

LITIGATION FUNDING

Mexico



Litigation Funding

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Quick reference guide enabling side-by-side comparison of local insights, including regulation and regulators; funders' rights (choice of counsel, participation in proceedings, veto of settlement and funding termination rights); conditional and contingency fee agreements; judgment, appeal and enforcement; collective actions; costs and insurance; disclosure and privilege; disputes between litigants and funders; and recent trends.

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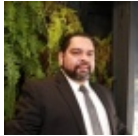
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Mexico



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REGULATION

Overview

Is third-party litigation funding permitted? Is it commonly used?

In Mexico, no specific laws govern third-party litigation funding agreements. However, such agreements are treated as atypical commercial contracts and are therefore governed by general contract laws. This allows for flexibility in the terms and conditions of the agreement.

It has been reported that third-party litigation funding is rising in Mexico and other countries, such as Argentina, Colombia, Chile and Peru.

Law stated - 13 February 2023

Restrictions on funding fees

Are there limits on the fees and interest funders can charge?

In Mexico, there are no specific limits on the fees or interest that third-party funders can charge for litigation funding agreements. However, the funder's remuneration may vary depending on factors such as the type of claim, its likelihood of success, and the place of the litigation. On the other hand, implementing litigation funding agreements as a loan could face some difficulties in Mexico. Additionally, using a loan structure for litigation funding agreements in Mexico may pose challenges as there is no guarantee of repayment, and it may be subject to limitations on interest as per the laws.

Law stated - 13 February 2023

Specific rules for litigation funding

Are there any specific legislative or regulatory provisions applicable to third-party litigation funding?

No specific legislative or regulatory provisions in Mexico apply to third-party litigation funding and there are no precedents from the Mexican judiciary on using this type of funding. The principle of freedom of contract applies, meaning that anything not prohibited by law is allowed. Thus, funding arrangements are typically governed by the principles of contract law and must meet the requirements of validity and existence as outlined in the Civil Code.

Law stated - 13 February 2023

Legal advice

Do specific professional or ethical rules apply to lawyers advising clients in relation to third-party litigation funding?

In Mexico, no specific professional or ethical rules apply to lawyers advising clients concerning third-party litigation funding. However, lawyers must act independently and, in their client's best interests and safeguard confidentiality.

Law stated - 13 February 2023

Regulators

Do any public bodies have any particular interest in or oversight over third-party litigation funding?

In Mexico, there is currently no specific regulation governing third-party litigation funding. As it is a relatively new concept in the country, no regulatory body has taken an interest in supervising this activity. However, the law does consider the habitual and professional performance of credit-granting activities as an auxiliary credit activity. As such, a Mexican company wishing to engage in third-party funding must be incorporated as a multiple-purpose financial company (SOFOM). Although SOFOMs, whose primary activity is the granting of credit, are not regulated entities, they must be registered with the National Commission for the Protection and Defense of Users of Financial Services to operate legally.

Law stated - 13 February 2023

FUNDERS' RIGHTS

Choice of counsel

May third-party funders insist on their choice of counsel?

Third-party litigation funders in Mexico are not prohibited from insisting on their preferred choice of counsel. Although it is uncommon for them to impose a specific lawyer or legal team, it is common for them to recommend a law firm or only work with a firm proposed by the client they believe has the necessary expertise. This is a common practice among litigation funders as they would want to be sure that the legal representation provided would be optimal to increase the chances of success of the case and, therefore, their return.

Law stated - 13 February 2023

Participation in proceedings

May funders attend or participate in hearings and settlement proceedings?

In Mexico, there are no restrictions on third-party funders attending hearings and settlement proceedings. However, as they are not parties to the litigation, funders may not actively participate in court hearings. They can only participate in out-of-court settlement proceedings if the parties permit them to do so. This is because the funders are not parties to the case, and the court may not legally recognise their participation.

Law stated - 13 February 2023

Veto of settlements

Do funders have veto rights in respect of settlements?

In Mexico, third-party funders do not possess veto rights concerning settlements. As the owner of the litigious rights, the plaintiff has the ultimate authority to decide on a settlement. However, it is common for litigation funding contracts to include provisions that protect the funder's interests. These provisions may consist of clauses such as the right to be consulted before a settlement is made to ensure that the funder's investment is protected and that they receive an adequate return.

Law stated - 13 February 2023

Termination of funding

In what circumstances may a funder terminate funding?

The parties can include clauses in the litigation funding agreement allowing the contract to be terminated under specific circumstances. These circumstances may include when the funder's financial interests are impacted, or any other conditions agreed upon by the parties. This flexibility allows the parties to tailor the contract to their specific needs and provides for the termination of the contract if the investment is not profitable or if the parties find that the agreement is not in their best interest.

