

# International **Comparative** Legal Guides



## Consumer Protection **2020**

A practical cross-border insight into consumer protection law

**First Edition**

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**Tougher UK Consumer Protection Law Powers and What They Mean for Businesses**  
Nigel Parr, Alexi Dimitriou & Christopher Eberhardt, Ashurst LLP

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## 1 General

### 1.1 What legislation, regulations and guidelines are relevant to consumer protection in your jurisdiction?

The most relevant legislation, regulations and guidelines for consumer protection in Mexico are the *Ley Federal de Protección al Consumidor* (Federal Consumer Protection Law or “LFPC”) and its Regulations (the “LFPC Regulations”).

Notwithstanding the foregoing, there are many other relevant laws, regulations and guidelines that relate to consumer protection, including:

- a. The personal data protection laws in Mexico that regulate the processing of personal data of all individuals in Mexico, including consumers (the “Mexican DPL”), particularly: (i) the *Ley Federal de Protección de Datos Personales en Posesión de los Particulares* (Federal Law on the Protection of Personal Data Held by Private Parties or the “DPL Law”); (ii) the DPL Law’s Regulations (the “DPL Regulations”); and (iii) the *Lineamientos del Aviso de Privacidad* (Privacy Notice Guidelines).
- b. Laws that regulate consumer protection in specific industries, for example:
  - the *Ley de Protección y Defensa al Usuario de Servicios Financieros* (the Law for the Protection and Defense of Users of Financial Services) or “LFPDUSF”, as applicable to the financial industry; or
  - the *Ley Federal de Telecomunicaciones y Radiodifusión* (Telecommunications and Broadcasting Federal Law or “LFTR”), as applicable to broadcasting.
- c. Laws, regulations and other legislation that regulate the publicity, labels and information to be provided to consumers in connection to food, beverages, cosmetics, medicines, and medical devices, among others, including:
  - the *Ley General de Salud* (General Health Law or “LGS”) and its different regulations, such as: i) regulations of the LGS in publicity matters; and ii) regulations of sanitary control of products and services.

### 1.2 What is the definition of “consumer” (i.e., who does consumer protection law protect)?

Article 2 of the LFPC defines “consumer” as the physical or moral person who acquires, carries out or enjoys goods, products or services as the final beneficiary. Micro-companies or members of micro-industries, which will be considered as such per the applicable laws, may be consumers under the LFPC if they acquire, store, use or consume goods or services with a purpose to integrate them into any process of production,

transformation, marketing or the provision of services to third parties. In this second case, the LFPC only grants micro-companies or members of micro-industries the possibility of exercising certain rights set forth in such law.

### 1.3 Who is/which entities are required to comply with consumer protection law?

All suppliers need to comply with the LFPC. Article 2 of the LFPC defines a “supplier” as any physical or moral person, as such legal figures are defined in the Mexican Federal Civil Code, that regularly or periodically offers, distributes, sells, grants the use or enjoyment of, or leases any goods, products or services. Considering the definition of individual and legal entity in the Mexican Federal Civil Code, it could be construed that foreign individuals and legal entities could also be considered as suppliers if they carry out the abovementioned activities in the Mexican territory or cater to Mexican consumers.

The provisions of the LFPC: (i) are matters of public order and social interest and must be adhered to throughout Mexico; and (ii) cannot be waived and no person can allege to have customs, uses, practices, agreements or stipulations preventing their observance.

### 1.4 Which agency/agencies is/are responsible for enforcing consumer protection law (i.e., who is the investigator and who is the adjudicator)?

The *Procuraduría Federal del Consumidor* (Federal Consumer Protection Agency or “PROFECO”) is the agency that is responsible for enforcing the LFPC.

The *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* (National Institute for Transparency, Access to Information and Personal Data Protection or “INAI”) is responsible for the enforcement of the Mexican DPL which, as previously mentioned, regulates the processing of personal data of individuals in Mexico, including consumers.

### 1.5 Are there any specific bodies that regulate/enforce consumer protection law in specific sectors?

The following are the main agencies that enforce consumer protection laws in specific sectors in Mexico:

- the *Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros* (the National Commission for the Protection and Defense of Users of Financial Services or “CONSDUSEF”), which regulates consumer protection in the financial sector;

- the *Instituto Federal de Telecomunicaciones* (Federal Telecommunications Institute or “IFT”), which regulates consumer protection in the telecommunications and broadcasting sector; and
- the *Comisión Federal para la Protección contra Riesgos Sanitarios* (Federal Commission for the Protection against Sanitary Risks or “COFEPRIS”), which protects consumers against risks related to the use and consumption of health-related products and services.

