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Construction Law 2026

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Global Practice Guides

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Chambers Global Practice Guides

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MEXICO



Law and Practice

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COMAD, S.C.

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COMAD, S.C. is the only construction law boutique law firm in Mexico. With 60 years of experience in major infrastructure projects in Mexico and Latin America, the law firm stands out for its knowledge and expertise in the construction sector, including in transactions, prevention of disputes and dispute resolution. COMAD has worked on projects in Mexico and across South and Central America, including major airports, power projects, oil and gas projects, highways and bridges, trains and metros, hospitals, Olympic-size sport facilities, water plants and sewage systems, and schools

and industrial plants. The firm works with architects, designers, contractors, supervisors and other members of the industry value chain. It participates actively in national and international organisations, which allows it to understand the trends and challenges in the contemporary construction industry, and it has significant experience in international model contracts such as FIDIC and NEC. The firm's dispute prevention and dispute resolution practice includes experience in negotiation, mediation, dispute boards, experts procedures, litigation and international arbitration.

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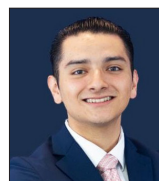


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1. General

1.1 Governing Law

Mexico follows the civil law system. It can therefore be considered that legal regulation of the construction industry, among others, is separated into private and public law. In that regard, in federal public projects the principal law that governs contracts is the Public Works and Related Services Law and its rules. On the other hand, regarding private contracts, the governing law would be the Commercial Code and the Civil Code.

Additionally, there are state-owned companies such as the Power Federal Commission (CFE) and Mexican Petroleum (PEMEX) among others, that have their own laws and rules to govern construction projects.

Finally, it should be borne in mind that Mexico is a federation organised into 32 states. Each state has its own local laws that can also be applicable depending on the particularities of a given project.

Such laws can be found on the website of the Mexican Congress.

1.2 Standard Contracts

Standard contracts are not generally used in Mexico. Instead, is common for each project to develop its own contract. However, there is an increasing interest in, and presence of, FIDIC contracts in the country, due to their relevance in the international industry.

In particular, mega plants developments and/or expansions with international parties are starting to use the FIDIC Red Book.

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2. Parties

2.1 The Employer

In private projects the owners are typically national and/or foreign companies with private investments. These companies commonly have construction managers or a general contractor.

The general obligations of the owners are the following:

- if a foreign company (subsidiary) will be constituted in Mexico, it will need to register it before the Tax Administration Service (SAT) and to the National Registry of Foreign Investment; and
- in order to contract a contractor, the parties will need to ensure that the corporate purpose is compatible or request or obtain registration with the Registry of Special Services Providers (REPSE).

The owner must register its workers before the Mexican Institute of Social Security (IMSS).

In public contracts, the owner is the state. In this field, there are several ways to contract the works, the administration or other services, including engineering, procurement and construction (EPC) contracts, concessions or self-financed projects.

Mexican construction practice follows a clear separation of contractual chains. The employer engages the main contractor directly and, once that contract is executed, has no legal relationship with subcontractors (unless the contractors did not comply with the administrative/labour obligations; in this case, the owner remains as jointly responsible with the contractor). The main contractor bears full and exclusive responsibility before the employer for the satisfactory completion of the works, regardless of which portions are performed by subcontractors. Subcontracting arrangements are entirely the contractor's own affair and cannot be invoked against the employer.

Private contracts financing is typically channelled through trusts (*fideicomisos*) structured with commercial banks or through funds. In public works, payment to contractors is made through federal or state budget allocations, and in certain large infrastructure projects,

through government-backed payment instruments or investment decrees (*decretos de inversión*) issued by the Federal Executive.

2.2 The Contractor

General contractors are commonly medium-large domestic companies. It is also common for foreign companies to constitute a Mexican company in order to perform a specific project.

As for the employers, rights and obligations are practically the same:

- registration before the Tax Administration Service (SAT);
- register the company before the Foreign Investment National Registry;
- if applicable, register the company to the Migration Institute to legally hire expats;
- the obtaining of the Registry of Special Services Provider (REPSE), if needed depending on its corporate purpose;
- registration of the company before the Mexican Institute of Social Security as an employer; and
- registration of its employees.

The contractor is generally the employer's sole counterpart and bears full responsibility for the entirety of the works, including those performed by subcontractors. It cannot invoke subcontractor failures as a defence against the employer. Subcontracting relationships are entirely separate from the main contract – subcontractors have no direct claim against the employer unless expressly agreed otherwise. As regards financiers, the contractor generally has no direct relationship with them in private projects. In public works, payment flows from federal or state budget allocations and, in major infrastructure projects, through government-backed payment instruments or *fideicomisos* structured for that purpose.

