

Lex Mex

Thursday 29 September 2016



Robert Bourns

President, the Law Society



Update on the legal sector in Mexico

Jacob Aitken, Director, Kidd Aitken Legal Marketing



Jacob Aitken

Director- Kidd Aitken Legal Marketing





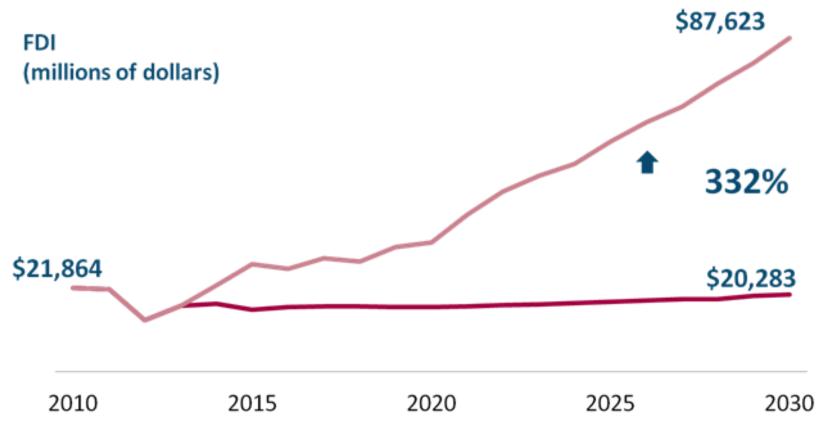
Economic outlook

- Latin America's second largest economy
- Economy continued to expand at annual rate of 2.5% through 2015 and early 2016
- Modest contraction in economy in Q2 2016 (first time in three years)
- Despite downturn, cautiously optimistic outlook



Foreign Direct Investment

Foreign Direct Investment is expected to increase 300% from 2010 to 2030 due to the structural reforms and programmes.





Mexican legal market tendencies

Consolidation

- Advanced institutionalisation processes
- Adjusting business models
- Tackling profitability differences

Internationalisation

- Entry of international firms
- Local / international firm mergers
- Big 4

Opportunities

- New opportunities due to market reforms
- Growth of new practice areas
- Demand for highly specialised talent



Structural changes in legal market



Influx of international firms

1. Baker & McKenzie

2. Baker & Hostetler

3. Chadbourne & Parke

4. Curtis, Mallet-Prevost, Colt &

Mosle

5. DAC Beachcroft

6. Dentons López Velarde

7. DLA Piper

8. Gardere Wynne Sewell

9. Greenberg Traurig

10. Garrigues

11. Haynes and Boone

12. Holland & Knight

13. Hogan Lovells

14. L&E Global

15. Littler De la Vega y Conde

16. Mayer Brown

17. Medina Cuadros

18. Miller, Canfield, Paddock and

Stone

19. Ogletree Deakins

20. Ontier

21. S.L. Sterling

22. Snell & Willmer

23. Strasburger & Price

24. Thompson & Knight

25. Uría Menéndez

26. White & Case



Mexican 'Magic Circle'





Independent firms Transactional leaders

- Creel, García-Cuéllar, Aiza y Enríquez, S.C.
- Galicia Abogados SC
- Mijares, Angoitia, Cortés y Fuentes S.C.
- Nader, Hayaux y Goebel, SC
- Ritch Mueller, Heather y Nicolau, SC



Race for expertise





Lateral hires Establishment of practices

- Constitutional reforms: energy, telecommunications, labour and tax
- Limited legal expertise in energy, owing to Pemex's 75year monopoly
- •Corporate/full-service firms struggled to build tax practices over the years



Rise of boutiques





Highly specialised Not necessarily small

Labour & Employment

Tax

Energy & Natural Resources

Telecommunications

Evolving market structure

Non-consolidated market

Value / complexity

Auditors (Big 4)

Transactional leaders

Leading boutiques

Top full-service

Mid-market

Other **Boutiques**

Commodities

Expert knowledge / specialisation



Ricardo Cervantes Vargas, Asociación Nacional de Abogados de Empresa, ANADE



Facts:

- The incorporation in Bars is not binding for practice.
- Neither mandatory qualification for legal practice.
- We have around 350,000 lawyers in practice. (Only 15,000 are Bar members).
- More than 1,600 law schools. (Only 150 are recognized as "good institutions").