## 2 Substantive Provisions

### Protections in relation to the quality and function of goods and services

#### 2.1 Please describe any protections regarding the quality and function of goods and services acquired by consumers.

The main protections under the LFPC regarding quality and functions of goods and services are as follows:

- a. Any good or service offered with a warranty must be issued as per the provisions of the LFPC and the agreement between supplier and consumer, and it must (i) be effective for at least 90 days as of the date of delivery, and (ii) contain at least its scope, period, conditions and mechanisms to make such warranty effective, as well as an address for complaints.
- b. The consumer can request the fulfilment of a warranty to the producer, importer and distributor of the goods or services, without distinction.
- c. In the event that the product has been repaired or serviced and it shows deficiencies attributable to the person that carried out the maintenance or repair, the consumer shall be entitled to have the product repaired or serviced again free of charge, within 90 calendar days of delivery.

Furthermore, the *Normas Oficiales Mexicanas* (Mexican Official Standards or “NOMs”) are mandatory technical regulations issued through the competent governmental entities in connection with various subjects, including the characteristics (and in some cases their verification methods) that products, goods or services must meet and comply with in connection to security, health, terminology, labelling and measurements, among others. There are a significant number of NOMs that have been issued in Mexico and they are applicable to a vast number of products and services, including telecom services, electrical and household products and medical devices. Suppliers, manufacturers or producers of products, goods or services must comply with any applicable NOMs.

The LFPDUSF and LFTR and their related legislation and norms, as well as other laws and norms applicable to consumer protection in specific sectors or industries, may have their own protections regarding the quality and function of goods and services acquired by consumers in the applicable sectors or industries.

#### 2.2 Please outline the substantive tests for these protections.

Per the LFPC and the LFPC Regulations, PROFECO’s test of the quality, specifications or any other characteristic of goods, products and services shall be carried out in accordance with any applicable NOMs, otherwise per (i) the *Normas Oficiales Mexicanas* (Mexican Official Standards or “NMX”), which are non-binding technical norms as established in the law that

specifically regulates the scope and the nature of this type of standard, or (ii) the methods or procedures that are determined by the Ministry of Economy or the applicable governmental agency, prior to an audience with the interested parties.

#### 2.3 What types of goods and services are covered by the protections relating to the quality of goods and services?

The protection of the LFPC applies to all products, goods and services provided by suppliers, as such term is defined in the law.

#### 2.4 Are there any exceptions to these protections?

There are no general exceptions to these protections, but exceptions may be included in the NOMs or other legislation applicable to specific goods, products, services, industries or sectors.

#### 2.5 What remedies are available for a breach of the protections in relation to the quality and function of goods and services?

All consumers have the right to file a claim or complaint against a supplier before PROFECO. PROFECO then starts a conciliation procedure between the consumer and the supplier. The conciliation procedure is not mandatory *per se*, but if the supplier fails to attend the conciliation hearing(s), PROFECO can fine the supplier assuming that the claim or complaint filed by the consumer is true; PROFECO can also issue an opinion which is considered an enforceable instrument (*título ejecutivo*) in favour of the consumer, and which could include a quantification of the bonification or compensation owed to the consumer.

The following are some of the most relevant remedies available for a breach of the protections in relation to the quality and function of goods and services:

- a. In the event products, services or goods which are the subject of a contract have hidden defects or flaws that make them unsuitable for their usual use, diminish their quality or their possibility of use, and fail to provide the security that is normally expected of them, consumers have right to request:
  - i. the return of the goods, product or service;
  - ii. the reduction of the price; or
  - iii. the early termination of the applicable contract, in the understanding that the supplier must return the amounts paid by the consumer, plus interest, if applicable.
- b. Consumers will be entitled, when appropriate, to the replacement of the product or the return of the amount paid when:
  - i. the content or quantity of a product is less than the one indicated;
  - ii. if the goods do not correspond to the quality, brand or specifications under which they were offered or do not comply with any applicable NOMs; and
  - iii. if a repaired good is not in a suitable state for its use or destination within the warranty period.
- c. Consumers will be entitled to request the indemnification of any damages and losses sustained.
- d. In the foregoing events, and other events (e.g. if services rendered were deficient or were never rendered for causes attributable to the supplier), consumers have the additional right to: (i) a bonification of no less than 20% of the price paid by the consumer; and/or (ii) a compensation of 5% of the cost of the reparation of the goods or, in the event of major defects or faults, 20% of the good’s price as set out in the applicable contract.



