

Direct Marketing: Overview (Mexico)

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A Practice Note providing an overview of the legal issues surrounding direct marketing in Mexico. This Note considers the statutes, regulations, and voluntary codes of practice that apply to direct marketing activities, including telemarketing, voicemail, fax, direct mail, electronic communications (including email), as well as means of consumer recourse, and regulatory enforcement.

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Direct marketing consists of communications by which a business tries to sell or market certain goods or services directly to consumers, without the use of traditional media (such as radio, newspapers, and television), out-of-home advertising (such as billboards), or general online methods (like banner ads). These communications are often unsolicited.

Direct marketing communications are sent by mail, telephone, text message, fax, and email straight to the recipient consumer. Although it can be a powerful business tool, direct marketing also poses some unique challenges. Direct marketing activities involve complicated legal issues arising from several statutes, regulations, and voluntary codes of conduct, the various provisions of which are not always consistent.

This Note focuses on the legal issues relating to direct marketing in Mexico. It discusses:

- The legal and regulatory framework in Mexico, including laws relating to data privacy, consumer protection, and advertising.
- Self-regulation and voluntary codes of practice.

- The different types of direct marketing and the rules governing them (including telemarketing, fax, direct mail, electronic communications such as SMS text and email).
- Consumer recourse and regulatory enforcement.

Legal and Regulatory Framework

Direct marketing is subject to laws and regulations across various fields of law. These laws and regulations not only govern the means of delivering the direct marketing, but also its content and how personal information may be collected, shared, and used.

Legislation and Regulation

Various laws and regulations cut across all types of direct marketing, like:

- Data privacy laws (see [Data Privacy Laws](#)).
- Consumer protection laws (see [Consumer Protection Laws](#)).
- Advertising laws (see [Fundamental Advertising Principles](#)).

Direct marketing is also governed by various self-regulatory programs and voluntary codes and raises certain cross-border legal issues (see [Self-Regulation](#) and [Cross-Border Issues](#)).

For information on laws that are specific to how the direct marketing is delivered, see [Types of Direct Marketing](#).

Data Privacy Laws

Because direct marketing involves the collection, sharing, and use of personal information, direct marketers must comply with relevant data privacy laws. The following laws govern data protection in Mexico and may apply to direct marketing campaigns:

- The [Mexican Constitution](#), specifically:
 - Article 16, which establishes the rights to access, rectify, cancel, or oppose the processing of personal data; and
 - Article 73, which empowers the Mexican Congress to legislate on data protection matters.
- The [Federal Law on the Protection of Personal Data Held by Private Parties](#) (*Ley Federal de Protección de Datos Personales en Posesión de los Particulares*) (FDPL) and the [Regulations of the Federal Data Protection Law](#) (FDPL Regulations).

- The [Guidelines for Privacy Notices](#) (*Los Lineamientos del Aviso de Privacidad*), which establish the required form and content of privacy notices for a company to be able to collect personal data.
- The [Parameters for Self-Regulation](#) (*Parámetros de Autorregulación en Materia de Protección de Datos Personales*).

The FDPL regulates data processing by private entities. The law also supports the creation of binding self-regulation. The consumer rights under the FDPL to access, rectify, cancel, and oppose the processing of personal data are sometimes referred to as "ARCO rights" (*acesar, rectificar, cancelar, and opositar*). The [National Institute for Transparency, Access to Information, and Protection of Personal Data](#) (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*) (INAI) enforces the FDPL and publishes guidance on data protection issues.

Under Mexico's data privacy laws and regulations, companies must:

- Include privacy notices on communications where consumer information is used.
- Have privacy notices in Spanish. This requirement is important to keep in mind, as some global companies operating in Mexico fail to have their privacy notices translated from English into Spanish.
- Appoint a data protection officer or data protection department in charge of overseeing compliance with data privacy obligations.
- Implement security measures around personal data.
- Treat information related to e-commerce interactions and transactions as confidential.

Mexico also allows consumers to opt out of certain advertising and marketing (see [Opt-Out Registries](#)).

Consumer Protection Laws

The [Federal Consumer Protection Law](#) (*Ley Federal de Protección al Consumidor*) (LFPC) applies to advertising in general terms, including direct marketing campaigns. The LFPC is the primary law in Mexico that protects the rights of consumers in Mexico from unfair and deceptive business practices. All businesses that offer goods, products, or services to consumers must comply with the LFPC.

Fundamental Advertising Principles

Under Mexican law, advertising regarding goods, products, or services must be:

- Truthful
- Verifiable.
- Precise.

- Free of text, dialogue, sounds, images, trademarks, designations of origin, and other descriptions that lead or may lead to mistake or confusion by being either deceptive or unfair.

(Article 32, LFPC.)

Comparative advertising is allowed, but it must not be deceptive or unfair. If a product advertises that is endorsed, approved, recommended, or certified by professional societies or associations, it must have the proper documents that support scientifically and objectively the qualities of the products or services.

Deceptive or unfair advertising means advertising that refers to characteristics or information related to any good, product or service that, either truthfully or not, misleads or causes confusion due to the imprecise, false, exaggerated, biased, contrived, or tendentious way it is presented.