2.3 The Subcontractors

Subcontractors are commonly local companies specialised in certain construction disciplines. As for the clients and contractors, rights and obligations are practically the same:

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- registration before the Tax Administration Service (SAT);
- the obtaining of the Registry of Special Services Provider (REPSE), due to the speciality of these kinds of companies, most of them need this special registration;
- registration of the company before the Mexican Institute of Social Security as an employer; and
- registration of its employees.

The subcontractor has generally no contractual or legal relationship with the employer. Its only counterpart is the main contractor, who remains solely responsible before the employer for all works regardless of who executes them. The employer is not bound by, and cannot be held liable under, any subcontracting arrangement. Subcontractors equally have no relationship with project financiers. In public works, subcontractors are not party to the government contract and have no claim against public funds – their only recourse in the event of non-payment is against the main contractor under the subcontract.

2.4 The Financiers

Depending on the project, it is common to see foreign banks and/or financial institutions providing backing, most of all for large and complex projects. For projects mainly related to energy or oil and gas, it is common to see self-financed contracts. In this kind of case, there are often co-financing institutions which can be Mexican, foreign or a mix of the two.

Financiers are commonly informed of a project's progress but are not usually directly involved. However, they typically require the contracting of specific third parties (as project managers and/or supervisors) in order to take part in a project.

When international and/or big financiers are involved in projects (even banks, financial institutions and/or funds) the antitrust and competence obligations will typically need to be observed. These obligations consist in the prior notification and approval of the Competence Federal Commission.

2.5 The Designer

Designers are typically treated as professional services providers, ie, legally speaking, there is no special treatment for designers.

3. Works

3.1 Scope

In Mexico, the scope of works is determined contractually by the parties and documented through a set of technical instruments that together define what must be built, to what standard, and under what conditions. There is no single mandatory format imposed by law for private contracts – the parties are free to structure the scope documentation as they see fit. In public works contracts, however, the Public Works and Related Services Act (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*) requires that the contracting authority prepare the engineering basis, technical specifications and execution programme before launching the tender process.

3.2 Variations

Variations in the scope and price depend on the nature (public or private) of the project as well as of the nature of the contract. The most popular type of contracts in Mexico are unitary price and lump sum contracts. Having said the foregoing, it is important to consider the following for public projects.

- Lump sum public contracts – the general rule is that variations are not permitted in the price, nor in the scope unless general economic circumstances not attributable to the parties appear (eg, unforeseen variations in the exchange rates or changes to national or international prices).
- Unit price public contract – the review and, if applicable, the variation in direct costs shall be required by the contractor in a certain period of time (depending on the applicable law). The procedure can be reviewing cost by cost, reviewing a group of costs together and/or reviewing the inputs.

In private contracts, the parties are free to agree to any process they consider appropriate while the general rule in Mexico for private contracts follows the principle of *pacta sunt servanda*.

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In public works contracts, the pricing of time-related costs is based on the indirect cost components already included in the contractor's original pricing breakdown (*análisis de precios unitarios*). In private contracts, recovery of prolongation costs is subject to negotiation and is frequently a source of dispute. In public works contracts, the pricing of time-related costs is based on the indirect cost components already included in the contractor's original pricing breakdown (*análisis de precios unitarios*).

3.3 Design

Contractors do not generally get involved in the process of design; however, the review and comments burden on the design, is commonly shared with the contractors. On the other hand, it is common that the owner has its own design or it gives it to the contractors in order to perform the works according to such design.

3.4 Construction

Third-parties are commonly the ones that manage the construction. For big and complex projects, is usual to have construction managers that are in charge of the tender processes in order to contract with third parties the specific scopes of the project.

3.5 Site

In Mexico there is no statutory or regulatory provision governing the allocation of site risk in construction contracts – this is purely a matter of contractual practice. The standard approach is for the contractor to include a declaration in the contract acknowledging that it has visited and inspected the site, that it is fully familiar with its conditions, and that it is satisfied the works can be executed as agreed. This declaration effectively places the vast majority of site-related risks – ground conditions, underground obstacles, geotechnical uncertainties – on the contractor.

3.6 Permits

There are several permits that need to be obtained in order to initiate a project and these can change from site to site depending on whether the project will be located in a federal area, in a protected area, etc.

The most common situation is that the owner of the project is in charge of the permits needed for the use

of the ground, water treatment, waste treatment, etc. In public projects, the state is generally responsible for this, so a lack of all the permits needed gives the contractor the right to request a suspension and, if the suspension is too prolonged, termination for cause.

The minimum requirements are to comply with the land use, the treatment of water and waste treatment obligations related to the permits. Again, it will depend on the area of development of the project.

3.7 Maintenance

It is common that the parties agree that the contractor is responsible for the maintenance of the works until the works are delivered to the owner. In the case of hidden/latent defects, the contractor has to respond for one year counted from the delivery date. After such year and according to the Civil Code (speaking of lump sum contracts) the owner holds the risk.

3.8 Other Functions

Depending on the speciality of the owner a third party can be in charge of the operation.

