods or assets.

#### **22. Where a policy provides for reinstatement of damaged property, are pre-existing plans for a change of use relevant to calculation of the recoverable loss?**

Insurers often grant coverage on a reinstatement basis. In cases where the policy allows for damaged property reinstatement, alterations in plans for a change of use are not considered in the calculation of the recoverable loss, as insurance should always seek to meet financial balance upon the direct and real damages, refraining from allowing enrichment beyond them.

#### **23. After paying claims, are insurers able to pursue subrogated recoveries against third parties responsible for the loss? How would any such recoveries be distributed as between the insurer and insured?**

After settling a claim, insurers in Mexico are entitled to pursue subrogation actions against third parties responsible for the loss, effectively stepping into the insured's position with the same legal rights to seek recovery. This allows the insurer to reclaim the amount paid under the policy directly from the liable party.

As for the distribution of any recoveries, if the insurer fully indemnified the insured, it is generally entitled to retain the entire recovered amount. However, unlike certain jurisdictions such as Spain, the Mexican insurance law framework has yet to provide a statutory solution for cases where the insured has suffered losses beyond policy limits or has had to bear part of the damages due



to deductibles or coverage limitations. Given the courts' modern tendency to rule in favor of policyholders, it is plausible that, in practice, recoveries could either be allocated first to compensate the insured for any uncovered losses or be distributed proportionally between the insurer and the insured. This approach would align with broader judicial trends favoring full indemnification for insured parties while ensuring equitable recovery rights for both parties.

#### **24. Is there a right to claim damages in the event of late payment by an insurer?**

Yes, under Mexican law, if an insurer delays payment of a covered claim without a justified reason, the insured may be entitled to claim additional damages. In addition to the original claim amount, the insurer could be liable for statutory interest, penalties, or even compensation for consequential damages if the delay caused further financial harm.

Mexican courts have increasingly recognized policyholders' rights in cases of unjustified delays, particularly when insurers act in bad faith or unreasonably withhold payments. However, the extent of recoverable damages will depend on the specific circumstances of the case.

#### **25. Can claims be made against insurance policies taken out by companies which have since become insolvent?**

In case of bankruptcy, claims can be brought under the insurance policies afforded by the company that has become insolvent, though this is applicable only in certain scenarios. In instances of property insurance covering movable assets, the insurer has the option to annul the policy, whereas for real property, the insurer is not permitted to opt for contract rescission. While Mexican law and precedents don't explicitly address liability insurance in these scenarios, our opinion is that insurance coverage should remain effective until the courts officially declare bankruptcy.

#### **26. To what extent are class action or group litigation options available to facilitate bulk insurance claims in the local courts?**

In Mexico, class actions and collective litigation mechanisms are available for insurance-related disputes, though they are relatively limited compared to other jurisdictions like the United States. The Federal Code of

Civil Procedure and the Federal Consumer Protection Act establish the framework for collective actions, allowing claims to be brought by groups of affected individuals in specific cases, including those involving financial services and insurance.

To proceed with a class action, claimants must demonstrate a commonality of interest among all affected parties. These actions can be initiated by PROFECO (the consumer protection agency), the National Commission for the Protection and Defence of Financial Services Users (CONDUSEF), registered nonprofit organizations, or by a group of at least 30 individuals. However, due to procedural complexities and strict admissibility requirements, class actions remain underutilized in the insurance sector.

#### **27. What are the biggest challenges facing the insurance disputes sector currently in your region?**

The biggest challenges currently facing insurance disputes in Mexico can be categorized into two main concerns. First, the lack of judicial sophistication has led to precedents that are inconsistent with reinsurance practice and custom. While courts aim to ensure protection and reparation, their rulings have instead introduced uncertainty, forcing underwriters to reassess and adjust risk pricing.

Second, the ongoing judicial reform adds another layer of unpredictability. While assessing the reform's overall efficiency is beyond this article's scope, its implementation could significantly impact insurance. For example, inconsistent rulings may drive underwriters toward arbitration over litigation, particularly in complex reinsurance disputes. Additionally, if courts prioritize broad coverage over fundamental insurance principles, premium rates could rise to account for increased exposure. Though speculative, such uncertainty could lead to market shifts that ultimately disadvantage consumers.

#### **28. How do you envisage technology affecting insurance disputes in your jurisdiction in the next 5 years?**

Technology is expected to play a pivotal role in shaping insurance disputes in Mexico over the next five years. The increasing use of artificial intelligence (AI) and data analytics will likely streamline claims processing, risk assessment, and fraud detection, potentially reducing disputes arising from misinterpretations or fraudulent

claims. Insurers may leverage blockchain and smart contracts to enhance policy transparency and automate claims settlements, minimizing conflicts over coverage terms.

However, as technology evolves, new challenges will emerge. Disputes related to cyber risks, AI-driven underwriting decisions, and the legal validity of digital policies and automated claim denials are likely to increase. Courts and regulators will need to adapt to these developments, ensuring that legal frameworks align with technological advancements while safeguarding policyholders' rights. Moreover, digitalization may push more insurers and insureds toward arbitration or alternative dispute resolution mechanisms as a faster and more efficient means of resolving conflicts.

### 29. What are the significant trends and developments in insurance disputes within your jurisdiction in recent years?

Mexican courts have established notable trends in insurance disputes, moving in multiple directions. A key development is the progressive approach favoring enhanced protection for insureds and consumer rights, including the extension of statute of limitations for insurance claims, particularly in liability insurance cases. Courts have also nullified certain policy exclusions related to third-party claims, reinforcing coverage in favor of beneficiaries.

In contrast, recent rulings in reinsurance disputes have emphasized the mandatory compliance of foreign reinsurers with Mexican jurisdiction when conducting business and underwriting risks in Mexico. This shift aims to ensure regulatory oversight and local

enforcement, reducing legal uncertainty in cross-border reinsurance relationships. These trends collectively reflect a judicial tendency to balance consumer protection with regulatory control in the insurance and reinsurance sectors.

### 30. Where in your opinion are the biggest growth areas within the insurance disputes sector?

The most significant areas of growth in insurance disputes are likely to be in the arbitration of complex cases and reinsurance claims. The increasing reliance on alternative dispute resolution mechanisms reflects a shift toward more specialized forums for resolving highly technical disputes, whether in full or partially. This trend is particularly evident in reinsurance matters, where expertise in industry-specific practices and principles is crucial for fair and efficient adjudication. As insurers and reinsurers seek greater predictability and consistency in outcomes, arbitration is expected to play an even more prominent role in resolving intricate insurance disputes.

Additionally, there has been a noticeable increase in consumer awareness regarding the importance of insurance, which is expected to have a significant impact on the market. As more individuals and businesses recognize the need for adequate coverage, insurers will gain access to valuable data that can help refine risk assessment, develop more tailored insurance products, and ultimately reduce disputes. A better-informed consumer base, combined with improved underwriting and policy clarity, has the potential to minimize litigation by ensuring that policyholders have a clearer understanding of their coverage, reducing conflicts over claims.

## Contributors

**José Luis Colin Vega**  
Partner

[jlcolin@colinvegafletes.com](mailto:jlcolin@colinvegafletes.com)



**Valentín Garza Davenne**  
Associate

[vgarza@colinvegafletes.com](mailto:vgarza@colinvegafletes.com)

