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On the eve of the ILS' trip to Mexico, the International Newsletter is pleased to publish a series of seven articles that are related to Mexican legal issues.



RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN MEXICO

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Introduction

With increased business opportunities in Mexico, there is also an increased risk that an investment could “go south” and result in litigation. The challenge in such litigation may not just be obtaining a favorable judgment: the challenge could include recognition and enforcement of such favorable judgment in Mexico. This article will discuss the basic principles for obtaining recognition and enforcement of a foreign judgment in Mexico.

In the United States, the recognition and enforcement of a foreign judgment is relatively easy, although the procedures vary on a state-by-state basis. In Mexico, however, the constitutional principle of due process mandates strict compliance with applicable rules and procedures. The discussion below addresses broad principles for recognition and enforcement of foreign judgments in Mexico and not the specific requirements in each jurisdiction.

Background

The Mexican Republic is formed by federal entities, of which 31 are states and one is a Federal District, Mexico City. Each one of these units has its own local legislature. Moreover, pursuant to Article 124 of the Mexican Constitution, each state has the right to exercise the authority not expressly granted by the Mexican Constitution to federal agencies.

In principle, the application of federal law and international treaties corresponds to federal authorities; however, when the dispute only involves



private interests, pursuant to Article 104 paragraph II of the Mexican Constitution, the parties may choose to submit their dispute to the state courts.

Notwithstanding each state's authority to regulate recognition and enforcement of foreign judgments, the fact is that many state's rules are similar to those of the Federal Code of Civil Procedure, and several states adopted the rules of the Federal Code by reference.

Mexican law and the judiciary, at both the federal and state levels, recognize the notion of comity and international cooperation. Accordingly, recognition and enforcement of foreign judgments in civil and commercial matters will be made pursuant to the procedural rules of the Federal Code of Civil Procedure, Code of Commerce and local Code of Civil Procedure, as applicable.

Conditions for Recognition and Enforcement

Pursuant to applicable procedural rules in the Mexican Codes of Commerce and Civil Procedure, and, except as otherwise provided in international treaties to which Mexico is party, foreign judgments are to be recognized in Mexico provided that, in summary, the following conditions are met:

- i) satisfaction of the formal requirements established by applicable procedural rules;
- ii) the judgment is not an exercise of an action *in rem* of real estate located in Mexico;
- iii) the foreign court had jurisdiction to decide the case;
- iv) service of process was properly made so as to provide the defendant with due process of law;

- v) the judgment is final (i.e., *res judicata*);
- vi) the claims are not the subject matter of a lawsuit pending before any Mexican court; and
- vii) the decision does not contravene matters of Mexican public policy.

Recognition and Enforcement Procedures

The procedure for the recognition and enforcement of foreign judgments in Mexico can generally be summarized as follows:

- a) the requesting court/judgment party must include in its request:
 - 1) an authentic (certified) copy of the judgment; 2) evidence of the service of process to defendant; 3) a declaration that the judgment is final (*res judicata*); and 4) an address for the party seeking enforcement to receive notices in Mexico;
- b) a Spanish translation of the request ("exhorto"/letter rogatory), and of all documents worded in a different language must be provided;
- c) once the request is received by the competent Mexican court, it will summon the parties involved, and grant them a nine-day term to produce their allegations/defenses and offer evidence in regard thereto;
- d) if evidence is propounded and admissible, the court will schedule a

- hearing for its reception;
- e) the Public Prosecutor, "*Ministerio Público*" (each court has an appointed representative of Mexican society), will always be summoned to participate in the proceedings; and
- f) once proceedings are completed, the court will issue its decision. The decision is appealable and, in turn, the ruling of the appellate court can be challenged through constitutional action "*juicio de amparo*" before a federal court. Completion of these proceedings may take approximately one year.

Once the recognition proceedings are completed, if the judgment debtor does not voluntarily comply with the judgment, enforcement will be initiated by the court. In this scenario, at the request of the executing party, the court will order the attachment of the judgment debtor's property and schedule a judicial auction at which the executing party may secure transfer of title to the attached property or receive the proceeds of the sale.

Since the judgment debtor's property needs to first be identified and located, and a determination made as to whether such property is movable or immovable, no estimated time for actual collection can be anticipated nor is there any assurance of collection since it depends on the financial condition of the judgment debtor.

Conclusion

Obtaining a favorable judgment is only one step in the litigation process. When the judgment is from a foreign court, the successful litigant must have the judgment recognized and enforced in the local country where the judgment debtor's assets are located. In Mexico, this process is not without its challenges, and an understanding of the basic principles for obtaining recognition and enforcement of a foreign judgment is a critical step in the litigation process.



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Endnotes

- 1 Mexico is party to the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, the Inter-American Convention of Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments, and the Inter-American Convention on Letters Rogatory, which shall be observed in the event that the foreign judgment is rendered by a court of any of the other parties thereto.
- 2 Mexican courts can reject enforcement if proven that in the country of origin foreign judgments and/or awards are not enforced in similar cases.
- 3 Article 567 of Federal Code of Civil Procedure grants Mexican courts exclusive jurisdiction over, among others: i) land and waters within Mexican

territory; ii) resources of exclusive economic zone or any sovereign rights therefrom; and iii) acts related to the Mexican State regime, federal agencies and states of the Mexican Republic. Regarding jurisdiction of foreign courts, the Mexican rules establish that it will be recognized based on rules accepted in "the international sphere" which are consistent with Mexican domestic rules.

- 4 It is highly advisable to appoint Mexican attorneys, jointly or individually, to participate in the proceedings, and to include their names in the disclosure, or alternatively, to grant a power of attorney to such attorneys.
- 5 The Federal Code of Civil Procedure does not regulate in detail specific formalities for "exhortos" (letters rogatory). Article 550 only

mentions that "exhortos" are to be written official communications: a) expressing which actions are requested by the requesting authority; b) providing the necessary information and data (c); attaching certified copies of pertinent documents (such as: complaint, service of process to defendant, the judgment, attestation that it is a final non-appealable decision, translation of documents worded in a language different from Spanish, etc.).