## 2.6 Who has or which agencies have standing to initiate proceedings for a breach?

PROFECO can initiate proceedings for any breach under the LFPC. CONDUSEF and IFT have standing to initiate proceedings for breaches under the LFPDUSF and LFTR, respectively, and any related laws, NOMs and other legislation.

## 2.7 Describe at least two examples of public or private enforcement of these protections in the last five years, including the conduct/alleged conduct, result and penalties imposed.

- In 2019, PROFECO received more than 1,677 complaints against various airlines. The main reasons for filing complaints were cancellations, flight delays, improper charges and lost or damaged luggage. For this reason, PROFECO has imposed penalties of more than \$7.5 million pesos in total on various companies, including Aeromexico, Volaris, Interjet, Aerobus and Aeromar.
- In 2020, 971 gas stations were fined a total sum of \$357 million pesos, due to failure to deliver full litres of gasoline. The above is information reported by the media, since PROFECO's yearly reports do not provide such information.

## Protections/prohibitions in relation to the safety of goods and services

### 2.8 Please describe any protections regarding the safety of goods and services acquired by consumers.

Regarding safety of goods and services, PROFECO is entitled to:

- a. Publish by any means the goods and services that have been detected as risky.
- b. Issue alerts addressed to consumers and help other authorities or agencies in the publication of their alerts about products or services that are defective, harmful or that threaten consumer life, health or safety.
- c. Order calls for review addressed to suppliers and make known those of other authorities on products or services that are defective, harmful or that threaten consumer life, health or safety.
- d. Withdraw from the market goods or products that threaten consumer life, health or safety, when this has been reliably determined by the competent authority.
- e. Order the repair or replacement of products or services that threaten consumer life, health, safety or the economy.

### 2.9 Please outline the substantive tests for these protections.

Per the LFPC and the LFPC Regulations, PROFECO's test of the quality, specifications or any other characteristic of goods, products and services shall be carried out in accordance with any applicable NOMs, otherwise per (i) the NMX, which are non-binding technical norms as established in the law that specifically regulates the scope and the nature of this type of standard, or (ii) the methods or procedures that are determined by the Ministry of Economy or the applicable governmental agency, prior to an audience with the interested parties.

## 2.10 What types of goods and services are covered by the protections relating to the safety of goods and services?

The protection of the LFPC applies to all products, goods and services provided by suppliers, as such term is defined in the law.

## 2.11 Are there any exceptions to these protections?

When dealing with the safety of goods and services, the LFPC and the applicable NOMs do not consider any exceptions.

## 2.12 What remedies are available for a breach of the protections in relation to the safety of goods and services?

All consumers have the right file a claim or complaint against a supplier before PROFECO. PROFECO then starts a conciliation procedure between the consumer and the supplier. The conciliation procedure is not mandatory *per se*, but if the supplier fails to attend the conciliation hearing(s), PROFECO can fine the supplier, assuming that the claim or complaint filed by the consumer is true; PROFECO can also issue an opinion which is considered an enforceable instrument (*título ejecutivo*) in favour of the consumer, which would include a quantification of the bonification or compensation owed to the consumer.

The following are some of the most relevant remedies available for a breach of the protections in relation to the quality and function of goods and services:

- a. In the event products, services or goods which are the object of a contract have hidden defects or flaws that make them unsuitable for their usual use, diminish their quality or their possibility of use, and fail to provide the security that is normally expected of them, consumers have the right to request:
  - i. the return of the good, product or service;
  - ii. the reduction of the price; or
  - iii. the early termination of the applicable contract, in the understanding that the supplier must return the amounts paid by the consumer, plus interest, if applicable.
- b. Consumers will be entitled, when appropriate, to the replacement of the product or the return of the amount paid when:
  - i. the content or quantity of a product is less than the one indicated;
  - ii. if the goods do not correspond with the quality, brand or specifications under which they were offered or do not comply with any applicable NOMs; and
  - iii. if repaired goods are not in a suitable state for their use or destination within the warranty period.
- c. Consumers will be entitled to request the indemnification of any damages and losses sustained.
- d. In the foregoing events, and other events (e.g. if services rendered were deficient or were never rendered for causes attributable to the supplier), consumers have the additional right to: (i) a bonification of no less than 20% of the price made by consumer; and/or (ii) a compensation of 5% of the cost of the reparation of the goods or, in the event of major defects or faults, 20% of the price of the goods as set out in the applicable contract.

### 2.13 Are there mandatory reporting requirements with respect to the safety of goods or services?

Yes, a compliance certificate in accordance with the applicable NOM must be secured to be able to import or commercialise products within the Mexican territory.

