

## Mexico Passes Class Action Legislation

September 15, 2011 by [Sean Wajert](#)

Readers with connections to [Mexico](#) may wish to take note that in March, 2012, enabling legislation will take effect permitting class action litigation in this southern neighbor.

While Mexico's Consumer Protection Law had allowed for certain limited collective actions in consumer matters to be brought by the Federal Consumer Protection Agency, this marks a significant change. In April, 2010, the Mexican Congress passed an [amendment](#) to the Constitution permitting of class actions in federal courts in Mexico and requiring that class action implementing legislation be enacted within one year of the amendment's effective date. The amendment was ratified by the required number of state legislatures, and Congress went to work. The Senate approved a class action bill in December, 2010, [as we alerted you](#). The House approved one in April, 2011. The law was published in the Official Gazette on Aug. 30, 2011, with an effective date of March, 2012.

Class actions will be available for consumer products and services claims, environmental claims, and certain financial services and antitrust claims. The law recognizes three types of class actions: diffuse actions to protect rights that belong to everyone, such as environmental issues; collective actions to protect rights that belong to a class linked by a non-contractual relationships; and homogeneous individual right-type class actions on behalf of a group linked by contract. Class actions that involve diffuse rights will be opt-out; and the class action will be opt-in if they involve collective rights or individual homogeneous rights. Significantly, the opt-in period can run up to 18 months following a final judgment or settlement.

In addition to individual actions (numerosity minimum 30); the law gives standing to a variety of federal agencies, such as the Federal Consumer Protection Agency, Federal Environmental Protection Agency, National Commission for the Protection of Users of Financial Services, and the Federal Antitrust Agency; and to certain civil not-for-profit associations whose function is to protect the collective rights of their members.

Plaintiffs must show commonality, and a notion of standing, and there is a general exception (perhaps like superiority/manageability?) for cases in which handling the dispute on a class-wide basis would be "improper."

Other features of note:

- quick turn around on certification pleadings and the court's ruling on class certification
- required settlement conference after certification, before trial
- limits on attorney's fees for plaintiffs
- modified loser pays provision

- the court may order notice to class members “through the most suitable resources for that purpose”

In cases in which individual class members seek damages, the law adopts a two-stage procedure consisting of a class-wide trial followed by individualized mini-proceedings on damages. The law prohibits payments to individual class members through a class representative. Individualized evidence need not be submitted during the class-wide phase of the trial proceedings.

Time will tell how the federal courts of Mexico apply the new law beginning in 2012. It is clear from the debate on the legislation that there is concern about class action abuse (American-style). Certainly, the legal risks have been raised for those doing business in these sectors in Mexico.