

## **ENFORCEMENT OF FOREIGN JUDGEMENTS IN MEXICO**

By  
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## ENFORCEMENT OF FOREIGN JUDGMENTS IN MEXICO

This article deals with assessing the probability of recognition and enforcement in Mexico of a judgment rendered by a United States court. Due to Mexico's absolute territorialism from 1932 to 1988, there were virtually no cases during such period involving the application of foreign law by Mexican courts. As of 1988, Mexico adopted new legislation limiting Mexico's territorialism, and allowing for the application of foreign judgments in that country if certain specific criteria have been met as described herein.

Mexico's new laws on the recognition and enforcement of foreign judgments are found primarily in its Federal Code of Civil Procedure, the state codes of civil procedure and the Commercial Code. Moreover, Mexico is party to several international conventions regarding this subject, although none with the United States.<sup>1</sup>

The 1988 Federal Code of Civil Procedure (FCCP) contains most of the new procedural and substantive dispositions regulating the enforcement of foreign judgments. At the local level, each state has its own code of civil procedure that includes specific rules for the recognition and enforcement of foreign judgments,

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<sup>1</sup> The U.S. and Mexico are both signatories to the "United Nations Convention on the recognition and enforcement of foreign arbitral awards," but this convention does not apply out of the arbitral context.

which, for the most part, follow the rules of the FCCP. The Supreme Court of Justice (SCJ) has stated that there exists concurrent jurisdiction of both systems, the federal and the local in taking cognizance of cases involving foreign judgments, for the recognition of such judgment and, when relevant, to issue orders for their enforcement.<sup>2</sup> Therefore, to execute his/her foreign judgment, a plaintiff may choose between federal and local courts.

In order to execute a judgment in Mexico, a plaintiff must present the foreign judgment to the court of the domicile of the defendant or to the court of the location of the assets in the Republic of Mexico.<sup>3</sup> To be admitted in Mexico, foreign public documents must be "legalized." As of August 14th, 1995, the legalization process for documents to be sent to Mexico is done through the local Secretary's offices of each State (e.g. the California Secretary of State's office located in San Diego performs this function).<sup>4</sup> "Legalization" is not required for documents sent through judicial or diplomatic channels. The U.S. judgment must also be translated into Spanish by an official translator or by diplomatic or consular agents.<sup>5</sup>

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<sup>2</sup> Appendix of the *Semanario Judicial De la Federacion* 1917-1985, section 4, pp. 74-75.

<sup>3</sup> FCCP, Article 572.

<sup>4</sup> Prior to August 14th the legalization process was accomplished by Mexican consulates. This procedure changed following Mexico's recent membership to the Hague Convention of 1961. Mexico now recognizes the authenticity of documents that have been certified by the U.S. Secretary of State under the "Apostille" procedure.

<sup>5</sup> "Enforcement of Foreign Judgments in Mexico: The 1988 Rules of the Federal Code of Civil Procedure," Jorge A. Vargas, *Northwestern Journal of International Law; Business*, Winter 1994, #14.

Prior to executing a judgment, the Mexican court will examine the authenticity of the judgment. If the reviewing court denies recognition of the foreign judgment, an order to postpone the proceedings will be issued until a higher court decides an appeal.

After recognizing the authenticity of a foreign judgment the Mexican judge will begin the "homologacion" process. This procedural process (known at the international level as "exequatur") consists in a review by a court of law of those specific requirements established by the applicable Mexican domestic legislation to provide a foreign judgment, arbitral awards or judicial resolution "with executive force."<sup>6</sup>

Mexican procedural law precludes the Mexican judge from reviewing the foreign judgment on its merits. The judge may only examine the substance of the foreign judgment to ascertain whether the latter may be enforced in accordance with Mexican law.<sup>7</sup>

The Mexican court will examine the following rules of homologacion. First of all, to be executed in Mexico, a foreign judgment must not be the result of a realty action (an action based on real estate located in Mexico) which is reserved to the exclusive jurisdiction of Mexican courts. Second, the foreign judge of the

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<sup>6</sup> Id.

<sup>7</sup> FCCP, Articles 132, 571, Part VIII.

sentencing court must have had jurisdiction to determine the case. Third, the defendant must have been summoned before the foreign court at trial. Fourth, the judgment must be final ("res judicata") in order to be executed by a Mexican court. Fifth, the case must not be the subject of another pending or final suit in Mexico. Finally, the judgment must not be contrary to Mexico's public policy. Each of these conditions are discussed below.

1. In Rem limitation.

The foreign judgment rendered must not have been a consequence of the exercise of a realty action (actions "*in rem*") which judgments are not recognized in Mexico.<sup>8</sup> The Supreme Court decided in 1907 that it would be unacceptable for a foreign court to oversee the adjudication of real property located in a different country even in the name of the administration of justice.<sup>9</sup> Therefore actions *in rem* are actions within the exclusive jurisdiction of Mexican courts. If a legal matter falls under the "exclusive jurisdiction" (as defined below) of the Mexican courts, there is absolutely no possibility that a judgment rendered by a United States Court would be recognized or enforced.

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<sup>8</sup> Enforcement of Foreign Judgements, Houston Journal of International Law, 1990 Vol. II, p. 375.

<sup>9</sup> See opinion published in Semanario, IV, EPOCA, Vol. 31, at 722.

