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Doing Business in Mexico

Baker & McKenzie

Doing Business in Mexico

Abstract

[Excerpt] This memorandum provides a general summary of certain aspects of Mexican law, which may be of interest to foreign companies considering doing business in Mexico.

The areas of law summarized in this memorandum include:

1. Foreign Investment Law;

2. Competition Law

3. Maquiladora Operations;

4. Company Law;

5. Taxes;

6. International Trade;

7. Labor Law;

8. Environmental; and

9. Intellectual Property.

Treaties, to which Mexico is a party, particularly the North American Free Trade Agreement (the "NAFTA") among Canada, Mexico and the United States, may affect investors from certain countries and may modify the preceding areas of Mexican law.…. Although this memorandum makes numerous references to NAFTA and other treaties, it does not comprehensively address all instances in which Mexican law is modified or complemented thereby.

Keywords

Mexico, commerce, investment, North American Free Trade Agreement, NAFTA, trade, public policy

Comments

Doing Business in Mexico

Mexico

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2004

Selected Legal Aspects of Doing Business in Mexico

Overview.

This memorandum provides a general summary of certain aspects of Mexican law, which may be of interest to foreign companies considering doing business in Mexico. The areas of law summarized in this memorandum include:

1. Foreign Investment Law;
2. Competition Law
3. *Maquiladora* Operations;
4. Company Law;
5. Taxes;
6. International Trade;
7. Labor Law;
8. Environmental; and
9. Intellectual Property.

Treaties, to which Mexico is a party, particularly the North American Free Trade Agreement (the "NAFTA") among Canada, Mexico and the United States, may affect investors from certain countries and may modify the preceding areas of Mexican law..... Although this memorandum makes numerous references to NAFTA and other treaties, it does not comprehensively address all instances in which Mexican law is modified or complemented thereby.

Political Structure and Legal System.

Mexico, whose official name is *United Mexican States*, is a federal republic comprised of 31 states and a federal district. As in the United States of America, the federal government is comprised of three branches: executive, legislative and judicial. The head of the executive branch is the President who is elected by popular vote for a six-year term. Legislative power is vested in the Chamber of Deputies and the Senate, whose members are elected for three-year and six-year terms, respectively. The judicial branch consists of a Supreme Court of Justice, Circuit Courts and District Courts.

Each of the 31 states has its own constitution, civil code and other local laws and regulations, as well as its own executive, legislative and judicial authorities. The head of the state executive branch is the governor. The legislative branch consists of the Chamber of Deputies and the local courts exercise judicial authority.

Mexico has a civil law system, which is based on the Continental European legal tradition stemming from Roman law and Napoleonic principles. Under this system, basic legal principles are largely codified in civil, commercial, criminal, judicial and procedural codes. Judicial precedents are not binding except for federal courts' decisions under certain circumstances.

1. Foreign Investment Law.

Mexico enacted a new Foreign Investment Law ("FIL") in 1993. The new FIL dramatically changed the regulatory framework for foreign investments in Mexico that was in place since 1973. Additional reforms have been made to the FIL in 1995, 1996, 1998 and 1999, respectively. The reforms embodied in the FIL largely follow those imposed by NAFTA, although NAFTA affords greater benefits in certain areas to U.S. and Canadian investors.

1.1 No Restrictions on Most Investments.

As a general rule, the FIL allows foreign investors and Mexican companies controlled by foreign investors, without prior approval, to (i) own up to 100% of the equity of Mexican companies, (ii) purchase fixed assets from Mexican individuals or entities, (iii) engage in new activities or produce new products, (iv) open and operate establishments, and (v) expand or relocate existing establishments. The only exceptions to that general rule are those expressly established in the FIL itself (discussed in section 1.2 below) or, in the case of the financial sector, in the legislation covering that sector. This new regulatory framework replaces the restrictions of the old foreign investment law, which generally limited foreign investment in Mexican companies to 49% or less.

1.2 Restricted Activities under the FIL.

The FIL lists certain economic activities that are (i) reserved to the Mexican State, (ii) reserved to Mexican nationals or Mexican companies without foreign equity participation, (iii) subject to quantitative foreign investment limitations, and (iv) subject to prior approval if the foreign investor wishes to own more than 49% of a company engaged in those activities.

1.2.1 Activities Reserved to the Mexican State.

In compliance with the Mexican Constitution and as a reflection of historical concerns regarding private investment, the FIL reserves certain strategic areas to the Mexican State. Neither Mexican nor foreign investors may engage in these areas of economic activity. These areas include (i) petroleum and other hydrocarbons; (ii) basic petrochemicals; (iii) electricity generation (as a public service), as well as its transmission and distribution; (iv) nuclear energy generation; (v) radioactive minerals; (vi) telegraphs; (vii) radio telegraphy; (viii) mail service; (ix) issuance of money; (x) control, supervision and security of ports, airports and heliports; and (xi) certain others expressly indicated under the corresponding legislation.

1.2.2 Activities Reserved to Mexican Investors.

The activities reserved by the FIL to Mexican nationals and to Mexican companies without foreign equity participation include (i) domestic and international[1] land transportation of passengers, tourism and cargo,

[1] Under Transitory Article Sixth of the FIL, as of December 18, 1995, foreigners may own up to 49% of the capital of Mexican entities engaged in the international land transportation of passengers, tourism and cargo within Mexico and in administrative services for bus stations and related services; they may own up to 51% of such enterprises as of January 1, 2001; and 100% as of January 1, 2004. This liberalization schedule follows NAFTAs phase-out schedule for land transportation. Foreign investment in domestic land transportation will continue to be prohibited.

excluding messenger and courier services; (ii) retail trade of gasoline and liquefied petroleum (LP) gas; (iii) radio and television, excluding cable; (iv) credit unions; (v) development banks; and (vi) professional and technical services reserved to Mexicans under the corresponding legislation.

