

# NOTES ON THE SERVICE OF FOREIGN NOTICE AND SUMMONS IN MEXICO

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## *Resumen*

*En su estudio, el Decano Miguel Acosta Romero investiga el uso de cartas rogatorias y exhortos judiciales conducentes al reconocimiento de trámites y sentencias extranjeras en México. Principia con un breve examen de los conceptos fundamentales legales internacionales que apoyan el uso de cartas rogatorias y exhortos, Acosta Romero explica el procedimiento a seguir para lograr el reconocimiento de una sentencia extranjera. El Decano Acosta Romero cuidadosamente distingue entre los países que son partes en tratados de reconocimiento de sentencias extranjeras con México y los que no tienen tales tratados con México. Finalmente, el autor proporciona ejemplos de casos en los que México, por razones políticas o constitucionales, tienen que rechazar la ejecución de las sentencias extranjeras.*

## INTRODUCTION: GENERAL PRINCIPLES

Mexican sources of law do not mention letters rogatory (cartas rogatorias). Instead, the term *exhortos* is used. The concept of letters rogatory, however, is generic in international law and exists in international conventions. This is why it is important to establish that both terms have the same meaning: the request made by the judicial authorities of one country to those of another country for help in executing or implementing their legal decisions.

With respect to *exhortos*, it must be pointed out that in practice they resolve a conflict of jurisdictions involving territory, inasmuch as the judiciary's power is circumscribed to a territory. Therefore, judges in one country only have authority to carry out or execute their own decisions, but not those of other states. Because of the international interest that judicial decisions complement each other, requests or letters rogatory have become generally accepted in international doctrine and treaties. Their use is regulated by conventions and the laws of individual countries as a means of resolving such conflicts.

## TYPES OF LETTERS ROGATORY

Letters rogatory or requests may be used in various situations to en-

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able a judge of one country to serve notice, summons or citations in civil or commercial matters to take evidence; or to implement final judgments from a foreign territory in his or her own jurisdiction. They may not be used to implement criminal sentences. Criminal sanctions are specifically excluded from the conventions of The Hague and Montevideo. Both conventions have been signed by Mexico and approved by Congress, and have force in Mexico and other signatory countries. Legislation may also prohibit such use, as is the case in France. Letters rogatory and exhortos cannot be used to execute penal decisions in a foreign country. These decisions, which normally require the extradition of the defendant, are processed by diplomatic means. Similarly, they cannot be used in fiscal matters because it has been agreed among international law scholars and in international law customs that one country does not have the power to intervene in the fiscal system of another.

It is clear that letters rogatory which request notice, summons, subpoenas or attachments should meet the requirements as set forth by Niboyet.<sup>1</sup> If an international standard has been adopted by a convention signed and ratified by the Congress of Mexico, then the standard should be followed. Article 133 of the Constitution provides that the Supreme Law of the land is the Constitution, the statutes enacted by the Federal Congress and all treaties made by the President and ratified by Congress. Thus the judges of each state must accord precedence to the Constitution, laws and treaties over the individual state constitutions and statutes. Some legal commentators have argued that, in some aspects, letters rogatory and the services requested through them may violate the individual guarantees of Articles 14 and 16 of the Constitution. However, in this writer's opinion, any constitutional objection is defeated by the express stipulation of Article 133, which should be given greater consideration than any other law or local constitution.

### *Procedural Requirements*

When it is necessary to act on the requests of foreign courts, the Mexican court uses the procedures and rules of its jurisdiction and not those of foreign jurisdictions. As argued in Mexico by Rafael de Pina and Castillo Larrañaga, decrees have power, not only within the country in which they are decreed, but also outside their territory.<sup>2</sup>

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<sup>1</sup>J. NIBOYET, *PRINCIPIOS DE DERECHO INTERNACIONAL PRIVADO* 48-49 (A. Rodríguez Ramón trans. 1951).

<sup>2</sup>R. DE PINA & J. CASTILLO LARRAÑAGA, *INSTITUCIONES DE DERECHO PROCESAL CIVIL* 360 (12th ed 1978).