There is a catalogue of NOMs, depending on the type of product or service to be developed, and these must be complied with.

### 2.14 Describe any voluntary or mandatory product safety recall regimes.

Any supplier is entitled to communicate to PROFECO voluntarily that he/she/it has detected some type of risk in products, e.g. the designed product does not satisfy fully a company's internal standards, even if it complies with the applicable NOMs.

The companies must inform PROFECO and consumers by issuing a "Call for Review" or "Alert" through the micro site <http://www.alertas.gob.mx>.

### 2.15 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

In 2017, PROFECO issued a Call for Review for a possible failure in the assembly of the Britax B-agile stroller as it could cause falls in minors. Although a total of 4,561 strollers had been sold in Mexico, the products remaining in stores were immobilised.

In 2020, PROFECO immobilised the sale of antibacterial and mouth covers, since such products lacked commercial information and therefore could be unsafe when used (i.e. were not disinfected or did not meet their purpose).

## Prohibitions relating to "conduct" against consumers

### 2.16 Please describe any protections/prohibitions relating to the conduct of persons or businesses (e.g., manufacturers/retailers) which sell or supply goods and services ("Conduct") to consumers. For example, misleading and deceptive conduct, unconscionable conduct, etc.

The following are some of the most important protections/prohibitions relating to the conduct of suppliers under the LFPC:

- a. **Protections/prohibitions relating to misleading advertising and information**
  - i. All information and advertisement in connection with goods, products and services that are disseminated through any means have to be truthful, ascertainable or measurable (*comprobables*), clear and with no text, dialogue, sounds, images, trademarks and other deceitful or abusive descriptions that create or may induce error because they are misleading or abusive.
  - ii. Misleading advertising (*publicidad engañosa*) is prohibited; such term is defined in the LFPC as advertising that refers to characteristics or information related to goods, products or services that, real or unreal, induce a consumer to error or confusion, due to the inaccurate, false, exaggerated, partial or contrived way it is presented. Furthermore, the information and publicity that compares products and services may not be deceitful or abusive in terms of the foregoing.

- iii. Any legend or information in advertising or other material that advertises a product or service, which indicates that such product or service has been endorsed, approved, recommended or certified by entities or professional associations, is prohibited when the supplier/advertiser fails to have the appropriate documents that support, "with scientific, objective and reliable evidence", the qualities or properties of such product or service, as well as any other requisite required by law.

- b. **Protections/prohibitions in standard contracts (*contratos de adhesión*)**

Standard contracts are defined in the LFPC as documents drafted unilaterally by suppliers to establish uniform formats with the terms and conditions applicable to a product or service, even if such document lacks the ordinary clauses included in contracts. Standard contracts celebrated in the national territory are only valid if they are in written form, in Spanish, with readable characters and with a uniform size and type of font. Standard contracts may not include disproportionate duties for consumers, unfair or abusive obligations or any other clause or text that violates the provisions of the LFPC.

The following are the most relevant clauses that are prohibited under the LFPC for standard contracts:

- i. Clauses that allow the supplier to unilaterally modify the content of the contract, or unilaterally withdraw from its obligations.
- ii. Clauses that release the supplier from civil liability, except if the consumer breaches the contract.
- iii. Clauses that transfer civil liability to a third party that is not part of the contract.
- iv. Clauses that foresee prescription terms that are shorter than the legal terms.
- v. Clauses that require the consumer to waive the protection of the LFPC or submit to the jurisdiction of foreign courts.

- c. **Protections/prohibitions in e-commerce**

- i. The suppliers will use the information provided by the consumer in a confidential way, so it will not be able to disseminate it or transmit it to suppliers unrelated to the transaction, except with the express authorisation of the consumer or at the request of a competent authority.
- ii. The suppliers will use available technical elements to provide security and confidentiality to the information provided by the consumer and will inform the consumer, prior to the conclusion of the transaction, of the general characteristics of such elements.
- iii. The suppliers must provide the consumer, before concluding the transaction, with their physical address, telephone numbers and other means to which the consumers can file their claims or request clarifications.
- iv. The suppliers will avoid misleading commercial practices regarding the characteristics of the products, so they must comply with the provisions related to the information and advertising of the goods and services the supplier offers, as indicated in the LFPC and related legislation.
- v. The consumers will have the right to know all the information about the terms, conditions, costs, additional charges (if any), and forms of payment for the goods and services offered by the supplier.

