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# NATIONAL LAW CENTER FOR INTER-AMERICAN FREE TRADE
# GLOBAL DEVELOPMENT ALLIANCE (GDA) WITH THE
# U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

## MEXICO TRADE CAPACITY BUILDING PROJECT

USAID ANNUAL PROGRAM STATEMENT
APS No. M/OAA/GRO/EGAS-06-107
Cooperative Agreement: 523-A-00-06-00044-00

**TECHNICAL REPORT FY 2011**
**1 OCTOBER 2010 to 30 SEPTEMBER 2011**

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*Table of Contents*

**I. QUARTERLY REPORTS FOR MEXICO TRADE CAPACITY BUILDING PROJECT**

- XVI Quarter: 1 October to 31 December 2010
- XVII Quarter: 1 January to 31 March 2011
- XVIII Quarter: 1 April to 31 June 2011 (Including Annex I)
- XIX Quarter: 1 July to 30 September 2011

**II. NLCIFT CALENDAR FORECAST: ACTIVITIES SEPTEMBER – DECEMBER 2011**

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# MEXICO TRADE CAPACITY BUILDING PROJECT

## Enhancement of the Business and Legal Environment and Trade Capacity through Legal Reform and Improvements in the Administration of Justice by Commercial Courts in Mexico

## USAID ANNUAL PROGRAM STATEMENT
## APS No. M/OAA/GRO/EGAS-06-107
## Cooperative Agreement: 523-A-00-06-00044-00

### QUARTERLY REPORT
### 1 OCTOBER TO 31 DECEMBER 2010

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I. SIXTEENTH QUARTER (1 OCTOBER TO 31 DECEMBER 2010):

A) During the previous quarter, the NLCIFT submitted to the *Instituto de Estudios Judiciales* a proposal outlining a workplan for an intensive series of workshops for judges on oral trials in civil matters. The workshops would cover topics such as: basic principles and rules regulating oral trials; the role of the judge as the director of the process; supervision of the parties and the role of the lawyers; the judge as conciliator in an oral trial; procedural matters including motions, defenses and other petitions; admissions of evidence during a hearing; witness interrogation and use of interpreters; and filing and storing of records of hearings, evidence and decisions.

During the sixteenth quarter, preparatory work on the oral training component of the project was initiated. Also, in early November 2010, the Mexican Senate approved the reforms to the Commercial Code that incorporated a new oral commercial trial.

The NLCIFT conducted a planning/preparatory trip on this component of the project in late November / early December 2010. NLCIFT staff members were accompanied by a retired bilingual U.S. judge, a bilingual cross-border commercial lawyer who also has considerable experience in the area of judicial training, and a bilingual cross-border commercial lawyer with considerable experience also in arbitration and mediation, as well as in judicial training. The NLCIFT team met with its project

partners in Mexico to advance the program/agenda for the oral trial training, determine the proper scope and focus and to set a calendar for the actual training (a detailed list of the issues discussed at the preparatory meetings is attached under Annex I).

Meeting participants included members of the special commission that has been established by the *Tribunal Superior de Justicia del D.F.* to propose and oversee the implementation of civil oral trial reforms (the "Commission"). Also in attendance were some of the judges that have been appointed by the *Tribunal Superior* to serve as oral trial judges.

The meetings were very productive and generated an enthusiastic exchange of ideas as well as comparative discussions pertaining to the U.S. oral advocacy system and the newly introduced Mexican oral trial for civil matters. It is noteworthy that both the Commission and the oral trial judges are eager to learn the skills needed for an effective oral advocacy. They believe that once the process is in place, they will also be able to identify issues or circumstances that may be improved upon, and that were either not foreseen or that would simply make for a more effective and expeditious process.

Meeting participants provided answers and clarifications to the preparatory document circulated by the NLCIFT (Annex I). Some of the issues addressed during the meeting included the following:

- The most common types of cases that are likely to be heard by the new oral trial courts include: (i) the collection of debts that are not documented in an executive document (*i.e.*, a promissory note or public deed) but, rather, in private agreements (*i.e.,* a simple loan agreement); and (ii) claims resulting from a breach or termination of contracts (*e.g.*, construction agreements; purchase and installation of equipment in a household; and plumbing services, among others).

- The provisions under Articles 193 to 200 of the Mexican Code of Civil Procedure on *Actuaciones Prejudiciales* will be applicable to the new oral trial procedure. The petition will be submitted to an oral trial judge and will follow the same rules established under such Articles. These rules include the possibility of receiving the testimony of one or more witnesses prior to the trial hearing.

- The NLCIFT team should focus its training activities mainly on the trial hearing (*Audiencia de Juicio*), and it should also provide some basic training on the conciliation conference that must be conducted by the judge during the preliminary hearing.

- On the issue of conciliation and the court's impartiality, there was consensus that judges will need to have excellent conciliation skills and strategies for purposes of conducting the conciliation conference without jeopardizing their impartiality.

- Since the process provides that the same judge will be in charge of both the preliminary hearing and the trial hearing, the Commission and oral trial judges believe there is no need for opening arguments by the attorneys at the beginning of the trial hearing.

- The order in which evidence will be presented during trial will be determined at the preliminary hearing. However, such order is flexible and can be changed if necessary.

- Article 374 of the Code of Civil Procedure allows the offering of any and all types of evidence, including: electronic evidence, pictures and other non-traditional types of evidence.

- Direct examination and cross-examination will be as flexible and free as possible. There will be no need for drafting a written list of questions prior to the hearing. However, the witness or party under examination will only answer questions after the judge has indicated that s/he may answer. In other words, the attorney for the plaintiff/defendant will ask a question, and the judge will state whether it is a valid question under the law and will order the witness to respond (Articles 360, 392 and 1011 of the Code of Civil Procedure).

- During direct examination or cross-examination the attorneys for the plaintiff or defense may not raise objections against the questions. Only the judge may reject or authorize a question to be responded to by the witness. On this matter, Commission representatives noted that they would like the NLCIFT to provide a list of objections and examples of such objections as they are regulated under U.S. law.

- Impeachments (known as *tacha de testigos*) will be addressed as a separate process (*incidente*) that will not suspend the trial hearing (Article 1008 of the Code of Civil Procedure).