In industries such as mining, railways, and green energy (where the state has no know-how), is common to see concessions and/or permits awarded to third parties who have expertise in the relevant industry.

3.9 Tests

Tests for completion follow the rules of the contract, but of course they will have to comply with the applicable law and standards of each project. There are mandatory standards (known as “NOMS”) which will be applicable depending on the nature of the project.

3.10 Completion, Takeover and Delivery

The most common process for completion and delivery in Mexico is that the contractor obtains a preliminary or substantial completion certificate that indicates that the project is being functionally delivered but there are still some issues pending. Such certificate can be identified as the “punch list”. With a substantial completion certificate, the contractor is usually empowered to start the process of obtaining the hidden/latent defects bond.

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Once the punch list is completed, the contractor obtains the final completion certificate, which indicates that the project is accepted by the owner and it starts to count the lapse of hidden/latent defects.

In public projects there is additionally the “rights and obligation extinction certificate”, which as its name indicates contains the release of the parties from their rights and obligations.

3.11 Defects and Defects Liability Period

The time frame in which the contractor must respond to hidden/latent defects will depend on the applicable law. However, these commonly range from six months to a year from the date of the appearance of the defect.

On the other hand, hidden/latent defects bond are commonly valid during the following year counting from the date of the final completion.

There are interesting and current examples in Mexico where, because the liability period has expired, the owner must search for the responsible parties, whether supervisors, contractors or subcontractors.

4. Price

4.1 Contract Price

In Mexico, construction contracts are mostly classified according to the pricing of the project; ie, lump sum, unitary price or maximum guaranteed price. So pricing is a substantial element in construction contracts in Mexico.

It is commonly agreed that payments will be made on a monthly basis through an estimation review process in order to allow a healthy cash flow.

4.2 Indexation

Indexation is not applicable in Mexico.

4.3 Payment

In general terms, delayed payments (without a justified cause) extend the schedule in accordance with the time of the delay and/or give the contractor a right to late payment interest.

Advance payments, and interim payments are usually considered in a contract.

Regarding advance payment, the general rule is that in order to pay it, the contractor shall deliver the advance payment bond. The lack of its delivery will release the owner from the obligation to pay the advance payment.

4.4 Invoicing

The most common practice is that once the estimation is issued by the contractor, the owner will have a certain period to review it and approve or reject it.

If the estimation is approved, then the contractor can issue a tax invoice which shall contain the elements required by the tax law.

5. Time

5.1 Planning and Programme

The most typical planning arrangement is that owners will have the phases of their projects mapped out in advance (in some cases the development of the plan is contracted to experts).

With the plan in hand, the owner will commonly launch a tender process allowing interested parties to submit proposals and the owner to decide who will execute the works.

5.2 Delays

Obligations are to pay on a timely basis and to deliver the works on schedule. In this regard, contracts are tied to work programmes and payment schedules.

The most common way to penalise delays in the work programme is through retentions for the difference between the original completion date and the real completion date, using a simple formula.

Delays on payment are compensated through the extension of the work programme.

It is very important to note that, in most cases, the contractor or subcontractors have the burden of noti-

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fying the delay in the payment as well as the request of the adjustment in the schedule.

5.3 Remedies in the Event of Delays

There are two main remedies to compensate delays:

- to retain the amount corresponding to the works delay; or
- for the contractor to perform the uncompleted works itself or for third parties to do so at the contractor's expense.

Third-party expert procedures are being implemented in order to solve disputes in this regard.

5.4 Extension of Time

Requests for extension must be grounded on a solid basis and with the documentation proving the causes the delay and the impact of such event on the schedule. For public projects, there are additional mandatory requirements to extend the time of the contract, such as a technical report containing the justification for the extension. If the extension is longer than a certain percentage of the original time, the approval of the auditing entity must be sought.

5.5 Force Majeure

Force majeure causes in Mexico are very similar to those in other jurisdictions and correspond to circumstances such as unforeseen natural events (earthquakes, tsunamis, natural disasters, etc). Since 2020, force majeure clauses have started to consider a COVID-19 section, which provides the parties with the right to request the suspension or the termination of a contract, depending on circumstances of each case.

Also, as a general rule, civil codes do not allow adjustment due to rising costs derived from economic fluctuations as these are not considered as force majeure events. However, inflation has become part of the conversation since prices have been experiencing historic rises.

A force majeure event will normally entitle the affected party to request the suspension of the contract, or, depending on the duration of the delay, its termination for cause.

5.6 Unforeseen Circumstances

As in 5.5 Force Majeure, unforeseen events are usually agreed by the parties and can also have as a consequence the suspension or termination for cause of a contract.

Some examples of unforeseen events include (as for force majeure events) earthquakes, tornados and changes in the law. There is also a rule under the common law Mexican Principles (non-written source of law) that provides that “nobody is obliged to do what is impossible to comply with”.

