

Newsletter

Litigation and Alternative Dispute Resolution, and Administrative Litigation Practice Group

What comes next after the publication of the Mexican Judicial Reform?

Once approved by the House of Representatives, by the Mexican Senate and more than 17 Local Legislative Branches, on September 15, 2024, the Mexican President published in the Federal Official Gazette the "Decree amending and repealing various provisions of the Mexican Federal Constitution, regarding the Reform of the Judicial Branch" (hereinafter the "**Judicial Reform**").

According to the First Transitory Article of the Judicial Reform, such Decree entered into force the day after its publication in the Federal Official Gazette.

I. Content of the Judicial Reform

Below we list the most relevant aspects of the Judicial Reform:

1. Amendments to the Supreme Court of Justice.

The composition of the Mexican Supreme Court (hereinafter "**Supreme Court**" or "**SCJN**" as per its acronym in Spanish) is reduced from 11 to 9 Justices, who will serve for a term of 12 years (currently 15 years), without the possibility of reelection. Given the new composition of the Supreme Court, qualified majority votes will now only require 6 votes (currently 8 votes).

The SCJN will not operate in Plenary and Chambers as it currently does, but only in Plenary, which anticipates possible lags in the operation and efficiency of the Supreme Court, given the number of cases that are normally resolved by the Plenary.

The person who obtains the most votes in the election of Ministers will act as President of the SCJN for a period of 2 years, being relevant to point out that the person who holds this position will no longer be the President of the Administrative Body of the

Federal Judiciary, differing from the current situation (the person who holds the Presidency of the SCJN in parallel, also holds the Presidency of the Federal Judiciary Council).

2. Election of judges

Pursuant to the Judicial Reform, the citizens will appoint by direct and secret vote the Justices of the SCJN, the Magistrates of the Superior Chamber and Regional Chambers of the Electoral Tribunal of the Judicial Power of the Federation ("**TEPJF**"), Circuit Magistrates, District Judges and Heads of the Jurisdictional Bodies of each State of the Republic. The total renewal of these positions (Federal and Local) must be carried out no later than 2027.

There will be no pre-campaigns and campaigns will last 60 days. Public or private financing of campaigns is prohibited, as well as the participation of political parties and public servants, who may not engage in acts of proselytism or position themselves in favor of or against any candidate.

Although equal access to mass media such as radio, television and social networks is allowed, the direct or indirect hiring of spaces or advertising in such media to promote candidacies is prohibited. On the other hand, candidates are allowed to participate in debate forums organized by the National Electoral Institute.

a) At the Federal level, it is expected that:

- An extraordinary election will be held in June 2025, in which the following will be elected: **i)** all of the Justices of the SCJN, **ii)** all of the Justices of the five Regional Chambers of the TEPJF, **iii)** the vacant judgeships of the Superior Chamber of the TEPJF, **iv)** all of the judgeships of the new Judicial

Disciplinary Tribunal, and **v)** 50% of the Circuit Judges and District Judges.

- In the ordinary mid-term election of 2027, the remaining 50% of the Circuit Magistrates and District Judges will be renewed.

- If the current Ministers, Magistrates and Judges so desire, they may be eligible candidates to participate in such elections.

- According to the information available, the ballots will include the names of the candidates, the Branch that nominated them, as well as the position, State and Judicial Circuit for which they are running.

- The Magistrates of the Superior Chamber of the TEPJF elected in 2025 will last 8 years, while those elected in 2027 will last only 6 years, so that all of them will conclude their term of office in 2033. The Magistrates of the Regional Chambers of the TEPJF will last 8 years and will expire in 2033.

- Excepting the case of Ministers of the SCJN and Magistrates of the TEPJF, judges will serve for 9 years and may be reelected consecutively at the end of each term, although they may only be reelected in the judicial circuit in which they were elected, except in exceptional cases.

b) At the Local level, it is foreseen that all judges must be elected and renewed by 2027. Therefore, the Federal Entities are ordered to adapt their Local Constitutions to adjust to the Judicial Reform, so that by 2027 the Local Judiciary Branches will be renewed.

3. Dissolution of the Federal Judiciary Council and creation of new administrative and disciplinary bodies

It orders the dissolution of the Federal Judiciary Council as we currently know it and the creation in its place of two bodies, the Judicial Administration Body and the Judiciary Disciplinary Court.

