

# **LGA Consulting-Wisconsin Trade Office - Mexico**

(Wisconsin Department of Commerce - International Division)  
Reforma 199, 14th Floor, Col. Cuauhtémoc, México, D.F. 06500  
T. (555) 546-9252; F. 546-9819  
E-mail: vlencioni@lgaconsulting.com

---

## **The PAGARE (Mexican promissory note) as a useful and effective guarantee**

In general, the pagare is the simplest and most effective instruments to use in Mexico when offering credit terms to Mexican distributors or clients. While other guarantee instruments might offer greater security, their onerous natures often preclude their regular use in Mexico. An LC is an effective guarantee, but it implies high collateral levels and high interest rates and bank fees for the Mexican client. A bond is also effective, but can be expensive and require endorsees and high collateral as well. On the other hand, the use of a pagare does not require the Mexican client to take on high bank fees or interest rates, or high collateral requirements. While it is not a direct guarantee like an LC, it is probably the most straightforward and one of the most executable legal documents in Mexico.

The pagare works in the following manner. The Vendor creates a pagare for the amount of the sale, generally incorporating interest terms in case of late payment. The Buyer signs the pagare, which functions as a personal guarantee for the entire amount mentioned in the document and the conditions contained within.

For your information, all pagare documents should contain the following elements in order to be valid and recognized in court:

1. The mention of the word “pagare” in the document
2. The existence of an unconditional promise to pay a determined sum of money
3. The name of the person/company that is the Vendor
4. The time and place of payment
5. The date and place where the document was signed
6. The signature of the Buyer or the person that signs in his/her name.

The Vendor keeps the original of the pagare and uses it as a guarantee over the Buyer until the buyer pays. When the Buyer pays, the Vendor will send the Buyer the pagare for its destruction. It is a common practice to include not only the buying company but also the owner of the buying company as an endorsee or co-subscriber in the pagare. In this way, not only can the selling company go after the buying company’s assets, but also the personal assets of the owner.

In case of non-payment or partial payment, the pagare functions as an executable legal document that allows you to gain access to assets (financial and fixed), generally equal to two to three times the amount of the pagare. A few days before the pagare is due, the selling company contacts the buying company to understand when or if the payment is forthcoming. If the payment is still in question on the day the pagare is due, one must present the document for payment to the Buyer. If the Buyer refuses, the Vendor, with his attorney, must go to a notary and get a “protesta”, that is, a notarized declaration that the pagare was presented to the Buyer for payment and the Buyer refused to pay. In order to carryout this action, the non-resident Vendor will normally endorse the pagare to a Mexican lawyer in a manner called “procurement”. This gives the lawyer full power of attorney over this document for collections and court actions. However, it does not transfer the actual property or value of the pagare to the lawyer.

## PAGARE (Mexican Promissory Note)

### Page Two

After receiving the “protesta” from the notary, the lawyer must set a day in court for the recognition of the pagare. If the pagare is done correctly and the lawyer carries out the above-mentioned actions appropriately, after one brief court appearance to validate the pagare (which can take place a week or two from of the passing of the payment deadline), a lawyer should be able to get the court to grant recognition and begin procedures for seizing fixed and financial assets of the Buyer. A court official (actuário) will work with your lawyer to notify the Buyer and to seize fixed and financial assets of the Buyer. With a good lawyer, a cooperative actuário, and a buyer that isn’t bankrupt or doesn’t try to “disappear” from his/her fiscal domicile, the seizing of assets should be achievable in about a month. If courts are backlogged, this one-month period can double.

Once assets are secured, the Buyer usually is ready to negotiate payment, understanding that otherwise, after a summary litigation procedure (called “Juicio Ejecutivo Mercantil”), the goods will be sold off (usually at a significant discount) to liquidate the pagare and other related interest payments and penalties. However, if the Buyer does not have or cannot secure funds or decides to be uncooperative, then the Vendor will have no choice but to go forward with a summary mercantile suit to legally secure the already seized assets of the Buyer. Once legally secured (vs. seized), these goods will then be auctioned to meet the Vendor’s obligations in the pagare. While this litigation action is summary and abbreviated, it can sometimes take up to 6-8 months from the beginning of the suit to receive funds. However, if the Buyer gains access to funds, most of the time this summary litigation is avoided and a negotiated settlement is reached before the suit is even begun, that is, shortly after the seizure of assets.