Country Guide
Mexico

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DOING BUSINESS MEXICO 2016

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DOING BUSINESS IN MEXICO

Introduction

Mexico is composed of 32 states. The states are free and sovereign, divided both administratively and territorially into local governments having their power.
Mexico's principal trading partners include the United States, Canada, Japan, Germany, the United Kingdom, and France, The Nehterlands ans Spain. Mexico has entered into several free trade agreements, apart from the North
American Free Trade Agreement ("NAFTA"). Like the one with the European Union (2000), as well as with various countries including: Chile, Colombia, Venezuela,
Bolivia, Costa Rica, Nicaragua, Israel, Iceland, Norway, Liechtenstein, Switzerland, Uruguay, Guatemala, Honduras and El Salvador. All in all, Mexico has entered into 12 free trade agreements covering 43 countries.
Mexico has also signed treaties for the avoidance of double taxation with 61 countries.
Including but not limited to: the United States, Canada, Germany, the Netherlands, Spain, Sweden, Switzerland, and South Korea.

1. Business Entities

There are different structures that investors may use, as desired, for investment vehicles in Mexico. They range from setting up a commercial corporation or a branch to forming a joint venture or a trust.

Corporations

The General Corporation Law recognizes the existence of seven types of commercial organizations or structures. However, in daily corporate practice in Mexico, the types of companies most utilized are: (a) limited liability stock corporation or "sociedad anónima" and (b) the limited liability company or “sociedad de responsabilidad limitada”.

Any of these types of companies may be organized with variable capital, which allows the business to alter its capital (the variable portion) with a minimum of formalities.

(a)The Limited Liability Stock Corporation or "Sociedad Anónima"

The "sociedad anónima" is the most used and accepted business structure in Mexico. It operates under a company name and ownership is in the form of shares in the capital of the company. Shareholders' liability is limited to making capital contributions to the company for the purchase of shares.

The creation of a sociedad anónima requires a minimum of two shareholders and no minimum capital is required for setting up the company. The authorized capital must be fully subscribed within one year of the establishment of the company. The management of the corporation is entrusted to a sole director or a board of directors.

(b) Limited Liability Company or "Sociedad de Responsabilidad Limitada”

The limited liability company is one formed by members/partners whose obligations are limited to the payment of their contributions to the capital of the company, but in which ownership interests cannot be represented by negotiable certificates, either in "registered" or "bearer" form. Such contributions are transferable only in the specific cases provided by the General Corporation Law. After the limited liability stock corporation, the "sociedad de responsabilidad limitada" is the most commonly used business structure in Mexico, and may be considered for United States tax purposes as a partnership.

A limited liability company may not have more than 50 members. The capital of the company must be divided into "parts" or "interests" which may be unequal in value and rights but must always represent one peso or a multiple of such amount. As in the case of the limited lability stock corporation, there is no minimum capital requirements for incorporation.

To incorporate any of the types of business organizations, the charter and articles of incorporation require formalization by a notary public and thereafter, registration with the Public Commercial Registry, thereby constituting notice to parties of incorporation.

The Branch of a Foreign Corporation

The General Corporation Law provides that a foreign company may acquire legal capacity when it sets up branches in Mexico and records them in the Public Commercial Registry in the location where it intends to set up the branch. For doing so, it must obtain the prior authorization of Foreign Investments Registry. In order to obtain such autorizations, among other requirements, the foreign company must evidence that it incorporated in accordance with the laws of its own country and that its charter and by-laws contain no provisions that are contrary to Mexican law.

Trust or "Fideicomiso"

In accordance with Mexican law, a trust is a contract whereby a person, known as the settler, makes us e of certain property for a specific lawful purpose, entrusting the achievement of the purpose to a trustee. The person benefiting from the trust is the beneficiary. Some type of Business are implemented through a trust figure.

In Mexico, only banks and certain other financial institutions may act as trustees. Individuals or legal entities are prohibited by law from acting as trustees with the exception of stockbrokers in connection with the investment of trust funds in securities.

2. Currency Exchange Information.

On January 1, 1993, a new currency was introduced in Mexico—the New Peso. Each New Peso was worth 1,000 old Mexican Pesos. The New Peso was phased out on January 1, 1996, and now Mexico's currency is again simply known as the Peso. The Mexican Peso maintains the same value as the New Peso.
The General Law for Auxiliary Organizations and Activates for Credit recognizes the existence of two organizations authorized for usual currency exchange activities Exchange Centers and Bureaus of Exchange.

The Exchange Centers are companies incorporated in accordance with the General Corporations Law registered before the National Banking and Securities Commission allowed to carry out currency exchange activities limited to the daily amount of USD$10,000.00 per client.

The Bureaus of Exchange are financial institutions authorized by the Ministry of Treasury to carry out exchange activities.

Both organizations have the obligation to collect information from their clients for Anti-Money Laundry purposes.

3. Mergers, Acquisitions, and Business Combinations

Mergers

There are two different kinds of mergers provided for in the General Corporation Law: (i) a merger in which simultaneously a new company is created and one or more merging companies lose their separate legal existence, and (ii) a merger in which one or more companies are absorbed into the surviving company.

Any merger of Mexican companies must be approved by the shareholders in an extraordinary shareholders meeting of each of the companies involved which must then be notarized and recorded with the Public Registry of Commerce in order to have legal effect.

Acquisitions

Under Mexican law, it is possible to acquire a business by: (i) the purchase of or subscription for shares of stock in a company or (ii) the purchase of the assets of the business.

Business Combinations

The current regulatory framework relating to business combinations in Mexico consists of the following laws: (i) The Federal Antitrust Law; (ii) The Foreign Investment Law; (iii) The General Corporation Law; (iv) NAFTA and other treaties to which Mexico is a party.

Prior notice to the Federal Antitrust Commission of combinations, joint ventures, mergers and acquisitions may be required, depending upon the amount involved, in order to comply with the Federal Antitrust Law.

Antitrust / Anti-Competition Law in Mexico

The Federal Antitrust Law is intended to promote free competition and regulates concentrations, as well as absolute and relative monopolistic practices, in a similar way to antitrust law in the United States upon which Mexico's antitrust law is based.

The Commission may penalize concentrations and monopolistic practices as follows: (i) order the suspension, alteration or ending of a concentration or monopolistic practice; (ii) order the reverse, partially or totally, of a concentration; (iii) levy fines on those engaging in prohibited activities.

4. Real Estate

The Mexican Federal Civil Code provides that any sale of real property exceeding the equivalent of approximately, Pesos $26,650.00. will have to be formalized in writing before a public notary Therefore, any sale of real property requires compliance with that formality.
Furthermore, the notarial deed transferring title to real property requires registration with the Public Registry of Property of the place where the real property is located or the sale will not be effective with respect to third parties. It is important to point out that federal law also provides that the offices of the Public Registry of Property are to be located in the seats of the judicial districts of each Mexican state. There is therefore no single federal Public Registry of Property, but rather numerous offices around the country where real property and related matters are recorded.
In view of the above, before purchasing any real property, a search in the Public Registry of Property should be carried out as part of the due diligence review.

As to Real Estate Transfer Taxes

In many states, the acquisition of real estate is taxed. The scope of this tax usually encompasses all transfers of real estate and rights thereto. Transfer taxes are borne by the entity that becomes the owner of the property, whether by virtue of purchase, donation, inheritance, in-kind capital contribution, merger, spin off, liquidation, etc. The tax rates range approximately between 2% and 4.8% of the apprised value of the property or the transaction price, whichever is higher.

With respect to title to, and use and enjoyment of real estate, the Mexican Foreign Investment Law provides for a special legal frame work to allow foreign investors to acquire and enjoy real estate in the so-called "Restricted Zone" (100 kilometers along land borders and 50 kilometers along the coastline), as follows:

(a) The acquisition of real estate by Mexican business entities with foreign shareholders:

Outside the Restricted Zone: Real estate may be acquired without any restriction.

Within the Restricted Zone: For residential purposes: title to and enjoyment of real estate may be acquired only through a trust, where the trustee holds direct title but the foreigner has the right to use and enjoy the property.
For non-residential purposes: real estate may be directly acquired, provided such acquisition is registered with the Department of Foreign Affairs ("SRE").

(b) Foreign individuals and foreign business entities.

Outside the Restricted Zone: Real estate may be directly acquired, with the SRE's prior authorization.

Within the Restricted Zone: For residential purposes and non-residential purposes: real estate may only be acquired and enjoyed through a trust.

The duration of a trust for the purpose set out above is 50 years but may be extended for another

50 years. As can be seen, real estate in the Restricted Zone to be used for industrial and tourist purposes may be held directly by Mexican entities with foreign shareholders without the need for a trust. Existing trusts may be canceled in order for such entities to own real estate directly.**(c)**

Deemed approval

Permits are to be approved or disapproved by the SRE within 30 business days following the filing of the application and registrations are to be approved or disapproved within 15 business days following the filing thereof, failing which, the permit or registration will be deemed granted.

5. Foreign Investment Considerations

Foreign Investment Regime

Pursuant to the Foreign Investment Law, any Mexican corporation or partnership with foreign shareholders or partners may engage in any business or participate in new fields of economic activity or manufacture new product lines, open and operate establishments and enlarge or relocate already existing establishments, provided the corporation or partnership does not engage in economic activities reserved for the state or Mexicans, whether individuals or corporations, or is subject to other specific restrictions. The only requirement is that otherwise applicable laws and regulations be observed.

6. The Tax Regime

Taxation of Corporations

Income Tax

Mexican corporations (according to Mexican tax law, other legal structures such as *asociaciones en participación* are also considered as corporations for tax purposes) are under an obligation to pay income tax at the rate of 30% of their net profits. Net profits are obtained by deducting from all taxable income earned in the fiscal year, the deductions authorized by law. The law authorizes, among other things, the deduction of the cost of the sale of goods and expenses as well as "investments."

Should the amount of the authorized deductions exceed the amount of gross income, a tax loss is incurred which may be carried forward up to ten years and set off against profits in those years.

Mexican taxpayers are required to file annual tax returns which must be filed within the three months following the closing date of the fiscal year. In Mexico, the fiscal year runs from January 1 to December 31.

During the fiscal year, corporations must calculate monthly estimated tax returns which are credited against annual income tax. No provisional payments have to be made during the fiscal year of incorporation.

In regards to distribution of dividends, there are two taxes to be considered:

a) Corporate Dividend Tax. Dividends paid out of profits on which the company has already paid the relevant corporate tax, are tax-free in Mexico from the corporate dividend tax. For this purpose, companies are entitled to create an "after-tax profits account" or "*Cuenta de Utilidad Fiscal Neta*" ("CUFIN"). If the corporate tax is not paid at the time a dividend is paid, then the corporation must pay the corresponding dividend tax.

b) Individual or Foreign Resident Dividend Tax. A 10% withholding tax on dividends will be triggered on dividends paid to individuals or foreign residents.1

Mexico has enacted thin capitalization rules to any debt incurred with a foreign-related party. The threshold is 3:1 debt-to-net equity ratio; otherwise interest associated to the excess is not deductible. Furthermore, interest paid by Mexican companies to related parties may be treated as dividends in certain circumstances (i.e. back-to-back loans, interest not paid under arm's length conditions, interest conditioned on profit, etc.).

Mexican transfer pricing rules apply to business transactions entered by and among related parties. Said provisions are based on the arm's-length standard, as Mexico has adopted most of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations rules.

In general terms, value added tax is paid at a rate of 16% by those who sell goods, provide services, grant the temporary use of goods, or import goods or services into Mexico. Value added tax must

be passed on to the person who in turn acquires the goods or receives the services until it is finally paid by the ultimate consumer.

Taxation of a Branch or Permanent Establishment

A branch operating in Mexico usually constitutes a permanent establishment in Mexico. In general terms, tax treatment applicable to a permanent establishment is basically the same as for a Mexican corporation and it must comply with various tax requirements arising from its operations in the country, such as filing income tax returns and issuing invoices meeting tax requirements, among others.

Profits obtained by the establishment will be subject to a 30% tax on the gain. Profit is calculated by deducting from all taxable income earned in the fiscal year attributable to the permanent establishment, the deductions applicable to the operations of the permanent establishment, whether amounts have been paid in Mexico or abroad. Only income earned from business carried out by the permanent establishment is deemed income attributable to the permanent establishment and subject to corporate tax in Mexico.

Foreign tax residents having no permanent establishment in the country are under an obligation to pay taxes in Mexico only on income earned from Mexican sources.