Under the FIL, foreign investors may not engage in any of the foregoing activities, directly or indirectly, through any agreement or corporate structure or scheme, except through special approved "neutral" shares without voting rights or with limited corporate rights, or as otherwise approved by the National Commission of Foreign Investments ("NCFI").

1.2.3 Activities with Foreign Investment Equity Limitations.

The FIL establishes foreign ownership limits in certain companies, activities and types of shares, as set forth below:

(i) up to 10%: production cooperatives;

(ii) up to 25%: domestic and specialized air transport and air-taxi transport;

(iii) up to 49%: insurance and bonding companies; foreign exchange houses; general deposit warehouses; financial leasing and factoring companies; authorized companies that loan funds raised in capital markets; investment advisors and companies that manage investment companies; shares in the fixed capital of investment companies and companies that manage investment companies; production and sale of explosives, firearms, cartridges, munitions, fireworks, excluding the purchase and use of explosives for industrial and extractive purposes, and the preparation of explosive mixtures for use in such activities; printing and publication of newspapers for exclusive distribution within Mexico; Series "T" shares of companies owning agricultural, cattle-raising and forest lands; fresh-water and coastal fishing, and fishing in the exclusive economic zone, excluding aquaculture; comprehensive port management; piloting services to vessels engaged in interior navigation; shipping companies that operate commercial vessels for navigation in interior waterways and between domestic ports, excluding tourist ferries and the exploitation of dredges and naval devices for port construction, maintenance and operation; supply of fuel and lubricants for ships, airplanes and railroad equipment; and certain telecommunication services.

Unless a treaty otherwise provides (e.g. NAFTA in the case of financial services), a foreign investor may not own more than the permitted percentage of equity in a Mexican company engaged in any of the above activities. These limits may not be surpassed either directly or through any type of agreement or corporate structure or scheme, except through the "neutral" shares mentioned in 1.2.2 above.

1.2.4 Activities Where Foreign Investors Require Prior Approval to Own More than 49%.

Under the FIL, prior approval is required for foreign investors to own more than 49% of a company engaged in any of the following activities:

(i) Port services to vessels engaged in interior navigation, such as towing, and mooring;

(ii) overseas shipping;

(iii) companies authorized to operate public airdromes;

(iv) private schools, at a preschool, primary, secondary, preparatory and higher education levels;

(v) legal services;

(vi) credit bureaus;

(vii) securities rating institutions;

(viii) insurance agents;

(ix) cellular telephone services;

(x) construction of petroleum and petroleum derivatives pipelines;

(xi) drilling of petroleum and gas wells; and

(xii) construction, operation and exploitation of railways as well as public railroad transportation services.

Foreign investors are required to obtain prior approval to own more than 49% of a new or existing Mexican company must file an application therefore with the NCFI. The NCFI has 45 business days from the day the application is filed to issue its ruling. If the NCFI does not rule within this 45-day period, the application will be deemed approved.

1.3 Acquisition of Existing Mexican-Owned Companies.

Under the FIL, a foreign investor may acquire more than 49% of the equity of an existing company owned by Mexican investors, without the prior approval of the NCFI, provided that the target company is not engaged in a restricted activity and the total value of the assets of such company does not exceed certain monetary thresholds established annually by the NCFI. This threshold is $712,395,000.00 Pesos (approximately US$77,434,000.00). This amount is higher than the threshold of US$75,000,000.00 that NAFTA established for the acquisition of existing companies. The NAFTA threshold applies to investors of NAFTA countries. The NAFTA threshold, subject to inflationary adjustments, will be increased to US$150,000,000.00 by 2003.

1.4 Branches.

Under the FIL, a foreign company must obtain approval from the Ministry of Economy ("SECON") to establish and register a branch in Mexico. SECON must rule on the branch application within 15 business days from the date the complete application is filed.

1.5 Registration Requirements.

Under the FIL, all foreign investments, whether subject to prior approval or not, must be registered with the Foreign Investment Registry within 40 business days from the date of the respective incorporation, branch registration, acquisition or execution of the relevant trust agreement. Foreign investors that do not register their investment with the Foreign Investment Registry are subject to administrative fines.

1.6 Repatriation and Remittance Rights.

Mexican law does not impose any general restrictions or limitations on the remittance of dividends or repatriation of capital.

1.7 Real Estate.

Mexican law establishes certain restrictions on land ownership by foreign investors in Mexico. These restrictions are discussed below.

1.7.1 Restricted Zone.

Under the Mexican Constitution, foreign individuals and entities may not hold direct title to real estate in Mexico located within 100 kilometers from the border or 50 kilometers from the coastline (the "Restricted Zone"). However, such individuals and entities may hold the beneficial interest in such real estate under a Mexican trust. Real estate trusts in Mexico have a maximum duration of 50 years and the trustee thereof must be a Mexican bank.

Under the FIL, Mexican companies with foreign equity participation may hold direct title to real estate located in the Restricted Zone if they engage in non-residential activities. If they engage in residential activities, they may hold the real estate in trust, i.e., they may not hold direct title thereto.

1.7.2 Non-Rural Land Outside Restricted Zone.

Under Mexican law, foreign individuals and Mexican companies with foreign equity participation may hold direct title to non-rural land located outside the Restricted Zone.

1.7.3 Rural Land Outside the Restricted Zone.

Foreign individuals may hold direct title to rural land located outside the Restricted Zone. Mexican companies with foreign equity participation may hold direct title to rural land, provided the ownership of such land is represented by special Series "T" shares. Foreign investors may not own more than 49% of the Series "T" shares issued by the respective company.