As its name indicates, the **Judicial Administration Body** will oversee the administration of the Federal Judicial Branch, which will have technical and managerial autonomy. It will be composed of 5 members who will serve for 6 years and will not be reelected.

The **Judiciary Disciplinary Court** will have broad powers to investigate and sanction acts or omissions of any public servant of the Federal Judicial Branch that are deemed contrary to the law, the administration of justice or the principles of objectivity, impartiality, independence, professionalism or excellence. Likewise, this Court will evaluate the performance of Circuit Magistrates and District Judges.

This Court will have technical and managerial autonomy and will be composed of 5 Magistrates elected by direct and secret vote of the citizens, applying the same requirements as for being a Minister of the SCJN. The term of office of these Magistrates will be 6 years and they are not able to be reelected.

The Court shall function in Plenary and in Commissions. The Commissions will be composed by 3 Magistrates and will process the first instance of the administrative responsibilities' proceedings. Their resolutions may be challenged before the Plenary, which will process the second instance. The proceedings before this Plenary will be resolved by a majority of 4 votes and its resolutions are non-appealable.

Said Court may impose the following sanctions: **i)** warning, **ii)** suspension, **iii)** economic sanction, **iv)** dismissal, and **v)** disqualification; excepting Ministers of the SCJN and Electoral Magistrates, who may not be removed by this Court since a special procedure must be followed.

4. Procedural reforms

The Judicial Reform establishes several changes in procedural matters, including the following:

a) The admission of Constitutional Controversies and Actions of Unconstitutionality against general rules, in no case will give rise to the SCJN decreeing the general suspension of the challenged rule.

b) Reinforcing the purpose pursued by the Amparo Law Amendment published in the Federal Official Gazette on June 14, 2024, which prohibited suspending with general effects general rules, the Judicial Reform prohibits the possibility of granting amparo protection with general effects (*erga omnes*) against general rules.

c) The considerations of the rulings issued by the Plenary of the SCJN, with at least 6 votes, will be binding for all Federal and Local jurisdictional authorities.

d) When the Collegiate Circuit Courts establish jurisprudence by reiteration or the SCJN by precedent, determining the unconstitutionality of a general rule, its President will notify the issuing authority. If after 90 calendar days the problem of unconstitutionality is not overcome, the Supreme Court, with at least 6 votes, may issue a general declaration of unconstitutionality, with general effects.

e) Federal Laws will establish the amounts and assumptions in tax matters in which the Administrative Courts (such as the Federal Court of Administrative Justice), District Courts, Collegiate Courts and the SCJN, must resolve within a maximum term of 6 months. In case of exceeding this term, notice must

be given to the internal body of the Administrative Court or, alternatively, notice must be given to the Judicial Discipline Court and the reasons for the delay must be justified.

5. Salaries and benefits

The remuneration of judicial officers may not be higher than Mexican President's and it is prohibited to create or maintain in operation funds, trusts, mandates or similar contracts not established in the Law.

In the case of the current Justices of the SCJN, it is established that those who participate in the popular election process and are not elected by the citizens will not be entitled to a retirement pension. Likewise, it is established that the current Ministers of the SCJN will be able to enjoy such retirement only in case they resign from their positions before the closing of the call issued by the Senate for the extraordinary election of 2025. In case they resign before such moment, their resignation will take effect on August 31, 2025, to match it with the entry of the newly elected Minister, as explained below.

II. Next steps

Once the Judicial Reform goes into effect, the following should occur:

1. 7 days later. The General Council of the National Electoral Institute will hold its first session, in which the preparatory aspects (organization, development, computation, surveillance and oversight) of the election to be held on the first Sunday of June 2025 will be agreed upon.

2. 30 days later. The Mexican Senate will issue the call for candidates for the extraordinary election of 2025.

3. 90 days later. The Federal Legislative Branch will adapt the corresponding Federal Laws. In the meantime, the Mexican Federal Constitution will be applied directly and, supplementarily, the electoral laws will be applied to the extent they do not oppose the Judicial Reform.

4. 180 days later. All the Federal Entities of Mexico must adapt their Local Constitutions to adjust to the Judicial Reform, so that by the year 2027 the Local Judicial Powers will be elected and renewed.