Excise Tax & Tax on Hydrocarbons

The excise tax is levied on certain specific goods or services, and the tariff will vary depending on the goods/services rendered.

As part of the Energy Reform recently enacted in Mexico, special tax provisions were enacted by the Hydrocarbons Law and the Hydrocarbons Revenues Law including special tax provisions for governmental and nongovernmental entities entering into agreements for the extraction and exploration of hydrocarbons and a new hydrocarbons tax applicable to the entities. □□

State and Local Taxes

In addition to federal taxes there are state and local taxes, which are enforced by each State or themunicipality where the company and/or the establishment, branch, store, premise is located. The most common taxes are as follows:

- Payroll. This tax is levied on the total amount of salary payments made during the year and, in general, the 3% tax rate applies.

- Real estate tax. This annual tax is applied on the value of the real estate.

- Property Transfer tax. In many states, the acquisition of real estate is taxed. The scope of this tax usually encompasses all transfers of real estate and rights thereto. Further, it is borne by the entity that becomes the owner of the property, whether by virtue of purchase, donation, inheritance, in-kind capital contribution, merger, spin off, liquidation, etc. The tax rates range between 2% and 4.8% of the appraised value of the property or the transaction price, whichever is higher.

Tax Treaties

Mexico has entered double taxation agreements with 61 countries. Some of these countries are: Germany, Australia, Austria, Argentina, Barbados, Belgium, Brazil, Canada, Korea, Chile, China, Denmark, Ecuador, Spain, United States, Finland, France, Greece, Indonesia, Ireland, Iceland, Israel, Italy, Japan, Luxembourg, Norway, New Zealand, The Netherlands, Poland, Portuguese Republic, United Kingdom, Czech Republic, Russia, Singapore, Sweden, Switzerland, Romania, The Slovak Republic). The treaties are usually based on the Organization for Economic Cooperation and Development ("OECD") Model Convention and provide tax relief to avoid double international taxation.

7. Intellectual Property Regime

Trademarks

Under Mexican legislation, a trademark is any visible symbol that is capable of distinguishing products or services from other product or services of the same species or class. Such definition excludes any non-visible element from being considered as a trademark. Trademarks may be word-marks (only words), design marks (only non-word elements), three-dimensional (packages and other three-dimensional elements) or composite (a combination of any of the preceding types).

In order to obtain the registration of a trademark, a written application must be filed with the Mexican Industrial Property Institute (the "MIIP"). If the application is properly completed, it is examined in depth from both a formal and novelty standpoint to verify whether the trademark is eligible for registration in terms of the Industrial Property Law ("IPL").

Mexico is a party to the Paris Convention for the Protection of Industrial Property and as such, the applicant may claim a priority if the same mark has been filed with the offices of other members of the convention within a six-month term.

The MIIP issues a certificate of registration for each accepted application as evidence of having granted a trademark registration. Registration of a trademark is valid for ten years, beginning on the date of filing of the registration.

The owner of a trademark must request a renewal of a trademark registration within the six months prior to its expiration date although without having to demonstrate its continuous and uninterrupted use. However, an affidavit must be filed as well, stating that the use of the mark has not been interrupted for a period of more than three years.

A trademark registration will lapse when the trademark is not renewed or when it is not used for a period of more than three consecutive years, unless there are justified reasons for the lapse in use.

The Madrid Protocol entered into force with respect to Mexico on February 19, 2013. Therefore, it is possible to select Mexico as a designated contracting party, as well as to file applications for international registrations at the MIIP.

Slogans and trade names

The IPL provides that slogans are any phrase used to announce products, services or an establishment. The right to their exclusive use is equally granted by obtaining registration with the MIIP. Trademark provisions also apply for slogans.

As for trade names, they are the visible name by which a particular establishment is known. This name is protected in the *"effective zone of clientele"* of the establishment, which means that it would not be protected in areas where the establishment is not known. Its protection does not require registration or any other formality. However, the owner may apply for its publishing by the MIIP, which has the effect that the adoption of the trade name will be presumed to be in good faith. Trade names are scarcely used nowadays, since service marks can provide a roughly equal protection with the added advantage that such protection comprises the whole country and not just the *"effective zone of clientele"*. Trademark provisions also apply for trade names.

Approval of the Bill implementing a trademark Opposition System in Mexico

On April 28, 2016, Mexico´s Congress approved the proposition for implementing an opposition system during the trademark registration process.

In accordance with the system, within ten days after its filing, each trademark application will be published in the Industrial Property Gazette. Once the application is published, any person who considers that the respective trademark incurs in any of the prohibitions set forth in articles 4 and 90 of the Industrial Property Law may express an opposition to the granting of such application in a writ that may be filed along with the payment of the respective fees and supporting documentation. Regardless, the Mexican Institute of Industrial Property shall not be exempt from performing its own examination of the respective application and determine if the same will be granted or refused, communicating such decision to the opponent. The Industrial Property Gazette will also include a list of applications that receive oppositions.

The existence of an opposition or the lack of the same will not keep any affected party from attempting to obtain the administrative declaration of annulment of the respective trademark registration.

The approval of this project by the Chamber of Representatives means that it will be reviewed by the Executive branch and, once approved, it will be published within the Federal Official Gazette to enter into force ninety days after being published.

Licensing of Industrial Property Rights

The trademark owner or its recorded licensee at the MIIP is entitled to use a trademark. A license agreement must be recorded with the Institute to protect trademarks against improper use by third parties.

Technology Transfer Agreements

Technology transfer under Mexican law seeks to harmonize Mexican policy with international intellectual property practices. Major breakthroughs of the IPL are the introduction of express protection for industrial secrets with heavy penalties for piracy as well as the patentability of pharmaceuticals.

Patents, Utility Models and Industrial Designs

In Mexico, inventions are defined as any human creation that allows the transformation of the matter or energy in nature for their use by mankind and the satisfaction of specific need. Inventions that are new, resulting of an inventive activity and susceptive of an industrial exploitation may be subject of a patent. However, the law provides that a) essentially biological processes for producing, reproducing or propagating plants or animals b) biological and genetic material in the form found in nature, c) animal races, d) plant varieties and e) the human body and the parts that compose it, cannot be considered as inventions.

For this purpose, an invention is new when it is not in the “state of the art”, which is understood as the technical information that has become publically available by any means, including all patent applications that have been filed prior to the date in which the new patent application is filed, unless such patent application has a priority as provided by the Paris Convention or the Patent Cooperation

Treaty. The prior disclosure of an invention does not form part of the state of the art so as long as the patent application is filed within the twelve months following the disclosure.

An invention will be considered to be the result of an inventive activity when a person skilled in the field of the invention could not have deducted the invention from the state of the art. As for the industrial exploitation, this requisite is fulfilled when the invention is subject to a practical use or can be manufactured or used in any particular field of economic activity, for the purposes described in the patent application.

The IPL specifically excludes certain inventions from patent protection, such as the following:

A. Theoretical or scientific principles.
B. Discoveries that consist in revealing that which already existed in nature.
C. Schemes, plans, rules and methods for conducting mental acts, games or businesses, as well as mathematical methods.
D. Computer programs, same that are protected by copyright.
E. Forms of presenting information.
F. Aesthetic creations, as well as literary or artistic works.
G. Methods for surgical or therapeutic treatments or diagnosis for the human body or animals.
H. The combination or mixture of known inventions, variations in their use, form, dimensions or materials, unless the result is not obvious for an expert in such field.

A patent grants a right of exclusive use over an invention for a twenty year period counted from the filing of the patent application.

When the invention that is patented consists of a product, the owner of the patent has the right to halt all use, manufacture, sale or import of the patented product. If the invention consists of a process, then the patent owner has the right to halt all use of the patented process as well as the use, manufacture, sale or import of the product resulting from such patented process. There are exceptions such as the use of patented products or processes for academic or scientific research or an exhaustion of rights arising from a fist sale.

In order to obtain a patent, the applicant must submit a duly completed patent application along with accompanying documents, such as the description of the invention, drawings and claims.

Once filed, the MIIP will verify that the patent application and the documents detailed above fulfill all formal requirements. Afterwards, the in-depth examination will occur to determine if the invention is eligible for patent protection.

To maintain a patent, it is necessary for the owner to pay the annuities and to exploit the patented invention or process. If a patented invention is not exploited, then it may be possible to request a mandatory license and in some circumstances, even its cancellation due to non-use.

The rights granted over a patent may be assigned or encumbered, but such acts must be recorded with the Mexican Institute of Industrial Property to be enforceable against third parties. Use made by a duly recorded licensee is considered as if made by the owner for all maintenance purposes.

On the other hand, utility models are any object, utensil or apparatus that has been modified in its disposition, configuration, structure or shape and thus offers different functions or is more useful. Utility models may constitute a ten-year right of exclusive use counted from the application date. The process for their registration is almost the same as the procedure for obtaining a patent.

Industrial designs are either drawings or models used to provide products with a new aesthetic quality. Industrial designs may be divided in two categories: industrial drawings which are the drawings applied to the products and industrial models, which are the molds or any other three-dimensional form that is used as a pattern for making the products.

Industrial designs may be registered for a protection of fifteen years counted from the filing date of the application. The procedure for obtaining their protection is almost the same than that for obtaining a patent.

Schemes for Drawing Integrated Circuits.

Schemes for drawing integrated circuits may be subject to a right of exclusive use, as long as registration is requested within the two years counted from the beginning of their first commercial exploitation, regardless of the country.

This right of exclusive use, allows the owner to halt any reproduction of the protected integrated circuit and any import sale or distribution of the same or any other circuit that comprises the protected integrated circuit or any good incorporating these.

The right of exclusive use granted over an integrated circuit lasts ten years counted from the application date. The procedure for obtaining its registration is almost the same than the procedure for obtaining a patent.

Industrial Secrets

Industrial secrets are any confidential information of a commercial or industrial character that allows its owner to gain or maintain a competitive or economic advantage over third parties, so as long as the owner has taken sufficient means or systems for preserving its confidentiality and the information.

Also, the confidential information must be recorded in discs, discs or any other physical or electronic means. Information that is already in the public domain cannot constitute an industrial secret.

The unauthorized disclosure of an industrial secret will in most cases constitute a criminal offense. Thus, in most scenarios it is useful to try to adapt confidentiality clauses and non-disclosure agreements to fit them in the concept of industrial secrets.

Industrial secrets are protected without need for any form of registration or other acts from any authority and are enforceable as long as they fulfill the requisites outlined above.

Copyright and Related Rights.

Mexico recognizes Copyright to any work from the moment it is fixed upon any tangible support, including electronic support. Such rights do not require any formality for their recognition and enforcement. It is important to mention that copyright law in Mexico is considered to be of Public Order and Social Interest, which means that any agreement to the contrary is null and unenforceable by operation of law.

In Mexico, Copyright can be divided into Moral and Pecuniary prerogatives.

Moral prerogatives are granted in perpetuity to the author. They may not be assigned, transferred or seized in any manner whatsoever. They may be exercised solely by the author, the heirs of the author or in their absence, by the Mexican Government. Moral prerogatives comprise the following:

A. The right to be recognized as author of the work or to use a pseudonym or determine the anonymity of the work.
B. The right to oppose any mutilation, modification or deformation of the work, as well as to any act that may damage the reputation of the work or the author's.
C. Determine if the work is to be published.
D. To take the work out of commerce. Quite obviously, the author would have to pay any damages resulting from such decision.
E. To oppose his naming as being the author of a work that is not of his authorship.

Pecuniary prerogatives may be transferred, but only through a written agreement that provides compensation to the author (not necessarily money) and for a specific and limited period of time. Unless the parties agree otherwise, the law presumes that the assignment will comprise a five-year period. A period longer than fifteen years may be convened only if the magnitude of the exploitation of the work justifies it. In practice, agreements can be longer than fifteen years if the parties convene to this fact in the agreement. Pecuniary prerogatives last one hundred years counted from the first of January that follows the author´s death or after a hundred years after the publishing of the work in case of pseudonymous and anonymous works. Computer software is excluded from this rule.

In addition, the author and the heirs of the author enjoy a non-renounceable but transferable right to receive royalties for any public communication of the work. Also, Mexico partially recognizes *droit de suite* and authors are entitled to receive an additional compensation for the re-sale of their plastic works, photography and original manuscripts so as long as they are made in a public auction, a commercial establishment or by a commercial agent.