1.7.4 Quantitative Restriction of Land Ownership.

The Mexican Constitution and regulatory agrarian legislation establish limitations on the amount of rural land a person may own and protect against expropriation for communal use. For example, generally the maximum area of irrigated land that may be protected from expropriation is 100 hectares per person. For lands subject to seasonal use and un-irrigated pastures subject to agricultural harvest, the maximum protection area is 200 hectares. Under the Constitution, a Mexican corporation may own and protect up to 25 times the land area one individual is permitted to protect.

Under certain circumstances and if certain requirements are met, a landowner may protect an area which exceeds the above limitations, e.g., if he improves the quality of the land by installing irrigation or drainage systems.

2. Competition Law.

On December 22, 1992, Mexico published in the Official Gazette a new competition law, entitled the "Federal Law of Economic Competition" (*Ley Federal de Competencia Económica*), which became effective on June 22, 1993. Thereafter, the Regulations of the Federal Law of Economic Competition were enacted on March 4, 1998, and became effective on March 5, 1998. The Federal Law of Economic Competition and its Regulations are hereinafter jointly referred to as the "Competition Law".

The Competition Law (i) restricts and regulates monopolistic practices and economic concentrations, (ii) creates a Federal Competition Commission (*Comisión Federal de Competencia*, hereinafter the "Commission") with broad investigative and enforcement powers, (iii) sets forth the basic procedure for actions by and before the Commission; and (iv) creates a limited private right of action for damages.

2.1 Regulated Practices.

The Competition Law prohibits in broad terms those monopolies and practices which "diminish, damage or impede free competition in the production, processing, distribution and marketing of goods and services." Monopolistic practices are divided into "absolute" and "relative" monopolistic practices.

Absolute monopolistic practices are defined as agreements or arrangements among competitors that have the purpose or effect of: (i) fixing prices; (ii) limiting production or distribution; (iii) dividing markets; or (iv) "rigging" public bids. The Competition Law provides that, apart from the civil and criminal sanctions that may be applicable to the parties involved, such agreements and arrangements are null and void.

The definition of relative monopolistic practices encompasses certain specific practices, which are prohibited only if the actor has "substantial power" over the "relevant market". The latter terms are defined by reference to the presence of certain factors detailed in the Competition Law (e.g., substitutability of goods, distribution and input costs; market share of the actor and its competitors, existence of market barriers).

The practices which may be deemed relative monopolistic practices are agreements or combinations, the purpose or effect of which is to unduly prevent market access to third parties or give exclusive advantages to certain persons, in the following cases:

(i) Between non-competitors, (a) the establishment of exclusive distribution arrangements, whether based on subject matter, geographic territories or time periods, including the allocation of customers or suppliers; and (b) the imposition of obligations not to compete;

(ii) the imposition of price or other conditions which distributors or suppliers must observe upon re-sale of goods or provision of services;

(iii) tying arrangements;

(iv) the conditioning of sales or other transactions on obligations not to deal with certain third parties;

(v) the refusal to deal with certain parties;

(vi) concerted action to pressure or retaliate against third parties; and

(vii) any action that may unduly damage or impede the competition process and the free access to the market of production, processing, distribution and marketing of goods and services.

2.2 Restricted Economic Concentrations; Prior Approval.

In general terms, a concentration is defined as any merger, acquisition of control, or any other action by means of which companies, associations, shares, equity quotas, trusts, or assets in general, are accumulated. Restricted economic concentrations are defined as those between any persons or entities, whether competitors or not, having the purpose or effect of diminishing, damaging or preventing competition in identical, similar or substantially related goods or services. The Competition Law identifies certain factors that the Commission must consider in determining whether a concentration violates this prohibition, such as the likely market power or price-fixing abilities of the resulting concentration. The Commission has the power to condition its approval of a proposed concentration on the restructuring of the transaction to avoid anti-competitive consequences. It is also empowered to order that prohibited concentrations be undone.

Proposed concentrations meeting the following thresholds must be notified to the Commission prior to their consummation: (i) transactions having a value in excess of 12 million times the daily minimum wage for the Federal District ("DMW")[2], or approximately US$53 million (at $9.50 pesos per U.S. dollar); (ii) transactions involving the accumulation of more than 35% of the assets or shares of a person or entity with assets or sales exceeding 12 million DMW (approximately US$43 million); (iii) transactions involving (a) persons or entities whose combined assets or annual sales exceed 48 million DMW (approximately US$213 million) <u>and</u> (b) an accumulation of assets or capital exceeding 4.8 million DMW (approximately US$21.3 million). The Commission has a period of 45 calendar days from the date of the notice or from such later date on which any additional requested information was received, to respond. If the Commission does not respond during such 45-day period the transaction will be deemed approved.

2.3 Federal Competition Commission.

As the agency responsible for enforcing the Competition Law, the Commission has broad investigative and enforcement powers. It may institute administrative proceedings on its own initiative and at the request

[2] The current DMW is $42.15 Mexican pesos as of December 29, 2001.

of third parties, investigate and resolve such cases, and enforce its orders through administrative penalties. It may also bring cases of a criminal nature to the attention of the District Attorney. The Commission may also issue advisory opinions.

2.4 Penalties.

The Commission is empowered to levy fines of up to 1,500 DMW, or approximately US$6,500 per day, for non-compliance with the Commission's orders. In addition to being obligated to cease the prohibited practices or divest prohibited concentrations, violators may be subject to civil and criminal penalties, including fines in the following amounts:

(i) up to 375,000 DMW (approximately US$1.6 million) for absolute monopolistic practices;

(ii) up to 225,000 DMW (approximately US$1 million) for prohibited relative monopolistic practices or prohibited economic concentrations;

(iii) up to 100,000 DMW (approximately US$443,368) for failure to provide the Commission with prior notice of economic concentrations, in the cases required by the Competition Law;

(iv) up to 7,500 DMW (approximately US$33,276) for individuals directly participating in prohibited monopolistic practices or concentrations, in their capacity as representatives of legal entities; and

(v) in serious cases of any of the above violations, the higher of 10% of the violator's annual sales or 10% of its assets.

