

The fourth annual complimentary guide to understanding  
DR practices around the world with an Asia-Pacific focus

阐述以亚洲为重点的全球争议解决操作的终极指南第四  
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LexisNexis® Dispute  
Resolution Law Guide 2018  
争议解决法律指南 2018

Including articles from featured contributor: | 包括律所的专题文章：

大成 DENTONS



# 大成律师事务所 二十五周年庆

25<sup>th</sup> Anniversary of Dentons China

LexisNexis<sup>®</sup> Dispute Resolution  
Law Guide | 争议解决法律指南  
2018

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## 1. What is the structure of the court system in respect of civil proceedings?

Mexico is a federal state and therefore its court system is divided into federal and local courts. In addition, commercial matters are distinguished from and governed separately from strictly civil matters. Commercial matters deal with all the legal relationships between corporations and/or individual businessmen, while civil matters refer just to legal relationships between individuals not involved in commercial activities. The Constitution has established that civil law matters, both substantive and procedural, are of local jurisdiction, whereas commercial matters are governed by federal law. Since commercial matters are federal, they are regulated in the Commerce Code, which is applicable to the entire country. On the other hand, since civil matters are local, each state and the federal district has its own Civil Code and Code of Civil Procedures. There is also, however, a Federal Code of Civil Procedures, which applies to the resolution of federal administrative and civil conflicts. Although commercial matters are federal, local judges may resolve commercial disputes. In fact, there are no commercial judges; the judges that resolve commercial disputes are civil judges, both local and federal.

Within the civil sphere in Mexico City, there are also judges called Justice of Peace judges, who settle claims involving very low amounts.

In addition to being a dual federal or state system, the court system in Mexico is also divided into civil, commercial, administrative, antitrust, labour, agricultural and criminal areas. Each of these areas has its own set of substantive and procedural rules.

The courts at the federal level include the Supreme Court of Justice with 11 Justices, the Collegiate Circuit Courts, having three magistrates, the Unitary Circuit Courts, having one magistrate, and the district courts, having one judge. Each state has a State High Court and specific courts divided into legal areas such as civil, commercial, family, leasing, labour and criminal matters.

The Supreme Court functions as a full court or in two chambers of five Ministers each. Among other matters, it resolves conflicts between states and between the federal government and a state, as well as conflicting decisions by the Circuit Courts. It also addresses challenges to the constitutionality of laws and is the last resort for appeal of certain cases involving constitutional matters.

The Collegiate Circuit courts were created to exercise powers originally corresponding to the Supreme Court, which is to resolve *amparo* proceedings involving questions of legality of decisions issued by the Unitary Circuit Courts. The latter courts in turn resolve appeals from the District Courts, which are the federal courts of first instance.

Both the District Courts and the Unitary and Collegiate Courts are divided territorially in the number or circuits that the Federal Judicial Board, an administrative body of the judicial power, establishes for the entire country.

## 2. What is the role of the judge in civil proceedings?

The role of a Judge in a Civil (or commercial) proceeding is to rule on the dispute based on the contractual provisions, on the applicable

law, its legal interpretation and absent a specific legal framework based on the general principles of law.

Pursuant to Mexican procedural law, the parties have the burden to boost the proceeding and to ask the Court to follow up the procedural steps established in the law. If the parties do not ask the Judge to continue with the proceeding for more than 6 months, then the Judge may declare that the proceeding is closed for lack of procedural interest.

Within the duties of the Judge, he/she must invite (i) the parties to conciliate the dispute; (ii) receive the evidence proposed; (iii) attend hearings; and (iv) rule on the dispute through a final judgment.

### 3. Are court hearings open to the public? Are court documents accessible by the public?

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Pursuant to the Commerce Code, hearings must always be held in public (the Commerce Code art. 1080). Pursuant to the Federal Code of Civil Procedures, the general rule is that hearings must be held public, exceptionally of those that the court considers appropriate to be held in private. (Federal Code of Civil Procedures art. 274).

