Regulatory, Pricing, and Reimbursement Overview

1. **What are the regulatory authorities with jurisdiction over drugs, biologicals, and medical devices?**

The authority responsible to apply and enforcing the regulatory framework in relation to drugs, biologicals, and medical devices is the Federal Commission for Protection against Sanitary Risks (COFEPRIS), which is a decentralized agency of the Ministry of Health.

2. **What is the regulatory framework for the authorization, pricing, and reimbursement of drugs, biologicals, and medical devices?**

The primary legislation for the authorization, pricing, and reimbursement of drugs, biologicals, and medical devices is the General Health Law (Ley General de Salud) (HL) and its Regulations. These law and regulations are supplemented by Guidelines and Official Norms (NOMS) published by COFEPRIS.

Price control in the private sector is based on a scheme of self-regulated maximum retail price (MRP) only covering patented products, overseen by the Ministry of Economy. Pharmaceutical companies' participation is voluntary. Under the price control each product's MRP must not exceed an international reference price, estimated as the average price in six major markets, plus a market factor. There are no established sanctions for violations of the MRP.

In privet sector, there is no reimbursement in Mexico.

3. **What are the steps in obtaining authorization to develop, test, and market a product?**

Manufacturers must obtain a marketing authorization from COFEPRIS to sell any medicinal product. Requirements and timeframes vary among new molecules, biologics, and follow-on products. A NOM compiling the requirements for granting marketing authorizations for medicinal products (NOM-257-SSA1-2013). In addition, there is a NOM about the specifications of stability test (NOM-073-SSA1-2015) was published in 2016. This NOM specifically addressed the test for stability to be carried out on drugs in Mexico (Climate Zone II subtropical with possible high humidity according to the OMS classification). Article 166 of the Health Law Regulations sets out the following approval timeframes:

180 calendar days for medicines, including an active pharmaceutical ingredient (API)/therapeutic indication already approved in Mexico.

240 calendar days for medicines not approved in Mexico but which are approved abroad.

180 calendar days for new drugs (a meeting with the New Molecules Committee is required).

The approval timeframe for biologics and biocomparables is 180 calendar days (Articles 177 and 177 bis 4, Health Law Regulations).

These timeframes may vary in practice, but can be reduced if the application has been pre-examined by a third health institution approved by COFEPRIS to do so.

New molecules

Essentially, applicants for marketing authorisations must prove safety and efficacy of their products through standard clinical trials, according to the rules set out by the General Health Law, its regulations and NOMs of good manufacturing of medicines and active ingredients.

Concurrently, they have to request approval of their products as new molecules by the New Molecules Committee of COFEPRIS. A new molecule is (article 2, section XV Health Law Regulations):

- An active ingredient or drug not approved worldwide (new molecular entity);

- An active ingredient or drug already available in other countries but with limited clinical experience or disputed information, without approval in Mexico;

- A drug which is a non-marketed combination of two or more active ingredients; and

- An active ingredient or drug already available in the market, but to be marketed for a new therapeutic indication.

R&D companies can benefit from a special procedure for drugs to be approved for the first time in Mexico, if they have been previously approved by:

- The European Medicines Agency;

- The US Drug and Food Administration;

- Health Canada;

- The Swiss Agency for Therapeutic Products (Swissmedic); and

- The Therapeutic Goods Administration in Australia.

In 2012, COFEPRIS published new rules to set out this procedure. This is essentially based on the dossier filed with the foreign regulatory agency, to reduce approval time frames by up to 60 working days. Industry participants have welcomed and used these new rules.

Generics

Applicants for marketing authorisations have to prove basically that their products are bioequivalent to the innovator product. They have to provide information concerning dissolution profiles or bioavailability studies regarding the reference product. COFEPRIS periodically issues a list of reference medicinal products.

Recently, the NOM setting the test to prove that a generic drug is interchangeable with a reference drug was updated (NOM-177-SSA1-2013). Legally, COFEPRIS should not grant marketing authorisation for generics breaching exclusivity rights.

There is a linkage system between COFEPRIS and the Mexican Institute of Industrial Property (IMPI), which aims to prevent the granting of marketing authorisations in violation of exclusive rights. According to the IP Regulations, every six months the IMPI must publish a gazette that includes patents covering allopathic medicines (Linkage Gazette). The initial IMPI position was that only patents relating to a compound were relevant to linkage review (excluding formulation and use of patents). In 2012, for the first time the IMPI included formulation patents in the Linkage Gazette, in accordance with a 2010 ruling of the Mexican Supreme Court (Jurisprudence No. 2a./J.7/2010, Federal Judicial Gazette, No. XXXI, page 135).

Under the linkage regulations, at the filing of the application, the applicant must prove that it is the owner or licensee of the patent of the active ingredient of the product (recorded with the IMPI), or state under oath that their application does not violate the list of products published in the Linkage Gazette and observes patent law.

Biologics (biotech products)

The Mexican jurisdiction recognises already that biotech products deserve special treatment as a result of their distinct characteristics, such as their complex structures, their size in comparison with chemically synthetised drugs and,

particularly, their susceptibility to variation during manufacturing. The regulatory scheme distinguishes from other biologics those products that have been manufactured by molecular biotechnology and provides a robust regulatory process to approve them.

The standards to approve biotech products are essentially the same as for other drugs in Mexico: they must be safe and effective and have appropriate quality. The biotech products, however, must comply with a number of additional dossier requirements, in view of their distinct characteristics. Applicants have to prove quality, safety and efficacy requirements under the General Health Law, its regulations and applicable NOMs, particularly, those for biotech products (NOM-257-SSA1-2014), for good manufacturing practices for medicinal products (NOM-059-SSA1-2013) and for active ingredients (NOM-164-SSA1-2013).