This is because the principles of justice are universal and should not encounter obstacles in implementation across international borders. Therefore, the execution of a foreign decree is a frequent form of cooperation in attaining common goals. This cooperation is consistent with legal-philosophical values of justice supported by the civilized peoples and countries of the world. Execution should be denied only to a country which does not guarantee rights in the administration of justice, conduct, politics and social and legal matters, because such rights are required and expected by all the civilized people of the world.

Legal standards applying to the execution of foreign decrees are found in international treaties and executive decrees as well as in the domestic law of each country, be it in the country that requests the execution of its decision or the country that lends its cooperation to carry out the execution. Although problems relating to the execution of foreign decrees are not unusual, the solutions to such problems should be found in international standards of treaties and international conventions. If this is not possible, the solutions should be found in the internal legislation of the country originating the decision and in accordance with the law of the country that must implement the decision.

### *Form of the Letter Rogatory*

There is no set form for requesting the execution of a foreign decree in all countries. Since, in all these countries, the principle of cooperation, or comity, prevails in the adjudication and execution of a foreign decision, formal requirements vary from country to country. In German law, for example, a foreign judgment is subject to an examination by the country that is to implement the judgment. This examination is limited to ascertaining whether the foreign judgment has fulfilled all the legal requirements of its own country. If so, it is automatically recognized and may be implemented. Under the Treaty of Montevideo, if the foreign final judgment is invoked as proof, documentation supporting its legality in the country of origin must be presented for it to be recognized as valid.

Court decisions are generally declarative in nature. Their purpose is either to declare the existence or absence of a right or to impose satisfaction of an obligation, through action or abstention. The decision may be limited to the declaration that a right exists, thereby creating, modifying or terminating a legal status. Only judgments imposing an obligation (*condena*) require foreign implementation, since other decisions involve only recognition of status.

Martin Wolff<sup>3</sup> puts forth the principle that, in international mat-

ters, only final decrees of foreign civil courts should be recognized. Those of administrative or criminal courts should be excepted because they are affected by claims of rights. By contrast, Article 423 of the Code of Bustamonte<sup>4</sup> considers administrative decisions to be enforceable in foreign countries.

## LEGAL CONSEQUENCES OF LETTERS ROGATORY

Valid final decrees carry three necessary results. The first is evidentiary. It is predicated on the decree's authenticity. In this respect, the decree is based upon its national law of origin, but it also documents the procedural and substantive rules of its country of origin, allowing the execution and recognition of those rules in the foreign country. The second result is *res judicata*, which goes to the heart of the dispute. It requires that the outcome of such a dispute be recognized by the foreign country. The third result is that of execution, which implies binding effects and immutability of results inasmuch as no judge in the future may alter or modify the terms of the decision as originally entered.

## MODELS OF EXECUTION

In countries such as Denmark, Ecuador, the United States, Haiti, Holland, England and Sweden, foreign judgments are not self-executing. Unless a procedure is instituted in the receiving country, foreign judgments will be denied full execution. Other countries such as Austria, Chile, Spain, Mexico, Monaco and Venezuela follow the principle of reciprocity and will give full effect only to the judgments of those countries which will provide reciprocal treatment to their judgments. Argentina, Belgium, France, Greece, Luxembourg and Switzerland require a review of the basis of the judgment as grounds for execution to verify that it conforms with their own laws. If it conforms, the judgment is recognized and executed.

Hence, there are countries in which only the form of the foreign judgment is examined; there are others in which form, as well as substance, must be consistent with domestic law. Finally, there is the third group, in which reciprocity prevails, as is the case with Mexico.

## EXEQUATUR AND MEXICAN LAW

Since courts lack the capacity to have their judgments implemented

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<sup>3</sup>M. WOLFF, *DERECHO INTERNACIONAL PRIVADO* 242-243, 265 (A. Marín Lopez trans. 1958).

<sup>4</sup>"Código de Derecho Internacional Privado o Código Bustamonte" in J. J. CAICEDO CASTILLO, *DERECHO INTERNACIONAL PRIVADO* 546 (6th ed. 1967).

in foreign countries, it is necessary to use a procedure known as *exequatur* through which the receiving country consents to the implementation of the foreign decree through an act which incorporates the foreign judgment into domestic law. In this respect, the applicable law must first be found in international treaties; in their absence, it must be found in the domestic law of the receiving countries. Among the applicable Mexican domestic law provisions are the following sections of the Federal Code of Civil Procedure:

Article 108. Requests which are sent to or received from foreign countries shall be subject to rules requirements of the Federal Code of Civil Procedure with respect to their formalities.