For additional information on advertising laws in Mexico, see [Country Q&A, Advertising in Mexico: Overview](#).

Additional Laws

Additional rules that may apply to direct marketing are:

- The [General Health Law](#) (*Ley General de Salud*) regulates marketing campaigns related to health products.
- The [Law of Protection of Users of the Financial Services](#) (*Ley de Protección y Defensa al Usuario de Servicios Financieros*) regulates marketing campaigns related to financial services.
- The [Insurance and Bonding Institutions Law](#) (*Ley de Instituciones de Seguros y de Fianzas*) references marketing activities for the goods and services supplied by insurance and bond industries.

Self-Regulation

The [National Council for Self-Regulation in Advertisement](#) (CONAR) provides guidance across several industry areas and contains general standard for all marketing activities.

Specifically, the [CONAR Advertising Ethics Code](#) refers to:

- Legality.
- Truthfulness and honesty.
- Respect and dignity.
- Fair competition.
- Comparative advertising, which is permitted if the advertising is:

- objective;
 - verifiable;
 - representative;
 - relevant to the comparison; and
 - focused on added benefits without disqualifications.
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- Health, well-being, and environmental consciousness.
 - Protection of minors.

Specific industry associations also have self-regulatory bodies dealing with marketing, such as:

- The [National Chamber of Cosmetic Products Industry](#) (*Cámara Nacional de la Industria de Productos Cosméticos*).
- The [Tequila Regulatory Council](#) (*Consejo Regulador del Tequila*).
- The [National Chamber of the Pharmaceutical Industry](#) (*Cámara Nacional de la Industria Farmacéutica*).
- The [National Association of Supermarkets and Department Stores, A.C. \(ANTAD\)](#).

Cross-Border Issues

The [Consumer Protection Bureau](#) (PROFECO) and the INAI both cover cross-border issues.

The PROFECO works in connection with similar offices abroad through a mutual co-operation agreement, which allows nationals an easy path for consumer protection claims against foreign providers of goods and services. For example, a consumer affected by a direct marketer based in a European country can file a complaint through the PROFECO, which in turn directs the consumer to the appropriate authority in the relevant country.

The INAI issued a decision sanctioning Google's Mexican entity for refusing to respond to a privacy request. Google's basis for refusal is that the request should have been addressed to Google in the US as the responsible party. This decision places Mexican affiliates at risk of sanctions under privacy laws for activities performed abroad. Under this decision, companies doing business in Mexico cannot avoid privacy compliance by asking the data owner to adhere to the laws of a different jurisdiction.

The Mexican administrative authorities and courts do not have extraterritorial sanctioning capacities. However, the civil courts attend to petitions from individuals to communicate with courts abroad to seek compensation for harm done to a Mexican national.

Types of Direct Marketing

Telephone Calls, Texts, Emails, and Fax

Unsolicited telephone calls, texts, emails, and faxes (communications) fall under the same regulatory umbrella. They are regulated under:

- Articles 17, 18, and 18-bis of the LFPC.
- The FDPL.

There is no distinction between communications to companies and individuals. Article 2(l) of the LPFC defines a consumer as companies or individuals that acquire or purchase goods, products, or services.

A party can generally send or transmit unsolicited advertising or marketing communications if:

- An opt-out is available for the consumer.
- The company can prove that the consumer information it uses was lawfully obtained (that is, the marketing is not done as a cold communication), either:
 - directly from the consumer; or
 - from a company which obtained tacit or explicit consent to transfer the information.
- The company refers to its privacy notice when using consumer information.
- The company:
 - has control over the consumer's information it uses;
 - can reply to requests about how the information was obtained; and
 - can cancel any information at the request of the consumer.
- The company refrains from sending or transmitting advertising or marketing materials related to:
 - general commercial activities to numbers registered on the [Public Registry to Avoid Advertisements \(Registro Publico para Evitar Publicidad\)](#) (REPEP); and
 - financial services to numbers and emails registered on the [Public Registry of Users Who Do Not Wish Marketing Information Related to Financial Services \(Registro Publico de Usuarios\)](#) (REUS).

(For more information on the REPEP and REUS, see [Opt-Out Registries](#).)

- The company makes available to the consumer relevant information about the company.

(Articles 16 to 18-bis, LFPC; Articles 8, 9, 12, 15, 16, and 17, FDPL.)

For both the REPEP and REUS, companies are prohibited from making telephone calls or sending text messages to registered numbers, but the registries do not prohibit sending faxes.

Additional Email Rules

Marketing by email is allowed and is governed by rules derived from the LFPC and the FDPL. Email marketing to consumers requires prior consent (Article 8, FDPL), but email marketing to companies does not. However, if the marketer obtained the consumer's data indirectly, for example from a public database, the marketer can send marketing at the same time it sends its privacy notice (Article 18, FDPL). Companies and individual consumers can both opt out of email marketing by sending an email requesting the opt-out. Mexican law does not establish a clear procedure for opt-outs, so there is no requirement that a company include an opt-out link in their marketing emails.

