Legal Framework of Powers of Attorney Granted Abroad and Their Effects in National Territory

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The purpose of this study is to define various aspects with respect to powers of attorney, their juridical nature and their scope of application in Mexican Law when said powers are granted abroad and are to be exercised in Mexico and vice versa.

With the bases hereof having been set, we shall first analyze the concept of mandate and power of attorney in order to better understand the juridical nature of the act and thereafter discuss the international conventions on the subject matter, such as the Convention that Abolishes the Requirement of Legalizing Foreign Public Documents and the Protocol on a Uniform Legal Regime of Powers of Attorney.

The concept of mandate

We may begin by defining what is understood by mandate, the contract by which one person, the attorney, agrees to carry out for the account of principal, the juridical acts entrusted thereto by the latter (article 2546 of the Civil Code for the Federal District).

The contract of mandate is deemed perfected when accepted by the attorney.
Mandates implying the practice of a profession are deemed accepted, when conferred on persons who offer the practice of their profession to the public, by the sole fact that they are not rejected within the next three days.

Their acceptance may be express or tacit. Tacit acceptance is any act carried out in the execution of a mandate (article 2547 of the Civil Code for the Federal District).

From the foregoing it is gathered that through this legal concept a person (the attorney) executes out certain juridical acts on behalf of another (the principal) so that said acts may become legally effective on behalf of the latter. When a mandate is joined to the execution of certain acts that necessarily affect the patrimony of the principal and those acts are regulated by law in a specific or general manner, the mandate then becomes a power of attorney.

As in all contracts, the legal concept of mandate must have certain requirements of existence (consent and purpose) as well as validity (capacity, without flaws or defects, a legal purpose, motive and form).

As concerns the elements of existence, specifically its consent, it may be said that the mandate exists when both parties state their will in the sense that the attorney shall carry out the acts entrusted thereto by the principal. This agreement reached by the will of the parties may be granted in an express or tacit form (when the attorney does not refuse or begins to execute the mandate within three days following its acceptance).
With respect to its purpose, article 2548 of the Civil Code for the Federal District provides that the purpose of a mandate may be any legal act for which no personal intervention is required by law.

With respect to the elements of validity, we might mention the following:

1. Capacity: any person may contract as principal provided he is qualified to contract on his own behalf or through another legally authorized person (article 1800 of the Civil Code for the Federal District).

2. Flawless consent: this includes doctrinal concepts referring to invalidity of the act as would be any error, tort, violence and damage.

3. A legal purpose, motive or cause: the basic aspect to be observed in this case is that no act entrusted by principal to his attorney shall be contrary to law or good customs, otherwise the mandate shall be void.

4. Form: article 2550 of the Civil Code for the Federal District establishes that mandates may be written or oral; however, there are restrictions since although the contract may be oral it must be ratified in writing.

**Article 2551**
The written mandate may be granted:

I. In a public instrument:

II. In a private writing signed by grantor and two witnesses with their signatures ratified before a Notary Public, Judge of First Instance or Justice of the Peace, or before the corresponding administrative officer or employee when the mandate is granted for administrative matters;

III. In a letter power without ratification of signatures.

As concerns its legal form, article 2553 establishes that mandates can be general or special. Those contained in the first three paragraphs of Article 2554 are general.

Any other mandate shall be special.

**Article 2554:**

"In all general powers of attorney for lawsuits and collections, a recital that it is granted with all general and such special powers as require special grant under law shall be sufficient so that the power of attorney shall be understood to have been granted without limitation.

In general powers of attorney for the administration of property, a recital that it is conferred for this purpose shall be sufficient to confer upon the attorney full and ample powers of administration."
In general powers of attorney for the execution of acts of dominion, a recital that it is granted for this purpose shall be sufficient to confer upon the attorney all the powers of the owner over the property in question, including the power to take all measures necessary for the protection and defense thereof.

When it is desired to limit the powers of the attorney in the three instances above mentioned, such limitations shall be expressly set forth or a special power of attorney shall be granted."