- In conclusion, it is URGENT to organize the legal practice.
 - Why?
 - It does not exist uniformity in the lawyers instruction.
 - It does not exist the conscience of practicing with ethics.
 - There are no real punishment for bad practices of lawyers.
 - One possible solution for this is the mandatory incorporation of lawyers in Bars.



- Actions in process to fight against these issues:
 - February 2014: Arely Gomez (former Senator) filling a law initiative for mandatory incorporation of lawyers in Bars.
 - September 2015: Mexican Senate organized public hearings, with the participation of lawyers of all around the world, who give their support to the mandatory incorporation on Bars. (France, Spain, Argentina, Brazil, Portugal, etc.).
 - October 2015: The FECC (Federal Economic Competition Commission) rules an opinion considering that the mandatory incorporation on Bars, affected freedom competition. This stoped the initiative law process in the Senate.



- Other alternatives for organize the legal services (in progress):
 - From December 2015 to March 2016: The Mexican President organized working groups called "dialogues for ordinary justice". The objective: finding solutions for a better perception on the ordinary justice
 - One of the workshops was about "the problems in teaching law" and "penalties for bad practices of lawyers".
 - The Mexican Bars participate on the workshops.
 - June 2016: The results of the working groups were given to the President.



- Now a days...
- The agreed proposals are (in preparation for filling in the Congress):
 - To review the legal framework of educational institutions.
 - To establish a common program for the teaching of law.
 - To establish mechanisms for lawyers, teachers and law school certifications.
 - To have mandatory ethics with minimum standards code.



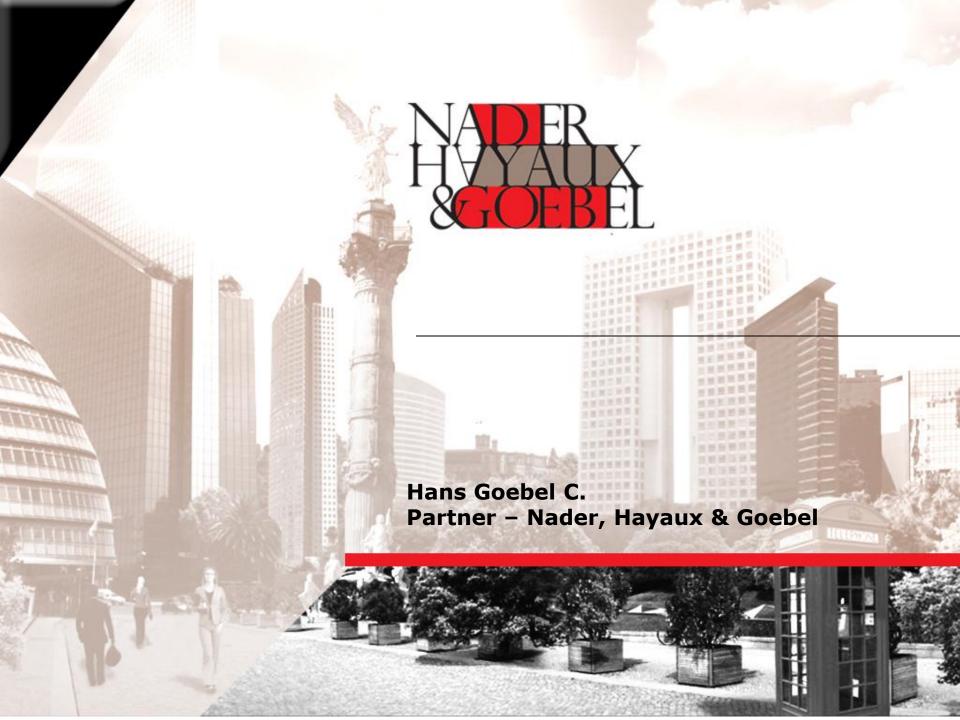
- Now a days...
- The agreed proposals are (in preparation for filling in the Congress):
 - To create an ethical organism with public and private participation (mix organism). This organism will punish the lawyers bad practices.
 - The bar members will be in control of the Bars, not under this mix organism.
 - We are still working...