2.5 Action for Damages.

The Competition Law also gives private parties an express right of action to bring ordinary civil suits for damages. In order to be able to bring such an action, the plaintiff must have previously given evidence of its alleged damages in the administrative proceedings before the Commission. The judge is allowed to consider the Commission's estimation of the plaintiff's alleged damages. The Competition Law expressly denies any private right to bring a judicial or administrative action based on the Law (i.e., alleging damages due to violations thereof), except for the foregoing right of action established by the Law.

3. *Maquiladora* Operations.

The Mexican maquiladora program was introduced over 30 years ago by the Mexican government to promote employment in Mexico. The maquiladora industry in Mexico is governed by the Decree for the Promotion and Operation of the Export Maquiladora Industry of June 1, 1998 (the "Maquiladora Decree"), as amended.

3.1 Corporate Presence in Mexico.

Under the Maquiladora Decree, a foreign investor may qualify to operate under maquiladora status only if it has a corporate presence in Mexico. A Mexican corporation that qualifies for maquiladora status may have up to 100% foreign ownership. The great majority of maquiladoras are wholly owned subsidiaries of foreign corporations.

3.2 Operation and Import Permits.

To qualify under maquiladora status, the company must have its maquila program approved by SECON. For such approval to be obtained, the company must submit information with regard to the project, including descriptions of the following:

(i) Product(s) to be assembled and/or manufactured in Mexico;

(ii) manufacturing process; and

(iii) machinery, equipment, tools and auxiliary items to be temporarily imported into Mexico for the manufacturing process.

SECON has 10 business days from the date when the application is filed to issue its resolution. If SECON does not resolve within this period, the application will be deemed approved. Once SECON approves the maquila program, permits will be issued for the importation of machinery, equipment, components, raw materials, fuel, lubricants and supplies. The duration of the maquila program will be indefinite, provided that all the provisions of the Maquiladora Decree and the conditions of the maquila approval are complied with.

3.2.1 Service Maquiladora.

The Maquiladora Decree provides for different types of Maquiladoras. Although the most common is exporting Maquiladoras (which are those engaged in manufacturing activities), service Maquiladoras (which are engaged in providing export services to export Maquiladoras) are also contemplated under the Maquiladora Decree. The activity of importation, warehousing, and distribution of goods, qualifies as a *Services Maquiladora*, provided the recipients of such services are also companies operating under the Maquiladora Decree.

Service Maquiladoras, as any other Maquiladora, must invoice abroad at least 30% of their total invoicing in order to import machinery and equipment ("M&E") under temporary basis. If a Maquiladora will only import materials, it must invoice abroad at least 10% of its total invoicing.

Please note that temporarily imported goods by a Service Maquiladora may be transferred to other Maquiladoras. When goods are transferred, they are considered as returned abroad for the transferor and imported under temporary basis by the transferee.

Services Maquiladoras are entitled to carry out the temporary importation of materials and M&E as discussed below.

3.3 Duty Free Imports.

As a general principle, under the Maquiladora Decree and the Mexican Customs Law, certain goods necessary for the manufacturing process may be imported without the payment of import duties, provided the goods are eventually exported from Mexico. Such method of importation is only available under special circumstances and for specific purposes. One of those special circumstances is a maquila operation. Please be advised that the temporary importation of goods may be subject to the payment of import duties as explained in paragraphs 3.4.1, 3.4.2 and 3.4.3 below. Nevertheless, please note that the temporary importation of goods remains exempted from the payment of value added tax.

A company that has qualified to operate under a maquila program approved by SECON automatically qualifies to import on a temporary basis certain items listed in the Maquiladora Decree (e.g., raw materials, fuel, lubricants, components, tools, etc.). Upon approval of the maquila program or any time thereafter, SECON may issue the import permits for the specific items required to be imported by the maquiladora.

A temporary importation entails certain record-keeping obligations listed in the Maquiladora Decree and the Customs Law. If such obligations are not fulfilled, the importer may be subject to the payment of duties and penalties.

3.4 The 2001 Amendments.

Certain significant amendments to the Maquiladora Decree and the Mexican Customs Law came into effect between November, 2000 and January 1, 2001. Those amendments were passed for Mexico to comply with its obligations under NAFTA and other international treaties (such as the free trade agreement with the European Union). Some of the most relevant amendments, are the following:

3.4.1 Duties on the Importation of Machinery and Equipment.

Since January 1, 2001, the importation of machinery and equipment is no longer subject to duty free treatment. According to the amendments to the Customs Law, a maquiladora will have to pay the applicable duties upon the temporary importation of machinery and equipment. Nevertheless, please note that reduced duties may be available through Mexico's network of free trade agreements and under a special program available for manufacturers, known as Sectorial Promotion Programs. Machinery and equipment temporarily imported is still exempted from the payment of the value added tax, and the compliance with some non-tariff regulations and restrictions.

3.4.2 Duties on the Importation of Raw Materials, Parts and Components pursuant to the NAFTA provisions.

As a result of the implementation of the NAFTA provisions, if products produced with Non-NAFTA originating raw materials, parts and components imported under temporary basis are exported to the United States or Canada, the Non-NAFTA inputs may be subject to the payment of Mexican import duties. NAFTA originating materials are exempted from payment of duties if imported under temporary basis. The payment of duties in Mexico can be made pursuant to the so-called "lesser of rule", contained under article 303 of NAFTA. This rule calculates the amount of Mexican import duties applicable on Non-NAFTA originating materials and subtracts the import duties paid in the United States or Canada. The result of this subtraction will be the amount of duties payable in Mexico. If the result is zero or negative, no duties are payable in Mexico. Nevertheless, in order to offset additional costs to maquiladora companies as a result of the implementation of the NAFTA provisions, reduced or eliminated duties may be available through Mexico's network of free trade agreements or under the Sectorial Promotion Programs.