**Article 2555**

"The mandate shall be granted in a public instrument or letter power signed before two witnesses, with the signatures of the grantor and witnesses ratified before a notary or before the corresponding judges or administrative authorities:

I. If general;

II. If the business for which it is conferred exceeds the equivalent of one thousand times the general minimum salary in force in the Federal District at the time it is granted; or

III. When in virtue thereof the attorney is to carry out, on behalf of grantor, any act that must be recorded in a public instrument."
Article 2556

"The mandate may be granted in a private writing signed before two witnesses, without the prior ratification of signatures being required, when the business for which it is conferred does not exceed the equivalent of one thousand times the general minimum salary in force in the Federal District at the time it is granted.

The mandate may be oral only when the business involved does not exceed 50 times the general minimum salary in force in the Federal District at the time it is granted."

Following are some of the principal's obligations:

- Principal shall remunerate the attorney, deliver the amounts of money required by the attorney for carrying out the acts assigned thereto, indemnify any damages and losses caused in case of noncompliance with the mandate and the solidary liability in those cases of mandates where more than one attorney has been appointed.

Following are some of the attorney's obligations:

- The attorney shall perform the juridical acts for which he was engaged, consult his principal when any act not specified in the contract has to be carried out, pay an indemnity if he has violated the mandate, notify his principal in case of revocation or ratification of the mandate, inform his principal of his administration, act personally, notify principal that the mandate has been fulfilled and deliver thereto whatever he has received.
Scope of validity of powers of attorney granted in Mexico and abroad

Once we have analyzed the general aspects that the mandate must include and the rules that govern the grant and exercise thereof, we might say that due to the nature of the entrusted acts sometimes they exceed the domestic juridical scope and are governed by another regime recognized by law, the international regime.

In this order of ideas it is understood that the Mexican laws govern all persons within Mexico as well as all acts executed within its territory or jurisdiction, as in the case of the mandate and those persons who submit to said laws, except when they provide for the application of a foreign law and also except for what is established in treaties and conventions to which Mexico is a party.

In other words, according to the preceding paragraph, powers of attorney granted pursuant to Mexican law are valid in Mexico and abroad, provided, in this latter case, that they will be subject to the provisions of international treaties or conventions to which Mexico is a party.

On the other hand, the problem is that we have to know what requirements have to be met when said powers are granted abroad either by an individual or company in order that they be effective in Mexico. In this aspect, countries have instrumented various mechanisms so that these acts, no matter how complex they might
seem, may be valid in Mexico, provided they comply with certain international rules such as those of international treaties and/or conventions.

Due to the above, we shall briefly analyze two documents: the Convention that Abolishes the Requirement of Legalizing Foreign Public Documents and the Protocol on a Uniform Legal Regime of Powers of Attorney.

1. Decree published in the Federal Official Gazette on August 14, 1995, promulgating the Convention that Abolishes the Requirement of Legalizing Foreign Public Documents adopted at La Haye, The Netherlands, on October 5, 1961. By this legal instrument the requirement of legalizing documents from States who are parties to the Convention is repealed and the same treatment applies to public documents issued in Mexico that are to be used in said States.

Said Convention was signed and approved by the Mexican Senate on January 19, 1993, as per the decree published in the Federal Official Gazette on January 17, 1994. The Convention tends to simplify the formalities for the use of public documents that are intended to bear legal effects in a country different from that in which they were issued.

For practical purposes, the convention substituted the document authentication system for one sole certification, called an apostille, which is attached to the document by the authorities of the State in which it is issued.

The apostille must be dated, numbered and registered to guarantee
the authenticity of the signature and/or seals of public documents, since in case of doubt in the country where they are to bear legal effect, their legitimacy can be verified by a request addressed to the authority that issued and registered said certification.

**Contents of the Convention**

The document of the convention consists of 15 articles. The first defines what is to be understood by public instruments so that they may be identified for their application in the territory of the contracting States.

Said public documents may be notarial or administrative documents, official certifications, etc.

The second article establishes the exemptions in the legalization of documents issued between two contracting States.

The fourth article establishes the rules for placing the apostille on the document, which must be done according to the model approved by the Convention.

The fifth and most important article provides that the apostille shall be issued at the request of the signatory or any bearer of the document.

Said article establishes the following:
- When duly completed, it shall certify the authenticity of the signature, the current capacity of the signatory and, if applicable, the identity of the seal or stamp affixed thereto.

- The signature and the seal or stamp on the apostille require no further certification.

