

Letters Rogatory in Mexico

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Mexico, a signatory to the Inter-American Convention on Letters Rogatory, has a well developed set of rules for presenting letters rogatory in Mexican courts, both federal and state, pursuant to the Mexican Federal Code of Civil Procedure (the “Law”).

In addition to outlining the general rules for presenting letters rogatory in Mexican courts, the Law delineates the specific procedures that must be followed in connection with (1) the service of process upon a Mexican party ordering him to appear in a foreign court, (2) the gathering of evidence and information in anticipation of litigation in a foreign jurisdiction (analogous to discovery in common law systems) and (3) petitions for the recognition and enforcement of foreign judgments in Mexico.

THE GENERAL SCHEME

In general, to be accepted before a Mexican court, a letter rogatory must: (1) appear on the appropriate Inter-American Convention on Letters Rogatory form, (2) be duly notarized in the foreign jurisdiction, (3) be duly apostilled pursuant to the Hague Convention, (4) be translated into Spanish by an official Mexican translator (although the law is silent on whether the translation must be an official one, in practice, all courts will require it as such), (5) describe the nature of the foreign action, and (6) state that which the foreign court is requesting of the Mexican court.

Parties wishing to present letters rogatory in Mexico may expedite the letters in one of two ways. The party may petition the foreign court to directly send the letter rogatory along with the accompanying documents to the Mexican court or corresponding authority, or the party to the foreign action may receive the letter from the foreign court, wherein a Mexican representative (usually the party’s Mexican counsel) is appointed to act in connection with the letter rogatory before the Mexican authorities. In practice, the second alternative is must more effective, as typically neither the foreign court nor the foreign party will be adequately prepared to meet all of the requirements imposed by the Mexican court.

As a general rule, the procedures are the same in both state and federal courts in Mexico. However, when dealing with state courts, in contrast to federal courts, the letter rogatory is not filed directly in the court in which the action is to proceed, but must first be filed with the Office of the President of the State Superior Court. The error of filing the letter rogatory directly in the state court, along with not apostilling or officially translating the documents, is the error most frequently committed by foreign parties presenting letters rogatory in Mexico.

In all cases, the court competent to act upon the letter rogatory is the court representing the jurisdiction in which the object of the letter, either persons or property, is domiciled.



LETTERS ROGATORY REQUESTING SERVICE OF PROCESS ON A MEXICAN PARTY

In addition to the above general requirements, letters rogatory requesting service of process on a Mexican party ordering him or her to appear in a foreign court should be accompanied by a copy of the summons and complaint, any requests for information in connection with the litigation (discovery), and official translations of all documents presented not written in Spanish.

Unlike most common law jurisdictions, in Mexico, a civil law country, service of process must be conducted by an officer of the court and personally served on the defendant. Therefore, the Mexican representative of the foreign plaintiff must present the letter rogatory and accompanying documents to the Mexican court and request that the latter personally serve the defendant named in the foreign action. If this procedure is not followed, a subsequent request by the plaintiff to recognize and enforce the foreign judgment in Mexico will be denied by the Mexican court.

LETTERS ROGATORY FOR DISCOVERY PURPOSES

Typically, Mexican courts will cooperate with a foreign jurisdiction's request for discovery through letters rogatory. However, if (1) the particular manner of obtaining the information is not permitted under the court rules and laws of the Mexican jurisdiction, e.g., inspection of the private files of a company or individual, (2) the discovery request is for documents not specifically identified, or (3) the discovery request does not involve persons or things closely connected to the litigation, then the request will be denied by the Mexican court.

LETTERS ROGATORY FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

Aside from the general requirements for presenting letters rogatory outlined above, for a Mexican court to comply with a letter rogatory requesting the recognition and enforcement of a foreign judgment it is essential that: (1) the defendant was personally served with the summons and complaint to original action and was not otherwise denied due process by the court rendering the judgment; (2) other legal matters are not pending between the parties concerning the same issues; (3) the matter has been adjudged final and conclusive (*res judicata*) (4) recognition and enforcement of the judgment would not be contrary to the public order of Mexico; (5) the judgment does not involve an *in rem* action; and (6) the courts of the country where the judgment was entered recognizes and enforces similar foreign judgments.

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