On the other hand, Mexico is part of the Rome Convention and recognizes related rights to performers (including performers that are not following a written script), phonogram producers, radio broadcasters, book editors and videogram producers. This protection is independent from copyright and allows the related right holders to oppose use of their performances, phonograms, videograms, editions or broadcasts.

Authors, heirs of authors, pecuniary prerogative holders and related right holders are usually organized into Collective Administration Societies that are tasked with verifying use of their works, performances, etc., and collecting royalties. Usually, use of a work performance, etc., is allowed by these societies if royalties are paid. These royalties are usually fixed and non-negotiable. Unlike other countries, more than a society may exist per artistic branch, for instance music authors and record companies are organized in different societies.

Copyright may be enforced by bringing a copyright infringement action with the Mexican Institute of Industrial Property, whose procedure is closely similar to that of a trademark infringement action.

Reservation of Exclusive Use Right

Notwithstanding copyright protection, the Mexican Copyright Law provides an additional form of protection over characters, periodic publications, periodic broadcasts, artistic names and even commercial offers called "Reservations to Exclusive Use". These reservations can grant a right of exclusive use over the following genres:

A. The title of a periodic publication, such as a magazine. This right lasts one year counted upon grant and may be renewed for equal periods of time.
B. The title of a periodic broadcast, such as a radio program. This right lasts one year counted upon grant and may be renewed for equal periods of time.
C. The name, physical and psychological characteristics of a character. This right is granted for five years counted from its grant and is renewable for equal periods of time.
D. The name of artistic groups, same that will last for five years counted upon grant and may be renewed for equal periods of time.
E. The names and characteristics of commercial offers, same that last five non-renewable years counted upon grant.

It shall be mentioned, that these rights may only be renewed if use of the subject matter of the reservation is demonstrated by submitting evidence. Otherwise, the renewal will be refused. This evidence may include websites that are accessible from Mexico.

Computer Software

Computer software may be registered with the General Copyright Bureau and provides full protection for the creator.

Franchising

The IPL establishes that a franchise exists when a trademark license includes know-how and technical assistance to enable the franchisee to deliver goods and services in a manner consistent and uniform and in accordance with the operating, commercial and administrative methods (policies and procedures) established by the trademark owner (franchisor), all for the purpose of maintaining quality, good will and the image of the products/services.

Franchise agreements must be registered with the Institute for purposes of existence to third parties.

Enforcement

The IPL contains broad protection of intellectual property rights and makes enforceability of these rights more efficient and faster. Under the IPL, patents and trademarks are protected for periods of twenty and ten years, respectively. In addition, protection is given to trade secrets, infringement of which is considered a criminal offense which may result in imprisonment of two to six years.

In general terms, the IPL severely penalizes unfair competition and any type of infringement of intellectual property. Seizure of goods is available as a means of immediately stopping an infringement without having to obtain a prior decision from the Institute or an investigation by the public prosecutor. This seizure is carried out by the MIIP.

Trans-Pacific Partnership

Mexico signed its accession to the Trans-Pacific Partnership (TPP) on February 4, 2016. The Senate is conducting the legal process to approve the Agreement.

Due to the particularities of the TPP´s Intellectual Property chapter, if the Agreement is approved by the Senate, significant modifications to Laws and Regulations related to Intellectual Property should be expected.

8. Labor and Employment

Employers operating in Mexico should be aware that labor relations in our jurisdiction are highly regulated and that employees in Mexico generally have greater rights than foreign counterparts in other countries.

Mexican Labor Law grew out of an armed revolution that concluded with the adoption of the Political Constitution of the United States of Mexico in 1917. Article 123 of such Constitution entitled "Labor and Social Security", expressly recognizes and protects the minimum rights of employees that cannot be waived in any manner whatsoever. This was the first constitutional recognition of labor rights in world history.

Thereafter, in 1931 the first Federal Labor Law was enacted to regulate labor relations nationwide. This law was later superseded by the 1970 Federal Labor Law that improved working conditions for employees. The 1970 Law was, for all practical purposes, the government's "political reward" to employee organizations for not supporting the 1968 student movement; hence the protective nature of the provisions included in the 1970 law which is the currently the

Basis of Employment Relationship

Mexican Federal Labor Law ("FLL") defines an employment relationship as the rendering of a subordinated personal service by one person to another in exchange for the payment of a wage. The main element of any labor relationship is subordination, which the Fourth Chamber of the Supreme Court of Justice of Mexico has defined as the employer's legal right to control and direct the employee and the employee's corresponding duty to obey the employer. Once an employment relationship exists, all the rights and obligations under FLL automatically apply, regardless of how the agreement is characterized by the parties, as well as regardless of the nationality of the employee.
The employment agreement should set forth the conditions under which employees will perform their jobs; however, failure to do so will be deemed as an employer’s default without depriving employees from the rights granted under FLL.

Under FLL provisions, an employment agreement must set forth at least the following: (i) the nationality, sex, marital status and address of both the employee and the employer; (ii) the length of the term of the employment agreement, whether for a specific job, term or indefinite period; (iii) the services to be rendered; (iv) where the work is to be performed; (v) the length of the work schedule; (vi) the salary, day and place of payment; (vi) any training that the employee will undergo pursuant to the procedures and programs established by the employer, (viii) other terms and conditions of employment, such as days off and vacations agreed upon by the employee and the employer.

Duration of Employment

An employment relationship in Mexico is subject to the principle of "job stability". This concept refers to the idea that once an employee enters into an employment agreement, such agreement is subject to the employee's right to keep his or her job as long as the employment relationship requires. If the employment relationship is for an indefinite term, the employee cannot be laid off without cause. If the relationship is for a specific job or term, the employee may keep his or her job until the specific job or task is completed.

FLL assumes, as a general principle, that an employment agreement has been executed for an indefinite term, unless the particular type of service to be rendered calls for an employment agreement for a specific job or term. An employment agreement for a specific term may be executed only if the work to be performed so requires or if the employee is hired to substitute on a temporary basis another employee.

On the other hand, on December 1, 2012, a Reform to Mexican Federal Labor Law was enacted and from an employer's perspective, one of the most important changes included in the recent Reform to Mexican Labor Law is the introduction of new types of employment arrangements.

Requirements regulating the employment relationships for a fixed or indefinite term remain unchanged by the Labor Reform; however, the 2012 Labor Reform now allows employment agreements for an indefinite term to be subject to: (i) an specific season; (ii) a probation period or (iii) an initial training period

Where employees do not meet the required skills or knowledge at the end of the corresponding period, employers will have the ability to terminate them without paying penalties or statutory severance.

However, probation periods will be limited to 30 days for blue-collar workers and 180 days for management, professional or technical activities and for high-level executives, while initial training periods will be limited to three months for blue-collar workers and six months for management, professional or technical activities and for high-level executives.

Please consider that these periods cannot be extended and employees hired under these arrangements will enjoy the same labor conditions as permanent employees but on a pro-rata basis.

While the introduction of these new types of working arrangements allows for a much needed flexibility, employers must observe all requirements before being able to take advantage of the new employment agreements, as failure to do so would likely cause the employer to lose the ability to terminate an employee that does not meet the required skills or that failed to acquire the necessary abilities required for the job.

Minimum Statutory Benefits

FLL entitles all employees rendering services in Mexico with the following minimum statutory benefits that cannot be waived in any manner whatsoever:

1. A year-end bonus equivalent to at least fifteen days wages (Christmas Bonus) and payable prior to December 20 of each year.
2. An annual vacation period, the length of which depends on the employee's seniority (a minimum of 6 days for the first year is provided).
3. A vacation premium of 25% of the salary payable to the employee during the vacation period and;
4. Mandatory paid holidays.

Termination of Employment

Unlike other countries where employment-at-will is the general rule, an employer in Mexico may dismiss an employee without liability only if there is a justified ground for the dismissal. FLL enumerates the following specific kinds of conduct that are cause dismissal:

(i) use of false documentation or information to secure employment; (ii) dishonest or violent behavior on the job; (iii) dishonest or violent behavior against co-workers that disrupts work discipline; (iv) threatening, insulting, or abusing the employer, clients and/or suppliers or their family, unless provoked or acting in self-defense; (v) intentionally damaging the employer's property; (vi) negligently causing serious damage to the employer's property; (vii) carelessly threatening work-place safety; (viii) immoral behavior in the workplace including sexual harassment; (ix) disclosure of trade secrets or confidential information; (x) more than three unjustified absences in a thirty-day period; (xi) disobeying the employer without justification; (xii) failure to follow safety procedures; (xiii) reporting to work under the influence of alcohol or nonprescription drugs; (xiv) a prison sentence; or (xv) incurring in any other acts of similar severity to those described above.

FLL provides that on termination date, the reasons for the dismissal must be presented to the employee or through the corresponding Labor Board in writing through a so-called "Termination Notice".
The notice must comply with specific requirements provided in FLL, such as a thorough description of the facts, dates, time and manner in which the ground for dismissal took place.

In the event the termination is undertaken with just-cause via the "Termination Notice", the employee would not be entitled to receive any severance but only any accrued benefits in arrears, including vacations, vacation premium, Christmas bonus and any other accrued benefit.

An employee may then appeal his or her discharge within two months of the dismissal to the corresponding Conciliation and Arbitration Board (an administrative agency charged with resolving labor disputes). The employer has the burden of showing that the employee engaged in conduct described in FLL. If the employer fails to meet this burden, the employee can request either (i) reinstatement to his or her position, or (ii) a constitutional indemnification equivalent to three months full salary, including premiums, bonuses, commissions and any other accrued benefits, including due wages.

The employer is not obligated to reinstate an employee if the employee worked for the employer for less than one year, if the employee must work in direct and constant contact with the employer and a normal work-related relationship is impossible or if the employee rendered domestic services or worked on a temporary basis. If the employer does not reinstate such an employee for any of these reasons, the employer must pay the employee a lump-sum indemnification equal to three months' salary plus twenty days salary for each year of seniority.

Employees dismissed with or without cause, as well as those who resign with fifteen or more years of seniority, are also entitled to a seniority premium equivalent to twelve days salary for each year of service rendered. However, the seniority premium may not exceed twice the minimum salary in effect in Mexico [plus prorated vacation, vacation premium, and year-end bonus as described below].
It is very important to remember that regardless of the way in which the termination is carried-out, the employee may appeal his discharge arguing a wrongful dismissal.

In such case, the company would then have the burden of showing that a Voluntary Termination Agreement was signed with the Employee and that (i) if the Agreement was ratified before the Labor

Board it would then constitute enough evidence, and (ii) if the Agreement was privately signed, such Agreement would constitute a strong argument to defend and uphold the company's integrity against the alleged dismissal.

It is always wise to analyze the causes that motivate termination and to assess the possibility of reaching a termination agreement to avoid litigation and further exposure.

Social Security

In addition to the FLL, there are other general laws that regulate labor relationships in Mexico, such as the Social Security and Workers' Housing Fund laws, as well as the Employer Saving's Fund Law. Below we have described in general the obligations imposed upon employers by these Laws.

a) Employer Obligations with the Mexican Institute of Social Security ("IMSS", for its acronym in Spanish) are: (i) To register its employees before IMSS within five days after the hiring of such employees, and (ii) To calculate and pay the dues owed by the employer and employees are obligated to turn into the IMSS a copy of their financial statements, along with a tax opinion done by an accounting firm in accordance with IMSS requirements and which includes a list of employee benefits given by the employer.

b) Mandatory Insurance required by Social Security Law and granted by registering employees in IMSS consists of: (i) Occupational hazards, (ii) Illness and maternity, (iii) Infirmity and life, (iv) Retirement, Advanced Age Retirement and Old Age and (v) Day-care centers and additional related benefits.

It is not mandatory to provide retirement/pension benefits outside of mandatory social security. This because this retirement benefit is included in the benefits afforded by IMSS.

On the other hand, the National Workers' Housing Fund Law provides the obligation by the employer to pay dues to a National Worker's Housing Fund to create a fund for employees that enables them to receive low-cost financing.

Collective Employment Rights

Collective Bargaining Agreements are not mandatory under FLL; however, it is provided that employees may also secure improvements in working conditions through collective bargaining agreements, provided there are at least 20 employees in the company. These Agreements are executed by one or more employees' unions and one or more employers, or one or more employers' associations. They may be of definite or indefinite duration, or for a specific project, and may not diminish employee rights under FLL. The collective bargaining agreement must also include the names and addresses of the parties, the location covered by the agreement, the agreement's term, work shifts, rest and vacation days, salary ranges, and other terms and conditions of employment negotiated by the parties.