– Thank you!



Update on Capital Markets

Hans Goebel, Nader, Hayaux & Goebel





During 2016, the following issuances have taken place in the Mexican Stock Exchange:

1. IPOs (stock) - 4 for a total amount of MXP\$6,742,089,104.25 (approximately US\$337,104,455), all of which were SABs. No IPOs for SAPIBs have been filed on 2016.

3 additional Stock IPO transactions have been submitted for review before the National Securities and Banking Commission (the "NSBC").





During 2016, the following issuances have taken place in the Mexican Stock Exchange:

2. FIBRAs

1 additional FIBRA (real estate) transaction has been submitted for review before the NSBC.

The first FIBRA E is expected for this year.





During 2016, the following issuances have taken place in the Mexican Stock Exchange:

3. CKD - 4 for a total amount of MXP\$9,034,312,537.60 (approximately US\$451,715,626).

19 additional CKDs transactions have been submitted for review before the NSBC.

The first CEPRI is expected shortly.





Other relevant facts:

- Mexican pension funds (AFOREs) currently manage around US\$150 Billion, and pursuant to applicable laws and regulations, such pension funds may invest up to 15% of such assets in FIBRAs and up to 20% in CKDs (in accordance with their respective investment regimes), that is, approximately US\$25 Billion.
- Currently CKDs have raised around US\$9.4 Billion (not exclusively with pension funds as investors, and taking into account capital calls commitments), while FIBRAs have raised over US\$2.5 Billion.





CKD - Definition

• Mexican trust (*fideicomiso*) managed by fund managers ("**GP**"), created to issue capital development trust certificates (*certificados de capital de desarrollo*) ("**CKDs**"), which are placed and offered through public or restricted public offerings on the Mexican Stock Exchange. CKDs are issued to invest in, or finance projects located in Mexico. Investments shall be subject to the investment policies set forth by the GP.





CEPRI – Difference with CKD

• CerPIs or project investment certificates (*certificados de proyectos de inversión*) are also issued through Mexican trusts, and placed and offered on the Mexican Stock Exchange. The CerPI trust structure is very similar to that of the CKD trusts, however CerPIs may only be offered through restricted public offerings, which means they may only be purchased by qualified or institutional investors. Following is a comparative chart between both vehicles:





CEPRI – Difference with CKD

mil'	CKDs	CerPIs
1.	May be offered through public or restricted	May only be offered through restricted public
	public offerings.	offerings (may only be purchased by
	\$ 5. 5. S.	institutional or qualified investors).
2.	Strict corporate governance rules (i.e.	More flexible corporate governance rules (i.e.
71111	holders' assembly has the authority to	the GP shall have the authority to approve all
	approve mayor investments representing	investments).
Tu	20% or more of the total assets of the trust).	
3.	Higher thresholds for exercise of minority	Lower thresholds for exercise of minority rights
	rights by the holders (i.e. 10% is required for	by the holders (i.e. 25% for is required for
	designating a member of the technical	designating a member of the technical
in the	committee).	committee).
4.	CKD trusts may not issue CKDs with limited	CerPI trusts may issue series of CerPIs with
MI	voting rights.	limited voting rights, in the understanding that
		such series shall have preferential economic
		rights.