- At present, the procedure does not allow for appeals against the judge's decisions issued during the trial hearings — with the exception of the *amparo* against the final judgment.

- All oral trial courtrooms will be adequately equipped and located within one building; they will be shared by all 12 judges. The NLCIFT team believes that this is a positive approach that will enable oral trial judges to share their knowledge and experiences in real time.

- Other practical and administrative matters were also discussed. For instance, meeting participants discussed the intricacies of scheduling and managing the judges' calendars in a way that is efficient and duly values the judges' time. Currently, the Commission and the oral trial judges envision that each oral trial judge will have a preliminary hearing, a final judgment hearing and a trial hearing per day.

It was decided that the initial training workshop would be held January 25-27, 2011.

B) The *Instituto* had also requested that the NLCIFT provide ongoing training to the Mexican judiciary in a variety of commercial law areas, including commercial contracts, alternative dispute resolution, electronic commerce, and other areas. The first training session under this program was delivered by the NLCIFT in late-October 2010 in Mexico City. The topic covered was "The Rights of Creditors and Debtors in Bankruptcy."

C) In October 2010, NLCIFT Researcher Cristina Castaneda also participated in a separate assessment sponsored by USAID (in collaboration with Booz Allen Hamilton) to evaluate the business environment in Mexico. Specifically, the NLCIFT's role in this assessment was to provide a diagnostic on the topic area of Access to Credit. The information gathered by the NLCIFT as part of this assessment also provides valuable information for purposes of the secured transactions component of this Cooperative Agreement with USAID/Mexico.

D) During this quarter, NLCIFT staff also remained in touch with representatives from the new Movable Assets Registry (*Registro Único de Garantías Mobiliarias* – RUG) (www.rug.gob.mx). The RUG officially started operating on October 7, 2010.

E) Also in the area of secured transactions reform, in late November 2010 the NLCIFT was contacted by the U.S. Commercial Finance Association (CFA). CFA perceives that one of the main obstacles to secured lending in Mexico is the court system. CFA representatives expressed an interest in collaborating with the NLCIFT and its counterparts in Mexico to provide assistance in this area and to further promote secured lending in Mexico. CFA also contacted the U.S. Department of State (including Ambassador Charles Shapiro, at the Office of Western Hemisphere

Affairs) for purposes of exploring the feasibility of coordinating a colloquium to be held in Mexico City during the second quarter of calendar year 2011.

F) Following the November preparatory meeting in Mexico City, and based on the additional feedback provided by the Commission and by the oral trial judges, the NLCIFT team continued to work on the fact scenario and background materials that will constitute the basis for the oral training workshop to be held in late January 2011. In addition to the team that participated in the November meeting, the NLCIFT also enlisted the participation of two additional U.S. judges for the January 2011 workshop.

II. NEXT QUARTER (1 JANUARY TO 31 MARCH 2011)

A) The NLCIFT will finalize the program and materials (including handouts and powerpoint presentations) related to the workshop in Mexico City.

B) The NLCIFT team (including three Arizona-based judges) will travel to Mexico City on January 24, 2011 for purposes of conducting the initial oral trial training workshop at the *Instituto* (January 25 – January 27, 2011).

C) During the late January trip, the NLCIFT will also meet with USAID/Mexico representatives (and possibly with other Mexican authorities – including the Mexican Federal Competition Commission (COFECO)) to discuss further activities under the project.

D) The NLCIFT will coordinate the following activities with the *Instituto*: 1) future presentations/lectures in the context of training sessions organized by the *Instituto* (following the initial lecture on the rights of secured creditors and debtors in bankruptcy proceedings, given by Professor Dale Furnish on October 28, 2010); 2) conducting additional and/or follow-up activities in connection with judicial training to Mexican judges (both in Mexico City and throughout the country); and 3) further collaboration on training in oral trials in commercial matters (both for the judiciary and other interested stakeholders).

E) The NLCIFT will continue to monitor the activities of the RUG. It will also continue its dialogue with CFA, the U.S. Department of State and USAID/Mexico in connection with a colloquium on secured transactions and the judiciary, to be held in Mexico City during the second quarter of calendar year 2011.

## ANNEX I

**TEMAS A TRATAR DURANTE LA REUNIÓN PREPARATORIA**
**TALLER SOBRE ORALIDAD CIVIL**
**DICIEMBRE 1, 2010**

### I. Casos Típicos que pueden llegar a discutirse en Juicio de Oralidad

### II. Actuaciones Prejudiciales

- ¿Serán aplicables los Artículos 193 al 200 del Código de Procedimientos Civiles (CPC) sobre actuaciones prejudiciales?

- De ser así, ¿cuál sería el procedimiento? (Solicitud ante Juez de Oralidad, citación en los casos del Artículo 198 CPC, práctica del testimonio [en relación al Artículo 1010 CPC].)

### III. Audiencia Preliminar

- Inicio de la audiencia: ¿Iniciará el Juez con la depuración del proceso? ¿Habrá alguna presentación por las partes? (Artículos 1006 par. 2, y 991 par. 2 CPC.)

  (i) La depuración del procedimiento: Legitimación Procesal y Excepciones (¿Artículo 35 CPC?)

  (ii) La conciliación de las partes por conducto del Juez: ¿Será ante el mismo Juez quien posteriormente decidirá el fondo del caso? En caso que sí, ¿cómo podrá asegurarse que las partes se sientan cómodas en comunicarse abiertamente con el conciliador/juez?

  (iii) La fijación de acuerdos sobre hechos no controvertidos (Artículo 1004 CPC).

  (iv) La fijación de acuerdos probatorios (Artículo 1005 CPC): Determinación por las partes y en su defecto por el Juez.

  (v) En cuanto a los hechos controvertidos que tendrán que comprobarse mediante testigos, peritos y prueba instrumental: ¿Cuál es el efecto/significado de la "admisión" de tales pruebas en la audiencia preliminar? ¿Cuáles serán los criterios o las bases para que el juez admita o rechace la prueba? ¿Deberá el juez resolver oralmente indicando cuáles pruebas quedarán admitidas? Una vez admitida cierta prueba durante la audiencia preliminar, ¿cómo se incorpora al proceso en el juicio oral?

