



# GLOBAL EXPANSION GUIDEBOOK

IPT

*Mexico*



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## INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Intellectual Property and Technology*.

### GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### INTELLECTUAL PROPERTY AND TECHNOLOGY

Inside this guide, we outline crucial aspects of IPT laws in over 40 jurisdictions that are particularly relevant to businesses seeking to expand their operations globally. We also summarize some fundamental commercial terms that customarily appear in IPT-related agreements.

You will find answers to such common questions as:

- Which jurisdictions recognize moral rights?
- What does my business need to do to have an enforceable assignment of intellectual property from an employee, from a consultant?
- What kind of liability can be excluded from a commercial contract?

With this edition, we've also included a section for each country that discusses the enforceability of electronic signatures.

Our goal is to make the guide as readable and informative as possible, providing you just the background you need to get an overview of the IPT laws in the selected jurisdictions. This is not a substitute for professional legal advice. If you have questions regarding specific matters, we encourage you to contact one of our contributors listed in the contributors section of this guide. With nearly 500 dedicated IPT lawyers around the globe, DLA Piper's IPT group is ready to handle your legal needs wherever you do business.

Also, please note that the guide's use of the term "trademarks" also refers to service marks, unless specifically addressed separately. The summary of intellectual property covers only the most commonly used categories worldwide (for example, we have not addressed plant patents). We have also referred to international treaties and conventions with their most commonly used names and not their formal titles (such as the TRIPS Agreement, the Berne Convention, the Paris Convention and the Patent Cooperation Treaty).

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that intellectual property and technology law is dynamic, and the legal regime in the countries surveyed could change.

## MEXICO



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### INTELLECTUAL PROPERTY FRAMEWORK

#### Overview

Two federal laws provide the core legal basis for protection of intellectual property rights in Mexico:

- The Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*) and
- The Federal Copyright Law (*Ley Federal del Derecho de Autor*).

### COMMERCIAL CONTRACT FRAMEWORK

#### Overview

Commercial matter provisions are governed by federal laws. In general, commercial agreements are governed by the Commercial Code; thus, certain agreements are governed by specific federal laws (ie, bank credit agreements, insurance, pledge and trusts, among others).

Additional commercial contract provisions may be found in other federal laws (ie, antitrust and consumers' protection), regulations and official standards.

The venue for resolution of disputes specified in a commercial contract corresponds to federal courts, although state courts may accept venue.

Commercial contracts with federal and state government agencies are subject to separate governmental regulations, which may include, among other matters, specific auditing and recordkeeping requirements.

### COPYRIGHTS

#### *Nature of right*

Copyright can apply to a variety of works, including musical, literary, broadcasting, photography, works of art (ie, graphic design, pictorial, drawing, sculpture and caricature), cinematography, audiovisual work, editorial compilations (such as encyclopedias and anthologies), operating systems and computer programs.

Copyright grants both moral and economic rights to its author, which shall be an individual as opposed to an entity.

Moral rights make the author the first and only perpetual owner of the rights of the copyright work; patrimonial rights allow the titleholder to exploit the work exclusively or to authorize 3rd parties to exploit the copyright.

## *Legal framework*

Federal Copyright Law (*Ley Federal del Derecho de Autor*) governs copyrights.

## *Duration of right*

Moral rights are perpetual; economic rights last for the life of the author plus an additional 100 years; although, when the work belongs to 2 or more co-authors, the 100 years will be counted from the death of the last co-author.

## *Ownership / licenses*

In order to perfect ownership of a copyright, the author must register their work with the National Institute of Author Rights (*Instituto Nacional del Derecho de Autor*).

Titleholder of the economic rights of the copyright may grant exclusive or non-exclusive licenses to 3rd parties, as well as transfer their rights.

All transfers shall be conducted against valid consideration and on a non-perpetual basis.

Licenses and transfer of copyrights shall be evidenced in writing and shall be registered with the National Institute of Author Rights.

The copyrights related to broadcasting work are limited by the signal retransmission obligation for broadcasting concessionaires set forth in the Federal Telecommunications and Broadcasting Law.

## *Remedies for infringement*

Infringement of copyright may lead to payment of damages and losses, which shall be determined by the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial or IMPI*), based on actual damage and/or loss.

Criminal penalties may be imposed.