However, court documents are private and only the parties can access the court file and the final judgment. During the trial, parties are requested for their consent to publish the award without their names and all explicit references to them are erased from the copy.

In recent years the Supreme Court declared that all information previous to 2003, relative to federal procedures is public. This statement was issued due to the approval of the Federal Law of Transparency and Public Access to Governmental Information that allows any individual to request any documentation relative to federal trials. Article 8 of the Federal Law of Transparency and Public Access to Governmental Information states that all the

resolutions that are non-appealable shall be made public; nevertheless, the parties may object to the publication of their personal data. Therefore, once the resolution is non-appealable, it becomes public to anyone who wishes to consult it.

### 4. Do all lawyers have the right to appear in court and conduct proceedings on behalf of their client? If not, how is the legal profession structured?

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No, only the lawyers that are authorized through a written brief by a party authorized representative have the right to appear in Court on behalf of the client. In addition, the lawyers must have in place their license and they should be registered also before the Court.

### 5. What are the limitation periods for commencing civil claims?

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Usually the limitation period for civil and/or commercial actions ranges from 5 to 10 years, depending on the nature of the action. However, there are certain specific actions that have a 6-month period, a one-year and a two-year statute of limitation.

### 6. Are there any pre-action procedures with which the parties must comply before commencing proceedings?

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No, under Mexican law a lawsuit is initiated directly through the filing of a written complaint before the Courts. No administrative or formal pre-action procedure is required.

### 7. What is the typical civil procedure and timetable for the steps necessary to bring the matter to trial?

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Under the Mexican civil system there is no distinction between the civil or commercial proceeding and the trial itself. Once the complaint files a lawsuit, the defendant will be summoned and have the right to counterclaim if he wishes to. Afterwards the Court will formally give the

parties the opportunity to produce their evidence and hold as many hearings as required to receive it. After all the hearings are held, then the parties can file their final pleadings in writing. Finally, the Judge will render its judgment in first instance.

**8. Are parties required to disclose relevant documents to other parties and the court?**

If the document is identified with precision and there is evidence about its existence, a party may request the Court to order the other party to disclose it. In addition, during a lawsuit, third parties are compelled, at all times, to assist the courts when investigating the truth and shall exhibit all documents and goods in their possession whenever they are required to do so. The courts have the power and the obligation to compel third parties, through any constraining means, to comply with such obligations. However, in the event of refusal, the courts shall hear the third party's arguments and issue a final non-challengeable decision.

**9. Are there rules regarding privileged documents or any other rules which allow parties to not disclose certain documents?**

Ascendants, descendants, spouses and those obliged to keep professional privileges, are exempt from such obligation whenever the evidence requested is prejudicial of the party to which they are related (Federal Code of Civil Procedures, art 90).

**10. Do parties exchange written evidence prior to trial or is evidence given orally? Do opponents have the right to cross-examine a witness?**

Pretrial discovery/disclosure is not regulated or allowed by Mexican legislation. There are, however, some specific and limited procedures that entitle a party to obtain specific information or testimony for preparing a lawsuit (article 1151, Commerce Code).

During the proceeding, attorneys are entitled to cross-examine any witness, the party or its representative (if it is a company or corporation), if it is requested.

**11. What are the rules that govern the appointment of experts? Is there a code of conduct for experts?**

The experts appointed by a party must have the title and license to act as experts in the corresponding area. Aside from these minimum requisites there are no binding codes of conduct for experts.

**12. What interim remedies are available before trial?**

Injunctive relief in principle is limited to attachment of assets or an order regarding the debtor to stay in its domicile.

**13. What does an applicant need to establish in order to succeed in such interim applications?**

Injunctive relief may be granted by a court only if the claimant proves a justified fear that the defendant may abscond, or when there is justified fear that the defendant may hide his assets or intentionally lose a specific good (in actions in rem).

**14. What remedies are available at trial?**

In general, the remedy for civil tort liability is the restoration of the status quo prior to the damage, when possible, or the payment of damages and lost profits. The basic contract remedies are specific performance or termination of the contract with damages and profits in both cases. If, in a contractual relationship, an interest rate is not specified, the legal interest rate is 9% (per cent) annually in civil matters and 6% (per cent) annually in commercial matters on the principal.

