International Discovery: Gathering Evidence from Around the Globe

Presented By
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These excerpts are taken from the upcoming new book, International Discovery, coming soon from the ABA.
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Introduction

Civil litigations in the United States are becoming an increasingly international practice, requiring litigants and courts to apply foreign and international law in order to resolve domestic cases. International cases frequently require the cooperation of foreign courts and authorities in executing orders of the domestic court. Discovery is one of the principal areas of civil litigation that requires collaboration across national lines and efficacy of court orders beyond jurisdictional boundaries. Although central to the practice of civil litigation in the United States, discovery is virtually unknown in most civil law jurisdictions, which creates a problem for obtaining necessary evidence from these countries.

Understanding how different jurisdictions approach and manage the collaboration across sovereign lines is, of course, critical in cases that involve different jurisdictions. One of the primary legal mechanisms for obtaining discovery in foreign jurisdictions is the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters of 1970 (the “Hague Evidence Convention”). This international convention has been adopted—either through ratification, accession, or succession—in sixty-one countries. The Hague Evidence Convention provides an international legal framework for requesting documents, and in some cases even oral or written testimony that are in or from witnesses in a jurisdiction foreign from the domestic case. However, each contracting state has adopted its own procedures for obtaining documents through the international convention. Additionally, many countries have adopted domestic legislation to either effectuate or supplement the provisions of the Hague Evidence Convention, or to provide an alternative procedure for obtaining the evidence.

Viewed through the prism of civil litigators in the United States seeking evidence in foreign jurisdictions, the first chapter of this book considers the procedures for obtaining evidence in the United States through the Federal Rules of Civil and the Hague Evidence Convention. The book then describes, in successive chapters organized by jurisdiction, the laws that enable foreign litigants to obtain evidence in the respective countries. Each chapter discusses the controlling law on foreign discovery, including the type of evidence obtainable, confidentiality and privilege, alternative dispute resolution, and costs.

With the benefit of the authors’ extensive experiences, each jurisdictional analysis provides a legal, practical, and case-specific review of the laws and challenges that the reader should understand when litigation invokes the laws of that jurisdiction.
Canada
By Brett Harrison and Laura Brazil

The relationship between Canada and the United States is one of the closest and most extensive in the world. This partially results from their sharing the world’s longest undefended border and daily bilateral trade of $1.6 billion. It is also a result of their sharing a legal regime anchored in the tradition of common law. Despite this shared heritage, a number of differences exist between the two nations’ legal systems. One of the major ways that the Canadian system diverges from the U.S. system is in the discovery process. This is compounded by the fact that, unlike many other countries, there is no treaty that governs the taking of evidence as between the two countries.

I. Understanding the Canadian System

The vast majority of civil claims in Canada are pursued through the provincial courts because the federal courts have very limited jurisdiction. As a result, the Canadian discovery process is generally governed by provincial rules of civil procedure. Although each of the Provinces has its own set of rules, they are very similar to one another. The only Province with substantially different rules is Quebec, which is governed by a civil code and follows a discovery process more similar to that of other civil law jurisdictions.

A few of the more significant differences between the U.S. and Canadian discovery processes are:

- Only one representative of a corporate party can be examined.
- An individual being examined must undertake to make inquires of others in order to provide answers to relevant questions asked at the examination.
- Although written interrogatories are not typically utilized, the answers to undertakings provided at the examination are provided in writing (in a manner similar to written interrogatories).
- Once answers to undertakings have been provided, a party has a right to reexamine on those answers.
- There is an implied undertaking that none of the evidence or information disclosed during the discovery process can be used “for any purposes other than those of the proceeding in which the evidence was obtained.”

II. Obtaining Discovery in Canada

The taking of evidence for use in a foreign proceeding is different in Canada than in many other jurisdictions. This is because, unlike many other nations (including the United States), Canada is not a party to the Hague Convention. Accordingly, parties seeking to compel Canadian evidence for use in a

3. Ontario Rule of Civil Procedure 30.1.01.
U.S. proceeding must utilize Letters of Request, also known as Letters Rogatory (Letters). This process involves two steps:

- **First**, the party seeking the evidence must bring a motion in a U.S. court for a Letter seeking judicial assistance from Canada (for ease of reference, the U.S. Motion).
- **Second**, the party must then bring an application in a Canadian court for an order enforcing the Letter, and to require the witness to produce documents and attend examinations under oath in Canada (for ease of reference, the Canadian Application).

Canada’s provincial and federal Evidence Acts contain specific provisions allowing for the enforcement of Letters. Canadian courts take a broad and liberal approach to requests for judicial assistance. As a general principle, they promote the comity of nations and are generally deferential to the decisions of foreign courts. The good news, therefore, is that Canadian courts will order the enforcement of Letters in most cases. However, the decision to enforce Letters is completely discretionary in Canada, and some Canadian courts have refused to enforce Letters based on the exercise of judicial discretion.

The remainder of this section will set out the process for successfully utilizing Letters in Canada, and will discuss some of the common pitfalls that may catch U.S. litigants off-guard. Unless otherwise specified, the process for obtaining documents is the same as for oral testimony.

### III. The U.S. Motion

#### A. Procedure

A U.S. litigant seeking to compel a Canadian to provide evidence must start by bringing an interlocutory motion or application before the court in which the U.S. litigation is pending. Though Canadian law does not specifically require that the U.S. motion be made on notice to other parties to the lawsuit, it does require that the Letter be issued through a hearing.

#### B. Relevant Law

The U.S. federal rules governing the issuance of Letters are described above in the section specific to the United States.

#### C. Contents and Scope

The Letter, together with the accompanying affidavit filed in support of the U.S. Motion, should reflect the factors that later will be considered by the Canadian court when it is asked to enforce the Letter. The affidavit is an important component of the U.S. motion for two reasons. **First**, it will itself contain useful evidence that will be referred to by the Canadian court. **Second**, although the Canadian court will show deference to the U.S. court, the Canadian court will likely “look behind” the Letter to see what supporting evidence was before the issuing U.S. court. Where the affidavit relies on the

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knowledge or belief of the swearing party, the source of that knowledge or belief must be explicitly stated—otherwise, a Canadian court will be wary of accepting the evidence contained in the affidavit.7

While the exact information included in the Letter and affidavit will depend on the particular circumstances of each case, there are some general principles that provide a helpful starting point when thinking about how to craft the U.S. motion.

• In view of the factors that will be considered by a Canadian court (which are described below), both the Letter and affidavit should be as specific as possible about the Canadian evidence sought.

• The Letter and affidavit should establish that the assistance of the Canadian court is necessary in the interests of justice. In particular, the Letter should state that the issuing U.S. court was shown that justice cannot be served between the parties unless the Canadian evidence is made available.