3.4.3 Duties on the Importation of Raw Materials, Parts and Components pursuant to the provisions of the Free Trade Agreement with the European Union.

The free trade agreement entered by Mexico with the European Union (EUFTA) has similar provisions to the NAFTA Article 303, since the EUFTA provide that as of January 1, 2003, Mexico may not grant exemptions or drawback on import duties for Non-EUFTA originating inputs incorporated into products exported to the European Union. Nevertheless, the provisions of the EUFTA differ from the provisions of NAFTA in the sense that duty relief restriction would only apply under the EUFTA when the finished products (that contain Non-EUFTA originating inputs) are imported into the European Union with preferential duty treatment. Therefore, if the finished products are imported into the European Union without claiming preferential duty treatment, the maquiladora would not be subject to the payment of import duties for the Non-EUFTA inputs incorporated in the finished products.

3.5 Sales into Mexican Market.

Pursuant to the Maquiladora Decree, a maquiladora may sell a portion of its output into the domestic Mexican market. A maquila company is able to sell to the domestic market 70% percent of the total value of its annual sales if it imports machinery and equipment under temporary basis, and 90% if it only imports temporarily raw materials, fuel, lubricants, components, and other goods than machinery and equipment. In any event, duties must be paid on all imported materials or components contained in the finished product to be sold into the Mexican domestic market.

4. Company Law.

4.1 Forms of Business Organizations.

Among other bodies of law, the Mexican General Law of Commercial Companies ("GLCC") contemplates various forms of business organizations. The GCCL regulates not only the requirements for their incorporation, but also sets forth their corporate governance directives. Among the relevant and most commonly used forms of business organizations are the following:

(i) corporations (*Sociedad Anónima* or "S.A." or *Sociedad Anónima de Capital Variable* or "S.A. de C.V."; hereinafter collectively referred to as "corporation(s)");

(ii) limited liability companies (*Sociedad de Responsabilidad Limitada* or "S. de R. L." or *Sociedad de Responsabilidad Limitada de Capital Variable* or "S. de R. L. de C.V."); and

(iii) partnerships (*Sociedades de Nombre Colectivo* or *Sociedad de Nombre Colectivo de Capital Variable*).

Foreign investors as their investment vehicles in Mexico do not commonly use partnerships, due to the fact that such investment vehicles do not provide limitation of liability to its partners. U.S. investors frequently incorporate a limited liability company because this form of business organization does provide limited liability to its partners and also because it provides certain benefits for U.S. tax purposes (considered as pass-through entities). Corporations, however, are by far the most common form of organization used in Mexico. The balance of the discussion in this section four is limited to corporations and limited liability companies.

4.2 Corporations.

4.2.1 Capital Stock.

Upon incorporation, a corporation must have fully subscribed capital stock of at least $50,000.00 Mexican Pesos (minimum fixed capital) and at least 20% of such capital contribution must be paid in cash. In case of contributions *in kind*, the same must be subscribed and paid in full on the incorporation date. In case of contributions some special rules apply, requiring the corporation to withhold shares paid with in kind contributions for 24 months as of the contribution's date as a guarantee that values of in kind contributions are not reduced in a percentage higher than 20%.

Shares of stock, the certificates of which are considered negotiable instruments under Mexican law, represent the capital stock of corporations. The S.A. and S.A. de C.V. differ in at least one significant aspect. A maximum amount of capital stock for an S.A. is fixed and specified in its charter and bylaws and any subsequent increase or decrease to such fixed capital requires amending the referred incorporation documents. Conversely, the charter and bylaws of a S.A. de C.V. sets the minimum fixed portion of its capital stock and the variable portion of such capital may remain open. In this scenario, the variable portion of its capital stock may be unlimited and may be increased or decreased without amending the incorporation documents as in the case of the S.A. For this reason, foreign investors, particularly those with wholly owned subsidiaries that want flexibility to increase or decrease the corporation's capital stock without any other formalities, prefer to organize their business activities in Mexico under the form of an S.A. de C.V. rather than through a S.A.

4.2.2 Minimum Number of Shareholders.

There must be at least two shareholders to organize a corporation. Unless otherwise limited by the Foreign Investment Law and its Regulations, the GLCC allows the shareholders of any given corporation to be both Mexican and foreign individuals.

4.2.3 Management Structure.

The corporation's management may be vested in one (Sole Administrator) or more directors. Whenever two or more directors are entrusted with the management of a corporation, they must act as a Board of Directors. If the Board of Directors has three or more members, the individual shareholder or group of shareholders owning 25% or more of the corporation's capital stock have the right to appoint one member of the Board. The corporation will be legally represented by its Sole Administrator or Board of Directors, as the case may be, and its authority will be contained in the corporation's bylaws or conferred by the shareholders.

The corporation's Board of Directors will be vested with the authority to appoint one or more general or special managers. By its nature, such appointment may be revoked at any time by the corporation's Board of Directors or by the shareholders. There are some statutory limitations contemplated by the GLCC in order to be appointed as Sole Administrator, Board member and/or general or special manager.

4.2.4. Management Surveillance.

In order to obtain a better protection of the shareholders of Mexican corporations, the GLCC provides for the existence of a Statutory Examiner (*Comisario*) to be appointed directly by shareholders, whose main task and duty will be to survey the corporation's management for the benefit of the shareholders. As in the case of managers, there are some statutory limitations contemplated by the GLCC in order to be appointed as Statutory Examiner of any given corporation, which attempt to secure their independence with respect to the corporation's management.

4.2.5. Annual Shareholders Meetings.

The shareholders of Mexican corporations must hold an annual shareholders meeting to discuss and approve, as the case may be, the management report and the financial statements of the corporation. Such annual shareholders meeting must be held no later than April 30 of every year.