  (vi) La citación para audiencia de juicio: A realizarse dentro de 10 a 40 días después de la audiencia preliminar.

### IV. Audiencia del Juicio Oral

- Inicio de la audiencia: ¿Quién dará inicio a la audiencia? ¿Habrá alguna presentación de alegatos por las partes? (Artículos 1006 par. 2, y 991 par. 2 CPC.)

- Presentación y desahogo de pruebas: El Artículo 1006 CPC, establece que el Juez determinará el orden en que se presentarán las pruebas. Al respecto: ¿Cómo hará la determinación y en qué momento se comunicará el orden a las partes y testigos, peritos, y otros? ¿Podrían las partes

determinar el orden en que desean presentar sus pruebas y comunicarlo al Juez al inicio de la audiencia para que el Juez lo apruebe de estar de acuerdo, o podrían las partes fijar el orden de las pruebas durante la audiencia preliminar, para que las partes lleguen al juicio oral con tal certeza?

- Prueba Confesional: El Artículo 1009 (II) CPC, establece que el Juez evaluará las preguntas antes de que se formulen al declarante. ¿Cómo se realizará esto en la práctica? En caso que una parte no quiera utilizar la prueba confesional, ¿puede llamar la contraparte a declarar en el juicio oral como cualquier otro testigo?

- Prueba Testimonial: ¿Cuál será el orden en que se realice el interrogatorio (Demandante, Demandado, Juez)? ¿Habrá interrogatorio y contrainterrogatorio? ¿Se permite el contrainterrogatorio por medio de preguntas sugestivas? ¿Pueden las partes interponer objeciones a las preguntas? ¿Cuáles son las limitaciones en cuanto a la forma de las preguntas?

- Prueba Instrumental: ¿De qué manera se presentarán y discutirán las pruebas instrumentales en el juicio, es decir, cómo se van a incorporar al proceso del juicio oral?

- Otros tipos de pruebas: ¿Se admitirán pruebas electrónicas? ¿Cuáles serán los pasos para ofrecer, admitir y presentar pruebas supervenientes?

- Cierre de la audiencia: ¿Pueden las partes presentar alegatos de clausura antes de que el juez decida el caso, con qué contenido y cuáles limitaciones (de contenido, tiempo, etc.)? (Art. 1006 par. 2, y 991 par. 2 CPC.) ¿Cuál será el contenido de la sentencia escrita? La copia que será entregada a las partes, ¿será copia simple o certificada?

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# MEXICO TRADE CAPACITY BUILDING PROJECT

## Enhancement of the Business and Legal Environment and Trade Capacity through Legal Reform and Improvements in the Administration of Justice by Commercial Courts in Mexico

**USAID ANNUAL PROGRAM STATEMENT**
**APS No. M/OAA/GRO/EGAS-06-107**
**Cooperative Agreement: 523-A-00-06-00044-00**

**QUARTERLY REPORT**
**1 JANUARY TO 31 MARCH 2011**

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I. SEVENTEENTH QUARTER (1 JANUARY TO 31 MARCH 2011):

A) During the initial 3 weeks of January, the NLCIFT finalized the program and materials (including handouts and powerpoint presentations) related to the workshop for judges on oral trials in civil matters. The NLCIFT team traveled to Mexico City on January 24, 2011 for purposes of conducting the initial oral trial training workshop at the *Instituto de Estudios Judiciales* (January 25 – January 27, 2011).

The oral training was delivered to the initial group of 12 Mexican judges that have been appointed (through a competitive selection process) as oral trial judges. The sessions were designed consistent with a learn-from-practice methodology, including open dialogue between the 12 Mexican judges and the NLCIFT training team (which included, among others, 3 bilingual Arizona judges), practice simulations on each aspect of the trial process (direct and cross-examination of witnesses, expert witness testimony, presentation of material evidence, etc.), as well as two mock trials conducted by the Mexican judges.

Members of the NLCIFT training team included the Honorable Barbara Mundell, the Honorable Gilbert Veliz, the Honorable Louis Araneta, attorney D. Michael Mandig, attorney Philip A. Robbins (also the NLCIFT's board chairman), NLCIFT researcher Cristina Castaneda, and NLCIFT deputy director Kevin J. O'Shea.

The NLCIFT received excellent feedback from the judges via the evaluation forms they completed (*see* document attached to this Quarterly Report – *Evaluaciones*).

B) During the late January trip, the NLCIFT also met with USAID/Mexico representatives, as well as with other Mexican authorities — including the Mexican Federal Competition Commission (COFECO) — to discuss further activities under the project. A COFECO representative agreed to send to the NLCIFT sample judicial decisions where COFECO feels the courts have not understood the technical issues involved in the area of competition policy – and, consequently, where courts/judges could benefit from additional training in this area.

C) The NLCIFT's second training session for the 12 Mexican judges was held on February 24-25, 2011 and focused on pre-trial settlement conferences (conciliation). The NLCIFT training team included the Honorable Barbara Mundell and the Honorable Louis Araneta. The session included both substantive presentations and two mock conciliations. As part of the session, participants discussed the Mexican judges' past involvement in conciliation conferences. Overall, the judges' view of settlement conferences did not appear to have as much of a "hands-on" approach as it does in the United States. However, the judges were receptive to learning the techniques and strategies for dealing with parties who are not inclined to settle or who are uncertain about settlement. Participating judges were also enthusiastic during the mock settlement exercises; and they expressed their commitment to implementing the reforms in this area.

D) Initially, the NLCIFT was also scheduled to conduct initial training for the judicial staff on March 8, 9 and 10, 2011. These dates had been scheduled based on the fact that reforms to the Mexican Code of Civil Procedure introducing an oral trial process would enter into force on March 11, 2011. However, in mid-February 2011, the date of entry into force of the relevant reforms was postponed to January 27, 2012. This new date in 2012 coincides with the date that recent Commercial Code reforms will go into effect. Also, it gives the judiciary time to further prepare the actual facilities for the trials.

As a result of this postponement, the *Instituto* also decided to postpone the staff training to some time in the second half of calendar year 2011 (no date has been specified yet).