5. 1st Sunday of June, 2025. The extraordinary election of 2025 will be held to elect:

- a) The 9 Ministers of the SCJN.
- b) Vacant judgeships of the Superior Chamber of the TEPJF.

c) Magistrates of the Regional Chambers of the TEPJF.

d) Magistrates of the Judiciary Disciplinary Court

e) 50% of the Circuit Magistrates and District Judges.

6. September 1, 2025. The following will occur:

a) Elected persons will take their oath of office before the Mexican Senate.

b) The Federal Judiciary Council is extinguished.

c) The Judiciary Disciplinary Court and the Administrative Body are integrated.

7. September 15, 2025. The Judicial Administration Body shall assign elected persons to the corresponding judicial body no later than this date.

8. Year 2027. The following should occur:

a) A second federal election day is held in mid-2027.

b) Federal Entities must comply with the renewal of the Local Judicial Branches.

III. Related aspects

- Suspension and resumption of work of the Jurisdictional Bodies of the Federal Judicial Branch. On August 19, 2024, the National Association of Circuit Judges and District Judges of the Federal Judicial Branch gathered more than 1400 Judges and Magistrates, 86% of whom voted to suspend the jurisdictional activities of the Federal Jurisdictional Bodies, so that, as of that date, only urgent matters have been attended, in accordance with the terms established by the Council of the Federal Judiciary in Circulars 16/2024 and 17/2024. At the same time, some Judicial Branches of the States of the Republic have joined this type of suspension of work.

In connection with the foregoing, on September 12, 2024, Circular 6/2024 issued on the same day by the General Secretariat of Agreements of the SCJN was published, informing that the Presiding Justice Norma Lucía Piña Hernández convened a session for Tuesday, September 17, 2024, to define the lifting of the labor suspension, as of the publication of the Judicial Reform in the Official Gazette of the Federation.

- Constitutionality analysis by the Supreme Court of Justice of the Nation. There have been many questions as to whether the SCJN could analyze in depth the constitutionality of this Reform and although theoretically there could be elements to sustain that such analysis would be possible (as has occurred in other parts of the world), the reality is that there are legal precepts and judicial precedents that hinder such possibility, so that the possibility of it happening would be remote.

In connection to the above, the Inter-American Commission on Human Rights issued Press Release 213/2014 dated September 12, 2024, whereby it warned that the Judicial Reform could affect judicial independence, access to justice and the rule of law.

- Possible Violation of International Treaties.

It has been discussed that the Judicial Reform could violate international treaties such as the T-MEC or the TIPAT (CPTPP), however, in our opinion, this would not occur until acts that evidence the loss of independence of judges, magistrates and ministers materialize. We consider that the mere entry into force of this Reform could hardly imply a violation of the international obligations adopted by our country, in relation to judicial independence.

- Secondary Laws. Although the Judicial Reform already establishes issues that are normally regulated in second level laws (Federal Laws), it will be necessary to wait to analyze the content of the secondary laws that the Congress of the Union will issue and the amendments to the Local Constitutions that each of the Federal States will issue, since it cannot be completely ruled out that they may include some modulation that will provide important elements for the new system of administration of justice.

- Role of civil society, the business sector and the lawyers' guild. The election of judges will imply a fundamental change in the justice delivery system

at the national level. This will require a great deal of adaptation on the part of business, society and law firms, which go beyond the judicial proceedings in which they may be involved.

The Judicial Reform will not eliminate the Federal Judicial Branch or the Judicial Branches of the Federal States, so it will be necessary to be prepared to adapt to the new challenges that the Judicial Reform will bring with it.

For 28 years, our 17 Practice Areas and 7 Industry Groups have worked hand in hand with national and international clients to strengthen and expand their operations, successfully facing all kinds of challenges, which is why we are prepared to face with experience and professionalism the changes that the Judicial Reform will bring about.

We are at your disposal to discuss any of the points reported in this document. This bulletin was prepared by Guillermo Villaseñor-Tadeo (gvillasenor@sanchezdevanny.com), Alfonso López-Lajud (alopez@sanchezdevanny.com), Juan Luis Serrano-Leets (jserrano@sanchezdevanny.com), Verónica Esquivel-Patiño (vesquivel@sanchezdevanny.com), Mauricio León-Alvarado (mleon@sanchezdevanny.com), Pedro Miranda-Sadurni (pjmiranda@sanchezdevanny.com), and Pablo Chévez-Gallegos (pablo.chevez@sanchezdevanny.com).

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