For this purpose, biocomparable applicants must submit essentially: i) in vitro studies/comparative non-clinical studies, ii) a report of comparative test of pharmacokinetic, if determined by the Ministry of Health, to show pharmacokinetic comparability on key parameters between both the follow-on and the product of reference, iii) pharmacodynamics test reports, and iv) comparative efficacy and safety clinical test to show similarity between both the follow-on and the product of reference. Once approved, close pharmacovigilance should be followed.

Biocomparables (follow-ons)

Applicants must submit clinical tests and, when appropriate in-vitro tests, to prove safety, efficacy and quality of this product comparable (similar) to those of the reference biologic.

The pre-clinical and clinical test used by an applicant for a biocomparable must use the corresponding reference biologic to perform comparative and physic-chemical studies. For this, the applicant must have to submit essentially:

- In vitro studies;

- A report of comparative test of pharmacokinetic, if determined by the Ministry of Health, to show pharmacokinetic comparability on key parameters between both the follow-on and the reference biologic;

- Pharmacodynamics test reports; and

- Comparative efficacy and safety clinical test to show similarity between both the follow-on and the reference biologic.

Although industry participants welcomed amendments to approve biologics, specific rules to approve follow-ons have caused debate. In Mexican domestic law there is currently no indication of a data-protection period for biologics. The recognition of data package exclusivity rights for biologics has been achieved through litigation.

Orphan drugs

They were introduced into the General Health Law and the Mexican Pharmacopeia. In practice, they are approved by a particular procedure, following rules for new molecules when applicable and appropriate, although they do not require approval by the new molecules committee. Specific rules are still pending. The draft of NOM requirements for granting marketing authorisations includes orphan drugs.

4. **What are the approximate fees for each authorization?**

Government fees for analyzing a manufacturing approval application are around US$3,000.

While Government fees for analyzing marketing authorization applications are around:

For new molecules/biologics: US$8,600.

Generics/biocomparables: US$4,800.

5. **For how long are marketing authorizations/registrations valid? How are marketing authorizations/registrations renewed?**

Marketing authorizations must be renewed every five years for medications of new molecules, generics, biologics (biotech products) and biocomparables (follow-ons), while Orphan drugs must be renewed every two years.

Applicants must prove compliance with good manufacturing practices, safety and efficacy standards, pharmacovigilance, labelling standards and all other applicable provisions.

6. **How does the authorization process differ between brand-name products and generic products? Are there differences for local manufacturers versus foreign-owned manufacturers?**

The differences between brand-name products and generic products authorization process are mentioned in question 3. But in general terms the differences are that for brand-name products it is necessary to demonstrate the safety and efficacy and for generic products it is necessary to demonstrate the interchangeability and biocomparability. (Please see answer to question 3).

In Mexico there are no differences for local manufacturers versus foreign-owned manufacturers.

7. **How are combination products (drug + drug, drug + biologic, drug + device, biologic + device, drug + biologic + device) regulated?**

Combination products must have marketing authorization from COFEPRIS. Given their particular features, combination products can be classified as either drugs (drug/biologic) and/or medical devices (drug/device). Requirements and application timeframes differ in each case. Depending of the nature of the combination product, it may require separate drug or biologic and medical device approvals or not.

8. **How is compliance with regulation monitored and evaluated? Is the regulatory regime comparable with the U.S. Food and Drug Administration or the European Medicines Agency expectations and requirements?**

COFEPRIS has a permanent pharmacovigilance programme. This is based on information on possible adverse effects of the drugs given, among others, by:

- Doctors and physicians, on a voluntary basis.

- The pharmaceutical companies that manufactured the products and those who conduct clinical trials, who must both report any health risks.

Under the Health Law Regulations and the NOMs, COFEPRIS´s monitoring is focused, among other things, on the following:

- Ensuring compliance with good manufacturing practices and standard operating procedures.

- Ensuring the activities do not exceed the limits set by the authorization and do not differ from those activities which are authorized.

- Ensuring the performance of validation analysis of the manufacturing processes and systems involved.

9. **What is the potential range of penalties for noncompliance?**

COFEPRIS is empowered to make on-site visits at any time to inspect premises and verify such compliance, and can initiate ex officio legal proceedings to sanction non-compliance. Ultimately, these legal proceedings can result in the revocation of the marketing authorization, ordering partial or total suspension of activities, services or adverts, and under certain conditions, COFEPRIS has statutory authority to revoke any manufacturing approval and/or impose sanctions, ranging from a fine of up to 16,000 times the minimum wage (about US$3,523), to closure of the establishment.

10. **Is there a national healthcare system? If so, how is it administered and funded?**

The Mexican health-care system comprises public (social security institutions) and private insurers, out-of-pocket payments and informal arrangements.

The major public segments of the Mexican health-care system are:

- The Mexican Institute of Social Security (IMSS). This represents social security for the self-employed and employees in private companies;

- The Institute of Social Security for State Workers (ISSSTE); and

- The Seguro Popular. This is a programme created in 2004 as part of a strategic reform to the General Health Law. It provides a public insurance scheme for those not covered by social security and other formal arrangements. The Seguro Popular was created to cover people with lower incomes. The federal government pays 70 per cent of the annual family premium, states provide 20 per cent and patients provide 10 per cent.

Other social security institutes for particular sectors, for example, for members of the military and for Mexican petroleum workers (PEMEX Medical Services).

The public health sector normally faces financial problems and implements measures to limit costs, for example, by pressing for price reductions in public bids and encouraging competition.