• It is also necessary for the Letter and affidavit to establish that the Canadian evidence cannot be obtained without the assistance of the Canadian court, which often requires establishing that the proposed witnesses will not voluntarily submit to examination. It is not sufficient to make a bare assertion that evidence sought is otherwise unavailable.8

• The Letter and affidavit should state that the Canadian evidence is intended for use in a pending U.S. litigation.

• The Letter and affidavit should also establish that there is a substantial likelihood that the Canadian evidence will be obtained in the manner proposed by the Letter.

• Ensure that the Letter includes all of the evidence you will require. The Letter will be limited by its terms and a Canadian court will not broaden the scope of the Letter to compel production or testimony that was not ordered by the U.S. court.9

The contents of the U.S. motion necessarily convey the scope of the requested discovery. U.S. and Canadian laws on the scope of discovery vary considerably. The rules of civil procedure governing each Province require that the requested discovery be relevant to a matter at issue in the case. Certain provinces, including Ontario, have recently narrowed the test for relevance. The previous test required only that evidence have a “semblance of relevancy,” while the new test is whether the evidence is “relevant to any matter” in dispute.10 This narrower scope excludes evidence that could be relevant or that concerns issues that that could be in dispute. Both the old and the new tests for relevance are narrower than those under the U.S. Federal Rules. While Canadian courts can narrow the scope of Letters, applications have been completely dismissed on the basis that the information sought was overly broad and that they constitute a mere “fishing expedition.”11

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10. Ontario Rule of Civil Procedure 31.06.

Canadian courts will specifically consider the scope of the requested discovery when considering a Letter directed to non-parties. For example, Canadian courts will weigh the burden being placed on the non-party witness compared to the need of the party requesting evidence. The more onerous a request on a non-party, the less likely it will be granted.12

IV. The Canadian Application

A. Procedure

Once the U.S. litigant has obtained a Letter from a U.S. court, the U.S. litigant must then bring an enforcement application to a Canadian court located in the Province where the requested witness resides. The Canadian Application, including a notice of application and supporting affidavit, must be prepared and served by a lawyer licensed in that Province.

B. Relevant Law

Enforcement of Letters is governed principally by each Province’s Evidence Act. Canadian judges are not required to enforce a Letter, and Canadian courts have commented that Canadian Applications should not be granted “routinely.”13 For instance, Section 60 of Ontario’s Evidence Act provides that an Ontario Court “may”—not “shall”—order the examination of a witness in Ontario (and order that witness to appear for examination) whenever it is made to appear that a court or tribunal of competent jurisdiction in a foreign country has duly authorized, by commission, order or other process, for a purpose for which Letters could be issued under the Rules of Civil Procedure, the obtaining of the testimony in or in relation to an action, suit or proceeding pending in or before such foreign court or tribunal.14

Nevertheless, judicial authority indicates that legislation like Section 60 will be read broadly with the aim of fulfilling, wherever possible, foreign requests for the gathering of evidence.15 As a result, there is a rebuttable presumption that foreign courts acted responsibly in issuing Letters.16

The law governing enforcement of Letters also has been influenced by provincial civil procedure rules governing the examination of non-party witnesses by Canadian litigants. As an example, Rule 31.10 of the Ontario Rules of Civil Procedure provides that a Canadian court will not grant a Canadian litigant’s request for an order compelling the examination of a non-party witness unless the court is satisfied that:

• The moving Canadian party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the non-party witness he seeks to examine; and
• It would be unfair to require the moving Canadian party to proceed to trial without the opportunity of examining the non-party witness; and
• The examination will not result in unfairness to the non-party witness the moving Canadian party seeks to examine.

Ontario courts have held that the requirements of Rule 31.10 need not be strictly complied with in the context of an application to enforce Letters brought by non-Canadian litigants. But there is case law to the contrary suggesting that Letters may not be enforced where no attempt has been made first to obtain the voluntary testimony of the requested witness.17

C. Contents and Scope
Section 46 of the Canada Evidence Act18 and parallel sections of provincial Evidence Acts set out four statutory preconditions to the enforcement of a Letter:

• The foreign proceeding is already pending or underway before a foreign court or tribunal of competent jurisdiction;
• The Letter was granted at a hearing of the foreign court;
• Enforcement of the Letter is necessary to do justice in the foreign proceeding; and
• The evidence sought is relevant to a substantial issue in the foreign proceeding (e.g., it is not required just to corroborate existing evidence or to attack witness credibility).

Once a judge is satisfied that these four preconditions have been met, he will consider whether to exercise his discretion to enforce a Letter based on six discretionary factors: 19

• The evidence sought is relevant;
• The evidence sought is necessary for trial and will be adduced at trial, if admissible;
• The evidence is not otherwise obtainable;
• The order sought is not contrary to public policy;
• The documents sought are identified with reasonable specificity; and
• The order sought is not unduly burdensome, bearing in mind what the relevant witnesses would be required to do were the action to be tried in Canada.

The judge cannot enforce a Letter unless the parties satisfy the fourth discretionary factor, which is that the order sought not be contrary to public policy. The remaining factors are “useful guideposts” and “essential criteria” to be considered in exercising discretion.20 Although the failure to meet all six

20. Id.
discretionary factors is not necessarily fatal to an application, an applicant is most likely to succeed if he adduces compelling evidence on all six criteria.

Evidence in support of each of the four pre-conditions and six discretionary factors should be set out in one or more affidavits. Hearsay statements in the affidavits are only admissible to prove non-contentious facts. In preparing affidavits, counsel should consider whether any supporting documents, such as commercial agreements, are subject to confidentiality orders in the U.S. Documents will become public once they are filed with the Canadian court.

In addition to the factors outlined above, the judge must balance two competing principles: (i) doing what justice requires, and (ii) protecting Canadian sovereignty. In the case of an application to enforce a Letter, “Canadian sovereignty” means the unfair burden on, or prejudice to, the person who is the target of the Letter.

V. Discretionary Factors

A. Relevancy

Counsel must ensure that the requested evidence is directly related to the allegations set out in the foreign complaint. In Pecarsky v. Lipton Wiseman Althbaum & Partners, the Ontario Superior Court of Justice refused to enforce a Letter when there was considerable uncertainty as to whether the documents requested were properly related to the issues in the U.S. litigation. The court found that the addition of the words “among other things” to the U.S. complaint was insufficient to justify the enforcement in Canada of such a broad document request.

Canadian courts have discretion to enforce a Letter only in part, such as by limiting the scope of questions to be asked during examination or documents ordered to be produced in accordance with Canadian laws of evidence and civil procedure. However, if a Canadian court finds the request too broad, it may reject the request in its entirety.