- vi. The suppliers will respect the consumer's decision regarding the quantity and quality of the products the supplier wishes to receive, as well as that of not receiving commercial notices.
  - vii. The suppliers must refrain from using sales or advertising strategies that do not provide the consumers with clear and sufficient information about the services offered, especially in the case of marketing practices directed at the vulnerable population, such as children, the elderly and the sick, incorporating mechanisms that warn when the information is not suitable for that population.
  - viii. The suppliers that offer, market or sell products or services through electronic means shall "guide themselves" by the provisions of a *Norma Mexicana* (Mexican Norm) that was issued in connection with e-commerce in Mexico, the NMX-COE-001-SCFI-2018. Notwithstanding the foregoing, as previously mentioned, NMXs are non-binding, as expressly stated in the law that specifically regulates the scope and the nature of this type of standard.
- d. Protections/prohibitions relating to marketing**
- i. If so required by consumers, suppliers must confirm the information the supplier has in its databases of such consumers.
  - ii. Publicity sent to consumers by suppliers must include the name, address, telephone number, or email of the supplier and the contact data of PROFECO.
  - iii. PROFECO administers the Public Consumer Registry (the "REPEP") where consumers who do not want to receive publicity can register their phone number and, per a very recent legal reform to the LFPC Regulations that has yet to be implemented by PROFECO, their email. PROFECO provides suppliers access to this list. Per the LFPC, suppliers and marketing companies must not send advertising to persons that have expressed that they do not want to receive publicity and those who are registered in the REPEP.
  - iv. Suppliers and companies that use consumers' information for marketing or publicity purposes are prohibited from using such information for other purposes.
- e. Other protections/prohibitions under the LFPC**
- i. The information of the products or their labels, containers and packaging and the respective advertising, both of national manufacture and of foreign origin, will be expressed in Spanish and their price in national currency in understandable and readable terms according to the general system of units of measurement, in the understanding that they may also be expressed in another language or another measurement system.
  - ii. Suppliers may apply neither coercive and unfair commercial methods or practices, nor abusive or imposed clauses or conditions in the supply of products or services.
  - iii. Suppliers may neither provide additional services to those originally contracted that have not been expressly requested or accepted, in writing or electronically, by the consumer, nor may they apply charges without the prior consent of the consumer or that are not derived from the corresponding contract.
  - iv. Suppliers may not unreasonably increase prices for natural, meteorological or health contingencies.
  - v. Suppliers are obliged to deliver the invoice, receipt or "proof of purchase" to the consumer, stating the specific data of the sale, service provided or operation carried out.
  - vi. Suppliers must inform PROFECO or obtain a permit if they want to carry out certain types of promotions (e.g. collectibles) and raffles.
  - vii. Any legends that restrict or limit the use of a good or service must be set out clearly, truthfully and unambiguously.
  - viii. The legends "guaranteed", "guarantee" or any other equivalent may only be used when they indicate what such "guarantee" consists of and how the consumer can make it effective.
  - ix. Publicity of promotions and offers needs to include specific information set forth in the LFPC and any consumer that meets the applicable criteria will have the rights to obtain the applicable promotion or offer.
  - x. Credit transactions, property-related operations, service suppliers and door-to-door suppliers or those who sell outside the commercial establishment or indirectly need to comply with specific requirements set forth in the LFPC.
  - xi. The suppliers need to provide a manual when selling dangerous products or remodelling services.
- The NOMs can consider additional protections/prohibitions relating to the conduct of suppliers.
- The LFPDUSF and LFTR and their related legislation and norms, as well as other laws and norms applicable to consumer protection in specific sectors or industries, may have their own protections regarding the quality and function of goods and services acquired by consumers in the applicable sectors or industries.

#### 2.17 Please outline the substantive tests for the above-mentioned protections/prohibitions.

As previously mentioned, per the LFPC and the LFPC Regulations, PROFECO's test of the quality, specifications or any other characteristic of goods, products and services shall be carried out in accordance with the NOMs, otherwise per (i) the *Normas Oficiales Mexicanas* (Mexican Official Standards or "NMX"), which are non-binding technical norms per the law that specifically regulates the scope and the nature of this type of standard, or (ii) the methods or procedures that are determined by the Ministry of Economy or the applicable governmental agency, prior to an audience with the interested parties.

