

ClientAlert

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Mexico Introduces Class Actions for Consumer, Financial Service, and Environmental Claims

After a long legislative debate, the Mexican Congress has passed the country's first law governing the use of class actions, set to go into effect six months following its official publication in the coming weeks. The regulation may be especially important because of its potential for wide-ranging application, including cases involving consumer products, financial services, and environmental concerns. The regulation follows an amendment to the Mexican Constitution enacted last year to permit class actions and which granted exclusive jurisdiction over class claims to the federal judiciary. Key features of the new regulation are highlighted in the following paragraphs.

Class Action Requirements and Representatives

Under the regulation's framework, class actions may be brought for claims involving: (a) harm to consumers or users of public or private goods or services, (b) damage to the environment, and (c) harm to consumers due to monopolistic market concentrations or practices, as decreed by the Federal Antitrust Commission. The remedies available to class action claimants include both injunctive relief and damages.

The requirements for bringing a class action are broadly defined. Prospective class members must be in the same common factual or legal circumstances, and there must be a clear relationship between the initiated action and the damage to the class. While the regulation imposes a minimum class size in certain instances, a class consisting of 30 members will satisfy this requirement. To proceed, the action must not be barred by *res judicata* or the three-and-a-half year limitation period set forth in the regulation, and must meet any other requirements of special applicable laws. The regulation further lists various grounds for rejecting a class action, including a general exception for cases where it would be improper to dispose of the subject matter on a class-wide basis.

In addition to a common representative selected from members of the class, class action lawsuits may be filed by nonprofit associations whose corporate purpose includes protecting those rights that are under threat of violation, provided that such entities are at least one year old. The regulation also grants standing to bring class-wide claims to the Federal Attorney General and other government officials charged with protecting consumer rights, users of financial services, competitive markets, and the environment.

Availability of Interim Relief

Unlike other Mexican procedural rules, the class action regulation permits the court to issue injunctive relief at any stage of the proceedings, to order the recall or seizure of goods and products that are directly related to any irreparable harm threatening the class, and to take "any other step that the judge may deem advisable" to protect the rights and interests of class members. To obtain interim relief, the requesting party must demonstrate an urgent need based on the risk of damage that is difficult or

impossible to redress, and the court must weigh the harm caused by the acts or omissions sought to be restrained against that imposed by granting the requested measures. Where an interim injunction is granted, a defendant may post security to avoid enforcement, although this right is not available where issues of national security are involved or where there is an imminent threat of irreparable harm to the social interests, life, or health of class members.

Class-Wide Rulings and Individual Damages Claims

Class action judgments may order restitution or compensation of damages. Where individual class members are entitled to recover their damages, the regulation establishes a two-stage procedure consisting of the class-wide trial followed by individualized proceedings, during which class members are to prove their own damages and a causal link to the defendant's conduct. The regulation imposes a term limit of one year from the final class judgment or settlement within which class members must commence these indemnification proceedings.

Timing of Proceedings

In general, the time limits set by the regulation provide for expedited certification and trial stages. To illustrate, class action defendants are given only 5 days from service of the complaint to submit arguments on whether the prerequisites for a class action have been satisfied, and the court's decision is to be issued within a further 10 to 20 days, depending on the complexity of the case. Where the court determines that the prerequisites for a class action have all been satisfied, defendants will have up to 30 days to answer the class complaint, including, *inter alia*, providing full arguments regarding the merits of the case and all supporting documentary evidence.

Opt-In Model

Class members who were not part of the original group commencing the proceedings may seek to join the action by providing express notice to the class representative at any time up to 18 months following the final judgment or settlement. Absent an appeal, the class judgment becomes binding on all class members.

Costs and Legal Fees

Each party is responsible for its own costs and legal fees in class action suits. The regulation imposes certain limitations on the fee structure that is available to class representatives and their legal counsel, based on percentages of the amount in dispute.

Class Actions' Fund

The regulation requires the creation of a fund, to be managed by the Federal Judiciary Council, for the deposit of money judgments in certain cases where the remedy of restitution is not possible. These resources are to be used in order to promote class actions in Mexico, as well as collective rights research and awareness. Where public interest reasons justify doing so, the fund may also be used for the payment of class action-related expenses, including the class representative's fees.

Conclusion

The new regulation permits class action lawsuits in a number of broadly defined subject matters, and across a potentially wide range of legal claims, opening the potential for class action claims in a wide variety of circumstances. The legislation will undoubtedly garner further attention as this novel area of law begins to take shape and the Mexican courts grapple with the many legal questions that will arise under the statute.

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