5.7 Disruption

Disruption can be seen from two sides: social events and criminal events. While social events usually suspend the execution of a contract, the effect of criminal events will depend on what is agreed by the parties. In some regions, for example, drug-dealing events can have contractual considerations in favour of the affected party.

6. Liability

6.1 Exclusion of Liability

In Mexico, the parties can agree whatever clause they consider appropriate, public order being the only limitation. The following are liabilities that, due to public order, cannot be excluded from the contract.

- Latent defects (*vicios ocultos*).
- Force majeure.
- Wilful misconduct and gross negligence (*dolo y culpa grave*). Liability arising from wilful misconduct (*dolo*) cannot be excluded under any circumstances under the Civil Code. Exclusion of liability for gross negligence (*culpa grave*) is equally unenforceable as Mexican law treats it on a par with wilful misconduct.
- Consumer protection. In contracts involving residential construction for end consumers, the Federal Consumer Protection Law (*Ley Federal de Protección al Consumidor*) imposes mandatory warranties and liability provisions that cannot be contractually excluded.
- Environmental and labour liability. Liability for environmental damage under the LGEEPA and for

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labour-related claims under the Federal Labour Law (*Ley Federal del Trabajo*) are statutory and cannot be contractually transferred or excluded as between the parties and the relevant authorities or affected workers.

6.2 Wilful Misconduct and Gross Negligence

Both concepts of wilful misconduct and gross negligence exist under Mexican law. The Civil Code recognises *dolo* (wilful misconduct) as the deliberate intention to cause harm or breach a contractual obligation, and *culpa grave* (gross negligence) as a serious failure to exercise the minimum standard of care that even the least diligent person would observe. Both are governed by mandatory law and cannot be contractually excluded or limited.

6.3 Limitation of Liability

As mentioned in 6.1 **Exclusion of Liability**, in Mexico the parties are free to agree on terms and conditions they consider convenient with the only limitation being that those conditions must not be contrary to public order and/or general interest. In this regard, in connection with private contracts, parties can agree the liabilities and limitations they consider appropriate.

On the other hand, regarding public projects, the liabilities are specified in the law and cannot be agreed in the contrary since public works are understood precisely as public order matter. However, it is important to note that, in general terms regarding public projects, risks and liabilities are held by the contractor.

7. Risk, Insurance and Securities

7.1 Indemnities

Indemnities are used in pretty much every contract in Mexico. Subjects that are commonly the object of indemnification are civil responsibility as well as force majeure or “acts of God” (ie, nature) through the corresponding insurance.

7.2 Guarantees

Guarantees in Mexican construction contracts are provided through *fianzas* (surety bonds) issued by regulated bonding companies (*afianzadoras*), or through standby letters of credit (*cartas de crédito*) issued by

banks. Both instruments are widely used in public and private works.

The standard guarantee structure – in both public and private contracts – comprises three bonds: an advance payment bond (*fianza de anticipo*) covering 100% of any advance received; a performance bond (*fianza de cumplimiento*) typically equivalent to 10% of the contract price; and a latent defects bond (*fianza de vicios ocultos*) also at 10%, effective from delivery.

Guarantees are only mandatory in some cases for public contracts.

7.3 Insurance

Insurance is governed in Mexico by the Insurance Law as well as the Insurance and Bond Institutes Law.

It is common that the owners take out risk insurance that guarantees the site of the works for any damage suffered owing to acts of God and/or force majeure events. On the other hand, contractors usually need civil liability insurance, as well as several bonds that guarantee, among other things, down payments/advance payments, performance, labour risks and hidden defects.

Also, depending on each contract and its scope, the contractor will need to have different types of insurance, such as transport or shipment.

7.4 Insolvency

It is very common in Mexican construction contracts to see a termination clause that states that if the contractor goes into bankruptcy, then the contract can be terminated for cause. However, according to the Bankruptcy Law, such a clause may be invalid. When a party enters into insolvency it shall start a complex procedure established in the Bankruptcy Law and its creditors must qualify in order to become part of the mentioned process.

7.5 Risk Sharing

As in other matters in Mexico, since the governing law between the parties is the contracts and its clauses, the parties can share the risk in any manner they wish. However, under the Federal Civil Code, in lump sum contracts the contractor holds the risk until the project

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is delivered. At this moment, the risk is transmitted to the owner.

In practice, the contractual balance tends to favour the employer.

8. Contract Administration and Claims

8.1 Personnel

Personnel is one of the most complex topics in the contemporary Mexican construction industry. Personnel in Mexico needs to be contracted directly by the company that will perform the work, and once a worker is engaged, the employer shall register them before the Mexican Institute of Social Security (IMSS) and the employer is also required to pay its fees not only to the IMSS but to the Housing Institute (*Infonavit*) too. Finally, workers are empowered to become part of a union, in this case union fees shall also be paid.

In general, the relationship between the employer and employee is regulated under the Federal Labour Law and it is very strict with employers.