B. Necessary for Trial

Although Canadian courts often only order the taking of commission evidence for the purpose of gathering evidence for trial, there is no rule against ordering commission evidence in relation to pre-trial proceedings.  

C. Evidence Not Otherwise Obtainable

This factor has been interpreted broadly. The applicant need not prove that there is no available evidence on the subject at issue. Instead, it must only show that it cannot otherwise obtain evidence of the same value as that sought through the Letter. For example, documentary disclosure, particularly when it is redacted, is not of the same value as the testimony of a person who can explain the documentation.

In order to satisfy this factor, the applicant should adduce evidence on the attempts it has made to obtain the evidence cooperatively from the Canadian person or from other parties to the US litigation. Evidence should also be adduced showing that a witness is uniquely knowledgeable about the issues in dispute or that no other available documents contain the needed information.

D. Not Contrary to Public Policy

Canadian courts cannot enforce Letters that are contrary to Canadian public policy or otherwise unduly prejudicial to Canada’s sovereignty or its citizens. For example, Canadian public policy protects deponents in civil cases through the deemed undertaking rule, which prohibits the use of testimony given in an examination for discovery from being used against the deponent in another proceeding. Canadian courts will not give effect to Letters that compel testimony that will be used for the purpose of commencing a fresh criminal or civil case against the deponent. Canadian courts have some tools available to ensure that Letters comply with public policy, such as narrowing the Letter or setting terms and conditions on its enforcement, such as on the manner in which the disclosure is made or by imposing sealing orders on court documents.

E. Reasonable Specificity


33. Id.
The information sought in the Letter should be specific. Counsel should avoid requesting broad categories of documents such as correspondence, contract, and memorandums, unless relevance can be clearly established for each broad category. It is necessary to adduce evidence to show how the evidence will be used to establish causes of action in a foreign trial. The request also must be sufficiently specific to permit the respondent to identify and locate the information.\footnote{34}

**F. Not Unduly Burdensome**

Among other factors, Canadian courts will consider whether the timing of the request makes it unduly burdensome. In *j2 Global Communications Inc v. Protus IP Solutions Inc.*, the court noted that the request for production was brought only six weeks before the U.S. trial, leaving little time for the responding party to comply with the request. The applicant provided no explanation for the delay. The short timelines for production contributed to the judge’s finding that the request was unduly burdensome.\footnote{35}

In considering whether the request is unduly burdensome, Canadian courts will also consider whether the request is proportional. In Ontario, for example, courts must always apply the guiding principle of proportionality when making orders related to discovery. The court must consider whether the proposed order is proportionate to “the importance and complexity of the issues, and to the amount involved, in the proceeding.”\footnote{36} In determining whether the order would be proportional, courts will consider factors such as the time and expense required to answer a question or produce a document, and whether requiring a person to answer a question would cause him undue prejudice.

To lessen the burden of the Letter, counsel should always bring the request to the U.S. and Canadian courts at the earliest possible time and provide an explanation for any delay. Counsel should consider how the production of documents or oral examinations can be obtained with minimal interference to the non-party’s business operations and daily activities. It is helpful to demonstrate a willingness to reimburse the non-party for all reasonable and documented expenses that she may incur in responding to the Letter. Offering compensation has the additional benefit of creating an opportunity to open settlement discussions with opposing counsel that may eliminate the need to obtain and enforce Letters.

**V. Deposition Tips and Traps**

Canadian law will generally govern depositions conducted in Canada pursuant to Letters. The U.S. and Canadian laws involving deposition procedures (including the procedure for making objections) differ in many significant respects. For instance, generally a party seeking testimony from a corporate party is only entitled under Canadian law to examine one representative of that corporation, unless consent or leave of the court is obtained. Many U.S. litigants do not know that they nevertheless can conduct their Canadian depositions under the U.S. Federal Rules—provided their Letters are appropriately drafted.

Careful drafting is especially important in the context of depositions. An appropriately drafted Letter, for example, can ensure that the deposition be conducted in Canada by counsel of record in the

\footnote{34} *j2 Global Commc’ns Inc. v. Protus IP Solutions Inc.* (2009), 2009 Carswell Ont. 7487 at ¶ 12(e), 183 A.C.W.S. (3d) 66 (Ont. Sup. Ct. J).

\footnote{35} *Id.* at ¶ 12(f).

\footnote{36} Rules of Civil Procedure, R.R.O. 1990, Reg. 194, 1.04(1.1).
United States. Similarly, an appropriately drafted Letter can allow for the videotaping of depositions, a practice not generally followed under the Canadian rules.

U.S. litigants should be aware that Canadian courts may require them to pay the costs—including attorneys’ fees—incurred by a non-party deponent pursuant to a Letter. While the amount of such costs will depend on the extent of discovery necessary, Canadian courts will impose reasonable limitations. In one recent case, for example, the Ontario Superior Court of Justice ordered that the applicants pay the non-party deponent’s costs up to a maximum of $6,000.37

U.S. litigants should also be aware that unsuccessful applications can attract high cost consequences. Two recent Ontario Superior Court of Justice costs rulings indicate that an unsuccessful applicant could be ordered to pay the full costs of the party who successfully opposed the issuance or enforcement of Letters.38 In one of these cases, the court ordered that the unsuccessful applicant pay the successful party’s costs in the amount of $107,789.73.39 In the other matter, the full indemnity costs award was upheld by the court of appeal.40 Ordering full costs is unusual in Canadian litigation, as the unsuccessful party in litigation typically only pays a portion of the successful litigant’s costs.

U.S. litigants should also be aware that, unlike under U.S. law, Canadian law generally compels a deponent to answer incriminating questions (but protects the deponent against subsequent use of the incriminating testimony or of evidence derived from that testimony). Thus, in *EchoStar Satellite Corp. v. Quinn*, the British Columbia Supreme Court would not refuse to enforce a Letter seeking the deposition of a Canadian witness solely on the grounds that enforcement might incriminate the witness in related proceedings.41

VI. Conclusion

Despite the similarities between the U.S. and Canadian legal systems, it is far from simple for a U.S. litigant to obtain discovery in Canada. It is important that U.S. lawyers be well-informed about the process of obtaining and enforcing Letters. It is equally important to involve Canadian counsel early in the process to ensure that the evidence sought is gathered in the fastest and most efficient manner possible.