### 15. What are the principal methods of enforcement of judgment?

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If a party refuses to comply with a judgment, the Court may order the attachment of assets or even the intervention of the administration of the debtor to get the payment. The assets then may be sold through a public auction to obtain the amount due. If the obligation consists in the performance of certain task, then if the party refuses to do it, the Court may award damages and lost profits and consequently attach assets to get them enforced. To obtain the enforcement, a specific ancillary proceeding must be brought asking the Court for the enforcement. This proceeding may take from three to six months.

### 16. Are successful parties generally awarded their costs? How are costs calculated?

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The Mexican system for attorney's fees awarded for the prevailing party in litigation is always fixed.

In commercial disputes, the Commercial Code does not establish clear rules as to how to determine the quantum. However, there are judicial precedents that clearly establish that the local law determines the way to liquidate costs.

The local law in Mexico City establishes that the first instance costs shall be calculated according to the following basis:

- (a) When the amount of the suit does not exceed the equivalent to three thousand minimum wages in the Federal District, it will be calculated at 10% (per cent).
- (b) When the amount of the suit exceeds the equivalent to three thousand minimum wages in the Federal District and is up to six thousand minimum wages in the Federal District, it will be calculated at 8% (per cent); and
- (c) When the amount of the suit exceeds the equivalent to six thousand minimum wages in the Federal District it will be calculated at 6% (per cent),

If the dispute were to be ruled by a second instance the percentages will be raised by a further 2% (per cent).

Most of the other state codes of procedure follow the same rules.

### 17. What are the avenues of appeal for a final judgment? On what grounds can a party appeal?

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First-instance judgments can be appealed before an appellate court. The appellate court stands in a superior hierarchical level to the court that issued the judgment.

According to the Commerce Code art. 1337, the appeal can be made in the following cases:

- (a) whenever the unsuccessful party adduces a violation of rights or a grievance;
- (b) when the successful party, even though it has succeeded pursuant to the first instance judgment, has not been awarded with the indemnification of damages and losses, the payment of costs or the restitution of products;
- (c) when the successful party wishes to adhere to an appeal previously filed; or
- (d) a third party with legitimate interest, whenever the final resolution affects him.

When the first-instance judgment is final, the appeal must be filed before the court that issued it, within nine days following the date on which such first-instance judgment was notified to the parties.

### 18. Are contingency or conditional fee arrangements permitted between lawyers and clients?

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Under Mexican law the parties are free to agree with their lawyers as to the amount of their fees. Thus, among other compensation schemes, the lawyers' fees can be calculated based on a contingency or success fee. Normally, in this scenario the fees are calculated either:



- (a) as a percentage of the amount of the claim or of the amount recovered. The percentage is agreed on between the lawyer and the client, and is based on the specific circumstances of the case, and can vary according to:
  - (i) the complexity of the matter;
  - (ii) the client's economic situation; and
  - (iii) the reputation of the lawyer.
- (b) as an hourly rate for time spent; or
- (c) as a fixed fee depending on the amount of the claim.

**19. Is third-party funding permitted? Are funders allowed to share in the proceeds awarded?**

Under Mexican law, there is no limitation on third-party funding. However, this practice has not really been adopted in the Mexican forum yet. In any event, if there is a third-party funding the third party will not be deemed as part of the proceeding, unless there is a formal assignment of litigation rights in its favor. Thus, at the end, the sharing in the amounts awarded should be made by the party that was funded in compliance with the agreement it may have executed with the third-party funder.

**20. May parties obtain insurance to cover their legal costs?**

Yes, there is no restriction to obtain it. However, it is not usual to have it in Mexico.