E) The NLCIFT continued to coordinate various activities with the *Instituto* — including the feasibility of conducting additional presentations/lectures in the context of training sessions organized by the *Instituto*. It is anticipated that the next such presentation/lecture will focus on alternative dispute resolution (ADR) mechanisms — including arbitration and mediation. The dates discussed for purposes of this lecture are May 11 or

May 12, 2011, and the lecture would include an analysis of proposed new legislation for the federal district in the area of arbitration.

F) The NLCIFT continued its dialogue with CFA, the U.S. Department of State, USAID/Mexico and Mexican counterparts (including the Federal Supreme Court of Justice, the *Instituto* and the Mexican Registry of Secured Transactions – RUG), in connection with a colloquium on secured transactions and the judiciary, to be held in Mexico City during the second quarter of calendar year 2011. During the late February 2011 trip to Mexico City, NLCIFT staff met with some of their Mexican counterparts. A representative from the Federal Supreme Court suggested that the NLCIFT also reach out to the Federal Judicial Institute (the federal-level equivalent of the *Instituto* in the D.F.).

Initially, the date for the colloquium was set for May 9, 2011. Based on discussions with their Mexican counterparts (particularly representatives from the RUG), the NLCIFT and CFA have decided to move the date to June 2, 2011. This postponement will enable the RUG and the Mexican Ministry of the Economy to make an announcement at the local level with respect to the significant progress achieved by the registry. RUG officials also anticipate that this announcement (presently scheduled for May 31, 2011) will contribute to encourage local authorities (including in the executive and legislative branches) to introduce additional reforms to the secured transactions legal framework – thus generating a more propitious and receptive environment for those who will participate in the colloquium.

## II. NEXT QUARTER (1 APRIL TO 30 JUNE 2011)

A) In early April 2011, the NLCIFT will conduct a planning trip to advance the arrangements for the ADR lecture in early May and the CFA colloquium in early June – including an initial meeting with the Federal Judicial Institute.

B) In early May 2011, the NLCIFT will conduct an ADR presentation entitled "Reforms in Mediation and Arbitration: The Role of Courts." Presenters will include 1 or 2 bilingual Arizona judges, members of the NAFTA Advisory Committee on Private Commercial Disputes ("NAFTA 2022 Committee") and NLCIFT staff.

C) The NLCIFT will finalize the planning and arrangements for the colloquium on secured transactions and the judiciary, to be held June 2, 2011. It is anticipated that the colloquium will be held at the Federal Judicial Institute in Mexico City.

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# MEXICO TRADE CAPACITY BUILDING PROJECT

## ENHANCEMENT OF THE BUSINESS AND LEGAL ENVIRONMENT AND TRADE CAPACITY THROUGH LEGAL REFORM AND IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE BY COMMERCIAL COURTS IN MEXICO

USAID ANNUAL PROGRAM STATEMENT
APS No. M/OAA/GRO/EGAS-06-107
Cooperative Agreement: 523-A-00-06-00044-00

**QUARTERLY REPORT**
**1 APRIL TO 31 JUNE 2011**

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## I. EIGHTEENTH QUARTER (1 APRIL TO 31 JUNE 2011):

**A. PLANNING TRIP TO MEXICO CITY, APRIL 2011.** The NLCIFT conducted a planning and preparatory trip on April 5-8, 2011. Three main objectives were achieved by the NLCIFT's team during this visit: (i) it advanced the arrangements for the panel on Alternative Dispute Resolution (ADR) to be held at the Judicial Training Institute of the Federal District (the Institute) at the beginning of May; (ii) it held various meetings with key stakeholders for the Round Table on Secured Transactions scheduled for June 2011; and (iii) it furthered the coordination of future training sessions on oral trial skills with the Institute.

With regard to the Round Table on Secured Transactions, the NLCIFT's team met with Magistrate Leonel Castillo González, Director General of the Federal Judicial Institute (IJF), who expressed much interest in the event and was also keen to hosting it at the IJF main building.

**B. PANEL ON MEDIATION AND ARBITRATION: THE ROLE OF THE JUDICIARY, MAY 2011.** The ADR Panel was held on May 12, and was conducted as a panel discussion to ensure a dynamic exchange of ideas and commentaries not only among the panelists, but also with the audience. Panelists included NAFTA Advisory Committee on Private Commercial Disputes (NAFTA 2022 Committee) members from Mexico and the United States, in addition to a retired bilingual Judge from Maricopa County, Arizona. The combined experience and knowledge of the panelists provided an enriching conference from a comparative perspective. The conference was moderated by Philip Robbins, an experienced trial lawyer and arbitrator and a United States' NAFTA 2022 Committee member.

The Institute's collaboration and contribution in coordinating the invitations to the ADR Panel made for a wide and varied audience. Approximately 50 people were in attendance, including members of Mexico's Federal District judiciary as well as in-house counsel and representatives of Mexico's bar associations.

The panel discussions focused first on Mediation, then on Arbitration, and were concluded with a one-hour question and answer session. Following are highlights of the discussion. The topic of mediation in Mexico included an introduction to the conceptual and regulatory differences between conciliation and mediation. On the topic of arbitration in Mexico, the discussion focused on the January 2011 reforms to the Commercial Code on arbitration. The panelists discussed in detail all ten (10) cases in which the law provides for judicial intervention or assistance during an arbitral process or commercial settlement. In general, the reforms to the Commercial Code provide for a more detailed regulation of the scope and procedures relative to a judge's assistance during arbitration. For instance, the reforms introduce a special procedure by which the judge will uphold an arbitral award and enforce it. Such special procedure is intended to be brief (approximately 35-45 days) and the judge's decision may not be appealed.

The panel discussions also covered the Arizona compulsory arbitration for monetary claims not exceeding US$50,000.00. Arbitration is required for all such types of claims before they can reach the actual trial process. Compulsory arbitration is not binding unless the parties agree during the process to make the arbitration decision binding. Nonetheless, in Maricopa County, 13,000 cases are on arbitration track every year, and 95% of such cases are resolved in the process without an arbitral award. The remaining 5% (650) of cases are resolved by an arbitral award.