4.3 Limited Liability Companies.

4.3.1 Capital.

Upon incorporation, a limited liability company must have fully subscribed capital of at least $3,000.00 Mexican Pesos (minimum fixed capital) and at least 50% of such capital contribution must be fully paid. The capital of limited liability companies is divided in equity quotas, which by definition of law are not considered negotiable instruments. The assignment of equity quotas, as well as the admission of new members to participate in the limited liability company's capital stock, requires a prior favorable resolution of the majority of its members, unless the company's bylaws establish a higher percentage. As in the case of corporations, the treatment to minimum fixed and variable portion of the capital on the S. de R. L. and the S. de R. L. de C.V. differ in a similar manner as set forth in section 4.2.1 above. Based on the above considerations, most foreign investors prefer to organize their business activities in Mexico under the form of an S. de R. L. de C.V. rather than through a S. de R. L.

4.3.2 Number of Members.

There must be at least two members to organize a limited liability company and a limit of 50 members has been set forth by the GLCC. Unless otherwise limited by the Foreign Investment Law and its Regulations, the GLCC allows the members of any given limited liability company to be both Mexican and foreign individuals.

4.3.3 Management Structure.

The limited liability company's management may be vested in one (Sole Manager) or more managers, which can be freely removed by the company's members at any time. Whenever two or more managers are entrusted with the management of the company, they must act as a Board of Managers. The company will be legally represented by its Sole Manager or by its Board of Managers, as the case may be, and its authority will be contained in the company's by-laws or conferred by the members.

As in the case of corporations, some statutory limitations contemplated by the GLCC will be applicable for the appointment of the company's Sole Manager or to the managers comprising the Board of Managers.

4.3.4 Annual Partners Meeting.

The members of a limited liability company must have at least one meeting at any time of every year.

5. Taxes.

5.1 Treaties.

Mexico has executed treaties for the avoidance of double taxation with various countries, including the U.S., Canada, and most OECD countries. Those treaties establish different rules for taxation of permanent establishments and of Mexican-source income (e.g., withholding rates on dividends, royalties and interest) derived by residents of the signatory countries. The relevant tax treaty must be reviewed to determine the applicable rates. Absent such a treaty, the rules of the Mexican Income Tax Law ("ITL") will govern, as discussed below.

5.2 Corporate Income Tax.

Under the ITL, a company resident in Mexico is subject to income tax on its worldwide net income at the rate of 35%. This rate will drop to 34% in 2003, 33% in 2004, and 32% in 2005 and thereafter.

5.3 Dividend Withholding Tax.

Dividends distributed by Mexican companies are subject to no withholding tax. If the dividends are distributed from the company's "net after-tax profit account," the company distributing the dividends will not be subject to tax on their payment. The "net after-tax profit account" is comprised of the company's net after-tax profit for each fiscal year, plus the dividends received by the company from other companies resident in Mexico, minus the dividends distributed in cash or in kind from that account.

Conversely, if a dividend is distributed from a source other than the "net after-tax profit account," the company distributing the dividend will be subject to tax at a rate of 35% applied to the amount of the dividend multiplied times a factor of 1.5385. This rate and factor will be reduced to 34% and 1.5152 for 2003, 33% and 1.4925 for 2004, and 32% and 1.4706 for 2005.

5.4 Other Withholding Taxes.

Royalties, license fees or other compensation paid by a Mexican licensee to a nonresident for unpatented technology, software or technical assistance are subject to withholding tax at the rate of 25%. Royalties paid to a nonresident for patents, trademarks, for trade names, or for advertising, are subject to withholding tax at the rate of 35%. Under most tax treaties that Mexico has entered into, the rate on royalty payments (as defined in those treaties) drops to 10% of the gross amount of the royalty.

Interest payments to nonresidents are subject to withholding tax at the rates of 4.9%, 10%, 15%, 21% or 35%, depending on the type of payee or payor. Under Mexican law in general, if the payee is a foreign bank or other financial institution registered with the Ministry of Finance, the interest payments will be subject to withholding tax at the rate of 10%. If (i) the payor is a credit institution (and the payee is other than a bank or financial institution registered with the Ministry of Finance to which the 10% tax rate applies), (ii) the payee is either a foreign supplier of machinery and equipment that form part of the fixed assets of the payor, or (iii) the payee is a foreign entity that finances the purchase of such machinery and equipment or provides certain working capital financing pursuant to an agreement that sets forth these circumstances and the entity is registered with the Ministry of Finance, the interest payments will be subject to withholding at the rate of 21%. In most other cases, interest is subject to withholding tax at the rate of 35%. Note that the 35% rate will drop to 34% in 2003, 33% in 2004, and 32% in 2005. These rates may be lower in the case of countries with which Mexico has tax treaties. For example, under the U.S. – Mexico Tax Treaty, the rates may be 4.9%, 10% or 15%.

Payments to residents of tax heavens are generally subject to a 40% withholding tax, except for certain interest and for dividends.

5.5 Tax on the Sale of Shares.

Generally, the sale of shares of a Mexican company is subject to Mexican income tax, regardless of the country where the sale takes place. Foreign residents who sell shares of Mexican companies are subject to a 25% tax on the gross proceeds from the sale, or, at the option of the foreign resident if it has a local representative in Mexico, to a 35% tax on the net gain derived from the sale. This option is not available to foreign sellers domiciled in a tax haven jurisdictions. The net gain, in the latter case, is determined by subtracting from the gross sale proceeds the seller's tax basis in the shares sold, adjusted for inflation and other factors as determined in the ITL. The 35% rate will drop to 34% in 2003, 33% in 2004, and 32% in 2005. Under certain conditions, tax rulings may be available for tax-free transfers of shares in reorganizations between members of the same group of companies.

