

Recognition and enforcement of foreign judgments and arbitration awards in the United Mexican States.

I. General Overview.

The recognition and enforcement of foreign commercial, civil judgments and arbitration awards in the United Mexican States (“Mexico”) is governed by national and international rules.

In the national level, the main applicable Mexican federal laws are the Commerce Code and the Federal Code of Civil Procedures, regulations that include the general principles adopted by the international community for the enforcement of foreign judgments and awards.

In the international level, Mexico is a signatory party to the following international conventions:

- 1.- Convention on the Recognition and Enforcement of Foreign Awards (New York Convention, 1958),
- 2.- Inter-American Convention on International Commercial Arbitration (Panama Convention, 1975),
- 3.- Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitration Awards (Montevideo Convention, 1979),
- 4.- Inter-American Convention on jurisdiction in the International Sphere for the extraterritorial Validity of Foreign Judgments (La Paz, 1984),
- 5.- UNCITRAL Model Law on International Commercial Arbitration (Model Law, 1985), and
- 6.- Bilateral Treaty for the Recognition and Enforcement of Judgments and Arbitration Awards in civil and commercial matters with the Kingdom of Spain.

According to Mexican law, a foreign judgment or arbitration award is binding and it can be enforced as a national judgment by the Mexican courts, provided the conditions that will be discussed in this presentation are met.

II. General conditions to recognize and enforce foreign judgments/awards.

a. Civil/commercial judgments.

For the recognition and enforcement of civil and commercial judgments, the following requirements must be met in order to avoid the Mexican judge denying such recognition:

1. The resolution must comply with the letter rogatory's formalities of Mexican law.

The execution of foreign judgment/awards has to be officially requested through the foreign court that issued the judgment/award. Since it involves formal proceedings, the request has to be done by means of a letter rogatory.

In Mexico such formalities are governed by the Inter-American Convention on Letters Rogatory (1975) and its Protocol (1979), by the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965, Service Hague Convention) and if the country where the foreign judgment or award is not a party to the mentioned conventions, by the Federal Code of Civil Procedures.

These rules provide the guidelines governing rogatory letters such as i) indication of the issuing authority and court that request the assistance of the Mexican courts; ii) identity and domicile of parties involved to serve notice; iii) nature, purpose and extent of the request of recognition and execution; iv) statement of facts that justifies the request of recognition and execution and v) formalities of reciprocity, authentication, legalization, etc.

Mexican Law is very formalistic and all the requirements must be fully complied in order to obtain the recognition.

2. It should have not being issued as a consequence of an "*in rem*" action.

This means that the lawsuit must be referred and pursued against a particular person (strict liability, breach of contract, misconduct and negligence) rather than against a property interest (partition of real property, foreclosure of mortgages, enforcement of liens).

3. It had to be issued by the court or judge that has proper jurisdiction over the merits.

The Federal Code of Civil Procedures provides that the judge or court that issues the judgment shall have proper jurisdiction to analyse, hear and issue a resolution, in accordance with the international rules of "*forum*".

It is important to mention that the Mexican Courts have exclusive jurisdiction on matters related to:

- Use, profit, exploration, exploitation etc., of Mexican land and waters, including subsoil, air, space, territorial waters and continental shelf.
- Natural resources on the economic exclusive zone related to the sovereignty rights over said zone.

- Official governmental actions related to the national State regime and its governmental bodies.
- National regime of the Mexican consulates and embassies and their official actions.

Thus, no foreign judgment/award of any nature deciding on the abovementioned related-matters will be effective and enforceable in Mexico.

4. The defendant must be given proper personal service (summons) of the process to secure due process to the defendant.

It is important to evidence that the lawsuit was properly served on the defendant. It has to be also evidenced that the defendant's rights were duly respected and that the defendant was given the opportunity to be heard in process, to provide evidence and defences.

When the defendant is summons through the Montevideo Convention, the notice shall meet the requirements established therein.

5. It has to be a "*res judicata*" resolution (final judgment).

The Federal Code of Civil Procedures requires that the judgment be final (*i.e.* not subject to any recourse), before same can be recognized by a Mexican Court. It is important to assure that the same merits have not been heard by a Mexican courts, since this will be a cause for denial of the recognizing of the foreign judgment.

Please bear in mind that evidence that the judgment is "*res judicata*" is also a requirement to legally request the issuance of rogatory letter and failure to meet this requirement, will automatically prevent the recognition and subsequent enforcement of the judgment.