Furthermore, PROFECO reviews publicity per the terms of the *Lineamientos para el Analisis y Verificacion de la Informacion y Publicidad* (Guidelines for the Analysis and Verification of Information and Publicity), which requires all advertising to comply with the following:

- a. All information in connection with advertised goods, products or services needs to be verifiable and ascertainable or measurable (*comprobables*), as well as any claimed effects or benefits thereof.
- b. All objective affirmations need to be verifiable and measurable (*comprobables*).
- c. No categoric or superlative terms in connection with the performance, characteristics or the conditions of the publicised goods, products or services, which may induce consumers to error or confusion, may be used. If such terms, along with objective affirmations, are used, or reference is made to studies, samples and/or tests, such information needs to be verifiable and ascertainable or measurable (*comprobable*).

- d. Advertising that compares goods, products or services must not cause an error or confusion in consumers, because such comparison is not verifiable or lacks objectivity.

In addition to the foregoing, PROFECO has internal guides in connection with the criteria that must be followed internally when reviewing advertising, which are not obligatory for individuals or private companies.

Finally, the LFPC Regulations allow suppliers to prove the veracity of any information in connection with goods, products and services, through documents issued by international or national organisations of “proven scientific and technical capacity”, when there are no applicable regulations within the Mexican territory. The LFPC Regulations also state, in connection with the Conduct described in point a.iii. of question 2.16, that technical and scientific studies that contain the report of the original results of an investigation will be considered as “scientific, objective and reliable evidence” if they comply with specific requirements set forth in the LFPC Regulations.

#### 2.18 Are there any exceptions/exemptions to the protections/prohibitions relating to Conduct?

There are no general exceptions to these protections, but exceptions may be included in the NOMs or other legislation applicable to specific goods, products, services, industries or sectors.

#### 2.19 What remedies are available for a breach of the protections/prohibitions relating to Conduct?

All consumers have the right file a claim or complaint against a supplier before PROFECO, as mentioned in question 2.5.

The following are some of the most relevant remedies available for a breach of the protections/prohibitions relating to the Conduct described above:

- a. In the event information, instructions, data and conditions promised or suggested by the supplier are untruthful, the consumer has the right to request what was actually offered and, when that is not possible, the replenishment of the consumer’s expenditures and if applicable, the bonification and compensation as set forth in question 2.5.
- b. In the event the author of a promotion or offer fails to honour his/her/its offering, the consumer may opt for its compliance, accepting an equivalent good or service, the early termination of a contract and, if applicable, the right to be paid the difference between the offered price of the goods or services and its normal price. The foregoing is in addition to the bonification and/or compensation described in question 2.5.
- c. In the event that, after a warranty is executed, and the defects or faults of goods or services persist, then the supplier needs to repair them again immediately and provide the consumer the compensation described in question 2.5.
- d. If suppliers fail to provide a manual when selling dangerous products or rendering services, they will be liable for any damages and losses caused by this omission, plus the bonification and compensation described in question 2.5.
- e. Consumers will be entitled to request the indemnification of any damages and losses they have sustained.

#### 2.20 List at least two examples of public or private enforcement of the protections relating to Conduct in the last five years, including the breach/alleged breach, result and penalties imposed.

- In 2018, PROFECO imposed a fine on Uber for an approximate amount of \$3.97 million pesos. This was due to the following violations of the LFPC: (i) the company was applying a standard contract which contained unfair and abusive provisions to the disadvantage of consumers and other provisions prohibited under the LFPC; and (ii) PROFECO considered their guarantee of a “safe service” of transportation as false advertising.
- In 2018, PROFECO initiated investigation procedures for infractions to the LFPC by Colgate-Palmolive Universidad Intercontinental, Merkatari, Mead Johnson Nutricionales de México, Tempure Sealy México, Spring Air México and others, particularly in connection with the advertisement of certain of their products having been endorsed, approved, recommended or certified by entities or professional associations, without the appropriate documentation that supported such claims.

The above is information reported by the media, since PROFECO’s yearly reports do not provide such information.

### Other protections/prohibitions

#### 2.21 Does consumer law in your jurisdiction have any other prohibitions/protections not covered by the questions above? If so, please describe these prohibitions/protections.

This is not applicable.

#### 2.22 Please outline the substantive tests for the above-mentioned protections/prohibitions.

This is not applicable.

#### 2.23 Are there any exceptions/exemptions?

This is not applicable.

#### 2.24 What remedies are available for a breach of these protections?

This is not applicable.

#### 2.25 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

This is not applicable.

## 3 Enforcement Action and Remedies

### Investigation of potential breaches

#### 3.1 What powers does the consumer authority in your jurisdiction have to investigate potential breaches of consumer law? Describe the key steps in a typical investigation.