39. Id. at ¶ 12(f).
40. Id.
### Discovery Procedures in Canada[^42]

| Application of Hague Convention | • Canada is not a party to the Hague Convention.  
|                               | • Instead, parties seeking evidence must obtain Letters of Request (also known as Letters Rogatory) from a U.S. Court.  
|                               | • Enforcement in Canada governed by provincial and federal Evidence Acts and common law. |
| Scope of Documentary Discovery | • A party must disclose the existence of every document relating to any matter in issue in an action that is or has been in its power, possession, or control.  
|                               | • Documents must be “relevant to a matter in issue” in the case. This is generally a very low threshold and the court will typically exercise its discretion to compel disclosure, but disclosure is not typically as broad as in the U.S.  
|                               | • “Document” means any matter expressed or described upon any substance by means of letters, figures or marks. This includes electronic documents, voice recordings, and computer data.  
|                               | • Courts will weigh the burden being placed on the witness compared to the need for the documents. |
| Scope of Oral Discovery        | • Witnesses may be questioned on anything that is relevant to a matter in issue in the case. The pleadings define the scope of what is relevant.  
|                               | • Witnesses must provide relevant, nonprivileged answers according to their information, knowledge, and belief.  
|                               | • If a witness does not have an answer to a relevant question, the witness must undertake to supply an answer to that question in writing at a later date.  
|                               | • A party may examine any other party adverse in interest.  
|                               | • The party seeking oral discovery from a corporate party is entitled to examine only one representative of its choice, absent consent to examine additional representatives (which is rarely given). The representative may be an officer, director, or employee. |

[^42]: Discovery in Canada is governed by the Rules of Civil Procedure in each province. While the rules in each province are similar (except for those in the Province of Quebec, which is based on civil law), they are not identical; as a result, thus there will be differences in the specific procedures followed in each province. This chart reflects Ontario’s Rules of Civil Procedure.
| Written Interrogatories | Canada does not have a written interrogatory process similar to U.S. Federal Rule of Civil Procedure 33.  
| | It is possible, however, for the examining party to receive written answers by electing to conduct its examination in writing. Written examination is conducted by serving a list of questions on the party being examined. It is also possible (but rare) for a court to grant leave allowing a combination of written and oral discovery. Written examinations are governed by the same rules as oral discovery, and subject to additional rules.  
| | If a witness is unable to answer a question on oral discovery, that witness may undertake to make inquiries and supply an answer to that question in writing at a later date. |
| Costs | Each party is responsible for the costs of producing its documents for discovery.  
| | Parties only have an obligation to produce copies of documents for inspection, not to provide copies of documents. If a party wants copies of documents, it will be required to pay for them unless an arrangement can be reached between the parties.  
| | A party seeking to examine a third party will generally be responsible for the costs associated with the examination. |
| Confidentiality and Waiver of Protection | Evidence obtained in discovery in one action generally cannot be used in other actions.  
| | Evidence obtained in discovery is protected by a “deemed undertaking” that the evidence may not be used for any purposes other than those of the proceeding for which it was obtained.  
| | This protection is lost when the evidence is filed in a court document or referred to in a public court hearing.  
| | A party can waive this protection by consenting to the use of its evidence in other actions.  
| | Evidence obtained in discovery can also be used to impeach a witness in other actions. |
## Third-Party Discovery
- Canadian courts are reluctant to allow the discovery of third parties.
- The party seeking to examine a third party must satisfy the court that:
  - It has been unable to obtain the information elsewhere;
  - It would be unfair to require the party seeking discovery to go to trial without examining the third party; and
  - The discovery will not unduly delay the trial, cause unreasonable expense to other parties, or result in unfairness to the third party.

## Other Sources of Useful Information
Mexico

By José Antonio Rodríguez Márquez

I. Introduction

There is not only a change of language when crossing the border between Mexico and the United States, there is a change of culture; and law as a cultural product does not escape these changes. Mexico and the United States belong to two different legal cultures. Mexico’s legal culture derives from Latin or French-German and the United States’ legal culture from the common law. The reasoning in the former is deductive and the one in the latter is inductive. These different approaches in reasoning may lead to different conclusions and different interpretations of both facts and laws.

II. Constitutional Grounds

The steps to obtain evidence in Mexican courts to be used in civil proceedings in the United States deserve a short analysis on the grounds to get said evidence, beginning with the constitutional basis and the organization of the country. According to Article 43 of the Political Constitution of the United Mexican States (Constitution), Mexico is a federal republic formed by thirty-one states and one federal district.¹

A. Prevalence of International Treaties

Pursuant to Article 133 of the Constitution, the Constitution and international treaties or agreements executed by the executive branch and ratified by the senate are the supreme law of the country. This includes the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, March 18, 1970, in force in Mexico as of September 25, 1989 [the Convention].

B. Federal Resolutions

The Supreme Court of Justice has reaffirmed the supremacy of international treaties signed by the executive branch and ratified by the senate in different resolutions (tesis). By means of those resolutions, the federal courts have reaffirmed, among other principles, the following: (i) that international treaties are part of the supreme law of the country provided they follow the provisions of the Vienna Convention on the Law of Treaties among the States and International Organizations or Among International Organizations;² (ii) that by executing international treaties, following the fundamental principle of the international customary law, pacta sunt servanda, Mexico must fulfill its obligations to the international community, which cannot be disregarded by invoking provisions of domestic law, and which are a liability of international nature; and (iii)

¹. Constitución Política de los Estados Unidos Mexicanos [Constitution], as amended, art. 43, 5 de Febrero de 1917 (Mex.).
that the Constitution, the general laws of the Congress of the Union, and international treaties form a superior legal order of national nature.³

C. Organization of the Mexican territory

Each political entity (thirty-one states and the federal district) has its own code of civil procedure, and there is also a Federal Code of Civil Procedures (FCCP). Commercial matters are legislated exclusively by the federation pursuant to Article 73, paragraph X of the Constitution. The Code of Commerce regulates commercial matters including commercial legal proceedings.

D. Legal Frame to Obtain Evidence

The main regulations for obtaining evidence in civil and commercial matters to be used in legal proceedings abroad are contained in the Convention and the FCCP, fourth chapter, titled “On Procedural International Cooperation.” The Code of Commerce, the state Codes of Civil Procedures and the Federal District Code of Civil Procedure also contain some regulations for evidence to be used abroad.