FIBRA - Main features

- FIBRAs are Mexican investment trust vehicles meant for acquisition and developement of real estate assets located in Mexico intended for leasing. FIBRAs are similar to REITs in the United States.
- In order to qualify to be taxed as a FIBRA, a FIBRA shall: (i) lease its real estate, (ii) hold its real estate for at least 4 years, (iii) distribute annually at least 95% of its net taxable income (Resultado Fiscal), and (iv) maintain at least 70% of its assets in the form of real estate, among other requirements.





FIBRA – Main features

- •A FIBRA may delegate operations to a management subsidiary or an advisor, who shall be entitled to a management or advisory fee.
- •A FIBRA operates as a transparent, "pass through" tax structure.
- •Other tax benefits include deferral of ISAI for the FIBRA in certain municipalities, and of ISR arising from capital gains generated when real estate assets are contributed to the FIBRA in exchange for CBFIs.





E. FIBRA E – Main features

- FIBRAS E are Mexican investment trust vehicles meant for investment in Mexican portfolio companies ("Portfolio Companies") active in any of the following sectors: (i) hydrocarbons and natural gas (except for upstream activities and sale of fuel to final customers); (ii) generation, transmission and distribution of electricity; or (iii) infrastructure investment projects (including concessions and other services agreement executed between private parties and governmental authorities) ("Authorized Activities").
- FIBRA E structures are similar to the US master limited partnership figure. The FIBRAS E structure contemplates a GP who shall be entitled to certain variable success fees (subordinated to the distributions to the certificate holders).





E. FIBRA E – Main features

- At least 70% of the annual average net worth of a FIBRA E trust shall be invested in shares of Portfolio Companies dedicated to the Authorized Activities, and at least 90% of the annual income of a FIBRA E shall derive from Authorized Activities.
- •A FIBRA E shall distribute annually at least 95% of its net taxable income (Resultado Fiscal).
- •The GP has greater authority in comparison to the advisors of the FIBRAs or sponsors of the CKDs. The GP shall design the investment policies and authorize all investments, without regard of the amounts.





SAPIB (Medium size issuers) – Main features

Pursuant to recent amendments to applicable regulations the requirements for medium stock issuers were lessened, in order to promote transition of medium stock issuers to public traded companies.

- <u>Investors</u>. Prior to the amendments stock issued by S.A.P.I.Bs could only be purchased by qualified or institutional investors. Such limitation is no longer applicable to S.A.P.I.Bs.
- <u>Equity Requirements</u>. S.A.P.I.Bs shall have an equity of at least (approximately) US\$3.4 Million.





SAPIB (Medium size issuers) – Main features

- <u>Traded Capital Stock Requirements</u>. Regular Mexican issuers shall publicly trade at least 15% of their capital stock. S.A.P.I.Bs are not subject to such limitations.
- <u>Stockholders Requirements</u>. Regular Mexican issuers shall have at least 200 stockholders. S.A.P.I.Bs are not subject to such limitations.





SAPIB (Medium size issuers) – Main features

- <u>Distribution Criteria</u>. With respect to regular Mexican issuers, after the IPO, (i) at least 50% of the total offering amount shall be distributed among individuals that hold less than 5% of the total offering amount; and (ii) no individual may subscribe more than 40% of the total offering amount. S.A.P.I.Bs are not subject to such limitations.
- <u>Traded Capital Stock Requirement after the IPO</u>. Once publicly traded, Mexican issuers shall at all times maintain at least 12% of their capital stock publicly traded. S.A.P.I.Bs are not subject to such limitations.









Update on Intellectual Property

Jose Juan Méndez, Méndez Cortés, S.C.





NEW TRADEMARK OPPOSITION SYSTEM IN MEXICO

- Reform to Articles 6, 7 BIS 1, 8; 119, 120, 123, 125 and 181 of the Mexican Industrial Property Law.
- NOT BINDING process.
- DOES NOS SUSPEND the registration trademark procedure.



Amendments:

- The expediting of the publication of the Gazette by the Mexican Institute of Industrial Property (IMPI).
- The IMPI will publish a list of the applications filed within in a period of 10 working days.
- From this publication, any person may initiate, within one month, a written opposition paying the correspondent fees.
- At the end of the mentioned period of one month, the IMPI will proceed to publish within the following 10 working days a list of the applications that received oppositions, providing the applicants a period of one month to file arguments against the oppositions filed in their applications.