It is important to be aware that in the case of a labour dispute the employer has the burden of proof.

8.2 Subcontracting

Since 2021 the subcontracting of personnel has not been allowed by law. This represents a major challenge in the construction industry.

Now, companies must transfer and recognise as their own employees, all those workers who carry out the main activities related to their corporate purpose and predominant economic activity.

The subcontracting of specialised services or works that are not part of the corporate purpose or of the predominant economic activity is allowed, but those companies that wish to provide these specialised services must be in a registry under the charge of the Ministry of Labour and Social Welfare, with prior accreditation of compliance with labour, social security and tax obligations.

It is important to note that the companies that receive the specialised services must respond to the workers in the event of any non-compliance by the subcontracted company.

8.3 Intellectual Property

In general terms, the parties agree that they may not use without prior written consent the name, denomination, trade mark or any other registered element as an element in their advertising or communications to the general public.

The parties undertake that all information provided that is not public knowledge will be kept confidential, which means that it will not be disclosed to third parties outside the contractual relationship and that – within the staff – only those persons who are deemed strictly necessary for the proper execution of the contracted work will be involved.

Under Mexican copyright law, architectural and engineering designs are protected works and ownership vests by default in their author – the designer or design firm – unless contractually transferred. In practice, construction contracts increasingly include express intellectual property assignment clauses whereby the designer or contractor transfers ownership of all project-specific drawings, specifications and technical documents to the employer upon payment. Where no such clause exists, the employer obtains a licence to use the documents for the specific project but does not own them.

9. Remedies and Damages

9.1 Remedies

The parties agree that the non-fulfilment by any of the parties of the obligations contained in the clauses of the contract shall be cause for termination of the contract. In addition to the termination, the parties may take legal action to recover the damages caused by such breach including the call for the performance bond.

Additionally, there is the possibility of an affected party cancelling a private contract arguing breach of that contract. In public contracts, the administration can

cancel the contract through the corresponding procedure.

9.2 Restricting Remedies

The parties may agree that in case of a breach by one of the parties of the obligations contained in the contract, the contract may be rescinded (plus a claim for damages). For the cancellation to be effective, however, the parties must indicate in the same contract the grounds for the rescission, as well as the manner in which prior notice must be given to the other party so that before initiating the rescission, the breaching party can correct or remedy the breach; only if the breach is not remedied may the contract be rescinded.

9.3 Sole Remedy Clauses

Single recourse clauses are generally used in contracts. These clauses are inserted in the contract and are in accordance with what is established by the parties, since they are the ones who agree on the grounds on which the termination of the contract is appropriate.

It is common to see contracts that state that if the contractor breaches a particular clause, the contracting party can remedy the breach with its own resources and then the contractor will pay for it.

9.4 Excluded Damages

The damages that are usually excluded from liability in construction contracts are those that are affected by hidden defects that make the thing unsuitable for the use for which it is intended or due to unforeseen circumstances or force majeure, since it follows the rule that no one is obliged to do the impossible.

9.5 Retention and Suspension Rights

Retention is standard practice in Mexican construction contracts. A percentage of each certified pay application – typically 5% – is withheld by the employer as a *fondo de garantía* (retention fund) throughout execution. This amount is released upon delivery of the works, provided there are no outstanding defects or unresolved claims, and is commonly replaced at that point by the latent defects bond (*fianza de vicios ocultos*).

Suspension rights are a different matter, neither the Civil Code nor the Public Works Act grants the contractor an automatic right to suspend works – for non-payment or any other reason – without express contractual entitlement. In practice, suspension rights in favour of the contractor are rarely included in Mexican construction contracts, again reflecting the asymmetry of bargaining power in the market. The employer, by contrast, typically retains a broad right to suspend or instruct the contractor to slow down works, with the cost and time consequences governed by the contract.

9.6 Termination

The termination of the contract may be agreed for breach by the parties to the clauses of the contract, plus compensation for damages that have been suffered as a result of the breach.

If the termination is “for cause” the contractor can request the payment of the works performed and the non-refundable costs as well.

If the termination is for convenience, the affected party will have the right to claim damages.

It is important for parties to public contracts to have in mind that the administration can terminate the contract “for cause” arguing that the termination is food for public order and in the general interest. A good example of this was the cancellation of the new Mexico City airport.

10. Dispute Resolution

10.1 Regular Dispute Resolution

The jurisdiction can be agreed as the parties prefer.

This means that local or federal courts can be selected as the parties prefer. Thus, the general rule in private contracts is that the parties can agree as they prefer. If the parties do not agree the applicable jurisdiction, the rule pursuant to the Civil Code is that the competent court will be:

- the competent court in the location agreed for the respondent to comply with its obligations;

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- the competent court in the place agreed for the execution;
- the competent court in the place where the site is; or
- the competent court for the respondent's address.