5.6 Transactions and Investments Related to Tax Heavens.

Beginning in 1996, Mexico's tax reforms incorporated several provisions aimed at eliminating or controlling investments in and transactions with companies incorporated in tax havens. Mexico has published a list of countries considered as tax havens. These tax provisions may affect shareholders, trusts beneficiaries or other entities or individuals who benefit from transactions with entities that are residents of tax havens, or investments in the corresponding countries.

5.7 Assets Tax.

The Mexican Assets Tax Law subjects Mexican business taxpayers (i.e., individuals or companies resident in Mexico engaged in business activities and individuals or companies resident abroad with permanent establishment in Mexico) to a tax on business assets at a flat rate of 1.8% per annum of the value of such assets. Nonresidents are also subject to the assets tax when they own Mexican *on-site* assets used in another's business activities and when they have inventory in Mexico for processing.

Taxpayers subject to the assets tax may credit their Mexican income tax payments against their assets tax liability for the current year. They may also credit the excess of income tax over assets tax in the past three years. If the assets tax liability in a given year exceeds the above-mentioned income taxes, the taxpayer may request a refund of the assets taxes paid against the excess of income tax over assets tax during the 10 following fiscal years.

5.8 Value Added Tax.

Mexico imposes a Value Added Tax ("VAT") on all purchases, rentals and services in the country. The general rate is 15% of the value of the product, rental or service. A 10% rate applies for most transactions in the border zones. 0% rates apply in certain limited cases. Note that beginning in 2002 VAT is levied on a cash basis.

The VAT normally operates by having each party in the chain of production charge the tax to its customer and pay to the tax authority the difference between the tax charged by its suppliers and the tax charged to its customers, on a monthly basis. In the case of exporters of goods, since they do not charge the tax to their customers, they may request a refund from the government of the full amount of the tax that they paid in respect of the production of the exported goods. Thus, a maquiladora that exports all of its production will be refunded any VAT paid in Mexico.

Imports are also subject to VAT at the rate of 15%. This tax is assessed on the customs value of the import plus the import duty. Because the importer is entitled to credit all VAT paid against VAT collected from its customers, the ultimate burden of the VAT effectively is passed along to the importer's customers and from there to the end consumer.

5.9 Transfer Pricing.

Mexican taxpayers who entered into transactions with related parties must, for tax purposes, charge or pay the prices that would be agreed to between independent parties in comparable transactions. These taxpayers are required to prepare and keep current documentation supporting the prices charged or paid.

5.10 Maquiladora Permanent Establishment Transfer Pricing.

Maquiladora operations generally create a permanent establishment in Mexico for the foreign principal, which would subject it to income tax in Mexico. On the other hand, Maquiladoras must comply with general transfer pricing principles when dealing with a related-party principal. Finally, the U.S. principal is generally liable for assets tax on the machinery and equipment and the inventory used and processed by the maquiladora. Upon the maquiladora complying with certain rules, the permanent establishment and assets tax implications mentioned above are done away with and the maquiladora is considered to have complied with transfer pricing provisions. To this end, maquiladoras must generate a tax profit (income minus deductions, before subtracting prior year's net operating losses) equal to the greater of 6.9% of the value of the assets used in their activity or 6.5% of the amount of ordinary costs and expenses of their operation. Alternatively, maquiladoras may opt to file for and secure from the tax administration an advance pricing agreement reflecting the profit that they should make.

6. International Trade.

International trade agreements are part of Mexico's overall strategy to increase the competitiveness of its economy and become an important player in global trade. The strategy of an open economy began in mid-1980s with Mexico's adherence to the GATT. Specifically, Mexico's network of Free Trade Agreements (FTA) has allowed it to become the seventh largest exporter in the world. As a result of an open economy, Mexico has the fastest trade growth in the globe. Between 1990 and 1998, foreign trade grew more than 200%.

6.1 Imports Generally.

Mexican import controls have been significantly liberalized in recent years. Most products no longer require prior import permits. Import duties have also been reduced. Duties are generally assessed against the transaction value of the products imported into Mexico.

6.2 Mexico's Free Trade Agreements.

By 2001, Mexico had signed 10 FTAs giving it preferential access to over 31 countries in three different continents (Chile in 1997, with the United States and Canada in 1993, Colombia and Venezuela in 1995, Bolivia in 1995, Costa Rica in 1995, Nicaragua in 1998, Israel in 2000, the European Union in 2000, El Salvador, Honduras, and Guatemala in 2001, Norway, Switzerland, Iceland, and Liechtenstein in 2001). FTAs offer more than preferential duty access, they also provide legal certainty by allowing companies the ability to predict the treatment for their products and services in the importing country. FTA provisions include National Treatment for goods and investments from the other Party as well as Most Favored Nation treatment for goods and services. They also eliminate performance requirements by removing the need to comply with content requirements or to export a certain amount of production. Mexico's FTAs provide for the free transfer of capital without restrictions, reimbursements in cases of expropriations, and create dispute settlement mechanisms that are a strong guarantee of fair justice. Some of Mexico's FTAs cover the protection of intellectual property rights, anti-trust provisions, and better thresholds for government procurement. Additionally, FTAs commonly require the standardization of customs documents making import-export transactions faster and more efficient and may grant laxer penalties when submitting deficient documentation to customs.

In addition to FTAs, Mexico is a constant signatory of agreements on the protection and encouragement of investments. These agreements protect investments made by investors from signatory states. To date, Mexico has signed investment agreements with almost twenty countries. In addition to provisions of a FTA regarding investments (i.e. NAFTA Chapter 11), Mexico has singed investment agreements with Argentina, Austria, South Korea, Denmark, Spain, Germany, Finland, France, Greece, Holland, Italy, Portugal, Sweden, Switzerland,

Uruguay and Luxembourg. The combination of FTAs and agreements on investment give Mexico a leading edge over other countries around the world.