BENEFITS

The main purpose is to give more support to users and holders of trademarks, avoiding the concession of registration titles that may invade a prior right or may be granted by mistake, inadvertence or lack of appreciation.



BENEFITS

The inclusion of this Opposition System will be an effective tool for the trademark owners to express their disagreement against trademark applications that could violate their rights, as well as to opportunely provide the authority with information and evidence that they consider relevant to support the study of the Examiners.



False Data Thesis

New criteria concerning the nullity action based on false data



The Thesis indicates the following:

Thesis: I.10o.A.15 A (10a.)	Judicial Gazette	Tenth Time	2009434	1 of 32
Federal Circuit Courts	Book 19, June 2015, Volume III	Page. 2322	Administrativ	ve Thesis



"BASED ON FALSE DATA" CONTAINED ON FRACTION III OF ARTICLE 151 OF THE MEXICAN INDUSTRIAL PROPERTY LAW, REFERS TO THOSE THAT ARE NOT ACCORDING TO REALITY

The Article 151, fraction III, of the Mexican Industrial Property Law establishes that a trademark will be considered null when this was granted based on false data provided in the application prosecution. However this criteria has established that the expression "based on false data" will not apply just to the data considered relevant to obtain the trademark registration, but to all kind of data. Since the relevant information to obtain a trademark registration is that it complies with Articles 88 and 89 of the Mexican Industrial Property Law, which refers that a trademark can be all kind of visual sign capable to distinguish goods or services from the competitors. A trademark cannot be granted against Article 90, which refers to the barriers for obtaining a trademark registration.

The above mentioned, obeys to the Principle of Good Faith which does not demand to prove the information provided in the trademark application, since this information just needs to be proved in case of being questioned.

TENTH FEDERAL CIRCUIT COURT ON ADMINISTRATIVE MATTERS OF THE FIRST CIRCUIT.



Heading Thesis



The Thesis indicates the following:

Thesis: I.4o.A.29 A (10a.)	Judicial Gazette	Tenth Time	2002571	6 of 95
FOURTH FEDERAL CIRCUIT COURT ON ADMINISTRATIVE MATTERS OF THE FIRST CIRCUIT	Book XVI, January 2013, Volume III	Page. 2097	Administrative	e Thesis



TRADEMARKS. THE TRADEMARK APPLICATION MUST SPECIFY THE PRODUCTS OR SERVICES THAT WILL BE COVERED AND THAT BELONG TO THE SAME CLASS.

Article 93 of the Mexican Industrial Property Law and 57 and 59 of its regulation, establish that it is necessary that the trademark application specifies the goods or services that will be covered and that belong to the same class, since the IP Regulation compels to list in the most specific way the products or services that will be covered by a trademark. This, in order to provide legal security and to avoid confusion between goods or services that by their nature could belong to different classes.

The above mentioned, has also the intention to avoid unfair competition and potential barriers to other trademark applicants that could be affected by a previous trademark registration in which the owner lists in a general way just the heading of a class.

This kind of disposition tries to prevent potential discussions on litigation matters regarding to which class covers which goods or services, since that in any case a product or service is questioned, it shall prevail the one that has a specific description over the one with a general description.