C. **Round Table on Secured Transactions, June 2011.** The NLCIFT in coordination with the Commercial Finance Association (CFA) organized a one-day Round Table on Secured Transactions in Mexico. The Round Table was held at and hosted by the IJF in Mexico City and was moderated by Ambassador, Charles S. Shapiro. It focused on the current Mexican legal framework on personal property security interests and the identification of areas for future improvement. In particular, the discussion revolved around two areas: 1) the recently launched Mexican registry of security interests; and 2) the existing law on secured transactions and the need for its final an effective revision as well as of Mexico's judicial and extrajudicial enforcement mechanisms for all personal property security interests. (*See* Annex I, for a Summary of the Round Table and Next Steps (bilingual), and Annex II, for the NLCIFT's publication of the event in its quarterly newsletter, *Novedades*).

Attendees of the Round Table included: Judges and Magistrates from the Federal and Mexico City Judiciary; representatives from Mexico's bankers association;

notaries; commercial notaries; lawyers, Mexico's Treasury, and its Commerce and Foreign Relations Secretariats. Representatives from the CFA included members from their executive board of directors, staff, counsel and its members from Bank of America, Citibank, Cole Taylor Business Capital, GE Capital, JPMorgan Chase and Wells Fargo. Also present at the meeting were Economic Officers from the United States Embassy as well as USAID officers. The NLCIFT's team for the Mexico Secured Transaction project has been led by NLCIFT President and Executive Director Dr. Boris Kozolchyk and includes project managers Cristina Castaneda and Marek Dubovec, as well as outside consultant Barrett Avigdor, and researcher Elizabeth Pocock. The IJF collaborated diligently in the logistics for the event at their offices. There were numerous logistics and technical staff assisting to ensure that the event ran effortlessly.

CFA hosted an introductory dinner the evening before the round table as well as a closing dinner. Approximately thirty people attended and were joined by special guests Magistrate Edgar Elías Azar, Chief Justice of the Superior Court of Justice of the Federal District, Magistrate Leonel Castillo González, Ángela Quiroga Quiroga, Director of the Institute, José Antonio Torre Medina, Assistant Secretary of Financial Regulation for the Ministry of Economy and USAID's Adam Shub, Kevin McGlothlin and Elizabeth Bauch. The dinner was an excellent opportunity for a casual exchange of ideas and goals as well as for strengthening relations with local partners.

Following the Round Table, the NLCIFT has been actively engaged with local partners. As a result, a drafting commission to reform the Mexican law on secured transactions has been created and is led by Mexico's Commerce Secretariat, particularly by Jan Boker Regens. In June, NLCIFT assisted the drafting commission by providing answers and supporting documents pertaining to initial questions on concepts and principles of secured transactions.

**D. Training for Federal Judges on Competition Law, June 2011.** The NLCIFT has continued to engage in conversations with the Mexican Federal Competition Commission (COFECO) and Abt Associates (USAID contractor on Competition Law and Policy) to conduct a training program for judges on competition law. NLCIFT anticipates that the initial steps for this program will take place in July and the beginning of August.

## II. NEXT QUARTER (1 JULY TO 30 SEPTEMBER 2011)

**A. CONTINUED WORK ON SECURED TRANSACTIONS REFORM.** The NLCIFT will continue to assist the Mexican drafting commission as they endeavor to complete reforms to their law on secured transactions in this next quarter. On the week of September 12, 2011, the NLCIFT will host a study tour organized by the United States Department of State for delegations from Chile and Colombia to support and assist them on their reform efforts. With the support of USAID, the NLCIFT will invite members of the Mexican drafting commission to join those meetings and advance their work on the drafting of Mexico's reforms.

**B. TRAINING FOR FEDERAL JUDGES ON COMPETITION LAW.** The NLCIFT will continue to work with COFECO and Abt Associates to conduct a training program for federal judges on competition law. Such program would be specifically designed for judges and will, therefore, include peer-to-peer interactions with United States Judges as well as with experts in this area. It is envisioned that the training program would be highly skill-based and will include mock and practical factual discussions.

**C. ORAL TRIAL TRAINING FOR JUDGES.** The NLCIFT and the Institute are coordinating future training sessions for the 12 appointed oral trial judges and their staff. This is a program that has received excellent references; for example, in a recent interview with Charlie Rose, President Calderón referred to the program of "oral trials" in Mexico as one of the most significant social accomplishments of his administration. To continue these efforts, the proposed training and follow up activities that are envisioned to take place in this next quarter include: (i) a feedback session using the video recordings from the January 2011 training session; (ii) training on oral communication skills as well as oral trial advocacy for the court staff – approximately 72 staff members; and (iii) a study visit by the Mexican Court Administrator for the new oral trial courts, including visits to State and Federal Courts in Tucson, Arizona, and one-on-one sessions with Deputy Clerks. Further, the NLCIFT will conduct a Panel on oral trials for the judiciary, lawyers and the general public in October 2011.

# ANNEX I

National Law Center for Inter-American Free Trade

# ROUND TABLE ON PERSONAL PROPERTY SECURED TRANSACTIONS IN MEXICO
## SUMMARY AND NEXT STEPS – JUNE 2, 2011

## I. SUMMARY OF THE ROUND TABLE

The National Law Center for Inter-American Free Trade (NLCIFT) as Global Development Alliance Partner with U.S. Agency for International Development (USAID), and with the Commercial Finance Association (CFA) organized a one-day Round Table on Secured Transactions in Mexico. The Round Table was held at and hosted by the Federal Judicial Institute (*Instituto de la Judicatura Federal*) in Mexico City. It focused on the current Mexican legal framework on personal property security interests and the identification of areas for future improvement. In particular, the discussion revolved around two areas: 1) the recently launched Mexican registry of security interests; and 2) the existing law on secured transactions and the need for its final an effective revision as well as of Mexico's judicial and extrajudicial enforcement mechanisms for all personal property security interests.

Based on the discussion during the Round Table, all parties involved agreed that, in general, Mexico's secured lending framework that is presently scattered in a number of codes and statutes needs to be revised especially to meet the credit needs of small and medium-sized businesses, as well as other interested parties in Mexico. Such a change in the legal and procedural framework will create a predictable and sound lending environment that will, in turn, reduce the cost of credit, promote economic growth and generate jobs at various levels of the Mexican economy. Although Mexican borrowers have already been able to access secured loans from foreign lenders, including the CFA members, such loans are too few and still too risky and thus Mexico's borrowing needs remain unsatisfied.