11. **How does the government (or public) healthcare system function with private sector healthcare?**

Private health insurance generally covers professional, executive and higher levels of the private sector. Enrolment in private health insurance has increased considerably over the past few years.

The public health sector normally faces financial problems and implements measures to limit costs, for example, by pressing for price reductions in consolidating public bids (involving the most important health institutions) and encouraging competition.

It is worth mentioning that the public and private health sectors function separately, there is no interaction between one and other.

12. **Are prices of drugs and devices regulated and, if so, how?**

Price control in the private sector is based on a scheme of self-regulated maximum retail price (MRP) covering patented products, overseen by the Ministry of Economy. Pharmaceutical companies' participation is voluntary. Under the price control each product's MRP must not exceed an international reference price, estimated as the average price in six major markets, plus a market factor. In 2008, the government created the Committee for the Negotiation of Drug Prices (CNDP) to:

Support public acquisitions through a process of transparent negotiation between public insurers and pharmaceutical companies.

Evaluate cost-benefits of new medicines and therapies in view of prices and other comparable products in the market.

13. **How are drugs and devices used by patients paid for? What roles do public and private payers play?**

In the private sector, most payments are made on an out-of-pocket basis. Private insurers are currently improving the level of pharmaceutical coverage as the private market in medicines has grown considerably.

14. **Who dispenses drugs and devices to patients and how are those dispensers compensated?**

Commonly, public insurers dispense medicinal products prescribed by their healthcare professionals. Products are prescribed from a basic medicinal products list, which public insurers essentially base on the National Formulary issued by the Ministry of Health. Public insurers acquire those listed products mostly by public tender processes. IMSS is the largest public sector buyer of drugs.

For direct purchasing of patented products, CNDP analyses the effectiveness of the drugs and relevant therapeutic alternatives, and the feasibility and implications of an eventual substitution with equivalent medicines. Also, CNDP

conducts an economic evaluation of the cost-effectiveness of patented medicines compared with those potential substitutes.

For ISSSTE, a prescribed medicinal product can be dispensed in a private drug store registered with this public insurer, provided that this is not available within ISSSTE facilities and under certain conditions. ISSSTE reimburses the cost of that product according to previous agreements.

15. **What are the professional and legal responsibilities of those who dispense drugs and devices? What role do they play in providing patient care, information, and safety?**

In Mexico there is a General Health Council that establishes through its National Formula Committee the drugs that can be acquired by the Federal Mexican Government and therefore be dispensed by healthcare professionals in the public sector, providing, in this way, information and safety related of such medications.

Additionally, the General Health Council is entitled to establish the Health Strategy in Mexico and hence is the one who decides the medications Mexicans should access to, especially in public sector.

Preclinical & Clinical Trial Requirements

1. **Outline the progression from drug/device discovery to preclinical trials to clinical trials to marketing approval.**

The progressions from drug/device discovery to preclinical trials to clinical trials to marketing approval are mentioned in question 3 in Regulatory, Pricing, and Reimbursement Overview.

2. **What authorizations are required for each stage in research, development, and testing?**

Any research on human beings must be approved by COFEPRIS. This research can include testing new medicinal products or new uses, dosages or administration routes for already approved medicinal products. Essentially, the main requirements for an application for authorizations from COFEPRIS are:

- Approval by an independent ethics committee registered with the Ministry of Health.

- Approval by the medical institution or institutions where the clinical trials will be conducted. These institutions must be approved by COFEPRIS to conduct clinical trials.

- Clinical trial protocol (including schedule and approximate amount of medicinal products to be imported).

- Written informed consent templates.

- Preclinical and clinical data that justifies conducting the research.

- Description of available resources to conduct the research and to address emergencies (including a statement of sponsorship).

- Written letter by the qualified investigator acknowledging his responsibilities, and data from both him and his staff.

3. **Are clinical trials required to be conducted locally as a condition (stated or implicit) for marketing approval?**

Clinical trials for innovator biological products must take place in Mexico when the product is to be manufactured in Mexico. For products manufactured abroad, the Ministry of Health can request that a clinical trial takes place in Mexico when the Sub-Committee on Evaluation of Biotechnological Products of COFEPRIS considers that this is necessary.

4. **How are clinical trials funded?**

The primary legislation for clinical trials is the Health Law Regulations for Health Research (Reglamento de la Ley General de Salud en Materia de Investigación para la Salud) (RLGSMIS) and the NOM for Health Research in Human Beings (NOM-012-SSA3-2012). The Guideline for Good Clinical Practice E6(R1) is taken into account.

This legislation is enforced by the Ministry of Health through COFEPRIS.

5. **What are the requirements for preclinical and clinical trial protocols? Who must approve the protocols?**

Preclinical data must be collected to justify whether clinical trials can be conducted. The RLGMIS requires measures to ensure that the investigator does not have conflict of interest, to:

- Protect the rights of research participants.

- Maintain accurate results.

- Allocate resources.

The RLGMIS and the NOM for Health Research in Human Beings provide the guidelines and standards for the clinical trial protocol, including rules concerning documentation, compilation, confidentiality and reports.

Essentially, according to the NOM for Health Research in Human Beings, any clinical trial must be conducted following ethical guidelines and must always respect the dignity, rights and welfare of human beings.

Clinical trials can specify certain steps or goals to be achieved. The principal researcher must compile a final technical report for the clinical trial. When clinical trials last longer than one year, annual technical reports for the Health Authorities must be compiled. Accordingly, the following NOMs apply for:

- Medicinal products labelling (NOM- 072- SSA1-2012).

- Pharmacovigilance (NOM-220-SSA1-2012).

- Interchangeability and biocomparability tests (NOM-177-SSA1-2013).

- Biological products (NOM-257-SSA1-2014).