Either party may request the renegotiation of wage clauses in collective bargaining agreements annually and the renegotiation of all clauses in collective bargaining agreements once every two years. A request for renegotiation of a collective bargaining agreement must be made at least sixty days prior to the second anniversary of the agreement or the expiration date for agreements of less than two years. Wage revisions must be requested thirty days prior to the anniversary or expiration date. If no timely request for revision is made, the agreement is extended for a period equal to its original term.
The provisions of the Collective Bargaining Agreement cover all employees regardless of union membership. However, confidential employees (or white-collar employees) may be expressly excluded. Although confidential employees are allowed to have their own collective bargaining agreements, they have not done so as a practical matter.

The Mexican Constitution guarantees to employees the right to strike, however, FLL limits the right to strike in order to make strikes relatively undesirable for both management and labor. These limits include prohibiting employers from hiring permanent replacements, operating during strikes except for essential safety services, or locking out employees.

The corresponding union is required to file with the Conciliation and Arbitration Board a strike notice prior to the planned strike, which the Board must forward to the employer within 24 hours of receipt. The notice states the union's demands, its intention to strike, and the strike objective. The strike may not commence until the employer has been given at least six days' notice prior to the date of the planned strike or ten days if public utilities are involved. The employer must file a written response within 48 hours of receipt. The Conciliation and Arbitration Board then holds a hearing to seek a settlement of the proposed strike. The parties may agree to postpone the commencement of the strike to attempt to reach an agreement.

Within 72 hours after the strike begins, the employer may request that the Conciliation and Arbitration Board declare the strike non-existent. The Board will do so if the strike has an unlawful objective or lacks majority support. Both parties are given an opportunity to be heard. If the Board determines the strike to be non-existent, employees must return to work within twenty-four hours or risk termination.

Profit Sharing

Furthermore, all employees are entitled to share the employer's profit at a rate of 10% of the pre-tax profits of the employer.

Profit share is considered a random obligation charged to the employer, which means that it is contingent upon actual generation of profits within a certain fiscal year. Thus, if no profits were produced, no amount would be due in favor of the employees.

If any, profit must be shared within 60 days following the date on which the annual income tax is paid. This would be before May 31 of the next year on which the profits were generated.

For calculation purposes, profit sharing should be divided in two parts.

The first part shall be distributed among employees considering the number of years of effective work during the year.

Second part must be shared in proportion to the salaries earned within the year.

As a rule, all employees are entitled to profit sharing; however, FLL provides some exceptions to the rule as follows.

- Companies of new creation are not obliged to share its profits, if any, for the first year of operations.

- The Director, Administrator or Manager of a general nature is not entitled to share in the employer's profit. This has been interpreted by the courts as the employee holding the highest position in the company, which means that only one employee is excluded from profit sharing.
- Temporary employees are entitled to profit sharing only if they worked for at least 60 days during the year.

Years of loss may not be compensated with years of gain, and the employees' entitlement to profit sharing does not imply the right to interfere in the company's administration or operation.

Please also note that if the employer does not share profit timely, there is a possibility that any employee files a claim before the Labor Board in order to request payment.

However, the employee would only have one year to bring legal action to the Labor Board, as there is a statute of limitations of one year, which starts running from the date in which the obligation to share the profit becomes enforceable.

Non-Compete and Non-Disclosure Obligations

It is common practice to pay some kind of consideration in turn for the employee's obligation not to compete directly or indirectly in the company's business once the labor relationship ends.

As a rule, Non-Competition Agreements/clauses are not enforceable in Mexico because the Mexican Constitution provides that no one may be construed from performing any legal activity or to provide any kind of services as long as they are legal.

However, according to the most recent criteria sustained by the Supreme Court of Justice, such agreements/clauses may be enforceable as long as they are subject to a determined period of time and territory, and a consideration is paid in exchange.

Because of the foregoing, in order to compel the employee to avoid competing with the company's business, it is common practice to execute Non-Competition Agreements in turn for hefty compensations. There are no legal provisions which set forth adequate compensations to this effect, having the company to undertake negotiations with the employee to reach a settlement amount for the employee's "obligation" to avoid competing for a specific period of time.

Please bear in mind that Confidentiality and Non-Disclosure Agreements are fully enforceable in Mexico and in the event the employee breaches non-disclosure obligations can incur in civil and criminal liability.

2012 Reform to Mexican Labor Law

On November 30, 2012, the reform to Mexican Labor Law was published in the Federal Official Gazette and became enforceable the next day on December 1, 2012.

The most relevant aspects of the Labor Reform are described as follows in a very general manner:

Incorporation of the concept of "decent work". This concept refers to aspect related to the dignity of all employees as human beings, as well as non-discrimination issues, and the right to social security to all employees, among others. The inclusion of this concept was made in line with International Treaties of the International Labor Organization ratified by Mexico.

Outsourcing provisions. The concept of outsourcing is defined for the first time in Mexican Labor Law as the subcontract of personnel in order to perform activities in favor of a beneficiary of the services; however, the following deadlocks were put in order to consider outsourced services to be rightfully contracted: (i) they cannot relate to substantial activities which are necessary in order to fulfil the company's main corporate purpose; (ii) they cannot cover the entirety of activities of the company; (ii) they cannot be similar or analogous to activities already performed by the company's own employees and; (iv) the reason for contracting outsourced services must be clearly justified. Should any of the aforementioned deadlocks is not complied with, the beneficiary of the outsourced services will be considered for all labor and social security legal effects, as employer of the personnel rendering the outsourced services.

Back pay derived from labor trials. A cap of 12 months is put on back pay staring from the alleged dismissal date. From the 13th month, an interest rate of 2% will have to be observed over a 15-month's basis, considering the initial 12 months and three more months corresponding to mandatory severance.

Grounds for Dismissal attributable to the employee. The following additional grounds for dismissal are included without incurring the employer in liability: (i) Violent acts against employer's clients and/or suppliers, unless the employee was taunted; (ii) sexual harassment; and (iii) Lack of documentation required by Mexican legislation in order to perform certain activities.

Grounds for Dismissal attributable to the employer. Incurring the employer during working hours, or any of its relatives or representatives in acts of dishonesty, violence, threats, sexual harassment, mistreating or any other similar or analogous acts against the employee, spouse, parents, children or brothers.

Alimony protection. The employer will have the obligation to notify competent authorities and alimony beneficiaries of any terminated employee.

Paternity leave. This leave is considered for the first time. New fathers would be able to enjoy a paid leave-of-absence of five days.

Procedural provisions. For the first time, technological related circumstances would be considered as evidence in labor related proceedings, such as audio and video recordings, fax documents, e-mail transmissions, electronic signatures, and in general all information technology devices and related information.
It was not a perfect reform, but it represents a much-needed one, as there were practical aspects of the employment life in Mexico, which were already happening but were not formally addressed in any labor legislation.

9. Immigration Law

Compliance with Mexican immigration requirements is the starting point for doing business in Mexico, since such requirements establish that it is not possible for a foreign national to do business of any kind in Mexico without having a visa.

According to Mexican Immigration Act, a foreign national can enter Mexico temporarily to perform a gainful or non-gainful activity, as long as it is legal, and falls under one of the following general conditions:

- When the foreign national is planning to live during his/her stay, with resources brought from abroad;
- When his/her purpose is analyzing investment alternatives;
- When she/he performs scientific, artistic, technical, advising or sport activities, including human rights observation and election processes;
- When she/he pretends to occupy confidential employee positions;
- When she/he pretends to attend Board of Directors meetings and assemblies;
- Any other legal activity.

Foreign nationals may enter Mexico either temporarily to conduct business or to live and work, provided they are in possession of the appropriate visa and/or immigration document authorizing the activities that they will carry out while in Mexico. It is also important to bear in mind the substantial discretion that Mexican immigration authorities have in applying immigration law and regulations, and the information provided below should be viewed with this limitation in mind.

On 2012, there was published in the Federal Official Gazette an executive order issuing the new Immigration Act and its Regulations.

According to these major immigration reforms as well as Mexican immigration policy, foreign nationalities are classified into three groups: i) unrestricted; ii) regulated and; iii) restricted, with different rules applying to each category.

NEW VISAS AND IMMIGRATION DOCUMENTS

Temporary Visitor Visa.

Citizens of countries that the Department of the Interior, in coordination with the National Immigration Institute, considers as “unrestricted entrance nationalities” do not require a previous visa to enter the country as tourists or business persons, provided that their stay in the country do not exceed 180 calendar days.

On the other hand, individuals holding a restricted nationality must request a visa at a Mexican Consulate, prior to their trip to Mexico.

In general terms, this type of visa is valid for a maximum period of 180 calendar days following the entry date into the country and in specific cases, may be granted for up to 10 years.

The 10-year visa may be granted to foreign nationals in any of the following situations, among others: (a) frequent traveler; (b) economically solvent person; (c) permanent supervisor of a foreign company having an affiliate in Mexico; (d) executive of an affiliate or business office of Mexican company abroad, or (e) person holding an invitation from a public or private entity or a government or private institution to participate in non-gainful activities in the country.

Moreover, the visa allows the foreign national to attend conferences and seminars; hold business meetings with private institutions, individuals, employees or representatives from Mexican or foreign companies, seeking for investment opportunities or potential clients; advise and consult colleagues on specific projects and provide training, conduct interviews and negotiation of deals and agreements (*provided that the foreign individual does not sign any legal document in representation of the company in Mexico).*

The visa holder may also request the issuance of a similar for his/her spouse, common-law partner, minor children, and children of legal age subject to guardianship.

Temporary Resident Visa

This visa allows the holder to reside in the country for a minimum period of 180 calendar days and a maximum of four years. The foreign individual must be sponsored by a Mexican or foreign entity, or a government or private institution in order to render services in Mexico.

It is of the outmost importance to determine whether the foreign individual will perform the activities under the wing and subordination of a foreign or local company, since such circumstance will trigger labor, social security, tax and immigration implications both for the company and the foreign individual.

Permanent Resident Visa.

This visa allows the holder to reside in Mexico for an indefinite period of time, and has the prerogative of multiple entries. It also allows to the foreign individual to work in Mexico.

The holder ought to maintain a regular temporary immigration status during four consecutive years, or by having family ties in Mexico (Mexican spouse, children, etc.)

REGISTRATION CERTIFICATE

Mexican companies hiring foreign personnel must be registered before de Ministry of Interior and National Immigration Institute, by means of an official ruling known as “Employer’s Registration”.

The Registration serves to attest the incorporation and legal capacity of the sponsoring company. It also has a mandatory nature.

POINTS AND QUOTA SYSTEM

Immigration proceedings will be subject to a points and quota system, established within the Immigration Act and its Regulations:

Quotas. - List of occupations, geographical regions, immigration status (authorized activities) and/or the combination thereof.

Immigration authorities will verify whether the "threshold" of a particular occupation within an immigration status has been reached.

Points.- To be based on educational level, job experience, proposed investment amounts, Spanish language fluency, knowledge of the Mexican culture, international awards, and others.

The Regulations do not specify the type of categories, the point's allocation system or minimum point score necessary to obtain permanent residence, though it is provided that the points will be revised every three years.

The points and quota systems are not yet specifically defined and are to be published in the Federal Official Gazette.

9. Immigration 2

Compliance with Mexican immigration requirements is the starting point for doing business in Mexico, since such requirements establish that it is not possible for a non-Mexican to do business of any kind in Mexico without having a proper immigration document.

In Mexico, immigration laws and regulations are highly codified. The laws are applied and enforced by the National Immigration Institute (known as the 'Instituto Nacional de Migración' or 'INAMI'). All foreign nationals who wish to enter and visit or reside (i.e. either temporarily or permanently) must comply with the provisions of the applicable law and regulations, and are subject to the endorsement of the INAMI. On 25 May 2011, the Federal Official Gazette published a reform to immigration laws and regulations, which came into effect in November 2012. This provided for a new immigration system and the publication of new Handbooks on Immigration Standards and Procedures. These reforms detail modifications in application formalities and procedures and incorporate the use of new technology and the application of visa waiver programs.

Visas are necessary to travel to and enter Mexico for foreign nationals who wish to enter as tourists, temporary visitors, business visitors or to reside temporarily or permanently in the country.

Visas are issued to foreign nationals who fulfil certain requirements to obtain approval to enter Mexico, regardless of the purpose or capacity in which they do so. These foreign nationals must first comply with the requirements set by the Mexican Government to obtain a valid visa to travel to Mexico.