Fourth Federal Circuit Court on Administrative Matters of the First Circuit



Thank you! Jose-Juan MENDEZ



September 29, 2016

www.mencort.mx jjm@mencort.mx



Update on Labour Law

Héctor González Graf, Marván, González Graf y González Larrazolo



Refreshments





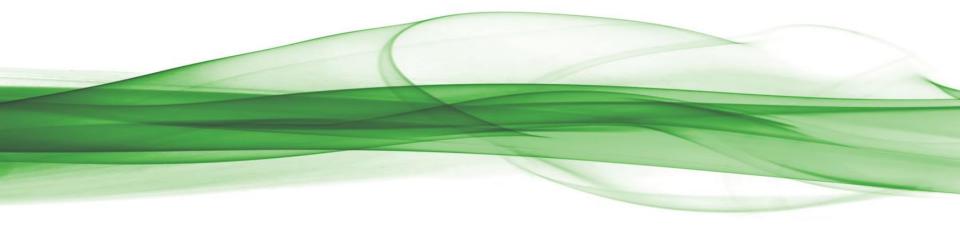
Developments in International Litigation and Arbitration in Mexico: Main trends and challenges

<u>Moderator:</u> Yves Hayaux du Tilly, Nader, Hayaux & Goebel Carlos Malpica, Malpica, Iturbe, Buj y Paredes Jesús Ángel Guerra Méndez, Guerra González y Asociados



International Arbitration and Litigation: Main Trends and Challenges

Carlos Malpica







North American Free Trade Agreement NAFTA (1994)

Objectives Art. 102

- a) Grant the signatories Most Favored Nation status.
- b) Eliminate barriers to trade and facilitate the cross-border movement of goods and services.
- c) Promote conditions of fair competition.
- d) Increase investment opportunities.
- e) Provide protection and enforcement of intellectual property rights.
- f) Create procedures for the resolution of trade disputes.

Other Free Trade Agreements.

Since NAFTA, Mexico has executed:

- a) FTA's with 46 Countries.
- b) Investment Treaties with 33 Countries.





Banco de Mexico (Central Bank) Autonomy (1994)

- a) Constitutional autonomy for the Central Bank.
- b) Maintain acquisitive power of the Mexican currency (peso).
- c) Limited Credit to Federal Government.
- d) Management Autonomy (appointment by Executive Branch/Senate).

Judiciary Reform (1994)

- a) Strengthen the Supreme Court as a Constitutional Tribunal
- b) Appointment of justices (Executive Branch/Senate).
- c) Creation of the Judiciary Council (Supervision, Management and career).
- d) Autonomy of the Judiciary Council (Chief Justice, three appointed by MSCJ from Judiciary, two Senate, 1 Executive branch).





- Electoral Reform (1996)
- a) Constitutional autonomy for the Federal Electoral Institute.
- b) Specialized Court (7 members Supreme Court/Senate).
- Democratic Breakthrough (2000)
- a) Democratic transition, first change in Ruling Party since 1929.
- b) Congressional impasse for structural reforms (Fox Tax/Energy-Antitrust Calderon).





- Alternative Dispute Resolution (2008-2011)
 a) Mexico adopted the Uncitral Model Law for Arbitration on International Commercial arbitration since 1993.
- b) On 2008 article 17 of the Mexican Constitution was amended to provide for alternative methods of dispute resolution.
- c) On 2011 the Mexican Commercial Code was amended to include a Special (summary proceeding) for the execution of awards.

Collective (Class Actions) 2011-2012

- a) Either Diffuse (i.e. environmental), Strict Sense (i.e. product liability, consumers); Individual (30 persons or more with the same contractual right)
- b) Congressional impasse for structural reforms (Fox Tax/Energy-Antitrust Calderon).





Actual Administration Reforms.

Pacto por Mexico/ Structural Reforms (2012).

Telecomm/Antitrust 2013

- a) Constitutional Autonomy of the Federal Telecommunication Institute (IFT).
- b) Spin off Telecomm from Antitrust Commission.
- c) Strengthens faculties of Antitrust Commission.
- d) Appointment of members (7 members Executive Branch/Senate).





Energy 2013

- a) Constitutional reform to facilitate private investment in petroleum exploration, extraction, refining, petrochemical, transportation and storage.
- b) Arbitration admitted, excluding administrative rescission
- c) Creation of the Mexican Environmental Protection Agency.
- d) Other autonomous regulatory entities for the sector (Energy Regulatory Commission/National Hydrocarbons Commission)
- e) Appointment of members (7 members Executive Branch/Senate).