More specifically, the Round Table participants also agreed:

### A. FUNCTIONALITY AND TRANSPARENCY

Changes to the Mexican legal framework on secured transactions need to include functional and unitary rules applicable to all security devices that ensures domestic and foreign lenders are able to assess risk and are able to provide more credit at reasonable rates of interest and with reasonable loan conditions.

### B. THE REGISTRY FOR SECURITY INTERESTS – (RUG)

The RUG is a great addition to the Mexican secured transactions system. In the near future, various functions, including interconnections to other Mexican registries will improve the technical and informational aspects of the RUG. It will continue to develop into an especially useful tool for the publicity and establishing of priorities for all security interests in Mexico.

### C. ENFORCEMENT

Both an extrajudicial and a judicial enforcement of secured claims in a manner consistent, fair, and efficient are vital for the success of secured transactions reform in Mexico. At present, the extrajudicial procedure may be utilized by creditors only with respect to guarantee trusts and *prendas sin transmisión de posesión* and is still subject to frequent dilatory appeals that make lending on quickly perishable or depreciable assets highly risky and costly.

### D. PERCEPTION

A key component for many lenders, domestic and foreign, is their perception of the predictability of Mexican laws and the enforcement of their security interests. Creating a positive perception of this predictability is important so that lenders feel confident in their decisions to lend within Mexico.

## II. STEPS FOR MOVING FORWARD

Many possibilities exist when considering the next steps to take in moving forward with the conclusions of the Round Table. Given the success of the discussions among all participants in Mexico City, the creation of drafting and working groups that will include all the affected sectors, lenders as well as borrowers, and will focus on the identified normative and transactional problems, is a natural progression for a reform process based on best lending and business practices.

Such next steps should include:

### A. DRAFTING OF COMPREHENSIVE REFORMS

A highly inclusive drafting group that represents lenders as well as borrowers, lawyers, judges, notaries, commercial notaries and the relevant Government Offices, should be appointed for drafting reforms to the Mexican legal framework on secured transactions so that it provides a modern legal framework with clear rules on the creation, publicity, priority and enforcement of all types of security interests. This reform should make the Mexican legal framework predictable and attractive to both domestic and foreign parties.

### B. DEVELOPING EFFECTIVE ENFORCEMENT PROCEDURES

A working group should be appointed for developing rules to create an expedited judicial procedure as well as functional extrajudicial remedies. Such working group should explore the possibility of "oral" highly summary trials for judicial enforcement of security interests, as well as the expansion of extrajudicial remedies that can be easily used by lenders. Mexican case law that enforces the parties' freedom to contract and shapes their own enforcement procedures augurs well for the judicial support of extrajudicial remedies. Once lenders feel comfortable with these extrajudicial enforcement mechanisms, there is potential to dramatically increase the presence of

such provisions in loan and security contracts and drastically increase the volume of secured credit at reasonable rates of interest. These enforcement rules must be consistently applied throughout Mexico by all of its courts.

### C. Training for Judicial and Financial Parties

There is a need for capacity building in terms of substantive and procedural law as well as on banking and financial aspects of secured transactions. Therefore, participants will work on developing training programs for judges, lawyers, borrowers and bankers on secured transactions and asset-based lending at all levels.

### D. Outreach

Improving the lenders' perception of Mexican legal framework on secured transactions will increase lending in the country and facilitate economic growth. Outreach illustrating the effectiveness of the RUG, reform efforts, and enforcement mechanisms, both domestically and internationally, will help shape positive perceptions and encourage lending.

Commercial Finance Association

USAID

National Law Center for Inter-American Free Trade

# MESA REDONDA SOBRE GARANTÍAS MOBILIARIAS EN MÉXICO
# RESUMEN PUNTOS CLAVE Y SIGUIENTES PASOS A TOMAR – JUNIO 2, 2011

## I. RESUMEN PUNTOS CLAVE DE LA MESA REDONDA

El *National Law Center for Inter-American Free Trade* (NLCIFT) como socio de la Alianza para el Desarrollo Global con la Agencia de los Estados Unidos para el Desarrollo Internacional (USAID por sus siglas en Inglés) y la *Commercial Finance Association* (CFA) organizaron una Mesa Redonda sobre Garantías Mobiliarias en México. La Mesa Redonda se llevó acabo en el Instituto de la Judicatura Federal en la Ciudad de México como anfitriones. Se enfocó en el marco legal Mexicano sobre garantías mobiliarias e identificó necesarias mejoras y reformas al mismo. En particular, la discusión se desarrolló entorno a dos temas principales: 1) el reciente Registro Único de Garantías Mobiliarias; y 2) la legislación actual sobre garantías mobiliarias y la necesidad de realizar una revisión efectiva y definitiva de la misma, incluyendo los mecanismos de ejecución judicial y extrajudicial para todo tipo de garantías mobiliarias.

Los participantes de la Mesa Redonda estuvieron de acuerdo que, en general, el marco legal Mexicano sobre garantías mobiliarias que actualmente se encuentra disperso a través de diversos códigos y leyes debe sujetarse a análisis y revisión para que esté a tono con las necesidades crediticias de las pequeñas y medianas empresas, y demás beneficiarios de una moderna ley de garantías mobiliarias en México. Dichas reformas al marco legal y de procedimientos generarán un ambiente crediticio sano y predecible que, por su parte, reducirá el costo de los créditos, promoverá el desarrollo económico y generará empleos a diversos niveles de la economía Mexicana. A pesar de que a la fecha ya existen deudores con acceso a préstamos garantizados otorgados por instituciones de crédito extranjeras, incluyendo los miembros de la CFA, dichos préstamos son muy pocos y riesgosos, de manera que las necesidades crediticias Mexicanas se mantienen insatisfechas.