- Good manufacturing practices for medicinal products (NOM-059-SSA1-2015).

- Active ingredients (NOM-164-SSA1-2015).

Clinical protocols must be approved by COFEPRIS.

6. **What are the requirements for consent by participants in clinical trials?**

Investigators have to collect informed consent from research participants in a formal written document, also signed by two witnesses. Basically, the validity requirements for consent are that a participant grants it on a voluntary basis, with capacity to do so and sufficient information (knowing potential risks and benefits). Participants keep the right to give up the research anytime. Investigators must ensure post care for them, until it is clarified that there are no damages derived from the research.

7. **May participants in clinical trials be compensated?**

According to the Official Mexican Standards regarding the Clinical Trials in Human Beings (NOM-012-SSA3-2012), the clinical trials budget should include compensation to which the subject of investigation will be legally entitled.

8. **How are participants in clinical trials protected and indemnified against any harm that arises as a result of participation in the trial?**

Medical assistance and financial indemnification for damage caused by the clinical trial must be provided to research participants, in case of damages directly related to the same; where appropriate, this financial fund may be

covered under study insurance.

Marketing, Manufacturing, Packaging & Labeling, Advertising

1. **What is the authorization process for the marketing of new drugs, biologics, medical devices, over-the-counter medications, and other medicinal products?**

The authorization process for the marketing of new drugs, biologics, medical devices, over-the-counter medications, and other medicinal products are mentioned in question 3 in Regulatory, Pricing, and Reimbursement Overview.

2. **What is the authorization process for the marketing of generic versions of these products?**

Applicants for marketing authorisations have to prove basically that their products are bioequivalent to the innovator product. They have to provide information concerning dissolution profiles or bioavailability studies regarding the reference product. COFEPRIS periodically issues a list of reference medicinal products.

Recently, the NOM setting the test to prove that a generic drug is interchangeable with a reference drug was updated (NOM-177-SSA1-2013). Legally, COFEPRIS should not grant marketing authorisation for generics breaching exclusivity rights.

3. **What are the typical fees for marketing approval?**

Government fees for analyzing marketing authorization applications are around:

For new molecules/biologics: US$8,600.

Generics/biocomparables: US$4,800.

4. **What is the period of authorization and the renewal process?**

Marketing authorizations must be renewed every five years for medications of new molecules, generics, biologics (biotech products) and biocomparables (follow-ons), while Orphan drugs must be renewed every two years.

Applicants must prove compliance with good manufacturing practices, safety and efficacy standards, pharmacovigilance, labelling standards and all other applicable provisions.

5. **What are the requirements, if any, for post-approval pharmacovigilance?**

Under the Health Law Regulations and the NOMs, COFEPRIS´s monitoring is focused, among other things, on the following:

- Ensuring compliance with good manufacturing practices and standard operating procedures.

- Ensuring the activities do not exceed the limits set by the authorization and do not differ from those activities which are authorized.

- Ensuring the performance of validation analysis of the manufacturing processes and systems involved.

6. **Are foreign marketing authorizations recognized?**

Foreign marketing authorizations are not valid in Mexico. However, COFEPRIS has set a special procedure for drugs to be approved for the first time in Mexico, already approved by equivalent regulatory authorities abroad. In this procedure, the requirements for approval of these agencies are recognized as equivalent to those in Mexico. According to the equivalence agreement marketing authorizations which has been approved by the Food and Drug Administration (FDA) and Health Canada are valid in Mexico.

7. **Are parallel imports of medicines or devices allowed?**

Any import of drugs, health products or raw material for drugs must be approved by COFEPRIS. Marketing authorizations in Mexico is required. In certain circumstances, for example, clinical trials and orphan drugs, import of a minimal quantity of products without a marketing authorization can be approved.

Regarding IP rights, parallel imports are allowed in Mexico in relation to trade marks where both:

The product was legally introduced in the country of origin.

The trade mark is owned by the same company or a related company in Mexico.

The Intellectual Property Law does not specifically address patents in this context as it does for trademarks. However, it is likely that the principle of exhaustion of rights also applies to patents

8. **What are the restrictions on marketing practices such as gifts, sponsorships, consultancy agreements, travel and entertainment, or other incentives for healthcare organizations and individual medical practitioners?**

Government officers must not request, accept or receive any gifts or donations from persons whose commercial or industrial activities they are directly linked to, or that they regulate or supervise (Article 8, Federal Law of Responsibilities for Government Officers).

Doctors working for the IMSS or ISSSTE are considered to be government officers and are therefore not allowed to receive gifts or donations from pharmaceutical companies when on duty and working in the name or facilities of IMSS or ISSSTE.

The General Health Law and its regulations do not address doctors in private practice, although they specify that private doctors must act according to professional ethics.

Companies must not provide doctors with goods or incentives of any kind to use, prescribe, purchase or recommend a medicinal product or to influence the result of a clinical trial (Article 4.9.1, Code of Good Practices of Advertising of the National Chamber of the Pharmaceutical Industry (CANIFARMA). The corresponding sanctions range from a warning to a fine.

Similarly, CANIFARMA's Code of Ethics indicates, in general terms, that companies should act responsibly in relation to sponsorships and donations.

Mexico does not currently have any anti-bribery laws to limit these practices, and there is no domestic legislation to regulate these cases beyond Mexico's jurisdiction. However, Mexico has ratified certain international treaties which do regulate, and in some cases prohibit, these practices.