## **MASK WORKS / TOPOGRAPHIES**

### *Nature of right*

Mask works protect the titleholder of any reproduction, total or partial, as well as from the import, sale or distribution for commercial purposes.

## *Legal framework*

Fifth Chapter of Second Title of the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*) governs mask works.

## *Duration of right*

The duration of mask work protection is 10 years from the date the filing is presented before the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial* or IMPI).

## *Ownership / licenses*

In order to establish the ownership of a mask work, registration is required before the IMPI.

Mask works registrations or registrations in process may be encumbered, transmitted or licensed pursuant to commercial general provisions. Registration of the agreement is required before the IMPI to perfect the encumbrance, transmission or license.

No obligatory license operates in mask work registrations.

## *Remedies for infringement*

Violation of a registered mask work may lead to payment of damages and losses, which shall be determined by the IMPI, based on actual damage and loss. Such payment of damages and losses will in no case be less than 40 percent of the public sale price of each product or the provision of the services that involve a violation of any of the intellectual property rights governed by the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*).

Criminal penalties may be imposed.

## **PATENTS**

### *Nature of right*

Regarding inventions, the right granted is a patent; regarding utility models and industrial designs, the right granted is a registration.

### *Legal framework*

3rd Title of the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*).

### *Duration of right*

The duration of a patent is 20 years (non-extendable) from the filing requesting the patent; the duration for utility models is 10 years (non-extendable) from the filing requesting the registration; and the duration for industrial designs is 5 years as of the filing requesting the registration, subject to additional extensions of 5 years up to 25 years.

## *Ownership / licenses*

In order to establish ownership of a patent, registration is required before the IMPI.

Patents registrations and registrations in process may be encumbered, transmitted or licensed pursuant to commercial general provisions. Registration of the agreement is required before the IMPI to perfect an encumbrance, transmission or a license.

## *Remedies for infringement*

Violation may lead to payment of damages and losses, which shall be determined by the IMPI, based on actual damage and loss.

Criminal penalties may be imposed.

## **TRADEMARKS**

### *Nature of right*

Trademarks can be visible names, figures, sounds, scents or the plurality of operational elements (eg, image, shape, size, color, package or decoration) that are sufficiently distinctive and capable of identifying the products or services to which they are applied, or are intended to be applied, compared with others of the same type or category; 3-dimensional shapes; trade names and company or business names, provided that they are not an exception; and the proper name of a natural person, provided that it is not the same as a registered mark or published trade name.

Trademarks shall be registered in relation to specific products or services according to the classification provided for by the Regulations of the Law.

### *Legal framework*

Trademarks are governed by the Fourth Title of the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*).

### *Duration of right*

Trademarks have a duration of 10 years as of the filing requesting the trademark registration.

## *Ownership / licenses*

In order to establish ownership of the title, registration of the trademark is required before the IMPI.

Trademark registrations and registrations in process may be encumbered, transmitted or licensed pursuant to commercial general provisions. Registration of the agreement is required before the IMPI to perfect encumbrance, transmission or license.

## *Remedies for infringement*

Violation may lead to payment of damages and losses, which shall be determined by the IMPI, based on actual damage and loss. Such payment of damages and losses will in no case be less than 40 percent of the public sale price of each product or the provision of the services that involve a violation of any of the intellectual property rights governed by the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*).

Criminal penalties may be imposed.

## **TRADE SECRETS**

### *Nature of right*

Trade secrets can include the nature, characteristics or purposes of the products; the production methods or processes; or the means or forms of distribution or commercialization of the products or rendering of services.

### *Legal framework*

3rd Title of the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*).

### *Duration of right*

As long as reasonable efforts are taken by the owner of the information to maintain the information as a trade secret; trade secret protection is potentially perpetual.

### *Ownership / licenses*

No registration is required. An owner must use means or systems to preserve a trade secret's confidentiality and restricted access to the trade secret.

An owner may transfer or allow the use of the trade secret to a 3rd party. A 3rd party shall have the obligation to not disclose the trade secret.

## *Remedies for infringement*

Violation may lead to payment of damages and losses, which shall be determined by the IMPI, based on actual damage and loss. Such payment of damages and losses will in no case will be less than 40 percent of the public sale price of each product or the provision of the services that involve a violation of any of the intellectual property rights governed by the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*).

Criminal penalties may be imposed.

## OTHER KEY IP RIGHTS

### *Nature of right*

Not applicable.