The following visas are relevant for those travelling for business purposes:

a) *Business Visitor visa*

The Business Visitor visa applies to foreign nationals wishing to enter Mexico to conduct business activities, i.e., to hold business meetings with private institutions, individuals or officials from

Mexican businesses, employees or representatives of foreign businesses, along with other similar activities.

The purpose of this visa is essentially to allow business people to come to Mexico temporarily for short periods (no longer than 180 days). The business visa includes an Entry and Exit Registration. The Immigration officer will keep the Entry registration for multiple entries and is not renewable.

There are two different categories of business visa applications:

- *Unrestricted nationalities.* Nationals of countries with 'unrestricted entrance' or 'free-access' do not require prior permission to enter the country as tourists or business persons, provided the stay does not exceed 180 calendar days. When entering the country, these nationals need merely present a completed application (i.e. the Multiple Immigration Form, 'Forma Migratoria Múltiple', 'FMM') and passport.
- *Restricted or Regulated Nationalities.* Nationals of countries considered as 'restricted' must first obtain a travel visa at the closest Mexican consulate, prior to entry to Mexico. They must then complete the FMM and present their passport with the visa issued by the Mexican consulate upon entry to Mexico.

b) Long-Term visitor visa with no permission to render gainful activities

This visa may be granted to those with sufficient means, frequent travelers, supervisors or executive staff of foreign companies. An application for a long-term visa can be submitted to the nearest Mexican Consulate. The visa has a maximum validity of ten years and may be renewed. It allows multiple entry and departure.

c) *Temporary Resident visa*

A Temporary Resident visa applies to foreign nationals with the purpose of entering and visiting Mexico for a maximum of 180 days for business, tourism, recreational, or leisure activities.

A temporary resident visa with no permission to perform 'gainful activities' is available for foreign nationals who are neither receiving income in Mexico nor have a labor relationship with a Mexican entity. This visa is valid for up to 180 days. The visa allows the holder to perform activities in Mexico for a maximum of six months or 180 days, but not to receive payment. It ensures the holder's legal status in Mexican territory during the validity of the visa.

A temporary resident visa with permission to work applies to foreign nationals entering the country to render services in Mexico as independent contractors or to work for Mexican companies or subsidiaries. Holders are considered as temporary visitors for a maximum period of six months or 180 days and are entitled to receive a salary or financial compensation in Mexico for that period.

The various visas differ in terms of what they entitle the holder to do. Therefore, applicants need to consider what they need the visa for (i.e. business, tourism, recreational or leisure activities). The business visitor visa, for example, does not allow the holder to receive any type of economic compensation, payment, fee or wages from a Mexican company with respect to activities carried out in Mexico.

Foreign Nationals who require a visa must apply for one and obtain it prior to entry, at a Mexican Consulate. These foreign nationals must first comply with the additional requirements established by the Mexican Government and obtain a valid visa to travel to Mexico. The National Immigration Institute (the 'Instituto Nacional de Migración' or 'INAMI') is the body with the authority to approve the entry of foreign nationals into Mexico.

Due to the different visa waiver programs and treaties to which Mexico is a party, certain foreign nationals are exempt from requiring a consular visa before travelling to Mexico for a short period of time (no longer than 180 days).

Foreign Nationals who do not require a consular visa should submit a Multiple Migration Form ('FMM') upon entry. This is the immigration document issued to all foreign nationals entering Mexico. It is provided to the foreign national at the airline counter prior to arrival in Mexico directly by crewmembers of the airline or flight attendants or may be obtained at the Mexican airport upon arrival. It must be surrendered by the time of departure at the port of exit. The FMM allows the foreign national to stay as a tourist or business person (not engaged in paid activities) for a period not exceeding 180 calendar days.

The FMM has an Entry and Exit Registration and the immigration authority will keep the Entry Registration. The foreign national must carry the Exit Registration at all times, as proof of lawful stay in the country.

The FMM enables the foreign national to submit residence applications in Mexico after any appropriate immigration procedures. The FMM will be exchanged for a resident visa, within 30 days of entry into the country.

Foreign nationals with either temporary or permanent residence status may request the corresponding authorization for entry or immigration status for a spouse, partner, children and/or parents (i.e. economic dependents).

Economic dependents are not authorized to work or conduct any activities other than those related to their lives as economic dependents and in accordance with age and school equivalence from the country of origin.

10. Security Interests under Mexican Law

The types of security interests that may exist in property under Mexican Law are:

Pledge

A pledge agreement provides a personal property right to secure (a) the payment of an obligation as well as (b) the preferential right to such payment. The pledge may be granted without transfer of possession, which means that the pledged property may remain with the pledger to use in the regular course of business. In case of a breach by the debtor of the obligations secured by the pledge, the creditor may sell, following the proceedings established by law, the pledged assets and apply the proceeds to the payment of the secured obligations.

Mortgage

A mortgage grants in favor of a creditor (mortgagee) a right over property, whose possession remains with the mortgagor, to be paid out of the proceeds of the disposition of the property in the event of a failure to comply with the obligations being secured. A mortgage is generally established over real estate but can also be granted over personal property attached to real property and over businesses or ships. Mortgages may be granted unilaterally, meaning that the mortgage may be granted by the mortgagor without the mortgagee's participation.

Surety Bond

A surety bond is an agreement by which a guarantor (obligor) agrees to pay the obligations of a debtor in the event that the debtor defaults on a payment.

Guarantee trust

This type of trust is a contract whereby a settlor transfers to a trustee the ownership of certain property in order to secure compliance with an obligation owed to the creditor or beneficiary. Generally, the trustee will only act after receiving instructions from the creditor or beneficiary. In Mexico, only banks and certain other financial institutions may act as trustees.

Equipment or Operating Loan

By virtue of this kind of contract, the debtor is obligated to use the exact amount of the loan for the acquisition of raw materials and/or equipment as well as for the payment of wages, salaries and direct expenses required for the day to day operation of the business.This type of loan is secured by the raw materials or equipment acquired with the loan proceeds or the products or manufactured goods resulting therefore.

Financing Loan

There are multiples uses for this type of loan: (i) to purchase tools, instruments, farming implements, fertilizer, cattle, or breeding stock, (ii) to develop farms or raise crops, either seasonal or permanent; (iii) to open land for cultivation; (iv) to purchase or install machinery and construct or develop working equipment necessary to carry out the debtor´s day to day business.This loan is secured, simultaneously and separately, with the assets and the products and proceeds, whetherfuture, pending or already obtained, of the business for which the loan was obtained.

Creating and Perfecting Security Interests

A security interest is perfected when all of the applicable steps required by law have been taken, generally, when the security agreement is signed. Formalization before a notary public and registration before the appropriate Public Registry of Commerce and/or Property, in the case of real property, and before the Registry of Secured Personal Property, in the case of personal property, is required in order to ensure and preserve the priority of the interest being granted.

11. Environmental Law in Mexico.

The environmental framework in force in Mexico is comprised by a complex system of federal and local dispositions, either laws, regulations, Mexican Official Standards, executive orders, etc. that could seem difficult to comply with and may give the imposition of penalties on individuals or companies for failure to do so.

At federal level the most relevant environmental statutes and regulations are:

- The General Law for Ecological Balance and Environmental Protection and its regulations;
- The General Law for Prevention and Management of Wastes and its regulations;
- The Federal Law for Environmental Liability;
- The National Water Law and its regulations;
- The General Law for Sustainable Forest Development and its regulations; and
- The Federal Criminal Law.

In addition, each State has the power to regulate the environmental topics under their competence through laws, regulations or local standards which are enforceable within the State's territory.

Controversies of environmental nature are most commonly solved by judicial and administrative courts, some of them specialized on judicial proceedings of environmental nature.

The Environmental Protection and Natural Resources Department ("SEMARNAT" for its acronym in Spanish) is the agency in charge of leading the environmental protection policy at federal level. It is also the agency in charge of granting environmental permits and authorizations for projects under federal jurisdiction, except for those projects related with the hydrocarbon sector. SEMARNAT is supported by other agencies being the most relevant:

1. The Federal Environmental Protection Agency (PROFEPA by its acronym in Spanish), SEMARNAT's enforcement arm. This agency is responsible of ensuring the compliance of the federal environmental provisions, throughout the conduction of inspections of potentially contaminating activities, implementing voluntary environmental audits, investigating citizen complaints, imposing fines and other administrative sanctions.

2. The National Water Commission (CONAGUA by its acronym in Spanish), which is the agency in charge of administrating the national waters in order to achieve its sustainable use and exploitation. CONAGUA has the power to grant authorizations and concessions to extract either underground or superficial national water, discharge wastewaters into federal bodies of water as well as other activities related with the matter.

3. The National Agency for Industrial Safety and Environmental Protection in the Hydrocarbon Sector (*Agencia Nacional de Seguridad Industrial y de Protección al Medio Ambiente del Sector Hidrocarburos*, ASEA by its acronym in Spanish). This agency was created when the energetic reform was approved, by the Mexican Federal Congress, in the year 2013. It is in charge of regulating and supervising the security both operational and industrial, and the environmental protection policy's enforcement within the hydrocarbon sector and the development of projects in said sector.

At local level, each State has their own agency in charge of conducting the local environmental policy and enforcing the compliance of the local environmental framework.

The development of activities and projects in Mexico requires diverse permits, approvals, authorizations, licenses, records and periodical reports, both federal and local concerning environmental matters, which must be obtained and/or filed for prior to the execution of the project (construction works) as well as prior and during the course of the operations.

The permits required to develop each activity will depend on the characteristics of said activity and of the site in which it will be developed, along some others, however, the most common applicable authorizations are:

- Environmental Impact Authorization;
- Environmental Risk Authorization;
- Operating License or Sole Environmental License ("LAU," for its acronym in Spanish);
- Environmental Annual Operating Report ("COA," for its acronym in Spanish);
- Record as a Hazardous Wastes Generator and Hazardous Wastes Handling Plan Approval (when certain amount of this sort of wastes are produced).
- Concession to use National Waters if the company is going to use water from wells or any other source not provided by a municipal or state water board;
- Wastewater Discharge Permits.

From the effective date of NAFTA, an Environmental Cooperation Commission made up of a Council, a Ministry and a Joint Public Consulting Committee has been in existence in order to promote cooperation between the three member countries on:

- Effectiveness of environmental laws;
- Compliance with such laws and their regulations; and
- Technical cooperation

In view of the rapidly changing and complex nature of Mexican Environmental Legislation, any corporation planning to do business in Mexico or engaging in a new field of activity to review compliance with the legal and technical implications of its activities should exercise care. With respect to business currently in operation, the conduct of periodic environmental audits, both of a legal and technical nature is highly recommended in order to avoid potential penalties resulting from inspections by PROFEPA and/or state and local environmental authorities.

12. Foreign Trade and Customs

Mexico is an open economy country, making it one of the most competitive, productive and interesting country to invest in and to carry out foreign trade interchanges. The most import sector for foreign invest are; automotive, manufacturing, technology, agroindustry, etc.

Foreign Trade and Customs matters in Mexico involved the commercial practices performed between different entities or persons[2] and the customs authorities before the specific customs port[3] in order to declare the legal entrance or exit from/to national territory.

The Mexican Government has introduced since 2012 technological tools to facilitate and increase the commercial exchange, such as single window, risk analysis based inspection and electronic data interchange systems. With this facilitation, the Mexican foreign trade operations have been optimized and procedures have become easier and faster.

To performed foreign trade operations, the importers or exporters must comply with the following requirements:

a) Declaring the goods entry or exit in the appropriate official form[4].
b) Paid the taxes, foreign trade duties, administrative quota, customs processing fee, etc.
c) Comply with all the Non-Tariff Regulations or Restrictions applicable regarding the tariff classification and the customs regime.
d) Comply with all formalities pursuant to the corresponding regulations base on the tariff classification and customs regime.

[1] Recipients, senders, customs, representatives, customs brokers or any person involved in the operation.
[1] In Mexico there are 49 Customs Ports, 19 at the north border, 2 in the south border, 17 Maritimes and 10 internal, strategically located.
[1] Generally, the official forms are the following; Import/export declaration (pedimento), international passengers from, small imports form, ATA, carnet, etc.).

I. <u>General and Sectorial Import Registry</u>

As a general rule, any person who wishes to import goods into Mexico must be registered in the General Importers Registry.

[2] Recipients, senders, customs, representatives, customs brokers or any person involved in the operation.
[3] In Mexico there are 49 Customs Ports, 19 at the north border, 2 in the south border, 17 Maritimes and 10 internal, strategically located.
[4] Generally, the official forms are the following; Import/export declaration (pedimento), international passengers from, small imports form, ATA, carnet, etc.).