9. **How the manufacturing of medicines and devices regulated and by which agencies?**

The requirements for manufacturing approval are set out mainly in the General Health Law, its regulations and NOMs setting good manufacturing practices for medicinal products (NOM-059-SSA1-2015) and health requirements for manufacturing (NOM-176-SSA1-1998). They regulate and provide guidelines and standards essentially for:

- Workforce conditions in the manufacturing facilities (including, for instance, responsibilities, uniforms, and medical examinations).
- Legal and technical documentation.
- Facility requirements.
- Manufacturing, validity and quality controls and protocols.
- Standard operation procedure.
- Biosafety measures.
- Destruction and elimination of waste.

The authority responsible for enforcing the regulatory framework in relation to medicines is COFEPRIS.

10. **Are local manufacturing requirements compatible with Good Manufacturing Practices (GMPs) as defined by the U.S. Food & Drug Administration and/or the European Medicines Agency?**

Yes, they are. In Mexico the certificates of Good Manufacturing Practices issued by those agencies shall be recognized and validated, as well as the ones issued by Health Canada (Canada), Therapeutic Goods Administration (TGA, Australia), Swissmedic (Switzerland), National Health Surveillance Agency (ANVISA Brazil), Ministry of Health, Labour and Welfare (MHLW, Japan) and Ministry of Food and Drug Safety of the Republic of Korea (MFDS, Korea).

11. **What is the inspection regime for manufacturing facilities?**

COFEPRIS is empowered to make on-site visits at any time to inspect premises and verify such compliance, and can initiate ex officio legal proceedings to sanction non-compliance. Ultimately, these legal proceedings can result in the revocation of the marketing authorization.

Good manufacturing practices, stability, and labelling standards and all other applicable provisions must be complied with. There must be a programme to recall and destroy products that do not meet quality standards.

12. **Are manufacturing facilities open for inspection by foreign inspectors or third party inspectors as authorized by the FDA/EMA?**

Yes, in Mexico COFEPRIS can authorize to foreign inspectors or third party inspectors to make on-site visits.

13. **What are the requirements for storage, packaging, and handling of medicines and devices and their constituent components?**

In México establishments must obtain a health license from COFEPRIS and a certificate of Good Storage Practices, in order to demonstrate to comply with the requirements. Depending of the nature of the activities of the establishment the

14. **What information must be included in medicine and device labeling?**

The labelling of medicinal products should include essentially the following information:

- Distinctive brand name.
- Generic name.
- Pharmaceutical form.
- Drug concentration.
- Formula description.
- Mode of administration.
- Conservation and storage information.

- Precaution and warning legends, including risks in case of pregnancy.

- Marketing authorisation number.

- Batch number.

- Expiration date.

- Manufacturer's and, if applicable, distributor's information, including address.

- Maximum price to the public.

In cases of drugs with a biological origin, the specifications of the live organism that was used for the preparation of the medicinal product and the name of the disease for which it is indicated, according to the revised international nomenclature.

15. **What additional information may be included in labeling and packaging?**

The information can be additionally stated in another language, provided it does not contradict the information in Spanish.

16. **What items may not be included in labeling and packaging?**

The labelling of medicinal products may not include the following information:

- Additives present in the medicinal product.
- The number of the marketing authorization of the country or countries to be exported.
- The legends: "Under license of ____" or "According to formula____".
- The logotype of the company who manufacture and distribute the medicinal product, among others.

17. **What are the restrictions and requirements for the marketing and advertising of medicines and devices?**

Only non-prescription medicines can be advertised to the general public, subject to approval by COFEPRIS. Media channels must require certified copies of the relevant marketing authorizations for medicines, before publishing related adverts.

Prescription medicines cannot be advertised to the general public (Article 310, General Health Law).

Any visual or audio advert for non-prescription medicines must bear the message

"Consult your physician", and must mention any required precautions when use of the medicine represents any danger, in case of an existing pathology (Article 43, RLGSMP).

Prescription medicines can be advertised to health professionals. However, advertising directed to health professionals can only be published in specialized media and it must be based on medical prescription information (Article 42, RLGSMP).

18. **Where can medicines and devices be sold or delivered? Can medicines and devices be sold or delivered via post?**

Unless they are over-the-counter products, medicines must only be available in authorized drug stores and can only be sold to patients with a physician's prescription.

19. **What are the restrictions and requirements for electronic marketing and advertising via email, by Internet, social media, and other channels?**

The Health Law Regulations apply to any advertising activity, including ads through electronic means and other forms of technological media.

COFEPRIS is in charge of monitoring ads on the internet. It has been strongly monitoring drug-like products, known as “miracle products” (products with non-proved health-related claims).

The internet promotion of prescription-only medicines addressed to healthcare professionals must be duly approved by the corresponding authorities. The advertising must be disclosed on scientific websites. The sponsor must be clearly identified.

Companies must adopt the proper measures to ensure the promotion of prescription medicines on their websites will only be accessible to healthcare

professionals.

Recently, COFEPRIS issued guidelines for digital advertising that apply to any product subject to be monitored/approved by COFEPRIS. These guidelines clarify that digital advertising campaigns must be approved by COFEPRIS before being used on any digital media.

20. **May medicines and devices be advertised or sold directly to consumers?**

Only non-prescription medicines can be advertised to the general public, subject to approval by COFEPRIS.

Unless they are over-the-counter products, medicines must only be available in authorized drug stores and can only be sold to patients with a physician's prescription. Dispensers must keep original prescriptions regarding antibiotics.

21. **How is compliance monitored?**

COFEPRIS has a permanent pharmacovigilance programme. The strictness on the imposition of the fines, in our experience it has been steadily increasing. COFEPRIS constantly monitors advertising activities throughout the country, particularly regarding drug-like products. COFEPRIS has been directing the efforts of coordination agreements related to publicity, and the enforcement of the same.

