

Direct marketing Q&A: Mexico

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Mexico-specific information concerning direct marketing laws.

This Q&A provides country-specific commentary on [Direct marketing: Cross-border overview](#).

The regulation of unsolicited commercial communications

1. How does national law regulate the making of unsolicited telephone calls for marketing purposes?

Unsolicited telephone calls are regulated under the general umbrellas of the Federal Consumer Protection Law and the Federal Law of Protection of Personal Data in Possession of Private Entities (there is no differentiation between communications to companies and individuals).

In general terms, unsolicited calls can be made as long as the following conditions are met:

- An opt-out should be available for the consumer.
- If consumer information is used (that is, the marketing is not done as a “cold call”), the company making the call should be able to prove that the information was lawfully obtained, 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.
- The company making the call 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 cancel any information at the request of the consumer.
- Calls related to general commercial activities must not be made to numbers registered in the Public Registry to Avoid Advertisements (RPEP), and calls related to financial services must not be made to numbers on the Public Registry of Users who do not wish to receive Marketing information related to Financial Services (REUS).

- Relevant information on the company making the call must be made available to the consumer.

2. How does national law regulate direct marketing by fax?

The rules relating to unsolicited telephone calls (see Question 1) also apply to direct marketing by fax.

3. How does national law regulate direct mail advertising?

Direct mail advertising is allowed. The registries referred to in Question 1 do not allow for registration of a home address.

The main rules of thumb to be observed in carrying out direct mail advertising, deriving from both our consumer protection and data privacy laws are that:

- An opt-out should be available for the consumer.
- If consumer information is used (that is, the marketing is not done as a “cold call”), the company making the call should be able to prove that the information was lawfully obtained, 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.
- The company making the call 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 cancel any information at the request of the consumer.

4. How does national law regulate direct marketing by email?

Marketing by email is allowed and is governed by rules derived from Mexican consumer protection and data privacy laws.

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

- All information provided by consumers will be considered as confidential, and may not be transferred or disclosed without express consent or an order by a judicial authority.
- Technical security elements must be implemented by the company performing marketing, to preserve confidentiality of the information.

(Article 76 bis, Federal Consumer Protection Law.)

5. How does national law regulate direct marketing by text messaging (SMS)?

SMS marketing is regulated in the same way as telephone communications, under the general umbrellas of the Federal Consumer Protection Law and the Federal Law of Protection of Personal Data in Possession of Private Entities (there is no differentiation between communications to companies and individuals):

- An opt-out should be available for the consumer.
- If consumer information is used (that is, the marketing is not done as a "cold call"), the company making the call should be able to prove that the information was lawfully obtained, 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.
- The company making the call 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 cancel any information at the request of the consumer.
- Calls related to general commercial activities must not be made to numbers registered in the Public Registry to Avoid Advertisements (RPEP), and calls related to financial services must not be made to numbers on the Public Registry of Users who do not wish Marketing information related to Financial Services (REUS).
- Relevant information on the service provider (the company offering the goods/services being marketed) must be made available to the consumer.

6. How do your national data protection regulations impact on direct marketing campaigns?

The main impacts of the Data Privacy Law and its regulations are:

- The need to include privacy notices on communications where consumer information is used.
- The general obligations to:
 - have privacy notices;
 - have an appointed responsible area for privacy (that is, a department having responsibility for privacy); and
 - implement security measures around personal data.
- An obligation to treat information related to e-commerce interactions and transactions as confidential.

7. What sanctions exist for breach of unsolicited marketing communications legislation?

The general sanctions in the Consumer Protection Law are administrative fines. The specific sanction would depend on the type of breach. Examples include:

- Failure to reply to a request from a consumer on whether the company holds information on said consumer: a fine ranging from USD50 to USD60,000.
- Advertisements not including the relevant company information, or failure to respect an opt-out from a consumer: a fine ranging from USD100 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.

The general sanctions associated with unsolicited marketing activity can also be imposed in relation to breaches of privacy. These include administrative fines ranging from USD500 to USD1.4 million.

8. Please list additional national rules that may apply to direct marketing campaigns. Please explain why they apply and provide references.

Additional rules that may apply to direct marketing are:

- The General Health Law on Advertisements regulates marketing campaigns related to health products.
- The Law of Protection and Defence of Users of Financial Services regulates marketing campaigns related to financial services.

- The Law of Institutions of Insurance and Bonds contains references to marketing activities for the goods and services supplied by the insurance and bond industries.

Cross-border communications

9. Under the laws of your country, is a direct marketer bound by the laws of the country of the recipient of unsolicited commercial communication (EU principle of the country of destination)?

There are two relevant precedents that should be taken into account in this regard.

The Mexican Consumer Protection Bureau works in connection with similar offices abroad through a mutual co-operation agreement, which is intended to allow nationals an easy path for consumer protection claims against foreign providers of goods and services. As an example, a consumer affected by a direct marketer based in a European country could file a complaint through the Mexican Consumer Protection Bureau, which in turn would direct that consumer to the appropriate authority in the relevant country.

The Mexican Data Privacy authority has issued a decision sanctioning Google's Mexican entity for refusing to attend a privacy request on the basis 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.

10. Under the laws of your country, can an individual seek redress in their own courts against a foreign company who targeted them in breach of that individual's laws against unsolicited communications?

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

Self-regulation

11. Through which organisations is direct marketing self-regulated in your country?

The National Council for Self Regulation in Advertisement (CONAR) provides guidance across several industry areas.

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

- The National Chamber of Cosmetic Products Industry.
- The Tequila Regulatory Council.
- The National Chamber of the Pharmaceutical Industry.
- The Mexican Counsel for Consumer Products.

12. What obligations or standards do codes of practice for direct marketing impose upon marketers?

The codes of practice contain general standards for all marketing activities. Specifically, the CONAR code refers to:

- Legality.
- Truthfulness and honesty.
- Respect and dignity.
- Fair competition.
- Comparative advertising is allowed, if it is objective, verifiable, representative, relevant to the comparison, and focusing on added benefits without disqualifications.
- Health, well-being and environmental consciousness.
- Protection of minors.

13. Are there any opt-out lists in your country? If so, how does one register on each list? Which organisation manages each list? What rules apply to each list?

The two main opt-out lists are the Public Registry to Avoid Advertisements (RPEP) and the Public Registry of Users who do not wish Marketing information related to Financial Services (REUS).

Public Registry to Avoid Advertisements (RPEP)

This registry is managed by the Consumer Protection Bureau and applies to general marketing activities. An individual can register online at <https://repep.profeco.gob.mx/index.jsp> or by telephone.

As a general rule, anyone can request the registration of a telephone number (even one not registered to the applicant). Registration is free and can be cancelled by the applicant. Companies can purchase the list of registered numbers.

Public Registry of Users who do not wish Marketing information related to Financial Services (REUS)

This registry is managed by the National Commission for the Defence of Users of the Financial System, and applies to marketing of financial services.

Registration can be done online, in person or by telephone. Online registration is available at <https://webapps.condusef.gob.mx/reus/app/registro.jsp>

The main general rules applicable to this registry are:

- There will be a 45-day delay between registration and recognition of a number 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 System and the Federal Law of Transparency and Access to Government Information.

14. What procedures exist for complaining to organisations against unsolicited communications?

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

On the consumer protection side an individual can complain directly to the Consumer Protection Bureau.

On data privacy, complaints are usually initiated through the offending company's own privacy mechanisms (as established in the relevant privacy notice). If no privacy notice is available, or there are no means to file a complaint, claims can be filed directly with the Privacy Authority.

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