Two specific rules apply to all e-commerce transactions, including email marketing:

- All information provided by consumers is considered confidential and can only be transferred or disclosed with:
 - the consumer's express consent; or
 - an order by a judicial authority.
- The company engaged in marketing must implement technical security measures to preserve confidentiality of the information.

(Article 76, LFPC.)

Opt-Out Registries

Consumers have the option in Mexico of opting out of receiving certain advertisements and marketing materials. The two main opt-out lists are:

- The REPEP.
- The REUS.

The REPEP registry is managed by the PROFECO and applies to general marketing activities. Anyone can request the registration of a telephone number, including numbers for both individuals and businesses, and even numbers not registered to the applicant). The registration covers messaging to that number via phone calls or texting (but not faxes). Businesses are barred from making any form of advertising to a registered number effective 30 days after registration. Registration is free and can be cancelled by the applicant. Companies can purchase the list of registered numbers. (Articles 7 to 12, [Agreement Establishing the Rules of Operation and Functioning of the Public Registry of Consumers](#), (*Acuerdo por el que se Establecen las Reglas*

de Operación y Funcionamiento del Registro Público de Consumidores.) Unlike the REUS, discussed below, the REPEP does not include emails.

The REUS registry is managed by the [National Commission for the Protection and Defence of Users of Financial Services](#) (*Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros*) (CONDUSEF) and applies to the marketing of financial services. For each registered consumer, the REUS registry applies to:

- Two private phone numbers (cell phone and home phone).
- Two work phone numbers (office cell phone and work phone).
- A private email.
- A work email.

Under the REUS registry rules:

- There is a 45-day delay between registration and recognition of a number or email address as part of the registry.
- Registration must be renewed every two years.
- Information is protected under both the Law of Protection of Users of the Financial Services and the [Federal Law of Transparency and Access to Government Information](#) (*Ley Federal de Transparencia y Acceso a la Información Pública*).

(Article 8, Law of Protection of Users of the Financial Services.)

Direct Mail

Direct mail advertising is allowed but is subject to general principles deriving from Mexican consumer protection and data privacy laws, including:

- Consumers should be able to opt out of direct mail. Mexican law does not establish a clear procedure for opt-outs from direct mail, and there is no single agency or organization that manages consumer requests. However, in general, companies should honor a simple email requesting to opt out, sent to the entity that actually sent the advertising (that is, either to the advertiser or the advertising agency that sent the materials on behalf of the advertiser).
- If consumer information is used, the company making sending the mail should be able to prove that the information was lawfully obtained (that is, the marketing is not done "cold"), either directly from the consumer or from a company which obtained tacit or explicit consent to transfer the information.
- Likewise, if consumer information is used, a reference to the company's privacy notice must be made available. Under Article 29 of the FDPL Regulations, if the consumer information was obtained from an indirect source (that is, other than

directly from the data owner), the company must include a privacy notice with its first communication, either by including the notice or a link to it.

The company sending the mail must have control over the consumer's information it uses and must be able to reply to requests about how the information was obtained, and to delete any information at the request of the consumer.

Consumer Recourse and Regulatory Enforcement

Consumers have various options to lodge complaints against a business for non-compliant direct marketing campaigns. Direct marketing may also be subject to regulatory enforcement. Businesses may face significant penalties for conducting direct marketing that does not comply with the law.

Consumer Complaints

The main procedures available to consumers are through the authorities in charge of consumer protection and data privacy.

Under the LFPC, an individual can complain directly to the PROFECO, though the law does not prescribe the specifics of the complaint procedure.

The process for complaints under the FDPL is clearer and more formalized. Consumers usually initiate complaints for violations of their ARCO rights through the offending company's own privacy mechanisms, as established in the relevant privacy notice. These complaints must be consistent with Articles 28 to 35 of the FDPL.

A consumer can also file claims directly with the INAI if either:

- No privacy notice is available.
- The offending company provides no means to file a complaint.
- The offending company does not comply with the consumer's request to invoke their ARCO rights or does it in unsatisfactory way.
- The offending company provides means to file a complaint, but their resolution is not compliant with the FDPL or the company was negligent when processing the claim.

(Articles 45 and 63(I), (II), (IV), (V), (VI), and (XVI), FDPL.)

Regulatory Enforcement

The general sanctions provided by the LFPC are administrative fines imposed by the PROFECO. The specific sanction depends on the type of breach, for example:

- Failure to reply to a request from a consumer on whether the company holds information on said consumer can result in a fine of USD50,000 to USD60,000.
- Advertisements not including the relevant company information, or failure to respect an opt-out from a consumer can result in a fine of USD100,000 to USD120,000.
- When unsolicited marketing is combined with false or misleading information, and the case is considered as impactful or serious, sanctions can be as high as 10% of the relevant product's annual sales or, alternatively, up to USD220,000.

(Articles 125 to 134-bis, LFPC.)

The general sanctions associated with unsolicited marketing activity can also be imposed to breaches of privacy. These include administrative fines of USD500,000 to USD1.4 million (Articles 63 to 65, FDPL).