There has also been a strong coordination effort between COFEPRIS and pharmaceutical companies tending to the self-regulation of advertising, which is still monitored.

22. **What are the potential penalties for noncompliance?**

The penalties for failing to comply with the rules related to advertising are the suspension of advertising activities ordered either to the responsible party or directly to the media, and the imposition of a fine to each one, which can range from 2,000 to 16,000 minimum wages (around US$9,000 to US$73,000). The responsibility for imposing these penalties falls directly on the Ministry of Health, through COFEPRIS.

Traditional Medicines and Over-the-Counter Products

1. **What are the regulatory requirements for traditional, herbal, complementary, or alternative medicines and devices?**

Traditional herbal medicinal products are regulated by the General Health Law and its regulations.

This type of products can contain excipients and additives besides vegetable materials, but they must not:

- Be isolated or chemically defined active ingredients.
- Be injectable.
- Include psychotropic or narcotic substances.
- Be mixed with conventional medicines or other substances that represent a health risk.

2. **Can these traditional, herbal, complementary, or alternative products be advertised directly to the public?**

Yes, they can be advertised to the general public. Any visual or audio advert must bear the message “consult your physician”. Adverts must limit themselves to indicating the general characteristics of the product, its therapeutic properties and use.

3. **What health, advertising, and marketing claims may be made for traditional, herbal, complementary, or alternative products?**

The advertising of traditional, herbal, complementary, or alternative products directed to the general population may include the description of the diseases specific to the human being, diagnosis, treatment or rehabilitation expressed in the terms of their sanitary registration and in language appropriate to the target audience. These messages must identify the issuer with the brand of the product or its business name.

In its label it may be included the information on how to use the medication.

4. **What are the regulatory requirements for over-the-counter (non-prescription) medications?**

The over-the-counter medication should meet certain requirements; initially it should have demonstrated efficacy and safety over time (at least 5 years) to be used in the relief of symptoms and signs of mild and short-term illnesses and easily recognizable by the consumer. It should be indicated for common, self-

limiting, easy self-diagnosis, self-management and simple self-assessment of response; it had to demonstrate efficacy and safety in all age groups of the population or at least in the majority, as well as in the pediatric, geriatric, pregnant and lactating population.

The over-the-counter medication must possess a wide therapeutic margin, so that voluntary or involuntary administration, at a time or dose higher than recommended or for an unapproved use, does not represent a direct or indirect serious harm to the health of the consumer, which means that the drug must have low toxicity, it should not mask serious or serious diseases that delay the diagnosis and timely treatment of an underlying disease.

5. **Are there any limitations on locations or channels through which OTC products may be sold?**

Medications can be dispensed at establishments other than pharmacies, so the medical advice or recommendation focuses on the labeling of the product or its instructions.

The General Health Law states that no over-the-counter or other health supplies can be sold in semi-finished, mobile or mobile modules.

6. **What health, advertising, and marketing claims may be made for OTC products?**

The advertising of OTC products directed to the general population may include the description of the diseases specific to the human being, diagnosis, treatment or rehabilitation expressed in the terms of their sanitary registration and in language appropriate to the target audience. These messages must identify the issuer with the brand of the product or its business name.

7. **Can OTC products be marketed or advertised directly to the public?**

Over-the-counter products can be advertised to the general public. Any visual or audio advert must bear the message “consult your physician”, and must mention any required precautions when use of the medicine represents any danger, in the case of an existing pathology.

COFEPRIS’s advertisement guidelines state that this regulatory agency will not approve an ad providing disease awareness to be followed by another ad of an over-the-counter medicinal product related to that disease, unless both ads are approved jointly.

8. **What is the mechanism by which a prescription-only product can be converted to an OTC product?**

There is no an expressly established process by COFEPRIS in order to convert a prescription-only product to an OTC product, but if there is a change in its production process and it have demonstrated efficacy and safety over time (at least 5 years) to be used in the relief of symptoms and signs of mild and short-term illnesses and easily recognizable by the consumer, the marketing authorization holder may present a written request to COFEPRIS asking to reclassify the prescription-only product to an OTC product.

9. **What are the requirements for the importation of either traditional medicines or OTC products?**

In order to import either traditional medicines or OTC products is necessary to obtain a sanitary authorization from COFEPRIS, to have a marketing authorization for the product, the person who will import the product must have the proper installation, and medicines expiration date must be greater than twelve months, counting from the entry of medicines to the country.

Product Liability

1. **What types of liability are recognized in your jurisdiction?**

Legal provisions

In general terms, liability arises from provisions in federal or local civil codes in Mexico. Liability can also arise from statutory terms. The NOM for good manufacturing practices of medicinal products (NOM-059-SSA1-2015) has provisions regarding liability. Recently, the Federal Consumer Protection Law has been amended to allow class actions.

Substantive test

Liability claims are mainly regulated by statutes and not by court precedents. Therefore, there is no clear substantive test. The standards to determine damages are high. According to precedents from the Federal Courts, the cause-effect relationship between actions/omissions and damage has to be fully proved.

2. **How do these types of liabilities apply to the manufacturers of medicines and devices?**

Accordingly, the NOM for good manufacturing practices of medicinal products (NOM-059-SSA1-2015) states that, when manufacturing through third parties, the marketing authorization holder has to supervise the manufacturing of the product and establish in agreements the liabilities and duties of each party involved.

3. **Does potential liability extend to the manufacturer only or could claims extend to corporate executives, employees, and representatives?**

All those involved in selling and/or distributing medicinal products can be liable in civil actions for harm derived from a defective medicinal product.

4. **How can a liability claim be brought?**

Limitation periods

Depending on the conduct and cause of action, the limitation periods are two to ten years for civil actions, and one to nine years for certain criminal actions.