**21. May litigants bring class actions? If so, what rules apply to class actions?**

Article 17 of the Mexican Constitution recognises “collective actions” in Mexico, providing that federal judges would hear these proceedings and mechanisms in an exclusive manner. This type of action is registered in the Federal Code of Civil Proceedings; Federal Civil Code; Federal Law of Economic Competence; Federal Law of Consumer’s Protection; Organic Law of the Federal Judicial Power; General Law of

Ecological Equilibrium and Environmental Protection; and Law of Protection to the User of Financial Services.

Mexican Law limits collective actions to matters related to the consumption of goods or services, public or private, and those related with the environment, specifically those related to the following matters:

- (a) consumer protection;
- (b) environmental protection matters;
- (c) protection and defence of the users of financial services; and
- (d) antitrust matters.

A collective claim can be filed by public entities such as the Federal Protection Consumer Office, Federal Protection Environmental Office, National Commission for the Protection and Defense of the Users of Financial Services and the Antitrust Federal Commission; the legal representative of the collectivity affected, provided it is formed by at least 30 members; and non-profit civil associations legally formed at least one year prior to the filing of the collective action.

The resolution will benefit all the members of the affected group and each member must liquidate and prove the damage caused.

Finally, the Amparo Law establishes the possibility of bringing in one single procedure a constitutional action against some decisions of the authorities, which may affect several persons.

**22. What are the procedures for the recognition and enforcement of foreign judgments?**

In accordance with international treaties (enforcement of domestic judgments abroad) and the Federal Code of Civil Procedures, article 571, Mexican courts are willing to recognise and execute a foreign judgment, provided that:

- (a) the formalities and conditions regarding rogatory letters have been met;

- (b) the resolution did not result from the exercise of an action in rem;
- (c) the foreign court had correctly assumed jurisdiction;
- (d) the claim was properly served on the defendant;
- (e) the foreign judgement is non-appealable and res judicata in the country in which it was rendered;
- (f) the action that gave rise to the resolution is not a pending matter between the same parties in Mexican courts; unless a letter rogatory had been processed and delivered to the Foreign Ministry or to the authorities of the state where the claim should be served; and
- (g) the judgment does not conflict with a mandatory law or Mexican public policy.

**23. What are the main forms of alternative dispute resolution?**

The main alternative dispute resolution method in Mexico is arbitration. Arbitration has a good reputation in Mexico and is seen by large corporations as a good and effective method of resolving disputes.

In the past, mediation was considered a waste of time. However, recent legislative reforms, as well as state policies promoting ADR, have begun to gain traction. Consequently, it is more common to find companies willing to mediate to solve their disputes. Recent legal reforms have strengthened the possibility of enforcing any agreement reached in conciliation or mediation proceedings.

**24. Which are the main alternative dispute resolution organisations in your jurisdiction?**

At the international level and dealing with large arbitration disputes, the ICC and the ICDR are the most important organisations in Mexico. They both have active presence in Mexico.

Local arbitral institutions have gained some traction and reputation for medium-sized local disputes. The facilities are excellent and the service they provide is high quality, in general. The main arbitral bodies based within Mexico are the following: the Arbitration and Mediation Commission of the Mexico City Chamber of Commerce (CANACO), a non-profit organisation based at Paseo de la Reforma no. 42, Delegación Cuauhtémoc, CP 06040, Mexico City, Mexico City (see [www.arbitrajecanaco.com.mx](http://www.arbitrajecanaco.com.mx)); and the Mexican Arbitration Center (CAM), created in 1997, with its offices in Tecnológico de Monterrey, Campus Santa Fe, Av. Carlos Lazo No. 100, Edificio Aulas 1, Nivel 5, Col. Santa Fe, México, Mexico City, CP 01389.

**25. Are litigants required to attempt alternative dispute resolution in the course of litigation?**

Litigants are not obliged to attempt ADR's during litigation. However, the Courts encourage them to mediate or conciliate the dispute during each phase of the proceeding.

**26. Are there any proposals for reform to the laws and regulations governing dispute resolution currently being considered?**

Yes, currently there is a trend adopted by the Mexican government to try to modernize and expedite the lawsuits to make them more alike to the U.S. system. In this context, ADR are being promoted and several legal reforms have been adopted to implement them in a more widespread manner. In addition, there is also a trend to have more oral proceedings (since traditionally the lawsuits in the Mexican legal systems are carried out through written briefs) and facilitate quick decisions.