III. The Hague Convention

Mexico and the United States are signatory states to the Convention. It may be thought that the Convention contains common ground for taking evidence in both countries, but this is not completely accurate. Instead, Mexico made some reservations to certain provisions of the Convention and this leads to differences between it and the United States. Under the Convention, Letters of Request, also known as Letters Rogatory, are used to obtain international cooperation to take evidence abroad. The Convention provides that a Letter of Request shall not be used to obtain evidence that is not intended for use in judicial proceedings, commenced, or contemplated. As provided by the Convention, “other judicial acts” do not cover the service of judicial documents or the issuance by which judgment or orders are executed or enforced, or orders for provisional or protective measures.⁴

A. Reservations and Declarations

One of Mexico’s important reservations to the Convention is that Mexico will not execute Letters of Request issued for the purpose of obtaining pretrial discovery of documents as known in common law countries, such as the United States.⁵ Pursuant to Mexican law, Mexico can only comply with Letters of Request issued for the purpose of obtaining the production and transcription of documents when the following requirements are met: (i) the judicial proceeding has been commenced; (ii) the documents are reasonably identifiable as to the date, subject, and other relevant information, and the request specifies those facts and circumstances that led the requesting party to reasonably believe that the requested documents are known to the

³. See Federal Courts’ Judgments (Tesis): Seminario Judicial de la Federación y su Gaceta [S.J.F.G.], Novena Época, tomo XXV, Abril de 2007, Página 5-6 (Mex.).
⁵. See Convention, supra note 4, art. 23.
person from whom they are requested, or that they are in his possession, or under his control or custody; and (iii) a direct relationship exists between the evidence or information sought and the pending proceeding.\(^6\)

Another reservation by Mexico is not to accept Letters of Request in a language other than Spanish.\(^7\) A translation of the first paragraph of Article 271 of the FCCP states that: “The judicial proceedings shall be written in the Spanish language. Any document filed in a foreign language shall be accompanied with the relevant translation into Spanish.” The Letter of Request sent to the Ministry of Foreign Affairs (the central authority in Mexico for the purposes of the Convention) or judicial authorities shall be written in the Spanish language or shall otherwise be accompanied by a translation into said language.\(^8\)

Mexico has also made other reservations to the Convention, for example: (i) regarding the appointment of a commissioner in aid of civil or commercial proceedings commenced in the courts of another contracting state, and (ii) regarding the use of measures to compel by diplomatic officers and consular agents.\(^9\)

Mexico also declared that Letters of Request may be transmitted to its judicial authorities through the central authority and through diplomatic, consular, or judicial channels (directly sent from the foreign court to the Mexican court), provided that in the latter case all legal signature requirements relating to legalization of signatures are fulfilled.\(^10\)

The United States has made declarations by either explaining or interpreting provisions of Articles 4, 8, 16, 17, and 18 of the Convention. None of them are relevant for the purposes of this chapter.

B. Letters of Request

According to Article 3 of the Convention, a Letter of Request shall specify:

(a) the authority requesting its execution and the authority requested to execute it, if known to the requested authority;
(b) the names and addresses of the parties to the proceedings and their representatives, if any; (c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto; (d) the evidence to be obtained or other judicial act to be performed. Where appropriate, the Letter shall specify, inter alia (e) the names and addresses of the persons to be examined; (f) the questions to be put to the persons to be examined or a statement of the subject-matter about which they are to be examined; (g) the documents or other property, real or personal, to be inspected; (h) any

\(^7\). See Convention, supra note 4, art. 4.
\(^8\). See Status Table, supra note 6.
\(^9\). See Convention, supra note 4, art.17 and 18.
requirement that the evidence is to be given on oath or affirmation, and any special form to be used; (i) any special method or procedure to be followed under Article 9. A Letter may also mention any information necessary for the application of Article 11. No legislation or other like formality may be required.

Regarding compliance with the requirements for a Letter of Request, Article 9 of the Convention states that:

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed. However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties. A Letter of Request shall be executed expeditiously.11

Also in the execution of the Letter of Request, pursuant to Article 11 of the Convention:

The person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse to give evidence (a) under the law of the State of execution; or (b) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or, at the instance of the requested authority, has been otherwise confirmed to that authority by the requesting authority. A Contracting State may declare that, in addition, it will respect privileges and duties existing under the law of States other than the State of origin and the State of execution, to the extent specified in that declaration.

C. Privilege

Neither Mexico nor the United States made declarations or reservations to the Convention regarding privilege; however, for the purposes of this chapter it is advisable to review the grounds and development of privilege in both legal systems, looking to their federal jurisdictions.

United States Federal Rule of Evidence 501 deals with privilege; likewise, the Mexican Federal Criminal Code, in Articles 210, 211, and 211 bis, provide regulations that protect certain privileges. When describing U.S. Federal Rule of Evidence 501, it has been said that the common law governs privilege. To guide privileges in the federal courts, Congress adopted Rule 501. The rule specified that except as otherwise provided

11. According to the Status Table, in the line for “Time for execution” the page corresponding to the United States sets forth “No information available,” and in the one for Mexico “Between 2 and 6 months, approximately.” Status Table, supra note 6.
by Act of Congress or by other federal rules, privileges in the federal courts would be
governed by the “principles of the common law as they may be interpreted by the courts
of the United States in the light of reason and experience.”

The Mexican Federal Criminal Code forbids the revelation of secrets by an
individual who: (i) without legal cause, to the detriment of one who may be adversely
affected, discloses a secret or reserved communication known or received as a
consequence of his employment, position, or office; (ii) makes a disclosure when
rendering professional or technical services, or by an officer or public employee, or
when the secret disclosed or published is of industrial nature; and (iii) discloses, reveals,
divulges, or uses illegally or to the detriment of another, information or images obtained
in the interception of private communications.

The federal courts in Mexico have developed very few judgments about
privileges. There are just a couple of resolutions in the matter regarding the waiver to
render testimony on the facts from third parties, that is, those exposed to
professional secrets (surgeons, lawyers, financial institutions, accountants, and priests,
among others) cannot disclose client information received while exercising their
professional duties unless authorized. However, a situation where a client authorizes its
lawyer to provide third parties with case information would not violate the professional
secret rule.

D. Blocking Statutes

The United States does not have any blocking statutes in connection with the
Convention. Mexico has as a blocking statute in the Federal Law of Transparency and
Access to Governmental Public Information (Ley Federal de Transparencia y Acceso a
la Información Pública Gubernamental) (Law of Transparency) as provided by the
Mexican Authorities or obtained from the replies to the “2008 Evidence Convention
Questionnaire.” The Law of Transparency was published in the Official Diary of the
Federation on June 11, 2002, and became effective the next day.

The Law of Transparency seeks to guarantee public access to information
possessed by (i) the three branches of the Union, (ii) any entity with legal autonomy
established by the Constitution, and (iii) any federal entity. This law seeks the
promotion of transparency in public management by means of the dissemination of
information produced by the subjects of this law; to guarantee the protection of personal
data in possession of those subjects; and to encourage the accountability process to
citizens, as well as to handle the organization, classification, and management of
documents. The Law of Transparency also regulates exceptions to the “principle of
openness” relating to public figures, etc.; the period of reserve; and the scope of its
applicability. In line with the Law of Transparency, the Federal Government created the
autonomous body called the Federal Institute to Access Public Information, which has
operative, budgetary, and decision autonomy.

