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Litigation: Enforcement of foreign judgments in Mexico

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General framework

Domestic law

Which domestic laws and regulations govern the recognition and enforcement of foreign judgments in your jurisdiction?

At the domestic level, the recognition of foreign judgments is governed by the Federal Code of Civil Procedures and the Federal Civil Code. In addition, there are several state codes that establish some requisites for the enforcement of foreign judgments.

International conventions

Which international conventions and bilateral treaties relating to the recognition and enforcement of judgments apply in your jurisdiction?

Mexico has signed the following international treaties regarding the recognition and enforcement of foreign judgments:

- the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards;
- the Convention on Competence in the International Sphere for the Extraterritorial Validity of Foreign Judgments; and
- the Convention between the United Mexican States and the United Kingdom of Spain on the Recognition and Enforcement of Foreign Judicial Judgments and Arbitral Awards in Civil and Commercial Matters.

Competent courts

Which courts are competent to hear cases on the recognition and enforcement of foreign judgments?

Pursuant to the domestic codes, both local and federal judges can recognise and enforce foreign judgments.

The competence to recognise judgments in civil and family matters lies with the bodies of each state, since – according to the Constitution – such matters are state matters. Commercial matters are concurrent: they can be heard by either federal or state authorities. The competent judge to hear and execute a judgment will be determined based on the court chosen by the parties and, in the absence of such designation, by the domicile of the party against which the judgment is enforced or the place of location of the goods within Mexican territory.

Distinction between recognition and enforcement

Is there a legal distinction between the recognition and enforcement of a judgment?

Yes. As a matter of statute, Mexican law establishes that any foreign ruling must be recognised as valid in Mexico unless it falls under some specific exceptions that prevent it. Recognition is therefore granted *prima facie* as a matter of law.

Nevertheless, the enforcement of the judgment requires specific legal proceedings to be followed that encompass:

- filing documentation;
- hearing the party against which the judgment will be enforced; and
- a review of certain substantive requirements.

The difference between recognition and enforcement has no practical effect, since the relevant issue is always the need to enforce a decision when the other party is unwilling to meet the obligations imposed by the judgment.

Ease of enforcement

In general, how easy is it to secure recognition and enforcement of foreign judgments in your jurisdiction?

It is relatively easy to secure recognition if all formal requisites established by the applicable laws and treaties are met, and the subject matter of the judgment does not fall within the grounds to refuse enforcement of foreign judgments.

Reform

Are any reforms to the framework on recognition and enforcement of judgments envisioned or underway?

No.

Conditions for recognition and enforcement

Enforceable judgments

Which types of judgment (eg, monetary judgments, mandatory or prohibitory orders) are enforceable in your jurisdiction and which (if any) are explicitly excluded from recognition and enforcement (eg, default judgments, judgments granting punitive damages)?

In principle, any type of judgment may be enforceable in Mexico. However, there are some that cannot be enforced:

- judgments that are the result of the exercise of an *in rem* action of real estate located in Mexico;
- judgments rendered by courts that did not assume competence according to internationally recognised principles;
- judgments in which the subject matter is under litigation before Mexican courts;
- judgments that are not *res judicata*; and
- judgments that are deemed by the Mexican courts as contrary to Mexican public policy.

Some judgments may deal with substantive topics not recognised or accepted by Mexican law and may be deemed to be contrary to Mexican public policy.

In practice, each category of judgment is interpreted on a case-by-case basis, since the scope of actions *in rem*, for instance, has been debated in some Mexican states. In Baja California, the local laws establish that a foreign judgment arising from an action *in rem* may be enforced in Mexico if the foreign court decided the dispute based on Mexican law; there has been debate about the validity of this local legal provision. In addition, a problem arises with regard to foreign judgments on personal actions that effectively order the transfer of ownership of goods or their sale in Mexico. For instance, there is no uniform criteria about the enforcement of judgments which have arisen from actions of inheritance that order the sale or transfer of ownership to heirs. There is similar debate about the patrimonial effects of a foreign divorce judgment.

How are foreign judgments subject to appeal treated?

If a foreign judgment is still subject to appeal, it cannot be enforced in Mexico, since the law requires the judgment to be *res judicata*. In this regard, an essential substantive requisite to enforce a foreign judgment in Mexico is to prove that it is *res judicata* and that no appeal or ulterior legal recourse may be filed against it. There is no a specific standard or document required by Mexican law to prove this; however, the best option is for the enforcing party to ask the foreign court that rendered the judgment to issue a procedural order or certificate establishing that, pursuant to the applicable law, the decision is *res judicata* in its country of origin.