Específicamente, los participantes de la Mesa Redonda acordaron:

### A. FUNCIONALIDAD Y TRANSPARENCIA

Las reformas al marco legal Mexicano sobre garantías mobiliarias deben incluir disposiciones funcionales y unitarias, es decir, aplicables a todas las garantías mobiliarias independientemente de su denominación actual de manera que las instituciones de crédito, locales e internacionales, puedan evaluar riesgos y otorgar préstamos a tasas de interés y condiciones razonables.

### B. EL REGISTRO ÚNICO DE GARANTÍAS MOBILIARIAS (RUG)

El RUG es una excelente adición al marco de las garantías mobiliarias de México. En un futuro cercano se espera que varias funciones, incluyendo la interconexión con otros registros en México, mejoren los aspectos técnicos e informáticos del RUG. Así, continuará desarrollándose como una herramienta especialmente útil

para la publicidad y el establecimiento de prelaciones de todas las garantías mobiliarias en México.

### C. EJECUCIÓN

La ejecución extrajudicial y judicial de las garantías mobiliarias de manera consistente, justa y eficiente es vital para la exitosa implementación de reformas sobre garantías mobiliarias en México. Actualmente, el procedimiento extrajudicial únicamente está disponible para acreedores en fideicomisos de garantía o en prendas sin transmisión de posesión, y continúa siendo objeto de apelaciones dilatorias que hacen que los préstamos garantizados con bienes perecederos o de rápida depreciación sean considerados de alto riesgo y resulten muy costosos.

### D. PERCEPCIÓN

Un elemento clave para muchas instituciones de crédito, locales o internacionales, es la percepción sobre qué tan predecibles son la ley y los mecanismos de ejecución de garantías mobiliarias en México. Es importante lograr una percepción más positiva sobre la predictibilidad del sistema para que las instituciones crediticias tengan confianza en sus decisiones de otorgar préstamos en México.

## II. SIGUIENTES PASOS A TOMAR

Existen muchas posibilidades cuando evaluamos cuáles son los siguientes pasos a tomar para la implementación de los acuerdos alcanzados durante la Mesa Redonda. En razón del éxito de las discusiones durante la reunión, resulta que la creación de grupos de redacción y de trabajo que incluyan a todos los sectores interesados (incluyendo a acreedores y deudores), que se enfoquen en los problemas legales y operativos ya identificados, es una progresión natural hacia la implementación de reformas basadas en las mejores prácticas crediticias y de negocios.

Dichos pasos deben incluir:

### A. REDACCIÓN DE REFORMAS INTEGRALES

Se debe de nombrar un grupo de redacción que sea sumamente inclusivo, es decir, que incluya a representantes de los acreedores así como de deudores, abogados, jueces, notarios, corredores públicos y representantes de las Secretarías de Gobierno respectivas, que se encargue de la redacción de las reformas al marco legal Mexicano sobre garantías mobiliarias. De manera que se desarrolle un marco legal moderno que contenga disposiciones claras sobre la constitución, publicidad, prelación y ejecución de todas las garantías mobiliarias. Dichas reformas deben generar un marco legal predecible y atractivo para partes locales e internacionales.

### B. DESARROLLO DE PROCEDIMIENTOS DE EJECUCIÓN EFECTIVOS

Se debe nombrar un grupo de trabajo que desarrolle y redacte disposiciones que creen un procedimiento judicial expedito así como procedimientos extrajudiciales funcionales. Dicho grupo de trabajo debe considerar la posibilidad de contar con

juicios orales sumarísimos para la ejecución judicial de garantías mobiliarias así como la expansión del ámbito de los procedimientos extrajudiciales que puedan ser fácilmente utilizados por los acreedores. La jurisprudencia Mexicana que sostiene la autonomía de la voluntad privada en los contratos y que da forma a procedimientos extrajudiciales creados por las partes es un buen augurio que fomenta el apoyo por parte del poder judicial de dichos procedimientos extrajudiciales. Toda vez que los acreedores se sientan cómodos con estos procedimientos extrajudiciales, existe el potencial que aumente la inclusión de cláusulas de éste tipo en los contratos de préstamo y garantía y que el volumen de préstamos garantizados a tasas de interés razonables incremente drásticamente.

### C. CAPACITACIÓN AL PODER JUDICIAL Y A ENTIDADES FINANCIERAS

Existe la necesidad de capacitación sobre la ley sustantiva y adjetiva sobre garantías mobiliarias así como sobre los aspectos bancarios y financieros de las mismas. Por lo que, los participantes trabajarán en el desarrollo de programas de capacitación para jueces, abogados, deudores y banqueros sobre el tema de garantías mobiliarias en general y a todo nivel.

### D. PUBLICIDAD

Al mejorar la percepción que tienen los acreedores sobre el marco legal Mexicano sobre garantías mobiliarias se incrementará el financiamiento dentro del país y se promoverá el desarrollo económico. Contar con publicidad que demuestre la efectividad del RUG, los esfuerzos de reforma y los mecanismos de ejecución, a nivel local e internacional, ayudará a formar una percepción positiva y promoverá un mayor financiamiento.

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440 N. Bonita Ave. – Tucson, AZ 85745
(520)622-1200 – fax: (520)622-0957
http://www.natlaw.com

# MEXICO TRADE CAPACITY BUILDING PROJECT

## ENHANCEMENT OF THE BUSINESS AND LEGAL ENVIRONMENT AND TRADE CAPACITY THROUGH LEGAL REFORM AND IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE BY COMMERCIAL COURTS IN MEXICO

USAID ANNUAL PROGRAM STATEMENT
APS No. M/OAA/GRO/EGAS-06-107
Cooperative Agreement: 523-A-00-06-00044-00

**QUARTERLY REPORT**
**1 JULY TO 30 SEPTEMBER 2011**

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## I. NINETEENTH QUARTER (1 JULY TO 30 SEPTEMBER 2011):

**A. PREPARATIONS FOR TRAINING ON COMPETITION LAW & SECURED TRANSACTIONS REFORM, JULY 2011.** The NLCIFT continued working with the Mexican Federal Competition Commission (COFECO) and Abt Associates (USAID contractor on Competition Law and Policy) on the training program for judges on competition law. During the month of July a full agenda for the training program was developed, including specific references to preparation materials that will be provided to trainees in advance of the program.

