

GUARANTY FOR THE SUSPENSION IN DIRECT “AMPARO” PROCEEDINGS FILED BY CREDIT INSTITUTIONS: A NEW JUDICIAL CRITERION

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Executive Summary:

Banks that file amparo proceedings to halt the enforcement of a judgment may no longer be able to do so at no cost. A recent binding precedent (*jurisprudencia*) issued by a Collegiate Circuit Court of the First Circuit holds that credit institutions must exhibit a guaranty to obtain a suspension in amparo proceedings. The criterion introduces a relevant element into a debate in which there are arguments and precedents to the contrary; therefore, its scope must be assessed in light of the circumstances of each case.

After years of commercial litigation, a company obtains a judgment against a bank. The bank files a Direct “Amparo” Proceeding (Constitutional) and requests a stay of enforcement. During that time — which the Supreme Court has estimated at approximately six months— the company does not collect. Who is liable for the damages caused by that delay? A new criterion offers a new answer.

WHAT WAS THE PREVAILING POSITION AND WHAT DOES THE NEW CRITERION PROPOSE?

Article 86 of the Credit Institutions Law (*Ley de Instituciones de Crédito*) provides that, as long as they are not in liquidation or bankruptcy proceedings, members of the banking system shall be deemed of recognized solvency and shall not be required to make deposits or post bonds, “not even for the purpose of obtaining the suspension of the challenged acts in amparo proceedings”.

Based on that provision, there are criteria and arguments under which Article 86 of the Credit Institutions Law constitutes a special rule that exempts credit institutions from granting a guaranty to obtain the suspension.

However, on October 2, 2026, the Fifteenth Collegiate Court in Civil Matters of Mexico City, in resolving a series of complaints filed by financial entities, established the binding precedent (*jurisprudencia*)

I.15o.C. J/1 C (12a.), with digital registry number 2032723, under the heading: “*SUSPENSION IN THE DIRECT AMPARO PROCEEDING. CREDIT INSTITUTIONS MUST EXHIBIT A GUARANTY TO ANSWER FOR THE POSSIBLE DAMAGES AND LOSSES THAT ITS GRANTING MAY CAUSE TO THE THIRD INTERESTED PARTY.*”

The court’s reasoning rest on the premise that the Constitution, in Section X of Article 107, and the Amparo (Constitutional) Proceeding Law, in its Article 190, condition the suspension in civil and commercial matters upon the Constitutional Claimant guaranteeing the damages and losses (*daños y perjuicios*) that it may cause to the third interested party (*tercero interesado*); therefore, in the words of the court, these provisions “cannot be subordinated to a rule contained in a different law”. Under the reasoning adopted by that Collegiate Court, Article 86 of the Credit Institutions Law would not, by itself, suffice to exempt credit institutions from granting a guaranty in such cases.

Likewise, the court applies a pre-existing criterion, binding precedent (*jurisprudencia*) P./J. 6/92 of the Supreme Court, which requires credit institutions to guarantee the suspension in Direct “Amparo” Proceedings (Constitutional); although this criterion dates from the Eighth Period (Octava Época), the collegiate court considers that, since it is not inconsistent with the provisions of the new Amparo (Constitutional) Proceeding Law, it remains in force. In any event, this is a *jurisprudencia* of a collegiate court, whose binding effect is limited, and which could become the subject of a conflict of criteria (*contradicción de criterios*).

WHAT DOES THIS MEAN IN PRACTICE?

For counterparties of credit institutions. In those cases in which this criterion is applicable, the third interested party could request that a sufficient guaranty be set or, as the case may be, challenge its omission or amount through the applicable means of defense.

For credit institutions. The new criterion makes it advisable, when defining the suspension strategy in each case, to consider the possibility that the granting of a guaranty may be required and, if so, to weigh its cost against the benefit of keeping the enforcement suspended. At the same time, there remain legal arguments and criteria that may be invoked to support the application of the exemption provided in Article 86 of the Credit Institutions Law; therefore, the strategy must be defined on a case-by-case basis.

THE BROADER CONTEXT: THE COURTS AFTER THE JUDICIAL REFORM

This criterion is not isolated. In the Twelfth Period (*Duodécima Época*), which began with the new composition of the Judiciary following the recent judicial reform, some federal courts have applied the guaranty requirement for the suspension more strictly: in 2026 it was held that not even a declaration of bankruptcy exempts a private company from exhibiting it. Although a uniform position may still be spoken of, this opens the door to the review of assumptions that were previously taken for granted.

The binding precedent (*jurisprudencia*) discussed herein constitutes a relevant criterion within the debate on the requirements for granting the suspension and its interaction with special regimes provided in other laws. However, its scope must be analyzed taking into account the rules on the binding effect of *jurisprudencia*, the existence of criteria and arguments to the contrary, and the possibility that the issue may become the subject of a conflict of criteria or a subsequent ruling by the Supreme Court.

In this context, both credit institutions and their counterparties should consider this new criterion when defining their procedural strategy in Direct “Amparo” Proceedings (Constitutional), bearing in mind that its application and specific effects will depend on the circumstances of each case and on the court hearing it.

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