**27. Are there any features regarding dispute resolution in your jurisdiction or in Asia that you wish to highlight?**  
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In Mexico a conscious effort has been made to give more certainty to foreign investors modernizing the legal framework, entering Bilateral Investment Treaties and promoting ADR's and transparency and quickness in the resolution of Court proceedings. Moreover, Mexico has explicitly characterized arbitration as a manifestation of the fundamental right of freedom. Thus, I would encourage any Asian company to have confidence in the Mexican legal system and in the potential enforcing of arbitral awards in our Country.

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## 1. 在民事诉讼方面，法院系统的结构是怎样的？

墨西哥是联邦国家，因此其法院系统分联邦法院和地方法院。此外，商事案件从民事案件中严格区分并单独管辖。商事案件调解公司和 / 或商人之间的法律关系，而民事案件调解的是不涉及商业活动的个人之间的法律关系。《宪法》规定，无论是实质性的还是程序性的民事法律案件都属于地方管辖，而商事案件则由联邦法律管辖。由于商事案件归联邦管辖，所以在适用于整个国家的《商法典》中进行了规定。另一方面，由于民事案件归地方管辖，所以各州和联邦地区都有自己的《民法典》和《民事诉讼法典》。此外，还有一部《联邦民事诉讼法典》适用于解决联邦行政和民事争议。尽管商事案件归联邦管辖，但是地方法官也可以裁决商业纠纷。事实上，不存在商事法官；解决商业纠纷的法官是地方和联邦的民事法官。

在墨西哥城的民事领域，也有法官称为治安法官，他们处理涉案金额很低的索赔案件。

除了联邦和州两种制度之外，墨西哥的法院系统也分为民事、商事、行政、反垄断、劳工、农业和刑事领域。这些领域各自都有一套实质性和程序性规则。

联邦层面的法院包括最高法院，有十一位法官；高等巡回法院，有三位法官；单一巡回法院，有一位法官；以及地区法院，有一位法官。每个州都有一个州高等法院和按法律领域划分的专门法庭，诸如民事、商事、家庭、租赁、劳工和刑事案件等。

最高法院可以作为一个合议庭审理案件，也可以由两个法庭分别审理，每个法庭有五位成员。除其他事项外，它处理各州之间、联邦政府与州之间的冲突，以及巡回法院作出的有争议的裁决。它还处理法律的合宪性问题，

也是对某些涉及宪法事项案件上诉的最后裁决机构。

高等巡回法院旨在行使原属于最高法院的权力，处理涉及单一巡回法院的裁决是否合法的宪法性诉讼。单一巡回法院处理来自地区法院的上诉（地区法院是联邦初审法院）。

地区法院、单一巡回法院和高等巡回法院均按照地域划分为若干个，由联邦司法委员会（司法权力的管理机构）设定全国的法院数量或审级。

## 2. 法官在民事诉讼中的角色是什么？

法官在民事（或商事）诉讼中的作用是在合同条款、可适用的法律、其法律解释的基础上，以及在有一般法律原则但无具体法律体制的情形下对争端进行裁决。

根据墨西哥诉讼法，当事人有责任推动诉讼程序，并要求法院遵守法律规定的程序步骤。如果当事人超过6个月不要求法官继续审理，则法官可宣布因缺乏程序性利益而结束诉讼程序。

在法官的职责范围内，他 / 她应当：(i) 邀请各方调解争端；(ii) 接收提交的证据；(iii) 出席庭审；(iv) 通过最后判决对争端作出裁决。

## 3. 庭审是否向公众开放？公众是否能够查阅法庭文件？

根据《商法典》，庭审必须公开进行（《商法典》第1080条）。根据《联邦民事诉讼法典》，除非法院认为有必要，否则庭审必须公开举行（《联邦民事诉讼法典》第274条）。