13. See Código Penal Federal [C.P.F.] [Federal Criminal Code], as amended, arts. 210, 211 and 211 bis,
14 of Agosto de 1931 (Mex.).
14. See Federal Courts’ Judgments (Tesis): Seminario Judicial de la Federación y su Gaceta [S.J.F.G.],
Octava Época, tomo XI, Mayo de 1993, página 277; and Novena Época, tomo XXVIII, Septiembre de
2008, página 1411 (Mex.).
15. See Status Table, supra note 6.
Ten years after its enactment, the Law of Transparency has become, in practice, a very effective tool for obtaining information regarding transactions involving entities subject to the law dealing with private entities. This has become evident in different legal proceedings in Mexico, including cases where a foreign party is involved.

IV. International Procedural Cooperation

As previously mentioned, the FCCP, fourth chapter, “On the International Procedural Cooperation,” is the Mexican legislation that contains or comprises regulations for federal civil disputes and for the application of supplemental legislation in commercial proceedings. Article 1054 of the Commercial Code also sets forth that if necessary, the local procedural law may apply.

A. Lack of Commitment

The performance by Mexican courts of notifications, reception of evidence, or other activities of mere judicial proceedings requested to be effective abroad do not imply in a definitive way the recognition of the jurisdiction (competence) assumed by the foreign court, nor the commitment to execute the judgment that may be issued in the corresponding procedure.

B. Foreign Public Documents and Notifications

According to the applicable law, public documents from abroad have public faith when legalized by the corresponding Mexican consular authorities. Public documents transmitted internationally by official means to have legal effects do not need authentication.

Those legal proceedings of notifications and reception of evidence in national territory, to be effective abroad, may be performed at the request of the interested party.

C. Letters of Request

The FCCP defines Letters of Request as communications forwarded abroad containing a request for performance of the proceedings necessary in the process where they are issued. Those communications shall contain the necessary information, corresponding certified copies, any other certificates, copies for the opposing parties, and any attachments. There are no additional form requirements for foreign Letters of Request.

Letters of Request may be forwarded to the requested agency by the interested parties themselves, by judicial means, by the intermediation of the consular officers or diplomatic agency, or by the competent authority of the requested state. The Letters of

16. See Código de Comercio (COD.COM.) [Commercial Code], as amended, art. 1054, 7 de Octubre de 1889 (Mex.).
17. See Código Federal De Procedimientos Civiles [F.C.C.P.] [Federal Code of Civil Procedure], as amended, art. 545, 24 de Febrero de 1943 (Mex.).
19. See F.C.C.P., art. 546; COD. COM., art. 1248.
20. See F.C.C.P., art. 547.
22. See Id., art. 551.
Request transmitted by official means do not require authentication, and those forwarded abroad only need the authentication requested by the laws of the country where they must be implemented. Letters of Request from abroad received in a language other than Spanish must be accompanied with a corresponding translation. Save for evident deficiency or objection by a party, the translation presented shall be used.

D. Applicability of National Law and Simplification of Forms

Letters of Request received from abroad shall be implemented according to national laws. The requested court may, upon request of the foreign court or the interested party, grant a simplification of formalities or change formalities from the domestic formal requirements when the requested change is not harmful to the public order and is specifically based on constitutional warranties. The request must contain a description of the formalities requested for the performance of the Letter of Request. Note that under FCCP, a party answering an interrogatory or deposition cannot be assisted by counsel.

In any case shall not be allowed that a party answering an interrogatory of depositions be assisted by his attorney, court representative, nor by any other person; neither give a copy of the questions, nor a time to be advised; but if the answering person does not speak Spanish, may be assisted by an interpreter, if necessary, and in this case, the court shall designate such interpreter. If the answering party requests so, his answers shall be transcribed in his own language too, with the participation of the interpreter.

Art. 107, F.C.C.P.

The requested Mexican court shall forward the performance of Letters of Request abroad by duplicate original copies, and shall keep a copy as evidence that the document was sent, received, and performed.

E. Production of Documents and Witnesses

The obligation to produce documents or present information in foreign proceedings does not include an obligation to produce documents (or copies) identified in general or overbroad requests. In this sense, a national court may not act or allow a party to conduct a general inspection of records that are publicly available, except in those cases authorized by national laws. For this purpose, it is necessary that the interested party or authority proves before the competent court that subject matter of the requested documents or information is indeed related to the pending proceeding.

23. See Id., art. 552.
24. See Id., art. 553; Cod. Com., art. 1055, para. 2, (setting forth that those documents drafted in a foreign language must be filed with the corresponding translation into English).
26. See F.C.C.P., art. 556. See also Cod. Com., art. 1074 (following the provisions of F.C.C.P., art. 550, 556).
27. See F.C.C.P., art. 561.
When the production of witness evidence or the testimony of a party is requested for a procedure abroad, the deponents may be cross-examined both oral and directly.28

F. Arbitration

Commercial arbitration and commercial matters in Mexico are of federal nature by Constitutional provision. The judicial assistance for commercial arbitration is a concurrent competence between federal and local courts, but the applicable arbitral law is the same.

At the end of the 1980s and the beginning of the 1990s, Mexico started a very important economic transformation, from one of the most protective economies to one of the most open ones. This change is reflected, among other matters, in the alternatives to resolve commercial disputes, domestic and international ones alike.

Instead of promulgating a new law for commercial arbitration, Mexico took the route to incorporate the arbitral legislation to the Commercial Code, in the Fourth Title of said body of mercantile provisions. The Mexican commercial arbitration legislation adopted the UNICITRAL Model Law, which is the model of law generally adopted by the countries that are members to the United Nations when starting their arbitral laws and practice with a model of law known worldwide.

In 1989, Mexico adopted the Model Law with some modifications, such as the limitation that any arbitration held in Mexico had to be conducted in Spanish; but in 1993 it adopted verbatim the UNICITRAL Model Law, allowing international arbitrations to performed in any language agreed to by the parties, or determined by the arbitral tribunal in cases of lack of agreement among those involved in the dispute.

The Mexican arbitration legislation adopted a monist system; therefore, the provisions for either international or domestic arbitrations are the same. In 2011, a new chapter, Chapter X, was added to the Fourth Title of the Commercial Code (“On the Judicial Assistance in the Commercial Settlement and Arbitration”) seeking—and in many instances, successfully—to more precisely regulate the method of judicial participation in arbitration, when needed.

In 1971, Mexico became a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention of 1958), giving certainty to the users of international arbitration that the awards shall be executed. Mexico has also been a party, since 1978, to the Inter-American Convention on International Commercial Arbitration of 1975. Likewise, Mexico has executed certain commercial and investment treaties, bilateral and multilateral, containing arbitration as a method of resolving disputes.