According to articles 96 and 97 of the LFPC, PROFECO has the power to initiate investigations and sanction procedures by itself and derived from anonymous complaints by affected



parties. In case the procedure is initiated by an anonymous complaint, PROFECO notifies the potential offender and then opens a conciliation process; if they do not reach an agreement, PROFECO initiates a proper sanctioning process, in which the opportunity to present grounds and evidence is given to the offender, and then PROFECO issues the final resolution in which sanctions can be imposed.

Please note that, according to the Civil Procedures Federal Code, private plaintiffs, government entities, and certain non-profits may bring consumer claims as class, or “collective”, lawsuits.

### 3.2 How is an investigation triggered (e.g. *ex officio*, whistleblower or complaint)?

PROFECO has the authority to initiate the investigations by anonymous complaint or *ex officio* through a verification visit. In case of *ex officio* investigations, PROFECO does not have the obligation to justify the reason for its investigation; therefore, in practice, it is common for PROFECO to order verification visits derived from whistleblowers or public information contained in TV, radio and/or social media.

### 3.3 Describe any complaints procedure for (i) consumers, and (ii) businesses.

The complaint procedure is the same for (i) consumers, and (ii) businesses, provided they are considered as consumers under the LFPC. The procedure begins with the filing of the complaint, which can be in writing, verbally, by telephone or electronically. Once the complaint is received, PROFECO notifies the potential offender and requires a written report related to the facts which are the object of the complaint. After this, PROFECO opens a conciliation process, and if the parties do not reach an agreement, PROFECO initiates a proper sanctioning process against the potential offender.

### 3.4 What is the timeline for a typical investigation?

From 15 to 60 working days, depending on the kind of products or services that are investigated, and if a conciliation process is commenced.

### 3.5 Are there criminal penalties for non-compliance with a consumer law investigation? If so, provide examples where such penalties have been imposed.

Not directly. According to article 24, section XVII of the LFPC if, exercising its powers, PROFECO detects the potential commission of a crime, it is obliged to inform the prosecution service (*Ministerio Público*), which would initiate the criminal process according to the applicable Criminal Code.

### 3.6 Can investigations be resolved by way of commitments or undertakings?

Yes, during the conciliation process, the parties – the consumer and the potential offender – can reach an agreement in which commitments and undertakings are established, and PROFECO then gives that agreement the character of administrative resolution. In case of non-compliance with such agreement, the affected party could initiate a claim to PROFECO, which has the authority to enforce the agreement.

## Enforcement

### 3.7 How does the consumer authority(ies) seek to enforce consumer law (for example, by administrative decision or by commencing proceedings in court)?

PROFECO enforces consumer regulation by administrative resolutions. Prior to issuing an administrative resolution to enforce consumer regulation, PROFECO follows an administrative process which has different stages: i) investigation/verification; ii) conciliation; iii) sanctioning process; and iv) resolution (sanctioning or not).

Please note that according to the Civil Procedures Federal Code, private plaintiffs, government entities, and certain non-profits may bring consumer claims as class, or “collective”, lawsuits.

### 3.8 Are the consumer protection authority(ies) bound by a time limit to commence proceedings on breaches?

Yes, according to article 14 of the LFPC, PROFECO has one year to initiate the investigation process. In that event, the procedure is initiated by an anonymous complaint, and the one-year period is interrupted when the complaint is filed. There is an exemption in which, when the proceeding relates to sanctioned breaches that may have effects on children’s rights, the limit is extended to 10 years.

### 3.9 Describe the enforcement powers/tools available to these bodies (civil, administrative, criminal).

In order to apply and enforce the provisions of consumer protection regulation, PROFECO can carry out surveillance and verification of the places where products or merchandise are managed, stored, transported, distributed or sold, or at the places where services are rendered, including those in transit. Also, PROFECO has the power to impose sanctions stipulated in the LFPC, for which PROFECO shall give notice to the alleged infringer of the procedure’s facts and shall grant a term of 10 business days to introduce evidence and refute them in writing. PROFECO has the authority to impose all sanctions in the administrative field, which are listed in the LFPC as follows: i) economic fines; ii) total or partial closure; and iii) prohibition on marketing goods or products.

### 3.10 Where regulators/enforcement bodies have a choice of enforcement tools/powers, what considerations do they take into account in determining which tools/powers to use?

To determine which powers to use, PROFECO must determine the seriousness of the case. In such respect, article 128 of the LFPC establishes those cases that are particularly serious, which are:

- Cases where the rights and interests of a group of consumers could be affected if the supplier continues to operate.
- When the infringement in question could endanger the life, health or safety of a group of consumers.
- Infringements committed in relation to goods, products or services that, due to the season or special circumstances of the market, adversely affect the rights of a group of consumers.
- Conduct committed by advantage of shortages, remoteness or difficulty to supply goods or to render a service.