For public contracts the rule is a little different. The parties can indeed agree on the jurisdiction unless regarding the cancellation of the contract. In this specific scenario, the competent court is the Administrative Court competent for the tax address of the claimant (whether federal or local depending on the nature of the contract).

In both cases (with the exception of cancellation of a public contract as outlined in the paragraph above), the parties can agree an arbitration clause. The most common arbitration clauses are ICC (International Chamber of Commerce), CAM (a Mexican Arbitration Chamber), ICDR (International Centre of Dispute Resolution) and LCIA (London Court of International Arbitration) clauses.

10.2 Alternative Dispute Resolution

The most popular form of ADR is arbitration. The parties commonly agree to arbitration clauses such as those of the ICC, CAM, ICDR and LCIA.

Arbitration in Mexico is regulated in the Commerce Code according to the UNCITRAL Model Law.

Some other forms of ADR such as mediation and conciliation are common through mutual agreement of the parties. Indeed, in the ordinary commercial and civil processes, there is an initial hearing of conciliation, where the parties can reach an agreement before an official conciliator, which will have the nature of an award. Also, during the oral processes of a trial, judges are empowered to push the parties to reach an agreement through mediation, and even recommend them to solve the controversy at the Mediation Institute.

It is important mentioning that a recent general law (the ADR Law) entered into force on 2024. This contains the rules for the negotiation, mediation and conciliation in several subjects as commercial. The effects of such law are not yet visible; however there has been a reduction in the judicial commercial and civil actions. This might be related to the ADR Law.

In public works, mediation is legally available but rarely used in practice.

Finally, other forms of ADR, such as dispute boards (whether Dispute Adjudication Boards or Dispute Avoidance/Adjudication Boards) are not yet used in Mexico.

Trends and Developments

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COMAD, S.C. is the only construction law boutique law firm in Mexico. With 60 years of experience in major infrastructure projects in Mexico and Latin America, the law firm stands out for its knowledge and expertise in the construction sector, including in transactions, prevention of disputes and dispute resolution. COMAD has worked on projects in Mexico and across South and Central America, including major airports, power projects, oil and gas projects, highways and bridges, trains and metros, hospitals, Olympic-size sport facilities, water plants and sewage systems, and schools and industrial plants. The

firm works with architects, designers, contractors, supervisors and other members of the industry value chain. It participates actively in national and international organisations, which allows it to understand the trends and challenges in the contemporary construction industry, and it has significant experience in international model contracts such as FIDIC and NEC. The firm's dispute prevention and dispute resolution practice includes experience in negotiation, mediation, dispute boards, experts procedures, litigation and international arbitration.

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MEXICO TRENDS AND DEVELOPMENTS

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Infrastructure Investment, Evolving Co-Investment Models and the Shift Toward ADR in Mexico

Introduction

Mexico's construction and infrastructure sector is undergoing a profound structural transformation that is redefining how projects are financed, executed and legally managed. Looking toward 2030, infrastructure has become a central pillar of economic policy, particularly in response to nearshoring trends, regional integration and the need to modernise logistics and energy systems. Four interrelated shifts define this transformation: a new investment cycle of unprecedented scale, the emergence of hybrid co-investment models, a structural move away from litigation toward alternative dispute resolution, and a more demanding labour and regulatory environment that raises the compliance bar for every project participant.

For investors, developers and contractors, these changes represent both opportunities and challenges. Success in this new environment will depend on the ability to integrate financial, technical and legal strategies from the earliest stages of project planning.

A new cycle of infrastructure investment

Mexico has entered a new cycle of infrastructure investment characterised by scale, strategic focus and long-term planning. The federal government has announced an ambitious investment program for the period 2026–2030, with a projected cumulative investment of approximately MXN5.6 trillion. Annual investment is expected to remain close to 2% of GDP, signalling a sustained commitment to infrastructure as a key driver of economic growth.

This investment strategy is closely aligned with global economic trends. The rise of nearshoring has increased the importance of Mexico as a manufacturing and logistics hub, particularly in relation to North American supply chains. As companies relocate operations closer to end markets, the demand for efficient transportation networks, reliable energy supply and modern industrial infrastructure has intensified.

In response, infrastructure investment is being directed toward sectors that enhance connectivity and competitiveness. Energy projects, including generation and transmission, account for the largest share

of planned investment, reflecting both the need for energy security and the demands of industrial expansion. Transport infrastructure, particularly railways and highways, also plays a critical role in facilitating the movement of goods across the country and toward international markets.

Beyond economic considerations, infrastructure development is also linked to broader social objectives. Investments in water systems, health facilities and education infrastructure are intended to improve quality of life and support inclusive growth. However, achieving these objectives requires more than financial resources. It depends on the ability to translate investment plans into well-structured, executable projects that can be delivered on time and within budget.

Reconfiguring public–private co-investment

As infrastructure investment expands, the role of private capital is becoming increasingly important. However, rather than relying on traditional public–private partnership frameworks, Mexico is moving toward a reconfiguration of co-investment models that reflect current fiscal and market realities.