In addition to the foregoing, regarding some types of goods intended to be imported or exported, the importer or exporter must be enrolled in a Sectorial Registry. This additional registration is required for commercial goods that the Mexican authorities consider as "sensitive products", such as textiles, shoes etc.

II. Custom Broker or legal representative

In order to perform foreign trade operations, the companies must hire a Custom broker, which is an individual authorized by the tax authorities to handle the import of products into Mexico on behalf of a company. This agent is specialized in international trade and is responsible for the veracity and accuracy of the information provided. This includes the determination of the customs regimen under which the merchandise is being imported, the correct classification of the products, and the fulfillment of all regulations and restrictions not related to import duties (according to the Mexican Customs Law and other laws that may apply).

III. Identification of the goods and tariff classification

Mexico is part of the Harmonized Commodity Description and Coding System, also known as Harmonized System (HS), which is an internationally standardized system of names and numbers to classify trade products.

All products can be classified in the HS by using the General Rules of Interpretation, Complementary Rules and Notes.

It is important to mention that, in the case of Mexico the Notes are not only a reference document or tool for classifying the goods, furthermore they are legally binding since they were published in the official gazette as expressly mentioned by the 3rd complementary Rule of the General Import and Export Duty Tariff.

Moreover, in accordance to the tariff item classification of the imported product, the importer must comply with the specific tariff (duties) and non-tariff regulations (import permits, Mexican Official Standards) etc.

Once the merchandise has been properly identified and classified, it will be possible to determine the duties and taxes to be paid during the import/export process.

IV. Determine Import/Export Duties and Taxes

The tax base for import duties is the value of the imported goods. The Customs Law establishes that the value of a transaction is the value shown on the respective invoice.
In addition to the price paid for the goods, the value of a transaction also includes certain expenses, such as customs fees, purchase commissions, packing and crating expenses.

1. Import Duties

The duty rate varies based on the type of product being imported and the country of origin of the merchandise. As a result, it is critical that importers apply the correct classification and valuation for the goods they import, since the amount of customs duties they will pay is based directly on this classification.

There are customs duty reductions (and even exemptions) depending on the origin of the product in accordance with the FTA´s signed by Mexico.

Currently, Mexico is part of a Network of 10 free trade agreements with 45 countries, 30 Bilateral Investment Agreements (APPRI´s) and 9 Economic Cooperation Agreements.

In addition, Mexico participates actively in multilateral and regional organisms and forums such as the World Trade Organization (WTO), the Asia-Pacific Economic Cooperation (APEC) and ALADI.

The most notable Free Tarde Agreement is the North American Free Trade Agreement (NAFTA) which contemplates the establishment of a free trade zone including Canada, the United States and Mexico which would benefit all its members due to the objectives arranged by its parts:

- Eliminating tariffs, obstacles to foreign trade and facilitating the circulation of goods and services between the three signatory countries;
- Promoting competitive conditions as well as capital investment in the members; adequately protecting intellectual property rights;
- Creating efficient procedures for the resolution of commercial disputes between the parties, as well as between their nationals; and
- Establishing policies for trilateral and multilateral regional cooperation as well as seeking to broaden the benefits and scope of NAFTA.

2. Value Added Tax

Imports into Mexico are subject to a 16% VAT rate. However, the VAT paid on imports may be credited against the VAT charged on a subsequent sale of the merchandise in Mexico. Entities that wish to credit VAT or request a VAT refund must be registered with the Federal Taxpayers Registry.

3. DTA (Customs processing fee)

The customs processing fee rate is equal to 0.008% of the invoice value of the goods and the fee applies to all goods imported into Mexico. Pursuant to FTA´s this fee can be excepted or established on a fix rate.

4. Export Promotion Program

Export promotion programs are oriented to promote productivity to increase the competitiveness of companies, based on the reduction of import duties for raw materials, parts and components to be incorporated into an export product and the simplification of administrative procedure by the Mexican government.

1. IMMEX Program

The IMMEX Program is an export promotion program, authorized by the Ministry of Economy, which allows Mexican companies, including subsidiaries of a foreign company, to temporarily import into Mexico raw materials, parts, components, containers and packing as well as machinery and equipment to be used in the production of export products, with the benefit of duty deferral.

In additions companies may access the benefits of PROSEC program (Sectorial Promotional Program) to reduce or possibly eliminate import duties for goods and material that are imported temporarily or definitively.

- Benefits applicable to IMMEX program:

  - Duty deferral of import duties and in some cases the duties can be exempted on imports of raw materials.
  - VAT exception in temporary import until December 31, 2014. Option to obtain a VAT credit if the company is granted a VAT certification by the Tax authorities.
  - Reduce processing fee

- Avoid payment of taxes in domestic purchases (when materials are incorporated to goods exported).
- Possibility to create virtual pedimentos (import/export declarations) between companies with IMMEX program.
- Possibility to consolidated import declarations.
- Sales between IMMEX companies are subjected to 0% VAT rate (under specific conditions).
- The acquisition of the foreign resident of raw materials, from local suppliers are subjected to 0% VAT rate (under specific conditions).
- Not constituting permanent resident establishment if all the incomes of its productive activity are from exportations.

➢ IMMEX Program modalities

- **Industrial;** is applicable for an industrial process to manufacture goods for export.
- **Services;** Applies to service rendered in association to exported goods or services rendered abroad.
- **Holding Company;** The manufacturing operations of a certified holding company and one or more subsidiaries are included in the same program.
- **Shelter program;** One or several foreign companies provide technology and productive materials without directly operating under the IMMEX Program.
- **Third Part (Outsourcing);** A certified company not having the facilities to perform productive process and conducting manufacturing operations through third parties entered in the Program thereof.

2. <u>PROSEC Program</u>

The PROSEC program was created by the Ministry of Economy to neutralize the effect on domestic industry of what is stated in Articles 303 and 304 of the NAFTA. These articles apply to imports of raw materials, machinery and equipment non-originated in Canada, United States, or Mexico. Basically a PROSEC allows its holder to import, on a permanent basis, raw material, parts and components, as well as machinery and equipment under preferential tariffs, provided that such items will be used to manufacture or assemble the products mentioned in the applicable PROSEC, whether or not the final products are intended for export or for sale in the domestic market.

This program is especially useful when importing goods from non-NAFTA countries when such goods are incorporated in products and then exported to a NAFTA member.

The goods that can be imported, as well as the final products to be manufactured, are organized in twenty-two specific industry sectors, which include, among others, the electrical/electronic, furniture, textile and apparel, footwear, toy, metallurgic, chemical, pharmaceutical, agricultural, automotive and transport industries, among others.

TRANSPORTATION INDUSTRY

13. Aviation Law

Foreign investment in a company engaged in any of the following businesses is permitted up to a maximum of 25% of its total capital:

- Domestic air transportation,
- Air taxi transportation, and
- Specialized air transportation.

The above percentages cannot be exceeded, either directly or indirectly, for example by using a trust. Foreign investment however it is permitted without restriction in companies engaged in international air transportation as well as private non-commercial air transportation.

Air transportation in Mexico is predominantly regulated by the Civil Aviation Law ("CAL") and the Air Transportation Law Regulations. The purpose of the latter is to clarify certain aspects of the CAL such as the requirements that must be complied with in order to obtain the concessions and permits necessary for operating air transportation services in Mexico.

The legal framework applicable for concessions and permits is, in brief, as follows:

The federal Communications and Transportation Department ("SCT") is responsible for granting concessions and permits to provide air transportation services

Concessions are granted to provide domestic scheduled public air transportation services and may only be granted to Mexican corporations complying with the foreign investment limitations previously mentioned. Such concessions may be for a period of up to 30 years, and may be extended several times for the same period, if the concession holder has fully complied with its obligations under the concession during this period. Foreign corporations are not allowed to provide domestic transportation.

Permits are granted to provide:

- Domestic non-scheduled services (inclusive of charter and taxi flights),
- International scheduled services,
- International non-scheduled services (inclusive of charter and taxi flights), and
- Private commercial services (inclusive of specialized air transportation flights).

A permit to provide domestic non-scheduled air transportation services will only be granted to Mexican corporations complying with the foreign investment limitations previously mentioned. Permits, however, for operating international scheduled air transportation services as well as international non-scheduled air transportation services and private commercial air transportation may be granted to both Mexican and foreign corporations. All of these permits are issued for an indefinite period.

Airports Law

Companies having foreign shareholders may invest in Mexican airports and aerodromes provided that no more than 49% of the total capital stock of the company is in foreign hands. Nevertheless, companies having foreign investment exceeding this amount may do so if an authorization from the Foreign Investment Commission is first obtained.

The Airports Law and the Airports Law Regulations that deal with the concessions and permits that may be granted by the SCT predominantly regulate airports in Mexico.

Concessions may only be granted to Mexican corporations for the administration and operation, and if applicable, for the construction of airports. Such concessions may be in effect for up to 50 years, and may be extended several times for the same period, provided that the concession holder has fully complied with its obligations under the concession during this period.

Permits may be granted to Mexican individuals or corporations for the operation of private aerodromes and only to Mexican corporations for the operation of public aerodromes. In either case, these permits may only be granted for a maximum period of 30 years. This period, however, may be extended.

Ground Transportation

Foreign investment in entities engaged in domestic ground transportation, whether of passengers, tourism or cargo, is prohibited and the business is exclusively reserved for Mexican individuals or corporations. However, this prohibition does not include the provision of courier services.

Foreign investment in corporations engaged in the provision of international ground transportation either of passengers, tourism or freight, has no restriction, in accordance with NAFTA.

The provision of ground transportation services on highways and federal roads in Mexico is predominantly regulated by the Federal Roads, Bridges and Motor Vehicles Transportation Law and the Motor Vehicles Transportation and Auxiliary Services Regulations.The SCT is responsible for granting permits to provide ground transportation services, as well as for the installation of interior load terminals and verification units, and for the provision of courier transportation services, among others. These permits are issued for an indefinite period of time.

Railways

Foreign investment in companies that provide public railway services is permitted up to a maximum of 49% of total capital stock. This percentage may be relaxed, however, by a favorable resolution from the Foreign Investment Commission.

Railway transportation service in Mexico is predominantly regulated by the Railway Service Regulatory Law and by the Railway Service Regulations.

These laws establish that a concession granted by the SCT is required to provide public railroad transportation, a concession may be in effect for up to 50 years, and may be extended once again for up to the same period, provided that the concession holder has fully complied with its obligations under the concession during such term.

In addition, the SCT may grant permits for the provision of ancillary services such as:

- Passengers terminals,
- Cargo terminals,
- Transfer of liquids,

- Maintenance workshops,
- Supply centers for the operations of railroad equipment.

Notwithstanding the above, a concession holder may provide the abovementioned services without the need to obtain a further permit.

Maritime Law

Foreign investment in companies engaged in any of the following businesses is permitted up to a maximum of 49% of their capital stock:

- Companies engaged in the provision of pilotage services for internal navigation in Mexico,
- Ship-owners engaged in domestic or internal navigation, with the exception of tourist cruises and machinery, equipment and other items used in naval construction, conservation and seaport operation.

For the following activities, while companies having more than 49% of their capital stock held by foreign shareholders may generally not engage in the provision of such services, it is possible to obtain an authorization from the Foreign Investment Commission to do so:

- Companies engaged in the provision of seaport services to vessels within internal waters of Mexico, such as towage and moorage,
- Ship-owners engaged in international navigation.

Maritime transportation services in Mexico are predominantly regulated by the Navigation and Maritime Trade Law and the Navigation and Maritime Trade Law Regulations.

The legal framework applicable for maritime transportation services is, in brief, as follows:

Mexican and foreign companies are allowed to provide international sea-going navigation services. However internal and domestic navigation can only be carried out by Mexican corporations or individuals with Mexican ships, although a temporary 90 day permit may be obtained either by a foreign shipowner operating a foreign vessel or a Mexican shipowner operating a foreign vessel, provided that there is no Mexican ship with the characteristics required for the provision of the particular service.

In addition to the above, a permit granted by the SCT is mandatory in order to provide the following services:

- Passenger transportation and tourism cruises,
- Nautical tourism,
- Salvage, security or assistance navigation with special vessels.
- Towage, maneuvers in port, unless an agreement with the seaport administrator has been concluded.

Ports Law

Companies having foreign shareholders holding up to 49% of the capital stock may act as port administrators. This percentage cannot be exceeded, either directly or indirectly.