Article 604. Foreign decrees and other judicial resolutions have force in Mexico as established by treaty, or if no treaty exists, as established by international reciprocity.

Article 605. Foreign judgments have force in Mexico only if they meet the following requirements:

1. They fulfill the formal requirements of Article 108.
2. They have been issued as a result of a personal action.
3. The obligation from which the action arose would have been legal in Mexico.
4. The defendant has been personally served with process.
5. The judgment was issued in conformity with the laws of the nation in which it was issued.
6. The necessary official requirements have been fulfilled.

Article 302 of the Federal Code of Civil Procedure also provides guidance with respect to letters rogatory. It states:

Requests sent to and received from foreign countries must meet the requirements of international treaties and conventions:

1. Letters rogatory are to be forwarded to their destination by diplomatic means. Signatures of the officials that send them will be certified by the Secretary of the Interior (*Gobernación*) and the signature of that official certified by the Secretary of Foreign Relations (*Relaciones Externas*).
2. Certification will not be required if the laws or practice of the country to whose court the request is directed does not have this requirement for documents of this type.
3. When permitted by the laws of the countries involved, the request will be sent directly by the requesting judge or court to the receiving judge or court with no more certification than that required by the laws of the receiving country.
4. Requests sent to the courts of Mexico may be sent directly by the requesting judge to the receiving judicial authority. It is sufficient that such a request be certified by a Mexican consul or

minister residing in the country or place of the requesting court.

5. The carrying out of judicial procedures in foreign countries may be delegated to the secretaries of diplomatic missions (*legaciones*) and to the consular officials of the Republic if so requested by the moving party, in which case the request will be legalized by the Secretary of the Interior and it shall be forwarded by the Secretary of Foreign Relations.

In the absence of a treaty or convention, the request proceeding from a foreign country seeking execution in Mexico must be based on an internationally valid principle, such as reciprocity. Examples of such proceedings include summons, citations and requests for evidence.

The required reciprocity must be expressed by the competent foreign authority in the requesting country in the text of the letter rogatory. The letter must promise that the requesting court will provide equal execution under equal circumstances to the receiving court from the receiving country or jurisdiction.

The provisions of the Federal Code of Civil Procedure and any other provisions applicable to foreign letters rogatory will have to be observed. One of these provisions in Article 108 of the Code of Civil Procedure for the Federal District or its counterpart in the procedural codes of each state of the Republic, if the letter rogatory is to have effect in such a state court.

If sent to the Federal District, Article 108 of the Code of Civil Procedure defers to the provisions of the Federal Code of Civil Procedure. Therefore the rules for letters rogatory are the same for the Federal District as for other federal courts. These rules are set forth in Article 302 of the Federal Code of Civil Procedure, described above at page 101.

Mexican precepts allow letters rogatory addressed directly to Mexican courts to be sent directly from court to court, requiring only certification by the Mexican Consul or Minister residing in the requesting country or jurisdiction. It is also possible for the procedure to be carried out by the secretary of a diplomatic mission (*legación*) and the consular official of Mexico if so requested by the moving party. In that case, it is mandatory to legalize the letter rogatory at the Ministry of the Interior and to forward it through the Secretary of Foreign Relations.

If the letter rogatory is sent directly by the requesting court to its counterpart abroad, it is apparent that, apart from the signature of the requesting court and the stamps validating the document, no other formality is required except for the certification of the Mexican consul or minister in the place or jurisdiction of the foreign court or of

such official's counterpart in Mexico. The certifier must state his diplomatic position, his name, his authority to certify, and he must sign and seal the document. If these requirements are not met, the certification is insufficient under Article 302, Section 4 of the Federal Code of Civil Procedure and the request can have no effect. Under Section 3 of Article 302, requests sent by a Mexican judge directly to a foreign court are required to conform to the certification required by the foreign country and should state the principle of reciprocity, this principle being essential to the acceptance and execution of the request. The first and second sections of Article 302 exempt the requirement of certification of the request when the receiving country does not have such a requirement. With the exceptions found in Sections 2, 3 and 4 of Article 302, requests from Mexico to another country or *vice versa*, based on the principle of reciprocity, should be sent to their destinations through diplomatic channels, and signatures duly certified by the Secretary of Foreign Relations.