Currently, arbitration in Mexico is an institution to resolve commercial disputes. In general, the outcome of arbitrations in connection with the execution of arbitral awards, either domestic or international, has been effective. Mexican courts and practitioners better understand the application of arbitration. Given the confidentiality of arbitration, there are no statistics on the results of arbitration in Mexico; however, the

28. See F.C.C.P., art. 562; F.C.C.P., art. 178 (stating that “[w]hen a witness leaves to answer any point, or has incurred in contradiction, or has expressed himself with ambiguity, the parties may call the attention to the court, in order that, if the court deems appropriate, demands to that witness the corresponding answers and clarifications”); see also Cod. Cost., art. 1269; Código de Procedimientos Civiles para el Distrito Federal [C.P.C.D.F.] [Code of Civil Procedure for the Federal District], as amended, 21 de Septiembre, art. 362 bis (Mex.).
resolutions of the federal courts have been issued in favor of arbitration, and a set of judgments in favor of arbitration is growing.

The arbitrations that are performed in Mexico are subject to the arbitral rules of international institutions, such as the International Chamber of Commerce and the International Centre for Dispute Resolutions of the American Arbitration Association. There are also arbitrations conducted according to the rules of Mexican institutions, both domestic and international arbitrations, such as the Center of Arbitration of Mexico (CAM) and the National Chamber of Commerce of Mexico City (CANACO).

G. Mediation

Regarding mediation, this practice has taken a different route. In spite of the fact that Mexico is a federal republic, in general the changes and adoption of new legal paths come from the federation and do not come from the states. In the case of mediation, the states, and not the federation, have led the way. Mexico is formed by thirty-one federal entities, or states. Currently, twenty-nine of those federal entities have enacted laws regulating alternative dispute resolution methods, particularly mediation or conciliation, or both.

In addition to those efforts, the private practice of mediation has also developed. In this front are the activities of the Asociación para la Resolución de Conflictos, A.C. (ARCO) (established in 2007), Instituto Mexicano de la Mediación, International Centre for Dispute Resolution of the American Arbitration Association, and the National Chamber of Commerce of Mexico City (CANACO).

In 2008, Article 17 of the Federal Constitution was amended to foresee the laws of alternative dispute mechanisms. On February 5, 2017, the Federal Constitution was amended again with Article 73, to add a new paragraph, XXIX-A, to determine that the federal congress is the one with the capacity to issue the general laws establishing the principles and bases of alternative dispute resolution mechanisms. Due to the later amendment to the Constitution, the federal congress has a term of 180 days to issue the general law mentioned above. It is expected that such general law might follow either the pattern of the UNICITRAL Model Law on Commercial Conciliation, or the law of Mexico City, with the limitations previously stated.

V. Conclusion

Obtaining evidence in Mexican courts to be used in civil proceedings in the United States is possible. The steps and formalities contained in the Convention, the Reservations made by Mexico, and the corresponding provisions of the Federal Code of Civil Procedure, and if any, provisions of the corresponding Local Civil Procedure Code, need to be followed, with the understanding that some of the formalities may be simplified. It is recommended to seek the advice of your Mexican counsel to succeed in this endeavor.
### Central Authorities

<table>
<thead>
<tr>
<th>Contact Information</th>
<th>Mexico-Central Authority (Art. 2) and practical information</th>
</tr>
</thead>
</table>
| **Address**         | Directorate-General of Legal Affairs, Ministry of Foreign Affairs  
                      Plaza Juárez No. 20  
                      Planta Baja Edificio Tlatelolco  
                      Colonia Centro  
                      Delegación Cuauhtémoc  
                      C.P. 06010, Mexico, Distrito Federal |
| **Telephone**       | +52 (55) 36865241                                           |
| **Fax**             | +52 (55) 36865236                                           |
| **E-mail**          | dgajuridicos@sre.gob.mx                                     |
| **Website**         | www.sre.gob.mx/                                             |
| **Contact person**  | Lic. Bertha Sánchez Miranda                                 |
| **Languages**       | Lic. Illiana Olivares Quiñones  
                      Spanish |

### Practical Information

*The following information was provided by the relevant state authorities or was obtained from the replies to the 2008 Evidence Convention Questionnaire.*

<table>
<thead>
<tr>
<th>Blocking Statutes</th>
<th>Yes. See Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (Federal Law of Transparency and Access to Governmental Public Information).</th>
</tr>
</thead>
</table>

#### Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

**Chapter I
Letters of Requests**

<table>
<thead>
<tr>
<th>Transmission of Letters of Request</th>
<th>Letters of Request are sent directly from a judicial authority in the requesting state to the central authority of the requested state.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority Responsible for Informing of Time and Place of Execution of Letter of Request (Art. 7)</td>
<td>Central Authority.</td>
</tr>
<tr>
<td>Presence of Judicial Personnel at Execution of the Letter of Request (Art. 8)</td>
<td>No declaration of applicability.</td>
</tr>
<tr>
<td>Privileges and Duties Existing Under Law of States Other than State of Origin and State of Execution</td>
<td>No declaration of applicability.</td>
</tr>
<tr>
<td><strong>Art. 11</strong></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
</tr>
<tr>
<td><strong>Translation Requirements (Arts. 4(2) and 33)</strong></td>
<td></td>
</tr>
<tr>
<td>Accepts Letters of Requests written in or translated into Spanish.</td>
<td></td>
</tr>
<tr>
<td><strong>Costs Relating to Execution of Letters of Request (Arts. 14(2)(3) and 26)</strong></td>
<td></td>
</tr>
<tr>
<td>Mexico does not seek reimbursement of costs under Article 14(2).</td>
<td></td>
</tr>
<tr>
<td><strong>Time for Execution</strong></td>
<td></td>
</tr>
<tr>
<td>Between two and six months, approximately.</td>
<td></td>
</tr>
<tr>
<td><strong>Art. 23 Pretrial Discovery of Documents</strong></td>
<td></td>
</tr>
<tr>
<td>Letter of Request may be executed subject to certain conditions (qualified exclusion).</td>
<td></td>
</tr>
<tr>
<td><strong>Information about Domestic Rules on Taking of Evidence</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Chapter I</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Witness examination</strong></td>
</tr>
</tbody>
</table>