This means that the apostille certifies that the signature and/or seal on a public document were placed by an official currently authorized therefor. The same Convention provides that all authorities who apostille documents shall keep a record of apostilles issued by them.

For example, if a document issued in Mexico is to bear legal effect in a State that is a party to the Convention and said document is a federal instrument, that is, any document issued by an authority mentioned in article 26 of the Organic Law of the Federal Public Administration, said document shall be apostilled by the State Representative of the General Director of Government, Department of the Interior, of the place where the document was issued.

Once it has been apostilled by the corresponding authority, said document shall be directly sent to the country where it is to bear legal effect, without any further authentication by the Department of the Interior or the Secretariat of Foreign Relations nor from any diplomatic or consular representative accredited in Mexico.

Likewise, foreign public instruments that are to bear legal effect in Mexico, issued by States who are parties to the Convention, shall bear the apostille approved by the Convention, duly issued by the proper authority of the issuing member country, and in case
of non-member countries the parties must abide by the traditional legalization system, that is, the presentation of said documents before the corresponding Mexican or foreign consular office.

Thus the apostille means that the interest of the document bearer will be protected by the rules established in the agreement, since the apostille is exempt from any proof as concerns the authenticity of the signature and seal affixed thereto, being that it must contain a progressive number and has to be registered to avoid any forgery, all of which is sufficient evidence of its authenticity and origin. In case of doubt as to the authenticity of the document, the interested party can consult the office that issued the document with respect to the respective apostille number.

To conclude, the approval of the apostille makes possible the establishment of a uniform system in all countries bound by the Convention.

2. The Protocol on the Uniform Legal Regime of Powers of Attorney

This juridical instrument was the result of a study carried out by the Board of Directors of the Panamerican Union who drafted a project on a uniform legal regime for powers of attorney that are to be exercised in foreign countries, which project was submitted to the governments of the American Republics who are members of the Panamerican Union, and then revised to conform to their observations.
The document consists of 13 articles which specify in detailed form the requirements that must be met by powers of attorney granted in foreign countries in order to be effective in Mexico.

**General aspects of the document**

1. It regulates powers of attorney, among other aspects, as concerns the person who grants them: if done personally or in the name and representation of a company or third person (article I).

2. It defines the capacity of the officer who authorizes the power and its authenticity.

3. The exercise of a power of attorney constitutes sufficient evidence of its legal effect (article III).

4. Powers of attorney granted for acts of dominion and general powers for administration of property and lawsuits and collections shall have a special rule that prevails over the general rules established in any other sense by the laws of the respective country (article IV).

   With respect to this article, the Mexican government stated a reservation when signing the protocol, upon its acceptance of the provisions of article IV, expressly declaring that foreigners who for the exercise of certain acts are obliged to accept the agreement or waiver mentioned in article 27-I of the Political Constitution of the United Mexican States must grant a special power of attorney expressly containing said agreement or waiver in one of its clauses.

5. Reference is made to the validity of powers of attorney granted in any other contracting country in conformance with the
rules contained in this protocol, provided they are also legalized as required by the special rules on legalization (article V).

6. It establishes that powers of attorney granted in a foreign language may be translated within the same instrument into the language of the country where they are to be exercised. In such case each and every part of the translation thus authorized by the grantor shall be deemed an exact translation. Translation of the power of attorney may also be made in the country where it is to be exercised, according to the use or laws thereof (article VI).

7. It establishes that powers of attorney granted in a foreign country need not be registered or protocolized in any specified offices as a formality prior to their exercise, but said registration or protocolization has to be made when required by law as a special formality in certain cases (article VII).

Finally, we shall mention a formality of a special law, the Notarial Law for the Federal District, which establishes that instruments granted abroad may be protocolized at the request of the interested party, provided they have been legalized or apostilled, and translated by an expert translator, if applicable (article 139 of the Notarial Law for the Federal District).

In the specific case of powers of attorney, the law establishes that powers of attorney granted outside of the Republic of Mexico shall be protocolized, after being legalized or apostilled, and translated by an expert translator, if applicable, in order that they may be effective in accordance with law. Finally, it states that the foregoing is not applicable in case of powers of attorney granted before Mexican consuls (article 140 of the Notarial Law for the Federal District).