There are other requirements regarding letters rogatory. First, as has been stated, it is a principle of International Law that the standard to follow in proceedings and execution of judgments, both of which permit the use of international requests if no treaty exists, is the standard of procedure in Mexico or, when the requester is a Mexican court, that of the receiving country. Therefore, the procedures relating to notice, summons, citations and taking of evidence should, in requests received by Mexican authorities, follow the standards of the Federal Code of Civil Procedure or the Code of Civil Procedure for the Federal District or the procedural codes for the various Mexican states in which the request is to be executed. With respect to the execution of judgments, these should be consistent with constitutional legal principles and basic precepts of Mexican law, if Mexico is the receiving country. For example, since slavery is prohibited in Mexico, a request which refers to or affects the liberty of a person in a way that would create slavery in the requesting country will not be executed in a Mexican court. Similarly, a request which requires a woman to submit to the status of a member of a Middle Eastern harem cannot be executed in Mexico.

When it is apparent that the legal proceedings of a requesting country do not follow the elementary principles of justice that are followed in Mexico, the request should not be fulfilled. Mexico cannot accept any rule which is contrary to its constitutional principles. It is also evident that, in the given examples, reciprocity would not apply, as Mexico would never transmit requests of such a nature.

## INTER-AMERICAN CONVENTION ON LETTERS ROGATORY IN MEXICAN LAW

The Decree of Promulgation of the Additional Protocol to the Inter-American Convention on Letters Rogatory agreed to in Montevideo, Uruguay, May 8, 1979 is good law in Mexico.<sup>5</sup> The decree relates to that convention and to the Additional Protocol of the Inter-American Convention on Letters Rogatory signed in Panama on January 30, 1975. In the decree, Mexico sanctioned the signed agreement on letters rogatory among the member states of the Inter-American Convention, made up of member nations of the Organization of American States. It is, therefore, in effect only for those countries. The scope of application of the decree is restricted to the signatory states, because the first article restricts its operation to signing nations. When applicable, requests for acts or information from judicial organs of one member state to others should be in accord with the following procedural formalities.

The letter rogatory should be transmitted to or from Mexico by the central authority of the requesting state and directed to the central authority of the receiving state. These central authorities are designated in advance to the Secretariat of the Organization of American States by the signatory states. The Secretariat then distributes a list of designated central authorities to the member states. Each state reserves the power to alter this designation at any time.

The international standards contained in the decree recommend that the requests or letters rogatory be on forms printed in the four official languages of the Organization of American States, but permits them to be issued in only the languages of the requesting and receiving states.

Form "A" is required and should contain the following:

- a) the name and address of the requesting judicial organ.
- b) a certificate stating the subject matter of the request.
- c) the name and address of the requesting central authority through which the request is transmitted.
- d) the name and address of the receiving central authority through which the request is forwarded to the receiving tribunal.
- e) the name and address of the petitioning party.
- f) the name and address of the attorney of the petitioning party.
- g) the name and address of any person designated to appear in the proceeding in the receiving country.

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<sup>5</sup>Diario Oficial, April 28, 1983.

h) a statement as to whether such person assumes responsibility for costs.

i) if applicable, a check for the required amount, with accompanying documents being sent in triplicate.

j) if applicable, a document showing proof of payment, sent in triplicate.

k) a designation of the person who is responsible for the action.

l) a statement designating the parties necessary for the proceeding.

m) a statement of any additional formalities which may be required in the proceeding, such as personal notification, legal representation or representation of a corporation.

n) a statement regarding what should be done to conform to the legal standards of the requesting country.

o) a statement regarding whether documents required in the request are submitted to any judicial or administrative authority.

p) a request to the central authority of the receiving country for the return to the central authority of the requesting country a copy of the attached documents.

q) a certificate of compliance with the request, dated, signed and stamped by the requesting judicial authority and the requesting central authority.

