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FORUM SELECTION CLAUSES DESIGNATING FOREIGN JURISDICTIONS IN ADHESION CONTRACTS: ARE THEY VALID?

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Executive Summary

- The Mexican Supreme Court (SCJN) declared invalid jurisdiction clauses in adhesion contracts that require consumers in Mexico to submit to foreign courts, as they violate the fundamental right of access to justice.
- These clauses place a disproportionate burden on consumers and do not reflect free or voluntary consent, since consumers cannot negotiate the contract terms.
- Companies offering digital products or services in Mexico are territorially linked, so disputes must be resolved before Mexican courts.

Before getting into the subject of this article, it is important to clarify that an adhesion contract is a pre-established agreement in which a supplier unilaterally drafts all the conditions -or clauses- without negotiation. The other party, known as the consumer or adherent, can only accept or reject those terms and conditions as stipulated by the supplier.

These types of contracts are -generally- used to simplify and streamline the contractual relationship between a supplier and hundreds of thousands of people who purchase the same product or service (such as banking, insurance, telecommunications, streaming services, etc.).

Therefore, in this type of contract, the consumer has no freedom to shape its content and must either accept or reject the agreement as a whole, without having had the opportunity to discuss or negotiate its terms with the other party.

Due to the nature of adhesion contracts, the Mexican Federal Consumer Protection Law seeks to establish equity between the obligations and rights of suppliers and consumers, ensuring that the principles of justice and proportionality are respected, and prohibiting clauses that violate said principles from being included in this type of contracts.

However, one of the most commonly found disproportionate clauses is the so-called “forum selection clause” or “jurisdiction clause.” These are contractual provisions through which the parties expressly agree on the specific court that will have jurisdiction to hear and resolve any dispute arising from the interpretation, performance, or breach of the contract.

In adhesion contracts, it is common for suppliers to include jurisdiction clauses designating the courts of their own domicile, even when their products or services are offered or marketed in a different country.

To counteract this common contractual imbalance, the Mexican Supreme Court of Justice (SCJN) has established, through binding precedent, that clauses requiring consumers to submit to foreign jurisdictions in adhesion contracts—particularly those involving companies operating in Mexico through digital platforms or internet—constitute a direct violation of the consumer's fundamental right of access to justice, and are therefore invalid.

The SCJN's rationale for declaring such clauses in adhesion contracts invalid rests on four key arguments: ***(i)*** they impose a disproportionate burden on the consumer; ***(ii)*** the consumer's consent to the choice of forum is neither free nor informed; ***(iii)*** these clauses directly infringe upon the fundamental right of access to justice; and ***(iv)*** suppliers that offer digital services to consumers in Mexico establish a clear economic and operational connection with the country, which justifies the jurisdiction of Mexican courts.

(i) Disproportionate burden on consumers

Requiring consumers to resolve a dispute in a foreign country effectively forces them to incur high costs—often beyond their financial means. In contrast, such expenses are typically manageable for suppliers, which are companies with significantly greater legal and financial resources.

(ii) Consumer consent is not free or voluntary regarding the choice of jurisdiction

As previously explained, due to their nature, adhesion contracts do not permit genuine negotiation of their terms; the consumer must either accept or reject the conditions unilaterally imposed by the supplier. Consequently, when such a contract includes a clause submitting disputes to a foreign jurisdiction, the consumer's consent cannot be considered truly voluntary, as the choice of forum is determined solely by the supplier, not by mutual agreement.

This dynamic results in a situation where the acceptance of foreign jurisdiction does not reflect a free and informed decision, but rather an imposition. Consumers are compelled to "consent" to a clause that is clearly unfavorable, under the threat of being denied access to a product or service they may want —or even need.

Such coerced "consent" undermines the very notion of true agreement. The SCJN has expressly recognized that, given the structural inequality between consumers and suppliers, presuming free and informed consent to a jurisdiction clause that limits access to justice would ignore the economic and contractual realities of consumer relationships.

(iii) Violation of the fundamental right of access to justice

When these jurisdiction clauses compel Mexican consumers to litigate before courts abroad, they directly violate the fundamental right of access to justice. This is because they create barriers that render the exercise of this right impractical or unattainable: the costs and complexities inherent in international litigation are prohibitive for many.

According to the SCJN, allowing a company to unilaterally impose such terms in an adhesion contract effectively deprives consumers of any genuine possibility of obtaining judicial remedies in the event of a dispute, thereby undermining the constitutional guarantee of accessible justice for all.

(vi) Existence of a territorial connection

When a company offers its products or services to consumers in Mexico via digital platforms or internet, a clear territorial nexus is established that justifies the jurisdiction of Mexican courts. The SCJN holds that the mere existence of a foreign jurisdiction clause cannot override the operational realities of the company. Thus, if an international company uses a website or application to conduct commercial activities in Mexico, advertises within the country, accepts payments in national currency, or employs domain names such as ".mx," it creates a tangible economic and operational connection to Mexican territory.

This territorial connection entails that the legal consequences of the company's actions must be subject to the jurisdiction of the courts where the harm occurs or where the consumer resides.

In conclusion, the recent SCJN ruling establishes a significant precedent for protecting consumer rights in the digital realm. Moreover, adherence to the principles set forth in this precedent is mandatory within Mexico.

This decision governs commercial relationships arising from adhesion contracts, meaning that companies operating in Mexico and formalizing sales through such contracts must be prepared to implement the necessary adjustments in their operations.

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