Class action in Mexico

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IMPLICATION OF NEW REGULATIONS OVER CLASS ACTIONS

On July 29, 2010 the Federal Official Gazette published the addition to the third paragraph of article 17 of the constitution to introduce “collective actions” in Mexico, in the following terms: The Mexican Parliament will issue the laws that regulate collective actions. Such laws will determine the application matters, judicial procedures and mechanisms to repair damages. Federal judges will hear these proceedings and mechanisms in an exclusive manner.


The implications of these amendments to Mexican legal ordinances are of great relevance, to the extent that nowadays it is possible to legally sue companies (public or private) for damages caused to a “collectivity” and not only in an “individual” manner as was traditionally established in the legislation. This implies that judgments can have collective scopes to repair the damage caused, which would imply, for example, the performance of one or more actions or to refrain from performing them, the individual payment caused to the members of the affected group, the compulsory compliance with an agreement or the rescission of the same with its consequences.

**Matter:** Legislation limits collective actions to matters related to the consumption of goods or services (public or private) and the environment.

**Competence:** Federal judges hear these kind of actions in an “exclusive” manner, this is, District Judges (in first instance) and Unitary District Courts (in an appeal degree).

**Authenticated:** “Collective Claims” can be filed by (i) public entities (Department of Consumer protection, environment, financial users and Federal Competence Commission of); (ii) the collectivity affected itself provided the same is formed by at least thirty members; and (iii) non-profit civil associations that were legally formed at least one year prior to the filing of the action.

**Procedure:** The judge must “certify” that it is a collective action, having to meet the admissibility requirements. It is highly important to state that the Mexican legislator chosen the “opt-in” system, this is, are considered members of the affected group only those that provide their express consent and not all the affected group (opt-out system), which considerably “limits” the possible sentence.

There is a prior and conciliation hearing, in which can be used alternative means to solve controversies. The collective action can be solved by judicial agreement at any time during the process.

**Judgment:** A collective sentence will benefit all the members of the affected group and in settlement of sentence each member must prove the damage caused. A collective actions “Fund” is created, which will be managed by the Board of the Federal Judiciary. The resources can be used for the payment of collective process expenses, the payment of the fees of the representatives of the plaintiff, notices to the members of the collectivity, the preparation of evidence and also to promote the research and diffusion of collective actions and rights.

**Coming into Force:** The coming into force of the legal amendments will be six months after the publication of the same in the Federal Official Gazette, therefore we expect such regulation to be in force as from March 2012.
Due to the fact that the possible defendants are companies dedicated to goods and services, it is necessary to thoroughly know the importance of these legal amendments, which may lead to important monetary sentences and affect existing agreements and their consequences.