Each request or letter rogatory must also be accompanied by the following:

a) a copy of the motion or petition by which the proceeding in which the request is sent was commenced, along with a translation in the language of the receiving party.

b) An untranslated copy of the documents which accompanied the motion or petition by which the proceeding was started.

c) An untranslated copy of the legal decision which ordered the issuance of the request or letter rogatory.

d) The above-mentioned Form A.

e) Form B which contains the information necessary for the person or authority who will carry out the request. It must contain:

1) the name and address of the party to whom notice is directed.

2) an explanation of the subject matter.

3) a copy of the request or letter rogatory.

4) the reason for the notice or delivery of documents.

5) specifications regarding the document to be delivered to the

notified party.

- 6) claim of rank of the original trial.
- 7) anything else which is requested by the notification.
- 8) terms of the summons as to place, date and time to contest the claim before the requesting judicial organ.
- 9) an explanation of how the notified party was notified.
- 10) an exact description of the acts requested of the notified person.
- 11) a statement of the legal consequences applicable to the notified person if he fails to appear.
- 12) the name and address of the public defender's office or legal aid society in the jurisdiction.
- 13) in the case of a request for information, a statement that the documents are submitted for acknowledgement or rejection.
- 14) the name of the receiving judicial organ.
- 15) a statement of the what information is requested.
- 16) a list of attached documents, dated, signed and sealed by the requesting judicial authority and the requesting central authority.

f) The request should be also accompanied by Form C, in which the receiving central authority must certify that the requirements of the request or letter rogatory have been fulfilled. This form, entitled "Certificate of Fulfillment," is authenticated by the signature and seal of the receiving central authority and is returned to the requesting party along with the following data:

- 1) the name, address and identity of the judicial authority fulfilling the request.
- 2) attached copies of the documents which the judicial authority conveyed.
- 3) the identity of the person notified with date and place noted.
- 4) information on the procedure followed for notification as to whether it conforms with the instructions given in the second paragraph of Article 10 of the Convention relating to personal notification or notice to a legal representative, stating whether it is in the form required by the receiving country, in which case such standard should be described.
- 5) the name and address of the person who received notice, as well as his relation with the person to whom notice was sent.
- 6) if applicable, return of the documents and the reason why notification was not possible.
- 7) if applicable, a request that costs be paid.

The Decree of Promulgation requires that copies attached to the request be considered authentic as long as they are signed and sealed by the requesting judicial authority that issued the request or letter rogatory.

A copy of the request and Form B, as well as the copy of the complaint, its attached documents and judicial decrees ordering the issuance of the request, should be delivered to the person being served or transmitted to the authority to whom the petition is sent. Another copy of the request and its attached documents will remain with the receiving country. The untranslated original, as well as the "Certificate of Fulfillment," will be returned to the requesting central authority by the receiving central authority. When a member state has more than one official language, the signing, ratification or adhesion to the Protocol of the Convention should declare the official languages. If there are territorial units, it should be stated which is the official language or languages of each unit, so that the Secretariat of the Organization of American States can distribute this information among the member states.

Upon receiving the request or letter rogatory, the receiving central authority transmits it to the competent judicial authority for implementation in accordance with the applicable domestic law. Once the request is fulfilled, the judicial organ establishes a record of its fulfillment and sends the necessary documents to the receiving central authority. The receiving central authority certifies the compliance on Form C, and the form is then sent without certification, along with the relevant documentation, to the requesting central authority. Finally, the requesting central authority sends it to the judicial authority issuing the request. If the request is not fulfilled, it is returned in the same manner, along with a statement explaining why it was not fulfilled.

The Protocol permits the payment of a country's executing expenses by the interested party, in conformity with the domestic law of the receiving country. Alternatively, the interested party may send a check attached to the request. Article 6 of the Protocol determines the costs that are the responsibility of the interested party. A list of such costs should be attached to the ratification or adhesion of the member states to the Protocol. If applicable, a set amount that a member state estimates will reasonably cover the cost of the proceedings may be charged. When a receiving state has made a declaration regarding the total of the expenses and costs of the proceedings to the Secretariat of the Organization of American States, a check for the amount should be attached to the request. The interested party should give this check to the judicial organ issuing the request if the interested party does not

designate a person responsible for paying the costs in the receiving country. When the interested party has deposited an appropriate sum with the requested state and this sum is placed at the disposal of the central authority, a document to this effect should accompany the request.