Formal requirements

What are the formal and documentary requirements for recognition and enforcement of foreign judgments?

The following formal requirements must be met to enforce a foreign judgment:

- an authenticated and apostilled copy of the complete judgment;
- an authenticated and apostilled copy of the procedural order and documented evidence of service on the defendant;
- an authenticated and apostilled copy of the document evidencing that the judgment is *res judicata*;
- official translations of all documents;
- an official request through a rogatory letter from the competent foreign court to the Mexican courts to enforce the judgment; and
- a fixed domicile in Mexico for the enforcing party.

The Mexican courts are strict in assessing compliance with formal requisites. Thus, to avoid any problems in enforcing the judgment, the necessary documentation should be filed without failure or delay. In addition, in some instances the judgment subject to enforcement is not completely clear in its scope and the orders contained in it. If this is the case, it is advisable to attach any prior decisions to the judgment that may serve as background for the Mexican courts to better understand the effects of the judgment, in order to guarantee its adequate enforcement.

Substantive requirements

What substantive requirements (if any) apply to the recognition and enforcement of foreign judgments? Are enforcing courts in your jurisdiction permitted to review the foreign judgment on the merits?

Mexican courts are not allowed to review the merits of the case. However, they must ensure that the following substantive requirements are met:

- that the court which rendered the judgment correctly assumed competence pursuant to recognised international principles;
- that the defendant was properly served and had the opportunity to be heard; and
- that the judgment did not arise from the exercise of an action *in rem*.

The analysis of these requirements may lead to an indirect analysis of the merits of the case by the Mexican courts. In this regard, the party seeking enforcement should be aware of this and, when appearing in court, should present allegations aimed at avoiding undue interference in the merits of the case.

Limitation period

What is the limitation period for enforcement of a foreign judgment?

There is no specific regulation under Mexican law about a limitation period for enforcing a foreign judgment. However, the general statute of limitation to enforce judgments before Mexican courts is 10 years.

Grounds for refusal

On what grounds can recognition and enforcement be refused?

If the formal or substantive requisites are not met or if the enforcement of the judgment may be contrary to public policy, the enforcement will be refused by the Mexican courts. Meeting the formal requirements constitutes the first test for admissibility of enforcement. In addition, enforcement will be refused if:

- the judgment was contrary to public policy;
- the defendant was not properly served;
- the defendant did not have the full opportunity to defend itself;
- the judgment arose from an action *in rem*; or
- the judgment is not *res judicata*.

Service of process

To what extent does the enforcing court review the service of process in the original foreign proceedings?

There is no a specific standard under Mexican law on the scope of the review that a Mexican court may perform regarding the way in which the service of process was conducted. However, the Mexican Constitution considers the opportunity of defence in a judicial proceeding as an essential human right. Moreover, Mexican courts in their own judicial procedures are strict in reviewing service on the defendant to ensure that it complies with the formal requirements under Mexican law.

In light of this – and although Mexican courts do not require that the proof of service in the foreign proceeding follows the same formal requirements under Mexican law – the Mexican courts at least require undisputable documentary evidence that the defendant was served. Without such evidence or certification, the Mexican courts would not accept and enforce the corresponding foreign judgment. For this reason, it is advisable to attach to any enforcement action the evidence proving that the defendant received the service, or that it was notified in its domicile by the foreign court officer or a person authorised by the foreign court. The best manner to prove this is certification or a procedural order from the foreign court establishing the manner in which the defendant was served and, if possible, attaching the corresponding documentary evidence or witness testimony about the manner in which the service was conducted.

Public policy

What public policy issues are considered in the court's decision to grant recognition and enforcement? Is there any notable case law in this regard?

There are few precedents regarding refusal to enforce a foreign judgment based on public policy reasons. However, some precedents have analysed the scope and content of public policy in connection with the enforcement of commercial arbitral awards. These precedents provide some standards that may be applicable to foreign judgments. Among these standards, Mexican courts must focus on the result of the enforcement of the judgment and its potential practical effects to assess whether there is a potential violation of public policy (understood as the most basic principles and values on which the Mexican legal system is built). Thus, the analysis of a potential violation of public policy should not serve as an excuse to assess or second-guess the merits of the foreign judgment.

Jurisdiction

What is the extent of the enforcing court's power to review the personal and subject-matter jurisdiction of the foreign court that issued the judgment?