- e. Acts with respect to basic commodities of generalised consumption, such as food, natural gas or liquefied petroleum gas, gasoline or other products subject to a maximum price or prices or fees established or registered by the applicable Ministry or by any other competent authority.
- f. Recidivism in the commission of infringements indicated in article 128 of the LFPC.

**3.11 Describe the relevant rules and procedures that must be followed by such bodies (e.g. administrative, judicial).**

The procedure is administrative. In order to establish a violation of the provisions of the LFPC and, if applicable, the imposition of sanctions, PROFECO shall give notice to the alleged infringer of the procedure's facts and shall grant a term of 10 business days to introduce evidence and refute them in writing.

Otherwise, PROFECO shall issue a decision pursuant to the evidentiary means that have been made available to it.

When PROFECO detects infringements to the NOMs and initiates against a supplier the abovementioned procedure in connection with the marketing of goods or products that are not in compliance with such standards, it shall also give notice to the manufacturer, producer or importer of such goods or products on the initiation of the procedure set forth in article 123 of the LFPC.

PROFECO shall establish the sanctions that may be legally admissible once the procedure in question is completed. PROFECO shall admit the evidence it deems advisable and shall proceed to introduce it. Likewise, it may request from the alleged infringer or from third parties other evidence it may deem advisable.

Once the introduction of evidence concludes, PROFECO shall give notice to the alleged infringer so that it may submit arguments within the next two business days. PROFECO shall then render a decision within the next 15 business days.

**3.12 Is there a right to a stand-alone action and follow on right of action within consumer law? Who has standing to bring these actions?**

The LFPC does not establish the right of stand-alone action.

**3.13 Is there a statute of limitations for bringing stand-alone or follow on right of actions?**

This is not applicable.

**3.14 Describe any international or regional cooperative mechanisms (e.g., MOUs) in which your jurisdiction is involved in the enforcement of consumer protection.**

There is not any international mechanism in which Mexico is involved in the enforcement of consumer protection.

## Appeals

**3.15 Describe any appeal processes.**

The resolutions issued by PROFECO imposing sanctions can be challenged by a motion for review, under the terms of the Federal Administrative Procedure Law. This motion is substantiated before PROFECO and it is solved by the hierarchical superior of whoever issued the challenged resolution.

Another challenging option is through a nullity trial before the Federal Administrative Justice Court. This is a jurisdictional process, in which a collegiate and a specialised court review that the resolution was issued in accordance with the consumer law and administrative procedure law.

**3.16 Can consumers or retailers/manufacturers appeal decisions made by the consumer authority(ies) or by a court?**

Yes, through the processes mentioned in question 3.15. Affected parties (consumer or manufacturer) can initiate an *Amparo* proceeding against the resolution issued by the Federal Administrative Justice Court.

**3.17 Does an appeal suspend the effect of any penalty/the requirement to pay any fine?**

Yes, if the plaintiff asks for the suspension of the effect of the penalties; however, the amount of the fines must be guaranteed.

## 4 Anticipated Reforms

**4.1 Are there any proposed reforms to consumer law or policy within the next 12 months?**

The Mexican Senators Chamber has issued an initiative to modify the direct marketing-related provisions of the LFPC, which was approved on October 2019. Such initiative has been sent to the Chamber of Deputies and, if approved, it will become law, unless the Executive Power uses its veto power to reject it. Considering the current structure of the Chamber of Deputies, it is probable that this initiative will be approved this year, although as of this date, we do not know when this proposal will be discussed in the Chamber of Deputies.

In general terms, the initiative modifies the LFPC to state that:

- It is strictly prohibited for companies and suppliers to use or share any kind of information about consumers with advertising or marketing purposes. These advertising and marketing practices will be allowed only after a request made from the consumer by means of previous, expressed and informed consent, which may be revoked at any given moment.
- Suppliers and companies will be responsible for the management of consumer information when such advertising is communicated by themselves or through any third party.
- The model of the REPEP will evolve. This registry (or the registry that will replace it) will refer to the consumers that have granted their consent for suppliers to use their information for marketing purposes and publicity. The companies and suppliers shall inform PROFECO of the list of consumers that have granted such consent.
- The amendment mandates that the origin of marketing calls and messages must be fully identifiable and that these can only be issued at reasonable hours of the day.
- The fines are increased for unsolicited marketing and those who violate these provisions.



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