Also, during the month of July, the NLCIFT continued to work with the Ministry of Economy in coordinating: (i) further work with the drafting commission appointed to revise the legal provisions on secured transactions and which is lead by the Ministry of Economy; (ii) participation by members of the drafting commission at a study visit on secured transactions that will be held at the NLCIFT's headquarters in Tucson, Arizona; and (iii) future training programs for the judiciary on secured transactions law and practice.

**B. PLANNING TRIP TO MEXICO CITY, AUGUST 2011.** The NLCIFT conducted a planning and preparatory trip to Mexico City on August 21-24, 2011. During this visit, the NLCIFT team met with COFECO and Abt Associates to further work on the design and agenda for the training program on competition law. At the end of the meeting, the group had finalized the agenda and identified all potential key speakers as well as next steps needed to carryout the training program.

The NLCIFT's team also met with the Ministry of Economy with regard to the study visit on secured transactions and the development of a joint training

program for the judiciary on secured transactions law and practice with particular emphasis on the use and benefits of the registry of security interests (*Registro Único de Garantías Mobiliarias* – RUG).

Also during this visit, the NLCIFT's team met with the General Director of the Federal Judicial Institute (IJF), Magistrate Leonel Castillo González, and agreed that the NLCIFT would provide training for Federal level judges on: (i) Oral trials on commercial matters; (ii) on competition law; and (iii) on secured transactions law and practices.

Finally, the NLCIFT also met with USAID-Mexico Mission Director, Thomas Delaney, and USAID officers including Kevin McGlothlin, Elizabeth Bauch, and Mark Gizzi. The NLCIFT provided an overview of the various project tasks as well as a forecast of activities.

C. **Study Visit on Secured Transaction and Reform Discussions, September 2011.** On September 13-14, 2011, the NLCIFT hosted a study tour organized by the United States Department of State for delegations from Chile Colombia and Panama to support and assist them on their secured transactions reform efforts. With the support of USAID, the NLCIFT hosted members of the Mexican drafting commission as part of the study visit. The Mexican members that attended the meetings in Tucson were Lic. Jan Boker, General Director of National Commercial Regulation and Lic. Isis N. Isunza, Director of the Under Secretariat of Competitiveness and Business Regulation, both from the Ministry of Economy. The two-day program included: an overview of legal principles of secured transactions reform in the Americas as a tool for economic development; a discussion of the OAS Model Inter-American Law on Secured Transactions and Model Registry Regulations, the NLCIFT 12 principles on Secured Transactions and the Honduran and Mexican laws on secured transactions; practical means of implementing secured transactions law, including the design and implementation of a registry system. The program also included meetings with representatives from local banks and credit unions, and local businesspersons from a variety of sectors; as well as a visit to the University of Arizona Law School to discuss the importance of legal education and policy issues as well as innovation and entrepreneurship projects and their relevance to law reform and capacity building.

The Mexican members of the drafting commission stayed in Tucson until September 17th to engage in detailed analysis and discussion of the Mexican law on secured transactions and specific areas of reform.

## II. NEXT QUARTER (1 OCTOBER TO 31 DECEMBER 2011)

A. **CONTINUED WORK ON SECURED TRANSACTIONS REFORM.** The NLCIFT will continue to assist the Mexican drafting commission as they endeavor to complete reforms to their law on secured transactions in this next quarter. For awareness and dissemination of information on the RUG, the NLCIFT in collaboration with the Ministry of Economy and the Commercial Finance Association (CFA) will prepare and conduct training sessions on the secured transactions practice. The first of these sessions will take place in December 2011.

B. **TRAINING FOR FEDERAL JUDGES ON COMPETITION LAW.** The NLCIFT will continue to work with COFECO and Abt Associates to conduct a training program for federal judges on competition law. Thus far, specific dates for the first training session have not been identified but it has been determined that it will take place before the end of the quarter.

C. **ORAL TRIAL TRAINING FOR JUDGES.** During this next quarter the NLCIFT will conduct: (i) a general lecture-style program on Oral Trials on Civil and Commercial Matters that will take place at the Judicial Training Institute of the Federal District on October 2011; (ii) a similar yet more comprehensive lecture-style program on Oral Trials on Commercial Matters that will take place at the IJF on October 2011; and (iii) a roundtable discussion with Federal level Judges at the IJF where a report on the reforms will be discussed in detailed along with international experts; this session will take place during the first two weeks of November at a date that will be determined shortly. Finally, the NLCIFT will explore possible training programs on oral trials on commercial matters for the Judiciary in other Mexican states.

**National Law Center for Inter-American Free Trade**

**NATIONAL LAW CENTER FOR INTER-AMERICAN FREE TRADE**
**GLOBAL DEVELOPMENT ALLIANCE (GDA) WITH THE**
**U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT**

**Proposed Calendar: September – December 2011**

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| **SEPTEMBER**<br>September 13 – 16, 2011 | Mexican Secured Transactions Drafting Group Visit to the National Law Center for Inter-American Free Trade in Tucson, AZ. |
| **OCTOBER**<br>October 18 – 20, 2011 | Lecture Series on Oral Trial Advocacy (Civil and Commercial Matters) at the Judicial Training Institute of the Federal District.<br><br>AND<br><br>First Training Session for Federal-level Judges on Oral Trial Advocacy for Commercial Matters at the Federal Judicial Institute. (To be delivered in person at the Federal Judicial Institute and streamed live to all other districts via videoconference.) |
| **NOVEMBER / DECEMBER**<br>November (1st Week – Exact Dates to be Determined) | Second Training Session for Federal-level Judges on Oral Trial Advocacy for Commercial Matters at the Federal Judicial Institute. Discussion: Critical Analysis of the reforms. (To be delivered in person at the Federal Judicial Institute and streamed live to all other districts via videoconference.) |
| November (1st Two Weeks – Exact Dates to be Determined) | First Training Session for Federal-level Judges on Competition Law and Policy. |
| November (Last Week) or December (2nd Week) (Exact Dates to be Determined) | Third Training Session for Federal-level Judges on Oral Trial Advocacy for Commercial Matters at Federal Judicial Institute. Skill-based learning.<br><br>AND<br><br>First Training Session for Federal-level Judges on Secured Transactions Law, Registry and Practice. |