Citizen actions

The federal procedural laws have been amended to allow class actions before the federal courts. The Federal Agency for Protection of Consumers (Procuraduría Federal de Protección al Consumidor) (PROFECO), the Attorney General's Office, non-profit associations and a common representative of a group of at least 30 members can now pursue class actions. These amendments are subject to testing in the courts and apparently there are no precedents of class actions for product liability.

In addition, there is an action available called accion popular, whereby any individual with or without proper legal standing can file a complaint before COFEPRIS, arguing and proving that there are certain health risks in a product in the market. However, the claimant's procedural rights are very limited, and these actions are intended to cease a health risk and not to obtain compensation.

5. **What defenses are available?**

Equitable defences are available. Available defences include:

- Assumption of the risk and contributory negligence.

Patents and Trademarks

1. **What are the basic requirements to obtain patent and trademark protection?**

To obtain the protection of a trademark for a sign, it is required to file an application before the IMPI and to comply with the formalities established by the IP law.

While in the case of patents it also necessary to file an application before the IMPI and to comply with the formalities established by the IP law.

2. **What agencies or bodies regulate patents and trademarks?**

In Mexico patents and trademarks are regulated by the Mexican Intellectual Property Office (IMPI).

3. **What products, substances, and processes can be protected by patents or trademarks and what types cannot be protected?**

Trademarks

In accordance with the IP Law, all visible signs can be protected, provided that they are sufficiently distinctive and able to identify the products or services to which they apply or intended to apply with respect to those in the same class.

Audible, olfactory and taste perception cannot be protected in Mexico. This limitation of trademark protection to visible signs was justified in the past by the

need of delimiting the granted right making clear the scope of protection to thirds.

Patents

According to IP Law, the inventions that are new, involve an inventive steps and capable of industrial application are patentable.

In Mexico, methods and process claims are considered patentable subject-matter as long they fulfill the patentability requirements, with exception of: i) essentially biological processes for obtaining, reproducing and propagating plants and animals; ii) methods for carrying out mental processes, playing games or doing business, and mathematical methods; iii) methods of presenting information; and iv) methods of surgical, therapeutic or diagnostic treatment applicable to the human body and to animals.

Regarding therapeutic treatment methods, please note that the patentability thereof can be dependent upon the formulation of the claims. IMPI, for example allows Swiss type claims (Use of Compound/Composition X for the manufacture of a medicament for treating Y), or as purpose-limited product claims (Compound/composition X for use in ...). In this respect, please note that currently there is an absence of criteria and guidelines in IMPI about which medical use claims can be accepted, since some Examiners accept both purpose-limited product claims and Swiss type claims. Taking into consideration that IMPI usually follows EPO's criteria and that it is easier to argue that purpose-limited product claims encompass products, preferably we recommend filing the purpose-limited product claim format. Please note that product claims are easily listed in the patent linkage gazette in order to prevent the violation of the patent through approvals before regulatory agency.

According to the IP Law computer programs are not considered as invention. The figure of Software is protected under the Copyrights laws. It is worth mentioning that they can patentable as computer- implemented processes.

4. **How can patents and trademarks be revoked?**

Trademarks

1. **I) Invalidity action**

The grounds of invalidation established by the IP law are:

1) The trademark is identical or confusingly similar to another one that has been used in Mexico or abroad prior to the date of filing of the application, and it is applied to the same or similar products or services, provided that the party who asserts the greater right for prior use proves the have used the trademark continuously in Mexico or abroad prior to the mentioned filing date or declared use, then the applicable statute of limitations is three years as of the date the Trademark Gazette that published the disputed registration was put into circulation;

2) The registration was granted on the basis of false information mentions in the application. The applicable statute of limitations is five years as of the date the Trademark Gazette that published the disputed registration was put on circulation;

3) The existence of a senior registration for a trademark identical or similar to that covered by a junior registration, and the good or services covered thereby are similar or identical in nature. The applicable statute of limitations is five years from the publication date of the Trademark Gazette detailing the disputed registration;

4) Registration is obtained by the agent, representative, user or distributor without the authorization of the owner of the foreign trademark registration. No statute of limitations applies to this action; or

5) A general cause of invalidity is available and it relies on the granting of registration against any provisions of the IP law or the law in force at the time registration was granted. This cause of cancellation has no statute of limitations.

1. **II) Cancellation actions**

The IP law establish as that if a trademark is not used for three consecutive years on the products or services for which it was registered, the trademark registration will be subject to cancellation for lack of use, unless the holder or the user of a recorder granted license has used it during the three consecutive years immediately prior to the filing date of the cancellation action for the lack of use.

Furthermore, a cancellation action can be brought against a registration when the owner of it has provoked or tolerate a trademark has become a generic term.

Patents

The IP law establishes several grounds on which a patent can be invalidated:

1) When the patent was granted in contravention of the provisions on requirements and conditions for the grant of patents.

2) When the patent was granted in contravention of the provisions of the law in force at the time when grating. Actions based on this cause of invalidity cannot challenge the legal representation of the applicant when prosecuting and obtaining a patent.

3) When the patent application was abandoned while being prosecuted.

4) When the patent granted by error or serious oversight, or when it is granted to someone not entitled to obtain it.

Actions based on causes (1) and (2) may be filed at any time. Actions based under causes (3) and (4) may only be filed within a five years term from the date when the publication of the patent in IP Gazette becomes effective.

Patent invalidity decisions are relatively difficult to obtain. The plaintiff must prove that the invalidity cause occurred. These actions usually require conclusive evidence even though a technical report from the Patent Department may be rendered by request of the Contentious Department, both of IMPI.