Ports in Mexico are predominantly regulated by the Ports Law and the Ports Law Regulations.

The legal framework applicable for concessions and permits is, in brief, as follows:

The SCT is responsible for granting the concessions and permits necessary for operating

ports, terminals and marinas.

Concessions for ports administration can only be granted to Mexican corporations with the foreign investment limitations previously mentioned. Concessions for operating a marine terminal located outside a port, and permits to provide ports services may only be granted to Mexican individuals and corporations.

Concessions may be in effect for up to 50 years, and may be extended once again for the same period, provided that the concession holder has fully complied with its obligations under the concession during this period.

14. Telecommunications

As a consequence of recent reforms, the telecommunications sector in Mexico has liberalized to allow private and foreign investment in this sector. This increase in private investment has both driven and reflected rapid growth in the industry. For example: foreign investment in companies that provide public telecommunication services, such as installation and operation of public networks, are now allowed to hold a 100% of the total capital stock.

Further, Foreign Investment Law only restricts foreign investment in telecommunications to 49% of the capital of Mexican companies operating in radio broadcasting/by using the electromagnetic spectrum in Mexico.

Foreign investors may invest in the capital of Mexican companies engaged in the restricted businesses referred to above provided they do so as minority shareholders or hold shares with limited voting rights, and in either case, agree to consider themselves as Mexican nationals with respect to their interest in the company and not to invoke the protection of their own government in the event of a dispute, under penalty of forfeiting their interest to the state for violation of the agreement.

The Federal Telecommunications and Radio Broadcasting Law (enacted as of 2014) is the governing law in Mexico that regulates the use of the radio-electric band, telecommunications networks, and satellite communications. Subject to the limitations mentioned above, any individual or company may obtain a concession to provide the following services, among others: (i) public local and long distance telephone service; (ii) data transmission; and (iii) restricted television.

15. Energy, Electricity and Mining

Energy Reform 2013.

Carried out in three stages, starting with amendments to Articles 25, 27 and 28 of the Mexico's Federal Constitution and the approval of 21 transitory articles. Thereafter, 21 secondary laws were issued and published on August 12, 2014, as well as 22 Regulations, published on October 31, 2014.

In view of the above mentioned, a whole new legal regulatory framework has been issued and is currently being implemented. This new regulatory framework allows the participation of private companies in hydrocarbons and electricity projects, which, until 2013, where carried out only by state-owned companies, Petroleos Mexicanos (PEMEX for its acronym in Spanish) and the Federal Electricity Commission (CFE for its Spanish acronym).

At present time, the new Government Regulatory Bodies, the National Hydrocarbons Commission (CNH for its Spanish acronym) and the Energy Regulatory Commission (CRE for its acronym in Spanish) are carrying out tender procedures in order to award exploration and extraction of hydrocarbons contracts and are granting permits and authorizations for midstream and downstream activities. Regarding electric power activities, the Energy Control National Centre (CENACE for its acronym in Spanish) is currently carrying out power auctions for the purchase and selling of electric power and clean energy certificates.

The main government policy aims to attract private investments to oil, gas and electricity activities, as well as to increase Mexico's oil and gas production through exploration and extraction contracts, increase midstream and downstream infrastructure, increase electric power generation as well as to improve its infrastructure.

Hydrocarbons:

By the amendments to the Mexico's Federal Constitution, individuals and private entities are allowed to engage in activities previously reserved only to the State, which were performed only by PEMEX.

Exploration and Extraction activities are given preference over any other exploitation of surface and subsoil. These activities are carried out by allocations or agreements with private entities or state government-owned companies, such as PEMEX, based on the following compensation plans:

- Services Agreements;
- Share Income Agreements;
- Share Production Agreements;
- License Agreements (where underground hydrocarbons are exclusively owned by the State until they are extracted from the subsoil and, after being extracted, they may be sold to private entities).

The Energy Ministry (SENER for its acronym in Spanish) and CNH are the authorities in charge of regulating exploration and extraction of hydrocarbons agreements which are awarded by means of bidding procedures, in which different blocks are bided according to the "*Five Year-Term Program (2015-2019) for Exploration and Extraction Tenders*". Bidding rules, requirements and model agreements for each tender are set by the above-mentioned authorities; while, the minimum values, among them the state participation in the operative utility, are set by the Finance Ministry.

As of today, three tender procedures have already been called and thirty (30) new contracts for exploration and extraction of hydrocarbons have been awarded to private companies for onshore and offshore blocks.

Additionally, a fourth tender procedure (under Round One) is currently under process for the awarding of exploration and extraction of hydrocarbons in deep waters. In this procedure, ten (10) blocks are expected to be awarded in the Mexican Gulf.

Exploration and Extraction Plan ("E&E Biding Plan)

Bidding procedures called by SENER and CNH are based in the E&E Biding Plan, which contemplates an exploration and extraction surface of 235, 070. 0 km2 and establishes four bidding rounds for exploration and extraction fields and areas to be executed from 2015 – 2019 with an average of 104,778.6 Billion Barrels of Crude oil equivalent.

The E&E Biding Plan considers bidding 237 extraction oil fields: 169 onshore; 39 offshore in shallow waters; 13 of extra heavy oil; 12 in the oil field known as Chicontepec; and 4 in deep waters (meaning a depth equal or more than 500 meters and less than 1,500 meters between surface of the sea and the seabed).

Round One.

Round One proposes the inclusion of 109 blocks for exploration and 60 extraction fields.

As mentioned previously, three (3) tenders included in Round One have already concluded and one more is under process for the awarding of hydrocarbons agreements in deep waters. Fourth tender includes 10 contractual areas with an average of prospective resources of 10,537.3 billion barrels of crude oil equivalent.

The term of the exploration and extraction agreements is of 25 or 30 years, based on the tender and model contract; however, agreements also provide the possibility of extending the term.

Other Activities in Hydrocarbons Chain.

With respect to other activities in the hydrocarbons production chain, such as processing and petroleum refining, natural gas processing, import and export of hydrocarbons and petroleum, transportation, storage, distribution, liquefaction, decompression, degasification, marketing and sale to the hydrocarbons public, petroleum or petrochemicals, the Hydrocarbon Law states that such activities will be carried out with a permit issued by both, SENER and CRE.

As of today, permits for midstream and downstream activities have already been issued by the above mentioned authorities, especially regarding transportation, distribution and selling of oil products and natural gas.

Construction of gas pipelines is expected to increase in 5,150 km according to the Natural Gas Transportation and Storage System Plan which considers 12 different projects that aim to guarantee the efficient development of the gas system. Additionally, more gas pipeline projects are expected to be called by CFE in order to supply natural gas to new power generation plants and to those already operating with fuel or diesel.

Finally, is important to mention that as of April 01, 2016, SENER began granting permits in order for private companies to import oil products, especially gasolines and fuels, activities which previously where only carried out by PEMEX throughout its commercial branch PEMEX International.

Fuel and gasoline prices, which as of today are established by the Financial Ministry, will be completely open and regulated as per market conditions, starting on January 01, 2018 therefore, private companies have increase their interest regarding the construction and operation of service stations throughout the country.

Electricity:

As a consequence of the Energy Reform and implementation of the new Law of the Power Industry, the legal framework for electric power in Mexico has changed from a restricted electricity market to a liberalized electricity market with complete openness to private investment in generation and commercialization and the possibility of joint ventures or public-private partnerships between the Government, through the Federal Electricity Commission and private entities for transmission and distribution.

The electric industry in Mexico comprises the following activities: generation, transmission, distribution, commercialization of electric energy. This sector includes the electric industry and supply of source materials for such industry.

CENACE, which is the government entity that regulates and operates the electricity market, recently concluded the first electric auction procedure, awarding 11 agreements to private companies in order for them to sell electric power and clean energy certificates to the state owned productive company CFE.

A second electric auction procedure is expected to be called throughout this year in which companies will be able to participate and present their offers pursuant to the auction guidelines to be released.

Moreover, new projects are emerging with private investment. Tenders are being called by the CFE for the development of electric infrastructure projects in Mexico and United States of America to be executed from 2015 through 2018. These projects include the execution of works for generation, transmission and distribution of electricity, as well as, the above referred construction of pipelines for transporting natural gas.

Mining:

Globally, Mexico ranks in first place in production of silver. It is also one of the 10 main producers of different minerals such as gold, copper, gypsum, zinc, among others.

The Ministry of the Economy regulates all mining activities in Mexico and supervises the compliance of this activity accordingly with the Laws, Regulations and Official Standards. Currently, the Mining Law and its Regulations are the main legal provisions to carry out exploration, exploitation and benefit of minerals and substances.

Mining activities may only be carried out by companies established in Mexico, rural communities or indigenous communities, by means of a mining concession issue by the Ministry of the Economy and prior fulfillment of the requirements provided in the Mining Law and its Regulations.

Foreign investors may participate in these activities by incorporating a Mexican company and complying with the applicable legal framework.

Mining concessions are issued for a period of 50 years, which may be extended for another 50 years if the activities are carried out according to the law and no cancellation cause is committed.

All mining activities are subject to payment of certain rights and government fees.

From the Energy Reform approved by Congress in 2013, natural gas related to a mineral field may be subject to an exploration and extraction agreement, which will be directly awarded by the CNH.

Overview:

Opening of exploration/extraction activities has been relevant to the upstream sector since new private companies have been participating in the four tenders called by CNH.

Exploration and extraction contracts have been already awarded for offshore and onshore oil and gas fields and, although their commercial exploitation will begin in the coming years, these new contracts represent important investments in Mexico.

Additionally, some oil fields awarded to PEMEX in Round Zero will be farmed out by such company. In this case, private companies will also be able to participate in tenders to be called by CNH to cooperate with PEMEX for those areas.

Regarding downstream and midstream activities important investments are coming into Mexico in order to develop related projects and more investments are expected in the coming years to increase transportation and storage infrastructure.

For electric market, electric auctions are being called by CENACE and private companies have shown great interest by participating in those procedures and filing economic proposals to sell their products. Furthermore, CFE expects to call for several bidding procedures in order to improve its current distribution and transportation infrastructure as well as to increase it.

The whole new energy legal framework has given the industry legal certainty regarding all related activities, while government support and public policy have aim to attract as many companies as possible in order to invest in Mexico.

16. Reorganization-Bankruptcy Proceedings

Reorganization and bankruptcy keep on as hot topics, in the hectic whirl of economic and commercial clashes in the world.

Since 2000, the statute applicable to business insolvency is the Commercial Bankruptcy and Insolvency Law ("CBIL"). In accordance to it, there are two successive stages: (i) reorganization or conciliation and (ii) bankruptcy.

The reorganization stage aims to the preservation of the company or of the business (the "Debtor"), through the execution of a reorganization agreement between the Debtor and its creditors.

The bankruptcy proceeding seeks out to sell the assets of the Debtor in order to pay its creditors.

Reorganization Stage

By request of the Debtor, its creditors, or the public prosecutor, an insolvent Debtor, not complying with its payment obligations, may be declared to be insolvent and thus at the reorganization stage.

Under the CBIL, general non-compliance with payment obligations occurs when the Debtor:

(i) Has debts past due for 30 days, representing 35% or more of the total of the Debtor's obligations on the date the petition for the declaration of insolvency is filed; and

(ii) The Debtor does not have assets easy to liquidate, to discharge at least 80% of its past due obligations.

The reorganization stage (as well as any subsequent bankruptcy) is dealt with by the District Court Judge of the domicile of the Debtor. Once an application for a declaration of insolvency is made, the Federal Institute of Insolvency Experts (the "FIIP") must then appoint an examiner that will determine whether the Debtor is actually insolvent and then submit a report to the Court that will then decide whether to issue a declaration of insolvency. Once such a declaration is issued, the FIIP then appoints a conciliator, whose principal task is to seek an agreement between the debtor and its creditors.

The reorganization stage is supposed to take no more than 185 calendar days to be concluded, calculated from the date of the last publication in the Federal Official Gazette of the declaration of insolvency.

The reorganization stage may be extended up to two consecutive times, for ninety calendar days each, on the understanding that this stage and its extensions may never exceed one year.

Effects of the Insolvency Declaration

The most important effects of the insolvency declaration are:

(i) The issuance of an order restraining the administrator of the business from leaving the jurisdiction of the court, unless the debtor provides an attorney-in-fact duly empowered to act on its name.