If for some reason, the cost of the requested or effectuated proceedings exceeds the set value, compliance with the request by the central authority and the judicial organs of the receiving country shall not be delayed. Additional funds may be solicited by the receiving country when the request is returned.

The payment of expenses and costs is not required in all cases. Article 6 of the protocol provides that if the member state does not declare expenses and costs to the Secretariat of the Organization of American States, these will not be incurred or accepted as the fixed price for the total.

Certification of the request can cause problems since it is difficult to know whether certification is required by convention. Using a previous example, the stamps of the requesting judicial organ and central authority authenticate all the requested acts, and no certification is required when it is established in the accord that the stamps of the judicial authority issuing the request be considered authentic if the stamp of the central authority hold them to be so. Therefore, if such international standards are established in the Protocols, certification of signatures is not required. But if no international agreement or standard exists or if no standard is set by the applicable international agreement, then the domestic standard, as stated by the Codes of Civil Procedure, should be followed, using the following guidelines:

a) Certification is not necessary if the laws and practices of the country to whom the request is directed do not require this of such documents. For example, if Mexico sends a request to a foreign country which does not require certification, certification will not be supplied by Mexico. If a foreign country sends a request to Mexico and no pact or convention covers such certification, then the requesting state must have stamps certified by the Mexican Consul or Minister residing in the country or place of the requesting party. Such situations are covered by Sections II and IV of Article 302 of the Federal Code of Civil Procedure.

The Organic Law of Mexican Foreign Service<sup>6</sup> states that the signature of a consul does not require authentication by the Secretary of the Interior and the Secretary of Foreign Relations.

b) When Mexico must send a request to a foreign country in regard to a matter for which no treaty or convention exists or where treaty or convention do not provide standards for certifi-

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<sup>6</sup>Diario Oficial, June 22, 1982.

cation, and the request is sent to Secretaries of Diplomatic Missions or Consular Agents of the Republic, in order to conform with Section V of Article 302, certification by the Secretary of the Interior and conveyance by diplomatic means is required. If the request is from a foreign country to Mexico, in accordance with Section 4, certification by the Mexican Consul or Minister residing in the country of the requesting tribunal is required.

c) In requests sent through diplomatic channels between countries which do not subscribe to a convention or treaty or to any other international law rule, there is no applicable international standard and certification is required by Section 1 of Article 302.

Certification of signatures is not an essential requirement of international requests, because it is generally not required by treaties and conventions. Authenticity is provided by the stamps of the judicial authority issuing the decree, as well as those of the central authorities. This is not an actual certification, but a guarantee of authenticity and, only when there is a lack of an international rule does Mexico require the certification mentioned in Article 302 of the Federal Code of Civil Procedure, as applied by the Code of Civil Procedure of the Federal District.

## LETTERS ROGATORY FOR THE EXECUTION OF FOREIGN JUDGMENTS

Rules for the execution of foreign judgments have been established, and letters rogatory must conform to these rules when execution is sought. The rules are that such judgments will have effect in Mexico in only two instances: (1) when such a procedure is established by international treaties, or (2) when the principle of international reciprocity is followed by the requesting nation. Requests must comply with the formalities of Article 108 of the Code of Civil Procedure for the Federal District. Article 108 requires that requests conform to the requirements of the Federal Code of Civil Procedure, specifically Article 302; that requests be ordered in the country of origin as a result of a personal action; that the claimed obligation whose compliance is sought be legal in Mexico; that the defendant be personally served with process to appear before the foreign court; that the judgment be issued in accordance with the laws of the country where issued; and, that all the requirements necessary to certify the judgment as official (*auténtica*) be met.

The Supreme Court of Justice of Mexico has decided that judgments issued in foreign probate courts are not enforceable in Mexico. The high court made this exception because it considers it impossible for a

foreign court to dispose of real property located in another country.<sup>7</sup>

The Inter-American Requests and Letters Rogatory Convention of Montevideo, Uruguay, of May 8, 1979<sup>8</sup> allow an interested party to designate an agent to appear before the judicial authority implementing the request or to authorize a representative to pay the required expenses and costs. To have a representative assure payment presents no difficulty since this person does not interfere with the implementation of the request. Rather his purpose is only to pay costs to the central authority of the receiving nation. To permit an agent to intervene in the proceedings (notice, summons, citations or executions of judgments), his Power of Attorney must conform to the standards of the receiving country and to the professional standards required for representation.