然而，法庭文件是保密的，只有当事人可以查阅法庭文件和最终判决。在审判过程中，要求当事人同意公开隐藏其姓名的裁决书，

并将所有明确指向当事人的内容从副本中删除。

近年来，最高法院宣布公开 2003 年以前与联邦法院诉讼有关的全部资料。这一声明经由《关于政府信息透明和向公众提供的联邦法律》批准。根据这一法律，任何个人可以请求获取有关联邦审判的任何文件。《关于政府信息透明和向公众提供的联邦法律》第 8 条规定，尽管当事人可能会反对，全部不可上诉的判决都要公开。因此，一旦裁决是不可上诉的，它就是任何人都可以查阅的公开文件。

#### 4. 所有律师均有权代表其委托人出庭并参加诉讼吗？如果不是，律师职业的结构是怎样的？

不，只有当事方代理人书面授权律师可以代理其客户出席法庭辩护。此外，律师应当向法庭出示其执照并登记。

#### 5. 提起民事请求的时效期为多久？

根据诉讼性质的不同，通常民事和 / 或商事诉讼时效期间为 5-10 年。但是某些具体诉讼的时效也可能是 6 个月、1 年和 2 年。

#### 6. 有哪些诉前程序是当事人在开始诉讼之前必须遵守的？

不，根据墨西哥法律，仅需要向法院提交书面申诉即可直接提起诉讼，不需要经过行政程序或者形式上的预先诉讼程序。

#### 7. 案件进入审理之前要经过哪些典型的民事程序？有什么样的时间表？

在墨西哥民事制度下，就审判本身而言，是民事诉讼还是商事诉讼并无区别。原告起诉后，被告将被传唤，并有权提起反诉（如果被告意图如此）。随后，法院将正式给予当事人出示证据的机会，并按接收证据的次数举行多次听证会。全部听证会结束后，当事人可以递交最后的书状。最后，法官将作出初审判决。

#### 8. 当事人是否必须向其他当事人和法院披露相关文件？

如果文件准确无误且有其存在的证据，一方当事人可以请求法院命令另一方对其披露。此外，在诉讼中，第三方在任何时候都必须协助法院调查真相，并应在需要时出示其拥有的所有文件和物品。法院有权和义务通过任何强制手段强迫第三方遵守这些义务。然而，法院在遭到拒绝的情况下应当听取第三方的辩解并发布不容拒绝的最终决定。

#### 9. 是否存在特权文件或其他规则允许当事人不披露特定文件？

当被要求出示的证据不利于与之有关的一方当事人时，祖先、后代、配偶以及有义务保证职务特权之人可免除此项义务（《联邦民事诉讼法典》第 90 条）。

#### 10. 当事人在审理之前是否交换书面证据？或是否提供口述证据？对方是否有权盘问证人？

墨西哥没有规定立法或允许审前取证 / 披露制度。然而，有一些专门的限制性程序可以使当事人有权获得特定资料或证词以准备诉讼（《商法典》第 1151 条）。

在诉讼过程中，代理人有权要求对任何证人、当事人或其代表（如果是公司）进行交叉审查。

#### 11. 关于指定专家证人的规则是怎样的？是否有专家行为准则？

当事人指定的专家必须具有在相应领域担任专家的职务和执照。除了这些最低限度的要求外，没有约束专家的行为准则。

#### 12. 案件审理前可获得哪些临时救济？

禁制令原则上仅限于资产扣押或要求负债者不得离开居住处的命令。

#### 13. 申请人需要确立些什么才能成功申请此类临时救济？

如果申请人可以证明有理由担心被告可能潜逃，或者有理由担心被告可能藏匿自己的资产或故意失去一个特定的物品（在物权诉讼中），那么法庭可能会出具禁制令。

#### 14. 案件审理时可获得哪些救济？

一般而言，对民事侵权责任的救济，是指在可能的情况下恢复到损害发生之前的状况，或者对损害和损失利润进行赔偿。对合同的基本救济，是指造成损害或利润损失的情况下，履行合同的某个具体条款或终止合同。如果在合同关系中没有规定利率，则在民事案件中的法定利率为每年9%，而商事案件中每年为本金的6%。

