

sánchez  
devanny®

**s c g** LEGAL

A Worldwide Network of Leading Law Firms





*Trends & Developments  
in International Arbitration  
& Transnational Litigation*

State Capital Group  
2014 Annual Meeting

Alfonso López Lajud  
*Sánchez DeVanny Eseverri*

September 8, 2014.  
Washington, DC.

## *Constitutional Legal Frame in Mexico*

---

- Article 1<sup>st</sup> of the Federal Mexican Constitution, set forth that in the United Mexican States, all persons shall enjoy the fundamental rights recognized by the Constitution and International Treaties and Conventions to which Mexico is a party.
- It also establishes that all Mexican authorities, of any level, have the mandate to protect, respect and guarantee the human rights, which include the officers of the judicial system.
- According to article 133 of the Mexican Constitution, International Treaties and Conventions are valid and recognized in Mexico, and are considered, along with the Constitution and Federal Laws, the supreme law of the country, provided that such Treaties do not contravene the principles of Constitutional Supremacy and National Sovereignty.

## *International Treaties to which Mexico is a party.*

---

Mexico has subscribed a great number of International Treaties and Conventions, some of them related to international judicial process collaboration in civil and/or commercial matters. The most important Treaties in these matters are:

### Service of Process

- a) ***Inter-American Convention on Letters Rogatory.***- Issued at the First Specialized Conference on Private International Law of the Organization of American States (OAS). Panama, 1975. Many countries of America have adopted such Convention, including Mexico and the USA, as well as Spain. This Convention applies to letters rogatory with the purpose of performing procedural acts (i.e. service of process, summonses or subpoenas abroad). It establishes the participation of a Central Authority, that in Mexico is the Ministry of Foreign Affairs.
- b) ***Additional Protocol to the Inter-American Convention on Letters Rogatory.***- It includes forms and specific requirements for issuance of letters rogatory.
- c) ***Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.***- Issued at the Hague Conference on Private International Law. 1965. Adopted by 68 countries, including Mexico and the USA.

## *International Treaties to which Mexico is a party.*

---

### Production and Taking of Evidence Abroad

- a) *Inter-American Convention on the Taking of Evidence Abroad.***- Also issued at the First Specialized Conference on Private International Law of the Organization of American States (OAS). Panama, 1975. Adopted by many American countries including Mexico, but it has not been adopted by the USA, nor by Spain. This Convention applies to letters rogatory deriving from proceedings in civil or commercial matters for the purpose of taking evidence or obtaining information abroad and addressed by a judicial authority of one of the States Parties to the competent authority of another.
- b) *Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad.***- It includes forms and specific requirements for issuance of letters rogatory.
- c) *Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.***- Issued at the Hague Conference on Private International Law. 1970. Adopted by many countries, including Mexico and the USA.

## *International Treaties to which Mexico is a party.*

---

### Enforcement of Judgments issued Abroad

- a) ***Inter-American Convention on Extraterritorial Validity of Judgments and Arbitral Awards.***- Issued at the Second Specialized Conference on Private International Law of the Organization of American States (OAS). Montevideo, Uruguay, 1979. Adopted by many American countries including Mexico, but it has not been adopted by the USA, nor by Spain. This Convention applies to judgments and arbitral awards rendered in civil, commercial or labor proceedings in one of the States Parties.
- b) ***Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments.***- Implemented for the effective application of the abovementioned Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards and to prevent jurisdictional disputes among the States Parties.
- c) ***Convention between the Kingdom of Spain and the United Mexican States for the Recognition and Enforcement of Judgments and Arbitral Awards in Civil and Commercial Matters.***- Executed in 1991. Madrid, Spain.

\*\*\* Mexico has not subscribed any Convention deriving from the Hague Conference, in connection with enforcement of judgments.

## *Enforcement of Judgments – Federal Civil Procedures Code.*

---

Mexican Federal Civil Procedures Code ("**FCPC**") establishes the specific provisions and requirements for the coercive enforcement in Mexico of a judgment or arbitral award (non-commercial) rendered abroad:

1. FCPC recognize the validity of a judgment or arbitral award (non-commercial) issued abroad, and set forth an homologation procedure, intended to enforce such resolutions. (Article 570).
2. In order to have coercive enforcement effects, a resolution shall comply with the following conditions (Article 571):
  - a) Comply with formalities for foreign letters rogatory.
  - b) Not resolving in connection with an *action in rem*.
  - c) Issued by a competent court.
  - d) The defendant was properly served and could oppose a proper defense in trial.
  - e) The resolution is firm and irrevocable (*res judicata*) at the Court of origin.
  - f) The action is not subject to pending litigation in Mexico, between the same parties.
  - g) That such resolution is not contrary to public order provisions in Mexico.
  - h) That the enforceable resolution is evidenced through an authentic document.

## *Enforcement of Judgments – Federal Civil Procedures Code.*

---

3. The letter rogatory that request the coercive enforcement of a resolution, shall be accompanied by the following documents (Article 572):
- a) Authentic copy of the judgment or award to be enforced.
  - b) Authentic copy of the documents that evidence the service of process and that certify that it is a firm and final resolution.
  - c) Translation into Spanish of all the documents.
  - d) Appointment of a domicile of the requesting party, at the same jurisdiction of the Court that will carry out the enforcement.