Law stated - 13 February 2023

Other permitted activities

In what other ways may funders take an active role in the litigation process? In what ways are funders required to take an active role?

The level of control that a third-party funder may have over a case can vary depending on the terms agreed upon by the parties in the funding agreement. While the funder can have a significant degree of control over the case if the parties agree, there is no legal requirement for the funder to take an active role in the litigation process.

Law stated - 13 February 2023

CONDITIONAL FEES AND OTHER FUNDING OPTIONS

Conditional fees

May litigation lawyers enter into conditional or contingency fee agreements?

Lawyers are free to agree on the terms of their compensation with clients. In Mexico, litigation lawyers are not restricted from entering into conditional or contingency fee agreements. These types of agreements, where the lawyer's fee is dependent on the case's outcome, are legal and commonly used in the country.

Law stated - 13 February 2023

Other funding options

What other funding options are available to litigants?

There are several funding options available to litigants. One option is a non-recourse loan, where a lender provides funding to the plaintiff with the understanding that the loan will only be repaid if the case is successful. Another option is a joint venture agreement, where the funder and the plaintiff work together to pursue the case and share in the outcome. Trust and services agreements are also options that can be tailored to the specific needs of the client and the desired level of involvement of the funder in the case. The most common funding option in Mexico is the no-win-no-fee arrangement with attorneys. In this arrangement, the attorney agrees to handle the case without receiving a fee upfront for a percentage of the recovery.

Law stated - 13 February 2023

JUDGMENT, APPEAL AND ENFORCEMENT

Time frame for first-instance decisions

How long does a commercial claim usually take to reach a decision at first instance?

The duration of the case can vary depending on the state and the case's complexity. In Mexico, claims are expected to decide for the first instance within six months, due to strict time constraints for parties in civil and commercial proceedings, with no opportunity for extension. However, the process can take longer in practice due to the limited operational capacity of courts. On average, obtaining a first-instance ruling can take around one year.

Law stated - 13 February 2023

Time frame for appeals

What proportion of first-instance judgments are appealed? How long do appeals usually take?

In Mexico, no reliable statistic is available on the proportion of first-instance judgments that are appealed. However, if a first-instance decision is challenged, the appeals process can take an additional six months or more, depending on the state and the case's complexity.

Law stated - 13 February 2023

Enforcement

What proportion of judgments require contentious enforcement proceedings? How easy are they to enforce?

The process of enforcing a judicial decision in Mexico depends on the nature of the decision. It is difficult to determine the proportion of judgments in Mexico that require contentious enforcement proceedings, as no reliable statistic is available. However, it is uncommon for parties to comply with an adverse ruling willingly.

There are different types of enforceable decisions:

- To enforce a decision for monetary payment, assets must be seized through an attachment proceeding.
- In cases where the action required by the decision is a personal performance of the obligor and cannot be performed by another, the executor may seek damages.
- If the losing party does not comply with a decision that requires specific conduct and the act can be performed by others, the court shall appoint a third party to serve it at the obligor's expense, or the executor may seek damages.
- If the decision requires the issuance of a document, the court may issue it on behalf of the losing party.
- In cases where the action consists of the delivery of property, documents, books, or papers, the court may use constraint means to obtain the delivery.

Enforcing a decision may be difficult as it may require different proceedings and legal steps.

Law stated - 13 February 2023

COLLECTIVE ACTIONS

Funding of collective actions

Are class actions or group actions permitted? May they be funded by third parties?

Yes, class and group actions are permitted in Mexico. The legal standing for submitting these types of actions can also be found in the Mexican Code of the Federal Civil Procedure and the specific laws related to the subject matter of the action, such as the Federal Consumer Protection Law. While it is not specifically mentioned, third-party funding is permitted for these actions.

Law stated - 13 February 2023

COSTS AND INSURANCE

Award of costs

May the courts order the unsuccessful party to pay the costs of the successful party in litigation?
May the courts order the unsuccessful party to pay the litigation funding costs of the successful party?

In Mexico, the court does not order the unsuccessful party to pay the successful party's costs in litigation as a general rule. However, if the judge determines that the losing party has proceeded maliciously or in bad faith. In that case, the court may order the losing party to reimburse the prevailing party for costs incurred in the proceedings. Concerning the litigation funding costs, the courts do not have the power to order the unsuccessful party to pay the litigation funding costs of the successful party.

Law stated - 13 February 2023

Liability for costs

Can a third-party litigation funder be held liable for adverse costs?