This shift is driven in part by fiscal constraints. Public resources alone are insufficient to meet the scale of infrastructure needs, making private participation essential. At the same time, there is a clear policy objective to maintain public control over strategic assets, particularly in sectors such as energy and transport. The result is the emergence of hybrid models that combine public oversight with private financing and operational expertise.

These hybrid structures represent a departure from earlier PPP models. Instead of standardised concession arrangements, projects are increasingly tailored to specific sectors and risk profiles. This flexibility allows for more efficient allocation of responsibilities between public and private actors, but it also introduces greater complexity in project design and negotiation.

A central feature of these new models is the emphasis on risk allocation. Projects are being structured to ensure that each risk is assigned to the party best able to manage it. Construction risks, for example, are

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typically transferred to contractors, while operational risks may be shared or allocated to private operators. Financial risks, including those related to funding and revenue generation, require careful structuring to ensure project viability.

At the same time, performance-based mechanisms are gaining importance. Payments and returns are increasingly linked to measurable outcomes, such as service quality, availability or efficiency. This approach aligns incentives between public and private stakeholders and encourages better project performance over the long term.

For investors, these developments imply a more active role in project structuring and management. Participation is no longer limited to financing; it involves a deeper engagement with contractual, operational and regulatory aspects of the project.

Strengthening contractual and institutional frameworks

As co-investment models become more complex, the importance of robust contractual frameworks has grown significantly. There is a clear trend toward the adoption of international standards, particularly in large-scale projects or those involving foreign investment. Frameworks such as FIDIC and NEC are increasingly used as references, providing structured approaches to contract management, risk allocation and project governance.

These models offer several advantages. They establish detailed and predictable procedures for handling variations, delays, claims and unforeseen circumstances, thereby reducing ambiguity and limiting the scope for disputes. They also incorporate sophisticated dispute avoidance and resolution mechanisms, including escalation clauses, early warning systems and dispute boards, which allow for the timely management of conflicts before they escalate into formal proceedings. For international investors, the use of familiar contractual standards enhances legal certainty, reduces transaction costs and facilitates participation in complex infrastructure projects.

At the institutional level, the investment program includes targeted measures to improve project plan-

ning, co-ordination and execution. The infrastructure investment programme includes initiatives aimed at strengthening inter-agency collaboration, developing specialised financial vehicles, standardising procurement practices and enhancing transparency through improved access to project information. These measures are intended to create a more predictable and efficient environment for both domestic and foreign investment.

Notwithstanding these developments, implementation challenges remain considerable. Regulatory fragmentation, administrative inefficiencies and capacity constraints within public institutions continue to affect project delivery. In this context, an additional and highly relevant trend has emerged: state-owned enterprises in Mexico are beginning to incorporate international contractual models such as those previously referenced into their procurement and project execution practices.

This adoption, however, is neither uniform nor absolute. It is subject to inherent limitations imposed by the Mexican legal framework, including public law constraints, mandatory administrative procedures, budgetary rules and oversight mechanisms applicable to public entities. As a result, international contractual standards are often adapted or partially implemented, generating hybrid contractual structures that combine elements of global best practices with domestic regulatory requirements.

This phenomenon is particularly significant from a legal and institutional perspective. On the one hand, it evidences a clear intention toward modernisation, efficiency and alignment with international standards, especially in projects involving foreign investment or complex financing structures. On the other hand, it reveals persistent institutional tensions, as public entities must reconcile innovation in contractual design with strict compliance with administrative law principles, transparency obligations and audit controls.

For investors and contractors, this duality introduces an additional layer of complexity. It requires not only familiarity with international contract models, but also a deep understanding of how these models interact with and are constrained by the Mexican legal system.

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These hybrid structures also create fertile ground for disputes, which makes the shift in dispute resolution practices described below more relevant.

Labour and regulatory challenges in infrastructure projects

Labour and regulatory developments in Mexico are introducing a new generation of challenges that directly affect the structuring, execution and financial viability of infrastructure projects. These challenges are particularly relevant in the context of construction activities, which are inherently labour-intensive and operationally complex.

One of the most consequential developments relates to the regulatory framework governing subcontracting and specialised services. The requirement for companies providing specialised services to be registered in the corresponding registry has fundamentally altered traditional outsourcing models. Contractors and project sponsors must now ensure that any subcontracted services comply with strict legal criteria, including the prohibition of outsourcing core business activities and the obligation to verify the registration and compliance status of service providers.

This has increased both legal and administrative burdens. Companies must implement enhanced due diligence processes, continuously monitor compliance by subcontractors and carefully structure contractual relationships to avoid potential liabilities, including joint liability for labour and social security obligations.

In parallel, proposed labour reforms aimed at reducing the standard working week to forty hours introduce additional operational and financial pressures. For infrastructure projects, this reform may have a direct impact on productivity levels, workforce scheduling and overall project timelines. In sectors where continuous or extended work shifts are common, adjustments will be required to maintain efficiency while complying with new labour standards.