(ii) The suspension of creditor debt enforcement proceedings during the reorganization stage;

(iii) The suspension of any enforcement of judgement proceeding related with the Tax or Labor authorities;

(iv) The separation of third party property from that of the Debtor;

(v) The designation of the reorganization manager;

(vi) The maintenance of the management of the business by the Debtor (however reorganization manager may request the removal of the Debtor and appointment of a receiver in order to protect the assets of the Debtor);

(vii) The creation of a special regime for the treatment of the Debtor's obligations;

(viii) The requirement that creditors prove to the reorganization manager, the amounts owing to them; and

(ix) The dealing with fraud to the detriment of the Debtor's creditors.

Reorganization Agreement

The reorganization agreement must contain a schedule of payments of the amounts owed to all proven creditors and must be signed by proven creditors, except for tax and employment creditors, that represent more than 50% of: (i) the amount of all general creditors and (ii) the amount of all secured creditors.

The reorganization proceeding is terminated when the Court approves the reorganization agreement filed by the reorganization manager.

Bankruptcy

A Debtor is considered bankrupt, when: (i) the Debtor so requests it; (ii) the reorganization period and any extensions have elapsed without the approval of a reorganization agreement by the Court; (iii) the conciliator requests a bankruptcy declaration and the Court grants it; or (iv) the creditors of the business request it at the moment of filing the insolvency proceeding.

Bankruptcy Declaration

The decision containing the bankruptcy declaration, among others:

(i) Suspends the legal capacity of the bankrupt to exercise its rights over its property;

(ii) The Debtor is removed from the management of the business and the trustee assumes it;

(iii) Requires the Debtor and those who have in their possession property of the bankrupt, to deliver to the trustee in bankruptcy, such possession and the administration of the estate in bankruptcy;

(iv) Prohibits the Debtor from making payments or delivering its assets to others;

(v) Prohibits the debtors of the business subject to the bankruptcy procedure from making any payments to the business without the trustee's authorization; and

(vi) Orders the FIIP to appoint the conciliator as trustee.

Effects of Bankruptcy Declaration

The main effect of the bankruptcy declaration is to transfer the administration of the property and of the business of the Debtor from it to the trustee, the latter having the same powers and obligations as the conciliator had.

Once bankruptcy is declared, the trustee sells the property of the Debtor, trying to obtain the best price for it.

Payment to Proven Creditors and Conclusion of the Proceedings

Payment to creditors are to be made in the following priority: (i) creditors holding a special privilege (funeral expenses of a deceased Debtor); (ii) creditors holding a pledge or mortgage; (iii) creditors holding a special privilege (as defined in the CBIL); and (iv) general creditors (without security or privilege).

The proceedings conclude when:

(i) The reorganization agreement made between the Debtor and its creditors is approved by the Court;

(ii) Total payment is made to proven creditors;

(iii) Payment is made to proven creditors in bankruptcy proceeding, and there are no other assets left to be transferred, as well as the estate of the bankruptcy is not enough to make a total payment of proven indebtedness; or

(iv) If the Debtor and all proven creditors so request.

17. Anti-corruption

The approval of the so called Anti-corruption National System (SNA) on May 2015 is a major constitutional amendment that seeks to integrate isolated policies and laws with the objective of eradicating corruption practices. In this order of ideas, SNA aims to work as a mechanism which provides coordination between the governmental entities, the auditing entities and the public units in charge of controlling public resources.

The main highlights of the constitutional amendment are the obligation for public officers to file personal estate and conflict of interest statements; the granting of extra powers to the Federal Superior Auditor (ASF) to execute "real time" audits; the creation of a new system to determine liability over public servers as well as to individuals or companies involve in committing administrative offenses; and the obligation for Mexican states to create an own local anti-corruption system, inter-alia.

At a glance, the SNA will have the following features, aimed at preventing, detecting and sanctioning corrupt acts: (i) the ASF will be in charge of reviewing the use of public federal resources and Mexican states' debt in cases where the federation appears as guarantor; (ii) The SNA will submit claims for unlawful actions to the anticorruption prosecutor and administrative courts; (iii) the ASF will investigate corruption offences and will take them to court; and (iv) the Federal Tax and Administrative Tribunal will rule over corruption crimes cases, imposing sanctions to public officers and private entities through the creation of specialized courts.

The anticorruption reforms establish at a constitutional level the possibility to impose sanctions for individuals involved with the commission of administrative offences. The sanctions may go from economic sanctions, disqualification for the participation on public bids and tenders as well as the compensation of the damages caused to the treasury of federal, local or municipal public entities. As well, legal entities might be penalized when the acts aforementioned have been carried out by individuals acting on behalf of their interest. In this case, the federal court may order sanctions which ranges from the suspension of activities to the dissolution and intervention of the company in the case of detriment of the public finances.

The secondary laws will establish the procedures for investigating and enforcing the applicable penalties for the referred acts or omissions. Secondary laws are expected to be publish on May 27, 2016.

18. Privacy and Data Protection

In 2009 the Federal Constitution was amended to include as a fundamental right the protection of personal data. Consequently in 2010 and 2011, respectively, the 'Federal Law on Protection of Personal Data held by Private Parties' and the 'Regulations of the Federal Law on Protection of Personal Data held by Private Parties' (together, the "Data Protection law") were enacted, which means that Mexico now has a comprehensive data protection legislation.

The Data Protection Law has the purpose of regulating the legitimate, controlled and informed processing of personal data, and of ensuring the right to privacy and the right to informational self-determination of individuals, and it applies to all individuals or private legal entities that process personal data, with the exception of: (i) credit bureaus that are governed by the Credit Information Companies Act and other applicable laws, and (ii) individuals carrying out the collection and storage of personal data exclusively for personal use, without purposes of disclosure or commercial use.

General Information

"Personal Data" is defined as all information concerning an identified or identifiable individual, whereas "Sensitive Personal Data" is personal data that refers to the most intimate areas of a datasubject's life, or which misuse might lead to discrimination or involve a serious risk for the data subject. In particular, data that may reveal racial or ethnic origin, present and future health condition, genetic information, religious, philosophical and moral beliefs, union membership, political views, and sexual orientation. "Processing" is the collection, use, disclosure or storage of personal data by any means. Use covers any action of access, management, exploitation, transfer or disposal of personal data.

Some of the most important obligations established by the Data Protection law with regard to the processing of personal data are: (i) the making available of a privacy notice to all data subjects (clients/consumers, employees, Internet users, etc.) prior to the processing of their personal data; (ii) collecting consent from data subjects for the processing of their personal data; (iii) maintaining physical, organizational and technological security measures to protect personal data against unlawful processing, disclosure or access; (iv) transferring personal data in compliance with applicable requirements; and (v) appointing a person or department of Personal Data.

Rights of Data Subjects

The Constitution and the Data Protection law provide that data subjects have the right to access, rectify or cancel their personal data, to oppose to the processing of such data, to limit its use and disclosure and to revoke the consent they have provided for the processing of their personal data.

Sometimes the exercise of such rights may not be possible but data controllers need to facilitate the exercise of the rights at all times, by establishing mechanisms that are easily accessible by data subjects.

Breach Notification

Data controllers are obligated to immediately notify data subjects of security breaches that materially affect their property or rights, so they can take appropriate actions to defend their rights or property. It is not necessary to notify the Data Protection Authority of the data breach.

Enforcement

The Data Protection Authority, i.e. the National Institute of Transparency, Access to Information and Protection of Personal Data ("INAI" for its acronym in Spanish), is responsible for the enforcement of the Data Protection law, either acting *ex officio* or upon a complaint from the data subject.

Failure to comply with the Data Protection law may be sanctioned with fines of up to 320,000 days of the minimum wage in Mexico City ($73.04 Mexican pesos during 2016) and with up to five years of imprisonment. If sanctions are imposed due to failure to comply with the Data Protection Law when processing sensitive personal data, fines and criminal penalties may double.

Electronic and Online Privacy

The Data Protection law also regulates the processing of personal data through behavioral advertising and tracking technologies, such as *cookies* and *web beacons*.

Cloud Computing

The Data Protection Law also regulates the processing of personal data by cloud providers that use contracts of adhesion to with their customers.

FIRM OVERVIEW

Managing Partners: Juan Jose Lopez de Silanes, Eduardo Kleinberg

Number of partners worldwide: 32

Number of associates worldwide: 130

Of Counsel: 2

THE FIRM Basham, Ringe y Correa is a full service law firm with strong presence in Latin America. Basham established in Mexico in 1912, has more than 100 years of experience assisting clients in doing business throughout Mexico and abroad.

The firm's clients include prominent international corporations, many of them on the Fortune 500 List, medium-sized companies, financial institutions and individuals.
The firm's large group of lawyers and support staff are committed to maintaining the highest professional and ethical standards. Constantly exposed to the international legal system, many of Basham, Ringe y Correa's lawyers and other professionals have completed graduated studies at foreign universities and have worked at companies and law firms abroad.

Basham's preventive and strategic consulting in all types of law allows the firm to offer its client effective, complete and timely solutions to their concerns. The firm's in depth knowledge and insight into international as well as the domestic market including economic trends, and current affairs give the firm a solid base and perspective in order to offer fully-integrated and tailored solutions to every client. It is because these qualities and values, that its clients have continued to entrust their legal affairs to Basham, Ringe y Correa for many years.

The firm's lawyers actively participate in worldwide associations, as well as in international transactions, something which has promoted the exchange of information and experience. This in turn improves the firms growing capacity to serve its clients by constantly adjusting to the dynamics of the global business environment. Basham, Ringe y Correa is aware that each client requires objective counseling, experience, professionalism and trustworthy people. The firm's lawyers are well-known leaders in their respective fields of specialisation and are committed to providing legal services at the highest standards of quality.

The firm actively encourages the participation of all of its lawyers in pro bono work for charitable institutions and not-for-profit organisations, among others. For this purpose the firm has created the Basham, Ringe y Correa Foundation.

SERVICES

PRACTICES	SECTORS	SOLUTIONS
Anti-Corruption, Compliance Investigations	Aerospace	Corporate Governance
Antitrust	Aviation & Airpot Law	Estate Planning & Asset Protection
Banking & Finance	Consumer Protection	Privacy & Data Protection
Capital Martkets	Gaming & Sweepstakes Area	Social Security
Civil, Commercial Litigations & Arbitrations	Health	
Commercial Insolvency	Insurence	
Contracts	Life Science	
Corporate	Mining	
Criminal Litigation & Counseling on Crime Prevention	Oil & Gas	
Environmental Law & Sustaintability Consulting	Real Estate	
Foreing Investments	Renewable Energies & Electricity Powers	
Foreign Trade Customs Regulatory	Shipping Law & Port Law	
Franchising	Social Security	
Government Bidding & Privatizations	Telecommunications	
Government Procurement	Trucking & Railroad	
Immigration		
Intellectual Property		
Laboral Employment & Social Security		
Mergers & Acquisitions		
Pro Bono		
Tax Consulting & Litigations		
Trust		

In addition, Basham has obtained the following awards:

■ "Firm of the Year in Mexico" by Who´s Who Legal from 2007 through 2016

■ "Gold Award" as "Best Mexican Firm in Mexico" in 2010 and 2012 and 2015 and "Silver Award" granted by the International Legal Alliance Summit in 2008, 2010, 2011, 2013, and 2014

■ “Mexico Client Service Award” granted by Chambers Latin America in 2014

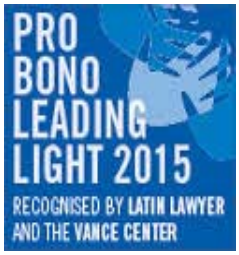
Appleseed
Sembrando la semilla de la justicia
México

■ “The Pro Bono Award” by Fundacion Appleseed de Mexico, A.C. in 2014

INTERNATIONAL
TAX REVIEW

■ “Mexico Tax Court Firm of the Year” granted by international Tax Review in 2015

■ “Mexico Patent Firm of the Year” granted by Managing IP Magazine 2016



■ “Pro Bono Leading Light 2015” granted by Latin lawer and The Vance Center

■ Ranked in Chambers Latin America 2016

■ Ranked in Chambers Global 2015

■ Ranked in Latin Lawyer 2016

■ Ranked in The Legal Lawyer 2016

In addition, the firm has been included as one of the "places where everyone wants to work in the "Super Empresas 2012" and "Super Empresas 2014" (Business Enterprises) ranking by the Expansion magazine.

The firm also has specialised litigation departments for civil, commercial, criminal, tax and administrative law as well as in commercial arbitration and constitutional proceedings (amparo).

LANGUAGES: Spanish, English, French, Portuguese and Chinese.

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