### POWERS OF ATTORNEY IN MEXICO

For a foreign Power of Attorney to have effect in Mexico, and for the attorney to intervene in the proceedings, the Power of Attorney must be sent according to the Protocol on Uniformity of Legal Rules on Powers of Attorney. Articles I to XII of this Protocol require a Power of Attorney to be executed before a notary, registrar, court clerk, judge or any other functionary authorized by the law of the country in which it is executed. The Power should attest to the understanding of the executor and his legal capacity and identity. If applicable, it should state the name of the representative who, in the name of the actual party, executes the Power of Attorney, stating that he actually has such representative powers as legitimately may be proven by valid, dated documents. If the Power of Attorney is executed by a legal entity, the existence of the legal entity must be verified and its documents must reflect the legal entity's charter, place of business and purpose. Furthermore, the certification of an instrument granting representative power must conform to the special laws on certification as required by the country where the Power of Attorney will be used.

If there is no International Protocol on Powers of Attorney, it is obvious that certification of the Power of Attorney is required for it to be effective in Mexico. The certification should be accompanied, as is the case for all foreign documents, with a Spanish translation.

If the attorney is to appear in the proceedings requested by the letter rogatory and is to conduct activities before the judicial authority in Mexico, the attorney cannot be a foreigner.<sup>9</sup> The judge executing

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<sup>7</sup>31 Seminario Judicial de la Federación, Cuarta Época, 722.

<sup>8</sup>*Supra*, note 5.

<sup>9</sup>Article 3 (revised) of the Law of Professions, which controls the legal practice, states that an attorney may not be a foreigner. Article 15 of the Law of Pro-

the request cannot permit the appearance in the proceeding of any attorney who does not meet these requirements.

## CASES OF NON-EXECUTION OF REQUESTS

In some cases, despite sending a request which conforms to international or domestic standards, execution may not be possible. The most common such situations are as follows:

- 1) A summons might not be served on the person mentioned in the request if that person has died and no executor has been appointed. Death makes it impossible to carry out the request.
- 2) An execution of judgment or attachment requested cannot be carried out if the specified goods are no longer in the possession of the person to whom the execution is directed.
- 3) When the execution of a civil or commercial judgment is sought on the goods of a person who is in suspension of payments or in a declared state of civil insolvency or bankruptcy. The Law of Bankruptcy or Suspension of Payments prohibits such judicial acts in regard to the goods of the bankrupt. A special proceeding is required for acknowledgements of claims or related collection procedures.
- 4) Execution of judgments, attachments, foreclosures or adjudications of property subject to a security interest in a mortgage bond (*cédula hipotecaria*) in accordance with the Code of Civil Procedure.<sup>10</sup>

In a case such as the immediately preceding example, it is clear that Mexican law prohibits the execution of an inconsistent foreign judgment. This is just one example of legal obstacles encountered as a result of civil or commercial code priorities. It is therefore advisable to check these codes; otherwise, one runs the risk of being unable to execute the letter rogatory.

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Professional Practice, which derives its power from Article 5 of the Constitution and which relates to the exercise of professions in the Federal District in conformance with Article 25 of the same law, sets out the requirements for exercise of the Legal Profession (Licenciado en Derecho). The requirements are: (1) to be a Mexican citizen by birth or naturalization; (2) to be in full enjoyment of civil rights; (3) to possess title legally issued and duly registered to a required diploma, and (4) to obtain from the General Directory of Professions a professional license.

<sup>10</sup>The mortgage bond shall contain a short statement of the deed and conclude with the following stipulation:

By virtue of the above record, the subject property owned by \_\_\_\_\_ is subject to the foreclosure of a mortgage, which is made known to the authorities and the public, so that no attachment, taking of possession, precautionary proceeding or any other act that would obstruct this action or violate the rights acquired under it (by the mortgagee) is carried out.