

Financing in Mexico

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Mexico is changing its attitudes towards business. It now looks for opportunities now instead of shunning them. As business booms, readily available financing will become more and more necessary. Up to now, bank loans have not been used frequently by businesses in Mexico. The reason is simple. Loan rates from Mexican banks hover around 30%, the application process is very lengthy and detailed, and most U.S. banks are simply afraid to lend into Mexico. It is hard for U.S. businesses and lenders to believe that Mexican companies are being run and industrial parks are being built without the help of any bank loans. They are completely self-financed. All of this is beginning to change.

This change means a great opportunity for both Mexican businesses and U.S. lenders. In 1997, Mexico surpassed Japan and became the U.S.'s second largest trading partner in exports and imports. Only Canada imports or exports more goods to the U.S. With this rise in trade, U.S. lenders are beginning to overcome their fears of the unknown and are finding that they can successfully and profitably loan into Mexico.

Although times are changing, it is still not as easy to get financing in Mexico as it is in the United States. A good part of U.S. lenders' reluctance to do business in Mexico is because the laws are different in Mexico from what they are in the U.S. and Canada. This is not to say that one set of laws is better. They are just different.

U.S. law and Canadian law have their origin in common law, where the courts make decisions that must be followed by the lower courts. For instance, when the U.S. Supreme Court makes a decision, it becomes the law of the land.

Mexican law, as well as Louisiana law, have their origin in civil law. Civil law looks mostly to statutes for guidance. Under civil law, a decision by a court affects only the case before it. Unlike common law, those decisions usually do not become binding law on everyone else. For example, a decision by the Mexican Supreme Court is not binding unless the court has ruled five times on the same point.

A major problem that U.S. lenders have is that Mexico does not have a system nor a requirement to record all loans against personal property in a central location. In the United States and Canada, when a bank wants to make a loan to a company secured by its machinery or its accounts receivable, the lender first checks the files maintained by the state. These records reveal what loans have already been made to the borrower, and whether the machinery or accounts receivable are already being used as collateral for another loan. When the lender makes the loan, the lender files a document (a UCC-1 in the United States) with the state to give notice to the world that the machinery or accounts receivable are encumbered by the lender's lien.

While many Americans complain about how slow it is to get results in courts in the U.S., getting results in Mexican courts is probably even more frustrating. Mexican courts tend to emphasize formalities even more than U.S. courts, and defendants have little difficulty in delaying matters.

Thus, it makes sense to provide for arbitration in agreements in transnational deals. Mexico recognizes arbitration awards made in the U.S., so long as certain basic procedural requirements are met. By obtaining an arbitration award in the U.S., using something

like the American Arbitration Association rules, one can then take that arbitration award to Mexico to have it enforced. Just as with a sister state judgment in the U.S., the defendant is prohibited from relitigating the issues dealt with in an arbitration award. Accordingly, arbitration streamlines the process of getting results from the Mexican courts.

Mexico's lack of a central recording system should not should not make lenders shy away from lending into Mexico. It simply means lenders must approach the loan process in Mexico differently. There are other ways to

determine a borrower's credibility, risk and ability to repay. Insurance on the loan may be available. Mexico has other means for enforcing repayment than found in the U.S. With proper counsel, U.S. banks should have no problem raising their comfort level to an acceptable level to make profitable loans into Mexico. Especially now, not only can U.S. lenders can have the cream of the crop of Mexican borrowers, since no other lender is serving them, but they can command very lucrative interest rates. At the same time, the new availability of loans to Mexican businesses will help them prosper, too.