### *Legal framework*

Not applicable.

### *Duration of right*

Not applicable.

### *Ownership / licenses*

Not applicable.

### *Remedies for infringement*

Not applicable.

## INTELLECTUAL PROPERTY IN EMPLOYMENT CONTEXT

### *Employees*

The Mexican Labor Act provides that an employee-inventor has the right to be named as author of their inventions. This is a right to recognition, not ownership. With respect to ownership of inventions, the Labor Act provides that:

- i. Where an employee-inventor works in research and development or works on perfecting processes used in the employer's business, the resulting intellectual property belongs to the employer, provided that, if the benefit to the employer is disproportionate to the salary paid to the employee, the employee shall have the right to a royalty, as determined by mutual agreement of the parties or by the Mediation and Arbitration Board, and
- ii. Intellectual property developed by an employee engaged in any other area shall belong to the employee, provided that the employer shall have the first right to the exclusive use or acquisition of the invention or patents (on terms to be negotiated by the parties or determined by the Mediation and Arbitration Board).

### *Consultants / contractors*

There is no specific legal framework under Mexican law for ownership of intellectual property developed by consultants and contractors. It is customary for consultants and contractors to sign written agreements. Absent a

written present assignment of developments, consultants and contractors retain ownership of the intellectual property developed by them, even if contracted and paid for by another party.

## KEY COMMERCIAL CONTRACT CONSIDERATIONS

### *Registration of commercial agreements*

No general registration requirement, but all intellectual property-related agreements shall be registered before the relevant governmental authority to be effective against 3rd parties.

### *Recognized language of commercial agreements*

Spanish. Documents to be filed with a governmental authority shall be translated into Spanish by an official translator.

### *Country-specific issues for online content*

There is no specific legislation regarding online content.

### *Enforceability of online/clickwrap/shrinkwrap terms*

Online terms are generally viewed as enforceable as long as they are conspicuous and users have an opportunity to review and indicate affirmative assent (eg, check a box).

### *Governing law*

Governing law and venue for resolution of disputes specified in a commercial contract corresponds to federal courts, although state courts may accept venue.

Dispute resolution is litigation in federal courts unless an alternative dispute resolution procedure, such as mediation or arbitration, is specified in the contract.

## KEY COMMERCIAL CONTRACT TERMS

### *Enforceability of warranty disclaimers*

Under Mexican law, the granting of warranties is mandatory only for determined products and services. If a seller or service provider grants warranty to its client, it shall respect such warranty in all its terms and conditions and contain the minimum requirements set forth by the applicable law.

### *Enforceability of exclusions/limitations of liability indemnification*

Provided that granting a warranty is not mandatory, if the seller or service provider grants warranty to its client, it shall respect such warranty in all its terms and conditions and contain the minimum requirements set forth by the applicable law.

## *Indemnification*

Federal and state civil laws set forth the provisions related to indemnification for damages and losses, which shall be, and are limited to, direct and immediate consequence of the act or omission that generated the indemnification.

Liquidated damages provisions may be used in agreements, provided that the amount of such liquidated damages may not be greater than the principal amount of the agreement.

## *Electronic signatures*

Electronic commerce and electronic signatures are recognized and regulated by Mexican law for private transactions; electronic methods may be used for commercial acts and their formation and consent may be expressed through electronic methods. The electronic signature is any electronic data comprised in or attached to a data message used in order to:

- Identify the signatory in connection with the data message and
- To indicate that person's approval of the information contained in the data message.

The electronic signature produces the same legal effects as the handwritten signature, and it is admitted as evidence in court.

Mexican law does not limit or restrict electronic signatures to a particular format or tool. However, the data message shall contain information regarding the name of the signatory in order to create a connection between the person and the electronic signature.

Pursuant to the provisions set forth in Article 93 of the Commerce Code, any commercial act required to be signed by the corresponding parties pursuant to the applicable laws may be signed electronically through an electronic signature as long as such electronic signature is attributable to the relevant parties and/or signatory persons. Furthermore, the information contained in the relevant data message shall be entirely conserved and kept as available for subsequent consultation.

An electronic signature may be considered advanced:

- When the signature is exclusively in control of the signatory person and
- When any modification to the original data message or electronic signature may be identified (eg, the password-protected identification form or digital fingerprint), pursuant to the opinion issued by a certification agent in e-commerce matters.

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