5. **Are foreign patents and trademarks recognized and under what circumstances?**

Trademarks

When the registration of a trademark is applied for in Mexico within the periods specified in international treaties or, failing that, within six months of the filing of applications in other countries, the filing date in the country of first filing may be recognized as the priority date.

For the priority referred to be recognized, the following requirements shall be met:

1. The priority must be claimed, and proof given of the country of origin and of the filing date of the application in that country, when applying for registration;

2. The application filed in Mexico must not seek to cover products or services additional to those provided for in the application filed abroad, in which case priority will be recognized only for those specified in the application filed in the country of origin;

III. The requirements specified in international treaties, the IP Law and the regulations thereunder must be met within three months of the filing of the application.

Additionally, if a trademark is identical or confusingly similar to another that has been used in the country or abroad prior to the filing date of the application in respect of the registered trademark and has been applied to the same or similar products or services, provided that the person who asserts the stronger right by virtue of prior use proves uninterrupted use of the mark in the country or abroad prior to the filing date or, where applicable, prior to the date of first declared use by the person who has registered it; it shall be invalid.

Patents

Where a patent is requested having been applied for abroad, the filing date in the country of first filing may be recognized as the priority date, provided that filing

in Mexico occurs within the periods specified by international treaties or, otherwise, within 12 months after the application for a patent in the country of origin.

To give priority referred shall meet the following requirements:

1. Upon application for the patent, priority shall be claimed and the country of origin and the date on which the application was filed in that country shall be specified;

2. The application filed in Mexico shall not seek the grant of rights additional to those deriving from the application filed abroad. For rights additional to those arising from the application filed abroad as a whole, the priority shall be only partial and relative to this application.

III. The requirements specified in international treaties, the IP Law and the regulations thereunder shall be complied with within 3 months after filing the application.

It is worth mentioning that parallel imports are not recognized by the IP Law in Mexico.

6. **Are there any non-patent/trademark barriers to competition to protect medicines or devices?**

Yes, in Mexico there is no a specific body of legislation for Data package exclusivity (DPE) but COFEPRIS issued in 2012 internal guidelines to provide 5 years-term protection limited to new chemical entities five years. However, the reliability and legal value of these guidelines is still uncertain.

Based on the interpretation of international treaties along with the Mexican legislation specifically related to approval of new molecules (new chemical

entities, formulations and new indications), along with the New Molecules Committee's (NMC) regulation (assists COFEPRIS with the analysis of technical and scientific data in connection with clinical trials, approval of new molecules and biologics) regulatory data exclusivity for 5 years for new chemical entities, formulations and new indications has been obtained through litigation. Regarding biologics legal precedents are still pending. It is worth mentioning that, NAFTA mentions that the protection should be for at least 5 years. On the other hand, some countries grant a wider length in regulatory exclusivity for biologics such as Unite States, Canada, among others.

7. **Are there restrictions on the types of medicines or devices that can be granted patent and trademark protection?**

No, there are no restrictions to any type of medicines or devices that can be granted patent and trademark protection.

8. **Must a patent or trademark license agreement with a foreign licensor be approved or accepted by any government or regulatory body?**

The only requirement established by the IP law is that for the license to have effects on third parties it has to be duly recorded before IMPI.

Likewise, according to the linkage regulation established in article 147 BIS of the Mexican Industrial Property Regulations and article 167 BIS of the Health Law Regulations, COFEPRIS is bound to observe the patents which are listed in the gazette listing those patents in force that cover allopathic medicines, according to the generic name of the active ingredient, prior to granting marketing authorizations to third parties different to the titleholder, and alternatively to present the corresponding license.

Regulatory Reforms

1. **Are there proposals for reform or significant change to the healthcare system?**

- Initiative Biotechnology Medicines (amends article 222 Bis of the General Health Law)

Public health institutions should establish an effective differentiation mechanism to ensure adequate pharmacovigilance and continuity of medical treatment, thus preventing an automatic substitution of biotechnology / biocompatible drugs, without due medical prescription.

- Initiative Self-prescription (amends articles 112 and 310 of the General Health Law)

The aim of the initiative is to avoid self-medication. In order to do this, it proposes: 1) to indicate that health education should include within its objectives the orientation and training of the population on the risk of self-medication and self-prescription; and, 2) establish that the advertising of over the counter products and herbal remedies should: i) include the legend –self-medicate can aggravate the disease; and (ii) disseminate the general characteristics of secondary reactions.

Initiative Medical Devices (reform various regulations of the General Health Law)

- The initiative aims to regulate the use of medical devices. Among the proposed, it is worth noting: 1) consider the medical team, prosthetics, diagnostic agents and supplies of dental use as such devices; (2) to replace the term "essential nutrients for health" with "medical devices"; 3) indicate that for sale or supply, as well as for importation, they must have sanitary authorization; and, 4) to emphasize that the indications of its use will be detailed in the instructions of the corresponding product, in printed or electronic form.

- Initiative Telemedicine (amends article 77 Bis of the General Health Law)

The initiative aims to implement telemedicine through electronic means. For this purpose it suggests: 1) to specify that the medical prescriptions will be issued in digital form; and 2) determine that this modality may be implemented by the public and private agencies and entities of the National Health System, subject to

Mexican regulatory and official regulations issued by the COFEPRIS.

2. **When are they likely to come into force?**

Marketing authorisations

The NOMs for good manufacturing practices for medicinal products (NOM-059-SSA1-2013) and for active ingredients (NOM-164-SSA1-2013) are currently being updated to bring them into line with the standards of the Pharmaceutical Inspection Convention/Pharmaceutical Inspection Co-operation Scheme