Anti Corruption Practices (2016)

- a) Requires public officers to provide information on assets/conflicts.
- b) Strengthens faculties of the Federal Audit Office.
- c) Creates Specialized Courts.
- c) Creates Specialized Prosecution/Supervision.
- d) Appointments (Executive/Senate)





- Mexican Judicial System.
- Arbitration in Mexico.
- Active Sectors, Main Trends.
- International Arbitration/Litigation a mix?
- COMMISA a Landmark Case.



-LIDERAZGO EN LITIGIO-

-LEADERSHIP IN LITIGATION-





INSOLVENCY AND FINANCIAL LITIGATION

By: Jesús Ángel Guerra-Méndez

LITIGATION IN MEXICO

- As in every country, litigation shall be seen as a tool to achieve a negotiated solution to a business conflict.
- ➤ Litigation is not lengthy, uncertain or expensive. However, litigation is an "art" highly sophisticated.
- Mexico, as a civil law country, provides with a clear and defined set of legal remedies to challenge the Court decisions, all of which have very little —to non- relevance to the costs of the proceeding.
- In general terms, the ordinary legal remedy is the appeal and the extraordinary legal remedy is the amparo (constitutional appeal).
- Therefore, it is always expected that either party is going to appeal and either party is going to file an amparo, unlike to common law countries where the review in appeal is limited.
- ➤ A proceeding, through all of its stages and legal remedies is expected to last from 20 to 36 months.

INSOLVENCY

- ➤ The Mexican "Ley de Concursos Mercantiles" was enacted in 2000, to be later amended in 2007 and 2014.
- ➤ Vitro abused of a loophole in the law to have intercompany claims controlling the approval of a restructuring plan, however, Vitro —and its harmful effects- is now water under the bridge.
- ➤ Right after the conclusion of the proceeding, in 2013 the executive branch proposed a major overhaul to the law, which was approved in 2014 by the legislative branch.
- There is no doubt that Mexico currently owns one of the most modern insolvency laws, that complies with international standards and foster cross-border restructurings.
- ➤ There are several successful cases that have concluded in a turnaround management and in a strengthen of the business as an on-going concern.

FINANCIAL LITIGATION

- Financial litigation shades different areas: banking, insurance, securities and many others.
- As a general rule, there are no special procedural rules for financial litigation, therefore, ordinary procedural rules apply, with the exception of a handful of special rules applicable to cases involving insurance and banking litigation.
- Mexico, as participant of the global economy, honours foreign financial transactions and treat them as domestic.
- International financial transactions have evolved in complex operations that are held, enforced and successfully executed as an outcome of a legal proceeding in Mexico.
- ➤ As a consequence, financial litigation have become a trend for federal courts, which are highly sophisticated.



ENFORCEMENT OF FOREIGN AWARDS

- Foreign awards, both judicial and arbitral, are recognized and enforced in Mexico.
- Recognition of foreign awards is subject to judicial scrutiny to determine whether the award complies with a minimum set of requirements.
- Only foreign awards that are final and unappealable are recognized in Mexico.
- Once the foreign award is recognized, it will be enforced in Mexico as if domestic.
- Mexico does not recognize foreign provisional measures or injunctions, however, Mexican Courts tend to issue provisional measures or injunctions in aid of foreign proceedings or arbitrations.



JESÚS ÁNGEL GUERRA MÉNDEZ



+52 (55) 5488 6105

SOCIO / PARTNER



Ciudad de México · Monterrey · Matamoros · Monclova · San Diego



Introduction to Justice Fernando Franco

The Rt. Hon. Lady Justice Arden DBE



Judicial Protection of Human Rights at the Mexican Supreme Court: Relevant criteria

Justice Fernando Franco González-Salas, Mexican Supreme Court of Justice



Closing Remarks

Yves Hayaux du Tilly, Mexican Chamber of Commerce in Great Britain



Lex Mex

Thursday 29 September 2016