6. The recognition and enforcement of the judgment should not be contrary to public order.

In general terms, Mexican courts consider that any penalty, indemnity or relief not recognized by Mexican Law will must probably be considered to contravene Mexican *public order*.

Additionally, a foreign judgment that does not meet or that goes against constitutional rights will also be considered contrary to Mexican public order. Thus, such judgments will not be valid, effective and consequently enforceable in Mexican Territory.

7. It has to be evidenced that the resolution is authentic.

The foreign authority shall certify that the resolution is either, a true and correct copy of the original, or the original judgment. It must be duly legalized/apostilled by the competent authority at the foreign country where the judgment is issued.

It is important to point out that the judge will be impeded to analyse and/or rendered any opinion regarding the merits of the case as well as the validity of the applicable foreign law.

Once the above conditions are duly fulfilled, then the Mexican judge will recognize and grant the enforcement of the foreign judgment.

- b. Arbitration awards.

Recognition and enforcement of foreign arbitration awards are regulated by the Commercial Code, which incorporates the provisions of the New York Convention on the Enforcement of Foreign Arbitral Awards.

According to the Commercial Code, the judge can only deny recognition and enforcement of a foreign award, when:

1. The party against whom the award is being enforced, evidences before the judge that:
 - a) One of the parties to the agreement to arbitrate has no authority to enter into such agreement or that such agreement is not valid according to laws that govern the disputes, or to the laws of the place where the award was issued.
 - b) The appointments of the arbitrator and/or the arbitration procedures were not duly notified or the parties were not given the chance to exercise its rights during the arbitration procedure.
 - c) The award refers to a dispute not included in the arbitration agreement or renders a resolution over disputes not subject to the arbitration agreement.
 - d) The appointment of the arbitrators or arbitration tribunal was not made, or the arbitration procedures were not followed in accordance with the terms of the arbitration agreement or, if the arbitration agreement is silent, in accordance with the law where the arbitration proceedings would take place.
 - e) The award is not binding to the Parties or the award was declared invalid or suspended by the judge of the country where the award was issued or of the laws applicable to the award; or

2. The Mexican judge determines that in accordance with Mexican Law, the object of the dispute cannot be submitted to arbitration or that its recognition or enforcement is contrary to Mexican public order.

III. Recognition and Enforcement procedure.

The party seeking the enforcement of a foreign judgment or award in Mexico has to request its recognition and enforcement before the local or federal courts of the domicile of the party against whom the judgment or award is being enforced.

The request to recognize and enforce the judgment could be made via letters rogatory issued by the foreign court or through the filing of a motion requesting the recognition and enforcement of the judgment or award.

It is important to keep in mind, that regardless of the procedure used to request the recognition and enforcement, the documentation and formalities mentioned hereinbefore must be met.

The judge will summon the party against whom the judgment or award is being enforced at its domicile and will give 9 working days to answer, contest and file evidence contesting the recognition and enforcement of the judgment or award. As it has been mentioned, the judge hearing the motion to recognize and enforce a foreign judgment or award will not assert on the merits of the case or on the validity of the foreign law, it must limit his analysis to the fulfilment of the conditions outlined above.

Considering the load of work of the Mexican courts and the fact that the resolution of the court granting or denying the recognition and enforcement of the judgment or award could be contested through an Amparo, the period of time that it will normally take to obtain the recognition and enforcement of a foreign award is from 18 to 24 months.

IV. Conclusions.

Mexican law is very formalistic and in order to secure the enforcement of a foreign judgment or award the following requirements must be met:

- Make sure that the Mexican party is properly served, in case of a foreign judicial procedure through letters rogatory, or make sure that an agent for process duly authorized is appointed in the place where the parties have agreed to litigate their disputes. In case of arbitration, perform all important notices through a Mexican notary public.

- Do not forget to enclose to the letters rogatory and to the motion requesting the enforcement of and award evidence that: i) the defendant was duly summoned; ii) the judgment is *res judicata*; iii) the resolution is authentic; and; iv) the fact that under equal circumstances the issuing judge would recognize and enforce a judgment coming from a Mexican judge.
- Finally, remember that all documents must be notarized, legalized/apostilled and officially translated into Spanish language.

Should additional information be required, or should you have any comments or questions, do not hesitate to contact us.

Thank you,
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