## *Enforcement of Judgments – Federal Civil Procedures Code.*

---

### 4. Homologation Procedure (Article 574):

- The Mexican Court will serve the requesting party (in the domicile appointed in Mexico), as well as the enforced party, whom will have a 9 (nine) business days term to offer evidences and produce pleadings and defenses. After such term, the Mexican Judge will render a resolution declaring the coercive enforcement or rejecting the petition.
- The Court will not review or decide in connection with the merits of the case, nor upon the justice of the judgment or award. The rejection of enforcement will only be determined after analyzing if all the formal requirements for such enforcement have been complied. (Art. 575)
- The Mexican Court will also resolve any matter in connection with attachment procedures, appraisals, judicial sale of assets, etc. (Art. 576)

## *Enforcement of Arbitral Awards – Mexican Commerce Code.*

---

Mexican Commerce Code recognizes the validity of an arbitral award issued by foreign arbitrators or arbitration tribunals, since such Code adopted the 1985 UNCITRAL (United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration, which derived from the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (known as the "New York Convention").

According the above, an arbitral award issued abroad may be enforced by Mexican Courts, without an homologation procedure, provided that:

- a) The interested party submits an application in writing to the competent Court.
- b) The party attach to this application the original counterparty or certified copy of the award and arbitration agreement.
- c) All these documents shall be translated into Spanish by a certified translator.

## *Enforcement of Arbitral Awards – Commerce Code.*

---

The enforced party could challenge the enforcement petition and the Court may deny such enforcement by:

- a) Proving that one of the parties that signed the arbitration agreement had no capacity to sign it; or that the arbitration agreement is invalid according to the applicable laws.
  - b) The enforced party was not properly notified in a legal and unquestionable manner regarding the appointment of arbitrator, or had no opportunity to produce an adequate defense.
  - c) The award is affected by an *extra petita* principle. In other words, it resolves in connection with matters not subject to the arbitration agreement.
  - d) The arbitration was not conducted according to the arbitration agreement, or the laws of the site of arbitration.
  - e) The award is not a final resolution yet.
  - f) The Mexican Judge orders that the dispute could not be subject to arbitration procedure according with Mexican Law, or the enforcement of the award is against the internal public order provisions.
  - g) If the award is being challenged or subject to a nullity procedure, the Mexican Court may suspend the enforcement procedure.
-

## *Important Provisions*

---

1. The Mexican Central Authority for purposes of letters rogatory, is the Ministry of Foreign Affairs, which review the legal requirements of any letter rogatory that is directed to Mexican Courts from abroad, or sent by Mexican Judicial Authorities to the competent courts of any foreign country ([www.sre.gob.mx](http://www.sre.gob.mx)).
2. In Mexico, it is expressly forbidden the request for the exhibition of documents that are referred in general terms, even if such documents will be used in foreign procedures.
3. In general terms, Mexican governmental agencies are impeded to issue certified copies of documents that are kept in public archives or offices, unless it is permitted by Mexican Laws and ordered by Mexican Courts. In order to obtain a mandate from a Judge, that orders the exhibition of a document, the requesting party shall provide accurate information regarding the characteristics, dates and contents of such document, otherwise, the petition will be deemed as an inquest, which is forbidden under Mexican Commercial Laws.

## *Important Provisions*

4. **Discovery.**- Understood as the “compulsory disclosure, at a party’s request, of information that relates to the litigation (Black’s Law Dictionary©), is only allowed in Mexico, provided that: (i) it is related to a formal litigation that is already in course; (ii) it refers to documents strictly related to the facts in conflict (cause of action); (iii) the document has been requested in accurate terms, expressing its characteristics, dates and contents; and (iv) it is requested by the Court, upon a party’s petition. Otherwise, the request of documents could be denied by the Court.



## *Bibliography and Sources*

---

1. Web Page of Mexican Chamber of Deputies:

<http://www.diputados.gob.mx/LeyesBiblio/>

2. Web Page of Hague Conference on Private International Law:

<http://www.hcch.net>

3. Web Page of Official Gazette of the Government of Spain:

<https://www.boe.es>

4. Web Page of United Nations Commission on International Trade Law (UNCITRAL):

<http://www.uncitral.org/>

5. Web Page of the Mexican Ministry of Foreign Affairs:

<http://www.sre.gob.mx>

6. Web Page of the Organization of American States (OAS):

<http://www.oas.org>

7. Black's Law Dictionary, Seventh Edition. Bryan A. Garner. West Group, St. Paul, Minn, 1999.

**scg** LEGAL

A Worldwide Network of Leading Law Firms



**sánchez**  
devanny®

Alfonso López Lajud  
[alopez@sanchezdevanny.com](mailto:alopez@sanchezdevanny.com)

Mexico City

T. +(52) (55) 5029.8500

Monterrey

T. +(52) (81) 8153.3900

[www.sanchezdevanny.com](http://www.sanchezdevanny.com)



©SÁNCHEZ DEVANNY ESEVERRI, S.C., MÉXICO 2014 .ALL RIGHTS RESERVED.