<p>| <strong>Should Letters of Request include specific questions to be used during witness examination or only a list of matters to be addressed?</strong> |
| Specific questions are required. |
| <strong>Is it a public or private hearing?</strong> |
| Private hearing. |
| <strong>Do the judicial authorities “blue-pencil” Letters of Requests (i.e., rephrase, restructure, and/or strike out objectionable questions or offensive wording so that a Letter of Request may be</strong> |
| Yes. |</p>
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>executed under the laws of the requested state?</td>
<td>No.</td>
</tr>
<tr>
<td>Is the witness provided in advance with a copy of the questions/matters to be addressed as contained in the Letter of Request?</td>
<td>No.</td>
</tr>
<tr>
<td>Are documents produced by the witness authenticated by the court?</td>
<td>Yes.</td>
</tr>
<tr>
<td>Is an oath generally administered to the witness?</td>
<td>Yes.</td>
</tr>
<tr>
<td>Can the witness be made subject to further examination and recall?</td>
<td>Yes, but a second Request is necessary.</td>
</tr>
<tr>
<td>Are there sanctions for the non-appearance of a witness?</td>
<td>The imposition of a fine or arrest.</td>
</tr>
<tr>
<td>Must interpreters who assist with the witness examination be court-certified?</td>
<td>Yes.</td>
</tr>
<tr>
<td>How is the testimony transcribed?</td>
<td>The secretary officer [law clerk] will take the testimony using the questions sent by the requesting authority. He will then transcribe the testimony, and produce a printed version, which shall be signed by all witnesses.</td>
</tr>
</tbody>
</table>

**Chapter I**

*Taking of evidence by video-links*

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are there legal obstacles to the use of video links?</td>
<td>No.</td>
</tr>
<tr>
<td>Technology Used</td>
<td>No information available.</td>
</tr>
<tr>
<td>Level of Interpretation Required</td>
<td>No information available.</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Simultaneous or in Sequence Interpretation</td>
<td>No information available.</td>
</tr>
<tr>
<td>Interpretation required in which jurisdiction?</td>
<td>No information available.</td>
</tr>
<tr>
<td>Who pays for interpretation?</td>
<td>No information available.</td>
</tr>
<tr>
<td>How would a request for evidence be handled if witness not willing?</td>
<td>The competent judge may issue an order to appear. If the requested person does not appear, she might be arrested or fined.</td>
</tr>
</tbody>
</table>

Chapter II

**Taking of evidence by diplomatic officers, consular agents, and commissioners**

| Article 15 | Applicable. |
| Article 16 | Applicable. |
| Article 17 | Not applicable. |
| Article 18 | Not applicable. |

Chapter II

**Taking of evidence by diplomatic officers, consular agents, and commissioners; Taking of evidence by video-links**

| Are there legal obstacles to use of video links? | No. |
| Technology Used | No information available. |
| Level of Interpretation Required | No information available. |
| Simultaneous or in Sequence Interpretation | No information available. |
| Interpretation required in which jurisdiction? | No information available. |
| Who pays for interpretation? | No information available. |

**Useful Materials**

| Bilateral or Multilateral Agreements | To consult bilateral and multilateral treaties to which Mexico is a party, see www.sre.gob.mx/tratados/. |
### Discovery Procedures in Mexico

**Application of Hague Convention**
- Mexico is a signatory to the Hague Convention since 1989.
- Mexico made some reservations to certain provisions of the Convention.
- Letter of Request shall not be used to obtain evidence that is not intended for use in judicial proceedings, commenced or contemplated.
- Mexico will not execute Letters of Request issued for the purpose of obtaining pretrial discovery of documents.
- The Letter of Request sent to the Ministry of Foreign Affairs (Central Authority in Mexico for the purposes of the Convention) or judicial authorities shall be written in the Spanish language or shall otherwise be accompanied by a translation.

**Scope of Documentary Discovery**
- The obligation to produce documents or present information in foreign proceedings does not include an obligation to produce documents (or copies) identified in general or overly broad requests.
- A national court may not act or allow a party to conduct a general inspection of records that are publicly available, except in those cases authorized by national laws.
- It is necessary that the interested party or authority proves before the competent court that subject matter of the requested documents or information is indeed related to the pending proceeding.

### Useful Links
- **Track service for Letters Rogatory**: [webapps.sre.gob.mx/rogatorias/](webapps.sre.gob.mx/rogatorias/) (en espagnol uniquement)
- **International Letters Rogatory**: [www.sre.gob.mx/tramites/exhortos/default.htm](www.sre.gob.mx/tramites/exhortos/default.htm) (Ministry of Foreign Affairs)

<table>
<thead>
<tr>
<th>Multilateral Conventions on Judicial Cooperation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Inter-American Convention on Letters Rogatory</td>
</tr>
<tr>
<td>• Inter-American Convention on the Taking of Evidence Abroad</td>
</tr>
<tr>
<td>• Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad</td>
</tr>
<tr>
<td>• Inter-American Convention on Proof of and Information on Foreign Law</td>
</tr>
</tbody>
</table>

<table>
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<tbody>
<tr>
<td>Track service for Letters Rogatory: <a href="webapps.sre.gob.mx/rogatorias/">webapps.sre.gob.mx/rogatorias/</a> (en espagnol uniquement)</td>
</tr>
<tr>
<td>International Letters Rogatory: <a href="www.sre.gob.mx/tramites/exhortos/default.htm">www.sre.gob.mx/tramites/exhortos/default.htm</a> (Ministry of Foreign Affairs)</td>
</tr>
</tbody>
</table>
| Scope of Oral Discovery | • When the production of witness evidence or the testimony of a party is requested for a procedure abroad, the deponents may be cross-examined both oral and directly.  
• In any case, it shall not be allowed that a party answering an interrogatory of depositions be assisted by his attorney, court representative, nor by any other person; neither give a copy of the questions, nor a time to be advised; but if the answering person does not speak Spanish, he may be assisted by an interpreter, if necessary, and in this case, the court shall designate such interpreter. If the answering party requests so, his answers shall be transcribed in his own language too, with the participation of the interpreter. |
| Written Interrogatories | • Mexico does not have a written interrogatories process similar to that in the U.S. |
| Costs | • Mexico does not seek reimbursement of costs. |
| Confidentiality and Waiver of Protection | • The Mexican Federal Criminal Code forbids the revelation of secrets by an individual who (i) without legal cause, to the detriment of one who may be adversely affected, discloses a secret or reserved communication known or received as a consequence of his employment, position, or office; (ii) makes a disclosure when rendering professional or technical services, or by an officer or public employee, or when the secret disclosed or published is of industrial nature; and (iii) discloses, reveals, divulges, or uses illegally or to the detriment of another, information or images obtained in the interception of private communications. |
| Third-Party Discovery | • The federal courts in Mexico have developed very few judgments about privileges.  
• There are just a couple of resolutions in the matter regarding the waiver to render testimony on the facts from third parties, that is, i.e., those exposed to professional secrets (surgeons, lawyers, financial institutions, accountants, and priests, among others) cannot disclose client information received while exercising their professional duties unless authorized.  
• Where a client authorizes its lawyer to provide third parties with case information, there is no violation of the professional secret rule. |