#### 15. 执行判决的主要方式有哪些？

当事人一方拒绝履行判决时，法院可以命令扣押财产，甚至对债务人进行行政干预以获得付款。然后，资产将通过公开拍卖予以出售，以获得欠款。如果义务是履行某一任务而当事人拒绝履行该义务时，法院可以判决损害赔偿金、损失的利润，并因此查封财产以便对其强制执行。为了实现强制执行，必须提起请求法院强制执行的特定附属程序。这一程序可能需要三至六个月。

#### 16. 胜诉方一般是不是会获得诉讼费用补偿？诉讼费用如何计算？

在墨西哥，胜诉方代理人的费用总是固定的。

在商业纠纷中，《商法典》并没有明确规定如何确定该数额。然而，司法判例清楚地表明地方法律决定清算费用的方式。

墨西哥城的地方法律规定，初审费用应当根据如下原则计算：

- (a) 当该诉讼的金额不超过联邦地区最低工资的3,000倍时，将以10%计算；
- (b) 当该诉讼的金额超过联邦地区最低工资的3,000倍，但不超过6,000倍时，将以8%计算；以及
- (c) 当该诉讼的金额超过联邦地区最低工资的6,000倍时，将以6%计算。

如果争端需要二审，那么费率将提高2%。

其他多数州的诉讼法律规定与此相同。

#### 17. 对最终判决有哪些上诉途径？当事人能够以什么理由提起上诉？

一审判决可在上诉法院进行上诉。上诉法院比一审法院的判决具有更高的效力等级。

根据《商法典》第1337条，以下情况可以上诉：

- (a) 败诉方举证侵犯权利或申诉的；
- (b) 即使按照一审判决胜诉，一方当事人也没有得到损害赔偿和损失赔偿、支付的费用或者归还的物品的；
- (c) 胜诉方希望遵守先前提出的上诉时；或者
- (d) 当最终判决对具有正当利益的第三方造成影响的。

一审判决终结后，必须在一审判决送达之日起九日内，向上诉法院提起上诉。

#### 18. 是否允许律师和委托人之间存在胜诉酬金或按条件收费的安排？

根据墨西哥法律，当事人可以与律师自由协商律师费用。因此，在其他补偿方案中，律师费的计算可以采取风险代理制或者胜诉制。通常情况下，费用可以按照以下任一种方式计算：

- (a) 索赔金额或者获赔金额的一定百分比。这一比例由律师和客户根据具体案件的具体情况，结合以下情形协商而定：
  - (i) 案件的复杂程度；
  - (ii) 客户的经济状况；以及
  - (iii) 律师的声誉。
- (b) 根据所花费的小时数计算；或者
- (c) 根据索赔金额确定的固定费用。

#### 19. 是否允许第三方资助？资助入是否可分享胜诉收益？

墨西哥法律没有对第三方资助进行限制。然而，这种做法并没有真正被墨西哥法庭接受。在任何情况下，如果存在第三方资金，除非有正式的诉讼权利转让，否则第三方将不会被视为诉讼的一方。因此，受资助方最终应

当根据与资金提供方签署的协议与其分享判决金额。

## 20. 当事人是否可为其诉讼费用投保？

是的，获得它没有限制。然而，在墨西哥却不常见。

## 21. 诉讼人是否可提起集体诉讼？如果可以，哪些规则适用于集体诉讼？

《墨西哥宪法》第 17 条承认墨西哥的“集体诉讼”，联邦法官可以用排他性的方式审理这些诉讼和机制。这类诉讼可以根据《联邦民事诉讼法典》、《联邦民法典》、《联邦经济能力法》、《联邦消费者保护法》、《司法力量组织法》、《生态均衡和环境保护总法》以及《金融服务消费者保护法》进行登记。