The combined effect of these regulatory changes is the creation of a more demanding and complex labour environment. Investors and contractors must adapt by redesigning workforce strategies, incorporating labour

risk allocation into contractual frameworks and anticipating cost implications in project financial models.

From a legal perspective, these developments also reinforce the need for integrated compliance strategies that encompass not only corporate and anti-corruption obligations, but also labour and social security regulations. Failure to adequately address these issues may result in substantial legal exposure, project delays and increased costs.

Judicial reform and the decline of litigation

One of the most significant developments in Mexico's legal environment is the sharp decline in civil and commercial litigation in federal courts. Recent data shows a dramatic reduction in the number of new cases, with decreases of approximately 77% over a short period between late 2025 and early 2026.

This trend suggests a structural shift in how disputes are managed. Rather than reflecting a decrease in conflicts, it indicates a change in behaviour among economic actors. Businesses and individuals appear to be increasingly reluctant to engage in litigation, particularly in cases where alternative options are available.

Several factors contribute to this phenomenon. Long-standing challenges in the judicial system, such as delays in case resolution, high litigation costs and uncertainty in the enforcement of judgments, have affected confidence in formal dispute resolution processes. The 2024 constitutional reform introducing the popular election of judges has added a further layer of uncertainty, as market participants reassess the reliability and predictability of the federal judiciary under a transitional institutional framework.

The decline in litigation raises important questions about the functioning of the legal system. In some cases, disputes may be resolved through informal means or alternative mechanisms. In others, they may remain unresolved, creating uncertainty and potential financial risks. For infrastructure projects, which involve complex contractual relationships and long time horizons, the absence of effective dispute resolution can have material implications.

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The rise of ADR and MASC in infrastructure projects

In response to the limitations of traditional litigation, alternative dispute resolution mechanisms are becoming increasingly prominent in Mexico's infrastructure sector. Known locally as MASC, these mechanisms include arbitration, mediation, dispute boards and expert determination.

Their growing use reflects both practical considerations and a broader shift in mindset. ADR mechanisms offer greater flexibility and efficiency compared to court proceedings, making them particularly well suited to the technical and time-sensitive nature of infrastructure disputes. They also allow for the involvement of specialised decision-makers, which is critical in complex projects.

In fact, in 2024 the ADR Law (*Ley General de Mecanismos Alternativos de Solución de Controversias*) entered into force. Some of the results are the encouraging of Mediation Private Centers, and the use of the mediation as a mandatory instance, prior to arbitration or litigation.

Arbitration has become a key tool for resolving high-value disputes, particularly those involving international investors. Its advantages include confidentiality, procedural flexibility and the enforceability of awards across jurisdictions.

The incorporation of ADR mechanisms into contracts is now standard practice in many infrastructure projects. Multi-tier dispute resolution clauses are commonly used, requiring parties to attempt negotiation or mediation before proceeding to arbitration. This structured approach helps manage disputes more effectively and reduces the likelihood of prolonged conflicts.

A shift toward preventive dispute management

Beyond the adoption of ADR, there is a broader shift toward preventive approaches to dispute management. This reflects a growing recognition that disputes are often the result of unresolved issues that arise during project execution.

Preventive strategies focus on early identification and mitigation of risks. This includes continuous contract

management and regular monitoring of project performance. The use of expert committees from the outset of a project is a key component of this approach, providing a mechanism for addressing technical issues in real time.

This shift has important implications for project management. It requires a more integrated approach, where legal, technical and financial considerations are addressed simultaneously. It also emphasises the importance of transparency and collaboration among project participants.

For investors, preventive dispute management reduces uncertainty and enhances project stability. It allows for more predictable outcomes and supports the timely delivery of projects.

Conclusion

Mexico's infrastructure sector is evolving toward a more sophisticated and integrated model of investment and project development. The combination of large-scale investment plans, reconfigured co-investment models and changing dispute resolution practices is reshaping the landscape for both public and private actors.

The decline in litigation and the rise of ADR mechanisms reflect deeper structural changes in the legal environment. For investors, this underscores the importance of integrating legal strategy into all stages of a project, from initial structuring to execution and dispute management. Equally, the tightening of subcontracting rules and the proposed reduction of the working week signal that labour and regulatory compliance is no longer a back-office concern but a front-loaded project risk that must be priced and structured from day one.

Looking toward 2030, success in Mexico's infrastructure sector will depend on the ability to navigate this evolving landscape. The regulatory and labour environment adds a further layer of complexity that requires proactive compliance strategies from the earliest stages of project planning. Investors who can adapt to new co-investment frameworks, implement robust contractual strategies, comply with increasingly demanding regulatory standards and proactively manage labour and dispute risks will be well positioned to capitalise on the opportunities ahead.

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