Mexican courts do not have the authority to impose costs on parties not involved in the litigation. As a result, if a third-party funder is not a party to the case, the court cannot require them to pay for any costs incurred by the losing party.

Law stated - 13 February 2023

Security for costs

May the courts order a claimant or a third party to provide security for costs? (Do courts typically order security for funded claims? How is security calculated and deposited?)

Mexican procedural law does not provide for the possibility of requiring a party or third party to provide security for costs in litigation, and there is no established practice for calculating or depositing such security.

Law stated - 13 February 2023

If a claim is funded by a third party, does this influence the court's decision on security for costs?

Mexican procedural law does not contain a stipulation that involves the provision of security for costs in litigation, and the absence of precedents on the matter indicates that the support of a claim would not influence the court's decision.

Law stated - 13 February 2023

Insurance

Is after-the-event (ATE) insurance permitted? Is ATE commonly used? Are any other types of insurance commonly used by claimants?

In Mexico, insurance after the event is permitted, but it is not a common practice. The use of this type of insurance would depend on the case's specific circumstances and the product's availability.

Law stated - 13 February 2023

DISCLOSURE AND PRIVILEGE

Disclosure of funding

Must a litigant disclose a litigation funding agreement to the opposing party or to the court? Can the opponent or the court compel disclosure of a funding agreement?

In Mexico, there is no legal framework specifically for third-party litigation funding and, therefore, no formal obligation to disclose the existence of a funding agreement or the funder's identity in court proceedings. Further, in arbitration proceedings, the UNCITRAL Model Law (1985), incorporated into Mexican law, does not require parties to disclose funding agreements. Nevertheless, it does require arbitrators to identify and disclose any circumstances that may affect their impartiality and independence, which could include the existence of a funding agreement.

The domestic arbitration centres, such as the Mexican Center of Arbitration (CAM) and the CANACO Mediation and Arbitration Center, have their own set of rules regarding disclosure of funding agreements, with CAM including a formal obligation to disclose the existence of any funding agreement, and CANACO not including any formal obligation.

Law stated - 13 February 2023

Privileged communications

Are communications between litigants or their lawyers and funders protected by privilege?

Communications between litigants or their lawyers and funders in Mexico are often protected by non-disclosure agreements to maintain the confidentiality of shared information. Despite the lack of a specific privilege duty, Mexican lawyers must act in their client's best interest, including keeping information confidential.

Law stated - 13 February 2023

DISPUTES AND OTHER ISSUES

Disputes with funders

Have there been any reported disputes between litigants and their funders?

In Mexico, third-party funding agreements are a relatively new concept, and to date, there have been no reported conflicts or disputes between litigants and their funders.

Law stated - 13 February 2023

Other issues

Are there any other issues relating to the law or practice of litigation funding that practitioners should be aware of?

Practitioners should be aware that there is no legal framework or judicial precedents for third-party litigation funding, making it challenging to navigate. Additionally, they should be mindful when structuring a funding agreement, particularly regarding the potential tax consequences of the proceeds received. Further, there may be irregularities in the judicial proceedings in Mexico, so funders may demand a higher return or even only finance arbitration and not litigation in court.

These issues may require practitioners to seek legal guidance when dealing with third-party funding in Mexico.

Law stated - 13 February 2023

UPDATE AND TRENDS

Current developments

Are there any other current developments or emerging trends that should be noted?

In recent years, global litigation funders have started to be interested in Mexico's growing dispute resolution market. Some of the leading players in this market include Deminor, OmniBridgeway and Nivalion. Despite this interest, third-party funding in Mexico is still relatively uncommon, and there are no current plans for a specific regulatory framework to be put in place.

However, the Mexican Arbitration Center has taken the initiative to adopt in the most recent version of its arbitration rules (effective December 2022) the parties' obligation to disclose the existence of any financing agreement as soon as possible the identity of any third-party funder.

Law stated - 13 February 2023

Jurisdictions

	Australia	Piper Alderman
	Austria	Nivalion AG
	Belgium	Nivalion AG
	British Virgin Islands	Martin Kenney & Co
	Canada	Omni Bridgeway
	France	Nivalion AG
	Germany	Omni Bridgeway
	India	Khaitan & Co
	Israel	Woodsford
	Italy	Fideal S.R.L.
	Japan	Miura & Partners
	Luxembourg	Nivalion AG
	Mexico	Becerril Vega Abogados
	Netherlands	De Brauw Blackstone Westbroek
	Spain	PLA Litigation Funding
	Sweden	Nivalion AG
	Switzerland	Nivalion AG
	Thailand	Rajah & Tann Asia
	United Kingdom - England & Wales	Woodsford
	USA - New York	Liston Abramson LLP