墨西哥法律对涉及公共或私人的商品或服务消费以及与环境相关的集体诉讼（特别是涉及如下事宜的）有所限制：

- (a) 消费者保护；
- (b) 环境保护事宜；
- (c) 金融服务消费者的保护；以及
- (d) 反垄断事宜。

集体诉讼可以由公共机构（如联邦消费者保护办公室、联邦环境保护办公室、金融服务消费者保护全国委员会和联邦反垄断委员会）、受影响的集体（至少有 30 个成员）的法律代表以及合法组建的非营利性民间组织（在发起诉讼前至少成立一年）发起。

判决将对受影响的集体的全部成员有效，每个成员必须清算和证明造成的损害。

最后，《宪法》规定了可以针对权力机构的某些决定提起宪法性诉讼，并可能会影响某些人。

## 22. 外国判决通过哪些程序予以承认和执行？

根据国际条约（在境外执行境内判决）和《联邦民事诉讼法典》第 571 条，在满足以下条件时，墨西哥法院将承认并执行国外判决：

- (a) 委托书的手续和条件都已经满足；

- (b) 判决不会导致物权诉讼；
- (c) 外国法院的管辖权无误；
- (d) 索赔已经正确送达给被告；
- (e) 外国的判决在该国为终局判决、既判案件；
- (f) 判决对应的诉讼并非原被告双方在墨西哥的未决事项；除非委托书已递交到外交部或索赔地的州相应部门；以及
- (g) 判决不与强制性法律或墨西哥公共政策相冲突。

## 23. 另类争议解决的主要形式是什么？

在墨西哥，争端解决的替代机制是仲裁。仲裁在墨西哥享有很好的声誉，被大公司视为解决争端的有效方法。

过去，调解被认为是浪费时间。然而，由于最近的法律改革以及各州出台促进替代性纠纷解决机制的政策，调解才开始具有吸引力。因此，越来越多的公司开始愿意通过调解解决纠纷。最近的法律改革加强了在调解或调解程序中达成任何协议的可能性。

## 24. 在您所在的司法管辖区有哪些主要的替代争议解决机构？

ICC 和 ICDR 是墨西哥处理国际层面的大型仲裁争端的最重要的组织。它们在墨西哥都很活跃。

地方仲裁组织对于中型地方纠纷有一些吸引力和声誉。总体上说，它们设施良好，服务质量高。墨西哥主要的仲裁组织有：墨西哥城商会仲裁和调节委员会（一家位于墨西哥城的非营利组织，简称 CANACO，地址是：Paseo de la Reforma No. 42, Delegación Cuauhtémoc, Mexico City, 邮政编码：06040, 网址：www.arbitrajeacanaco.com.mx）和墨西哥仲裁中心（成立于 1997 年，简称 CAM 地址是：Tecnológico de Monterrey, Campus Santa Fe, Av. Carlos Lazo No. 100, Edificio Aulas 1, Nivel 5, Col. Santa Fe, México, Mexico City, 邮政编码：01389）。

25. 在诉讼过程中诉讼人是否必须尝试替代争议解决办法？

在诉讼期间，替代性纠纷解决机制不是必选项。但是法院鼓励在各个诉讼阶段进行调解。

26. 当前是否有在审议中的改革争议解决法律法规的建议？

是的，目前墨西哥政府奉行促进诉讼现代化、加快诉讼速度的趋势，使之更像美国的体制。在此背景下，替代性纠纷解决机制正在推广，且一些法律改革已被推行，以使得替代性纠纷解决机制更广泛地实施。此外，还有一种口头诉讼并迅速裁决的趋势（因为在传统上，墨西哥法律体系中的诉讼是通过书面陈述进行的）。

27. 关于您所在司法管辖区或者亚洲地区的争议解决，是否有任何特殊情况需加以强调？

推动法律体制现代化，签订双边投资条约，促进替代性纠纷解决机制和法院程序的透明度和快速性，墨西哥作出了可被感知的努力为外国投资者提供更高的确定性。此外，墨西哥明确规定仲裁是基本自由权的体现。因此，我鼓励所有亚洲公司对墨西哥法律制度和我国仲裁裁决的潜在执行力抱有信心。

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