2. Jurisdiction of Judge or Sentencing Court.

The recognition of jurisdiction by the Mexican judge to enforce in Mexico a foreign judgment is regulated by Chapter V (Articles 564-568) of the 1988 FCCP. Article 564 states the following: "The jurisdiction assumed by a foreign court regarding the enforcement of judgments shall be recognized in Mexico when said jurisdiction has been assumed based upon reasons compatible or similar to those in Mexico's domestic legislation, except when the case involves matters of the *exclusive jurisdiction* of Mexican courts." Mexican judges have *exclusive jurisdiction* over land and bodies of water located in their national territory as well as over their maritime exclusive zones. Any acts of authorities relative to the internal regime of the state or instrumentalities of the federal or local governments also fall under the *exclusive jurisdiction* of the Mexican courts.<sup>10</sup>

Further, according to Article 564, prior to executing the foreign judgment, the Mexican judge must recognize the foreign judge's competence to decide on the matter. Jurisdictional competence will be assumed based upon reasons compatible or similar to those in Mexico's domestic legislation.<sup>11</sup> Under Mexican law, the court competent to decide a case is either the court of the domicile of any of the parties, or of the performance of the contractual obligations, or finally, the location of the goods. In a matter resulting from a contractual dispute, if the contract contains a choice of forum clause, the Mexican court will determine whether the

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<sup>10</sup> Mexican Constitution, article 121 & FCCP, Article 564.

<sup>11</sup> Id. Article 571, Part III.

choice of forum implies an impossibility to appear for one of the parties or a denial of justice. In addition, the choice of forum should not operate to the exclusive benefit of one of the parties to the clause or agreement rather than to all of them.<sup>12</sup> The final determination of whether the forum selection clause is to the exclusive benefit of only one of the parties, shall be a matter for the judge's discretion.

3. **Defendant Must Have Been Summoned.**

For the Mexican judge to recognize a foreign judgment, the defendant must have been summoned personally before the court at the trial on the merits.<sup>13</sup> Whether the defendant was given the right to be heard or the rights of due process will be strictly scrutinized, to assure the defendant received a fair trial and the exercise of his/her defense.

The service of process of a defendant in a foreign country will be done through Letters Rogatory.<sup>14</sup> Letters Rogatory ("Carta Rogatoria") consist of an official communication from one judge to another, from one country to another, requesting the performance of an act within the latter's jurisdiction. The Inter-American Convention on Letters Rogatory governs the service of process between Mexico and the U.S. Therefore, failure to comply with the international treaty shall

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<sup>12</sup> Id. Article 567.

<sup>13</sup> Id. Article 571, Part IV.

<sup>14</sup> The Letters Rogatory that demand the service of process are "procedural acts of a formal nature" and therefore do not require "Homologacion". FCCP, Article 554.

void the purported service even if the service was made in compliance with American law and even if the defendant had actual notice of the lawsuit. The Inter-American Convention provides that foreign defendants may be served in their country through the "Central Authority" designated by each signatory nation.<sup>15</sup> Mexico has designated as the Central Authority competent to receive and distribute Letters Rogatory the Secretariat of Foreign Affairs of Mexico.

4. **Must be a Final Judgment From the Foreign Country.**

A foreign judgment must be a final judgment (*res judicata*), not subject to appeal or other collateral attacks available in the foreign jurisdiction. If it can be proven that the original judgment can be reversed or suspended by a competent authority in the country where it was rendered, it will neither be recognized nor enforced within the Mexican Republic.<sup>16</sup>

5. **The Case Must Not be Subject of Another Suit in Mexico.**

The action underlying the foreign judgment, must not be the subject of another suit still pending between the same parties in Mexican courts in order to be executed by a Mexican court.<sup>17</sup>

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<sup>15</sup> Inter-American Convention on Letters Rogatory, Article 4.

<sup>16</sup> Id. Article 571, Part V.

<sup>17</sup> Id. Article 571, Part V.

6. Judgement Must Not be Contrary to Public Order.

The obligation, the performance of which has been sued upon abroad, must be legal in the Mexican Republic in order to be executed. This notion implies the application of Mexico's public policy ("ordre public"), a notion which can be used by the court of the state to deny the recognition of the foreign judgment. The public policy condition is the principal that foreign judgments will not be enforced in Mexico if contrary to the laws of Mexico.<sup>18</sup>

Even if contrary to Mexico's public order, it should be noted that Mexican courts may, upon request of the plaintiff, enforce part of a judgment when the entire judgment is not enforceable.<sup>19</sup>

Finally, despite the fulfillment of each of the above-mentioned conditions, Mexican courts may still deny the enforcement of a foreign judgment if it is proven that in the country of origin, foreign judgments or awards are not enforced in similar cases.<sup>20</sup>

As indicated, the foregoing "homologacion" rules are new to Mexico and therefore there is currently little precedent regarding their interpretation.

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<sup>18</sup> Id. Article 569, Article 571, Part VII.

<sup>19</sup> Id. Article 577.

<sup>20</sup> Id. Article 376. It should be noted that this Article does not request that the Mexican judge refuse to execute the judgment but rather leaves to his discretion to execute or not the foreign judgment.

In some areas, the rules provide for a great deal of subjectivity by the reviewing court, for instance, with regard to a determination "contrary to Mexico's public policy." Nevertheless, these rules mirror, to a great extent, those generally applied in international conflicts of law. Mexico and the United States have yet to ratify a treaty on the execution of foreign judgments, and therefore currently, Mexico's "homologacion" rules are the only standards which apply to the execution of foreign judgments between the U.S. and Mexico.