Mexican courts have complete and broad power to assess the competence and jurisdiction assumed by the foreign court to render the judgment which is intended to be enforced. In doing so, Mexican courts first rely on their own competence rules and then on internationally recognised principles. Pursuant to Mexican law, national courts have exclusive jurisdiction to hear disputes relating to:

- land or waters located in Mexican territory;
- resources located in the exclusive economic zone;
- sovereign acts or decisions; and
- any other matter that is subject to the exclusive jurisdiction of Mexican courts (eg, the administrative rescission of government contracts).

Contracts entered into between government agencies and foreign companies are generally deemed to be public contracts subject to Mexican law and court jurisdiction, so there is always a risk that any such contract submitted to foreign laws or courts may not be enforceable in Mexico.

Concurrent proceedings and conflicting judgments

How do the courts in your jurisdiction address applications for recognition and enforcement where there are concurrent proceedings (foreign or domestic) or conflicting judgments involving the same parties/dispute?

According to Mexican law, when a foreign judgment refers to a matter that is pending resolution or has been resolved by the Mexican courts and was first filed before them, the foreign judgment will not be enforced. Thus, the key factor in determining whether the foreign judgment may be enforced is whether a Mexican court was the first court to hear the dispute.

Opposition

Defences

What defences are available to the losing party to a foreign judgment that is sought to be recognised and enforced in your jurisdiction?

The only defences that may be used are those relating to the formal or substantive requirements for enforcement. The defendant may oppose the enforcement by, among other things, alleging:

- breach of public policy;
- incorrect assumption of competence by the foreign court; and
- lack of proper service.

In any event, the defendant cannot re-litigate the merits of the foreign judgment and the court must refrain from reviewing it or second-guessing the content of the foreign decision.

Injunctive relief

What injunctive relief is available to defendants (eg, anti-suit injunctions)?

Injunctive relief is not available to defendants under Mexican law. Moreover, in Mexico, anti-suit injunctions are not recognised. However, any injunctive relief granted to the party enforcing the judgment may be disputed by the party subject to the enforcement. In fact, the party subject to enforcement may render ineffective any provisional attachment of assets if it can file a guarantee or bond to secure the potential payment of the judgment.

Recognition and enforcement procedure

Formal procedure

What is the formal procedure for seeking recognition and enforcement of a foreign judgment?

Once the formal petition for enforcement of the judgment from a foreign court is received, the Mexican court will issue a procedural order initiating an ancillary proceeding for enforcement. In this procedural order, the court will summon the parties, claimant and defendant to appear before it in the next nine working days to file their arguments, defences and evidence (if they deem it necessary). If the evidence filed must be received in a hearing, the court will fix a date for a hearing in order to receive it. After the evidence is received, the court will either grant or reject the enforcement request.

Timeframe

What is the typical timeframe for the proceedings to grant recognition and enforcement?

The proceeding typically lasts four to six months in the first instance. However, the decision can be appealed and ultimately challenged through a specific constitutional proceeding known as *amparo*. The timeframe to resolve the matter, including the three instances, may be between 18 months and two years.

Fees

What fees apply to applications for recognition and enforcement of foreign judgments?

There are no court fees in Mexico. The only fees are those of the attorney representing the parties, which can be negotiated freely by each party.

Security

Must the applicant for recognition and enforcement provide security for costs?

No.

Appeal

Are decisions on recognition and enforcement subject to appeal?

Yes, both types of possible decision (those that grant enforcement and those that deny it) are appealable. In addition, the appeal court decision may be challenged through an *amparo* proceeding.

Other costs

How does the enforcing court address other costs issues arising in relation to the foreign judgment (eg, calculation of interest, exchange rates)?

In principle, a Mexican court may follow and apply the basis to liquidate the amounts included in the foreign judgment, specifically the interest rate established in it. Without a specific basis in the judgment, the Mexican courts should apply the legal interest established in statute, which is 6% for commercial matters and 9% for civil matters. The exchange rates are calculated based on the official exchange rate published daily in the *Federal Official Gazette*.

Enforcement against third parties

To what extent can the courts enforce a foreign judgment against third parties?

Since it is an indispensable requisite that the party against which the judgment is enforced has been heard, it is not possible for a Mexican court to enforce a foreign judgment against a third party which was not party in the original lawsuit.

Partial recognition and enforcement

Can the courts grant partial recognition and enforcement of foreign judgments?

Yes, a Mexican court may decide that only part of the judgment is subject to enforcement and grant it accordingly.

Von Wobeser y Sierra SC - Marco Tulio Venegas

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