

Country Report
Class Actions in Mexico
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1. *What year was the procedure adopted?*

The existence of class actions in Mexico is the consequence of two major reforms of the legal system. Firstly, on July 29, 2010 article 17 of the Mexican Constitution was amended to recognize the existence of class actions. This reform established that only the Federal Congress has the power to legislate on issues related to class actions and assigned the resolution of these procedures exclusively to the Federal Judiciary. Finally, the reform also instructed the Federal Congress to make all the necessary legislative adjustments within a year of the publication of the amendment.

Secondly, as a consequence of the reform of article 17 of the Constitution, on August 30, 2011 the Federal Congress published in the Federal Gazette a group of amendments to several federal laws in order to regulate class actions in Mexico. At the center of this reform was the addition of a new section to the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*). In the same amendment the Federal Congress also made changes to the Federal Civil Code (*Código Civil Federal*), the Federal Law on Economic Competition (*Ley Federal de Competencia Económica*), the Federal Law on Consumer Protection (*Ley Federal de Protección al Consumidor*), the Law on the Organization of the Federal Judiciary (*Ley Orgánica del Poder Judicial de la Federación*), the General Law on Ecologic Equilibrium and Protection of the Environment (*Ley General de Equilibrio Ecológico y Protección al Ambiente*), and the Law on the Protection and Defence of the User of Financial Services (*Ley de Protección y Defensa al Usuario de Servicios Financieros*). According to this amendment, these changes became effective six months after they were published in the Federal Gazette.

2. *Is it authorized by statute, rule or judicial interpretation of an existing statute or rule? (Please include the formal citation and, if available, a link or attachment of an English language version.)*

In Mexico class actions are recognized in article 17 of the Constitution and regulated in the Federal Code of Civil Procedure (article 578 to article 626).

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3. *What is the scope of the procedure?* (Is it trans-substantive or is it limited to specific fields of law (e.g., consumer law, securities, ...?))

Article 17 of the Constitution establishes that the Federal Congress will determine, through laws, the scope of the class actions, as well as the judicial procedures and the mechanisms to repair the damage. It is in article 578 of the Federal Code of Civil Procedure that the Federal Congress determined the scope of the class actions in Mexico. According to this provision, class actions are limited to consumer relations connected to the exchange of goods and services, whether public or private, and the environment.

4. *Who has standing to initiate the procedure?*

Article 585 of the Federal Code of Civil Procedure establishes the list of those that have standing to initiate the procedure.

Section one of this article grants standing to four federal public entities. The Office of the Federal Attorney for Consumer Protection (*Procuraduría Federal de Protección al Consumidor*), the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*), the National Commission for the Protection and Defence of the Users of Financial Services (*Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros*), and the Federal Competition Commission (*Comisión Federal de Competencia*).

Section two grants standing to the representative of a group of at least 30 individuals.

Section three grants standing to non-profit civil associations (*asociaciones civiles*), as long as they were established at least one year before filing the class action and its mission includes “the promotion or defence” of the rights and interests in the area of the class action.

Lastly, section four grants standing to the Federal Attorney General (*Procurador General de la República*).

5. *What remedies are allowed?* (Injunctive or declaratory relief; monetary compensation; other)

The Federal Code of Civil Procedure creates three different types of collective procedures in the Mexican legal system: the diffuse action (*acción difusa*), the collective action in strict sense (*acción colectiva en sentido estricto*), and the individual homogenous action (*acción individual homogénea*). The essential difference between the three is the type of right or interest that can be protected through each procedure. According to article 581, 582, 604, 605, 610, and 611, injunctive relief, declaratory relief, and monetary compensation are available remedies but not all remedies are available in all the procedures.

In the case of *diffuse actions* the judge can only condemn the defendant to return the situation to the state of affairs that existed before the damage was produced, if this is possible. If it is not possible, the judge will condemn the defendant to pay an amount of money in accordance to the damage caused to the interests or rights of the group. The

money will not be distributed to the group but will be transferred to a fund administered by the Council of the Federal Judiciary. (Article 604)

In the case of *collective actions in strict sense* and *individual homogenous actions*, the judge can condemn the defendant to repair the damage caused and compensate for the individual damages that the members of the group suffered. In order to receive the individual compensation, each member of the group has to demonstrate in court that it suffered damage. (Article 605)

6. *Is the procedure opt-in or opt-out?*

Article 594 of the Federal Code of Civil Procedure establishes a system of opt-in for class actions in Mexico. The members of the affected group can opt-in to the procedure anytime while the case is still in court. Additionally, the members of the affected group will have 18 months to join the class action after the judicial decision is final or after a settlement is reached.

7. *What are the applicable rules on funding and financing? (How is the lawyer for the class paid, and by whom? Who is responsible for adverse costs? Is third-party litigation financing allowed?)*

Article 617 of the Federal Code of Civil Procedure mandates that “each party will cover all the costs and expenses related to the class action, including the fees of their attorneys”. In addition, the article establishes that the fees of the attorneys cannot exceed a maximum percentage of the total value of the dispute. The percentage varies depending on the total value of the dispute but in no case exceeds 20% of the total value of the dispute. This maximum on the fees of the attorneys applies whether the dispute is terminated through a judicial decision or through a settlement. According to the same provision, any settlement that ends a dispute has to resolve the issue of the costs and expenses, including the fees of the attorneys, and it has to be approved by the judge.

In addition, article 625 of the Federal Code of Civil Procedure establishes that the resources in the fund administered by the Council of the Federal Judiciary can only be used to “cover the costs of the class actions, including the fees of the attorneys of the plaintiff, when there is a social interest that justifies it and the judge orders it”. According to this provision, the costs of the class actions include the notifications to the members of the group, the preparation of evidence, and the notification of the judicial decision. This fund collects the money that defendants in diffuse actions have to pay when they are condemned and it is impossible for them to return the situation to the state of affairs that existed before the damage was produced. (Article 604)

8. *Please tell us about whether and how the procedure has been used?* (About how many cases have been brought to date? How many cases annually? What types of cases? Who brought the cases? What have been the outcomes of the cases?)

In general in Mexico there is no established practice of empirically evaluating legal institutions or the effects of legal reforms. For example, there is no study that analyzes the number and type of cases filed as a consequence of a major reform on the tort liability of the Mexican State, which was enacted more than 10 years ago. This absence of empirical studies also affects the study of class actions. Although there are no studies that offer data on the type of litigation that the reform on class actions produced, it seems that the effect of the reform has been very limited.

Unfortunately, it is extremely difficult to study how class actions have been used in practice in Mexico since there is no database that reports all the cases decided by the Federal Judiciary. Nonetheless, given the very small number of class actions reported in the main database of the Federal Judiciary (which does not include all the cases) it seems likely that the practical effect of the reform has been very limited.