6.3 Foreign Trade Law.

Mexico enacted its new Foreign Trade Law ("FTL") in 1993 (effective on July 28, 1993). The FTL regulates international trade and prohibits unfair trade practices such as dumping and trade subsidies. The FTL generally follows GATT principles and conforms to the requirements of the NAFTA and other free trade agreements.

7. Labor Law.

The Mexican Federal Labor Law ("FLL") regulates employment relationships in Mexico. The FLL applies to all employees in Mexico regardless of nationality or place of entering into the employment agreement.

7.1 Mandatory Employee Benefits.

7.1.1 Profit Sharing.

As of the second year of operations, all employers must distribute among their employees an amount equal to ten percent (10%) of the employer's pre-tax profit within 60 days after the employer is required to file its year-end income tax return. Fifty percent (50%) of such amount is to be distributed in proportion to the number of days worked by each employee during the year, and the remainder according to the wages of each employee. Certain managerial employees are not entitled to profit sharing.

7.1.2 Christmas Bonus.

All employers must pay their employees a year-end bonus equal to at least fifteen days' wages, payable before December 20th of every year.

7.1.3 Paid Holidays.

The following are the legal paid holidays, which must be observed. An employee required to work on any of these holidays must be paid as worked holiday a penalty equivalent to three times his normal wage, including his/her regular salary:

January 1 (New Years Day);
February 5 (Constitution Day);
March 21 (Benito Juarez Day);
May 1 (May Day);
September 16 (Independence Day);

November 20 (Revolution Day);
December 1, every 6 years upon inauguration of a new President;
December 25 (Christmas Day); and
Special dates designated by the electoral laws.

7.1.4 Vacation Premium.

All employers must pay vacation days at a rate of at least 125% of the employee's wages. Employees with more than one year of seniority are entitled to six days of paid vacation. Such six-day period is increased by two days per subsequent year of seniority up to twelve days. After the fourth year minimum paid vacation is increased by two days every five years thereafter, as follows:

Years of services	Business days	Seniority premium
1	6	25%
2	8	25%
3	10	25%
4	12	25%
5-9	14	25%
10-14	16	25%
15-19	18	25%

7.1.5 Training.

All employers are required by law to provide training to their employees. The employer must have a training program approved by the Ministry of Labor. A Joint Commission must implement the program, for Training and Instruction, comprised of an equal number of representatives of the employees and of the employer.

7.1.6 Employer Housing Contributions.

The FLL requires employers to pay an amount equal to five percent (5%) of each employee's wages to the Federal Workers Housing Fund ("INFONAVIT"). Employers must deposit these contributions in a special account at a local bank.

7.1.7 Minimum Wage.

The FLL establishes a minimum amount, which must be paid to all employees in cash, without deductions or withholdings, on a weekly basis. The National Minimum Wage Commission determines such minimum wage from time to time. The minimum wage varies for each of three economic regions into which the country is divided. A general minimum wage applies to all employees within each economic region, except those that fall within a series of specific job categories. It is not a common practice to see companies paying such minimum wage. It always depends on the market conditions and on the benefit package that the companies that are around are granting to their employees. Therefore, it is very important to be aware of the labor environment in the place in which the company is going to be located.

7.1.8 Maximum Hours/Overtime Payment.

The maximum number of hours, which an employer may require its employees to work, without having to pay overtime, is 48 hours per week. The employer must pay the first nine hours of overtime at 200%, and overtime exceeding nine hours at 300% of standard pay. An employer may not require its employees to work more than nine hours of overtime per week. The normal work hours may be distributed throughout the week as necessary; most employers now distribute them in five days (9.6 hours per day). At least one paid full day of rest per week must be observed. Sunday work is subject to a 25% premium, notwithstanding of any overtime premium that may apply. If an employee works in excess of 57 hours a week, the labor authorities may penalize the employer.

7.1.9 Health and Safety.

The employer is required to provide a safe and sanitary environment for the workers to render their services. A Joint Health and Safety Commission must be created to investigate the causes of illness and accidents and to propose resources to avoid them. In addition, employers are required to comply with Federal Health & Safety regulations and with a number of Official Mexican Standards dealing with all types of H&S issues such as fire and accident prevention, exposure to toxic substances, employee protective equipment, etc.

7.1.10 Paid Maternity Leave.

All employers must provide their female employees with a fully paid maternity leave of six (6) weeks prior to the approximate delivery date and six (6) weeks thereafter. After this twelve (12) week period, employers must offer such employees their former positions back, including any accrued rights there under such as accrued seniority and vacation pay.

7.1.11 Employer Social Security Contributions.

See 7.3 below.

7.1.12 Additional Benefits.

Employers may voluntarily enhance the minimum benefits established by law. Benefits such as savings funds, punctuality and attendance bonuses, cafeteria and transportation subsidies, productivity bonuses, etc. are provided by many Mexican employers, depending on the market conditions and on the economical situation of each employer.

7.2 Severance Payments.

7.2.1 Occasion and Basis of the Payment; Reinstatement.

Mexican employers may not freely dismiss employees without cause. To dismiss an employee without being liable for the severance pay described below, a Mexican employer must i) be able to prove, in labor court if necessary, that the dismissal was for a statutorily-defined "just cause," and ii) give the employee prompt written notice of the dismissal and the "just cause". If the employer fails to prove "just cause" as explained in 7.2.2. below, the employer must make the following severance payments: i) 3 months of salary; ii) a seniority premium, equal to 12 days of salary per each year of services rendered (subject to salary limitation up to twice the minimum wage); iii) back salary from the date of the dismissal through the date of payment; and iv) accrued benefits.

If the employee ends the individual employment relationship for a "just cause", the employer is required to pay, in addition to the foregoing, 20 days of salary per each year of services rendered. The payment of 3 months of salary and 20 days per each year must be calculated, considering an integrated salary, which is the standard pay plus the proportional part of the benefits.

An employee dismissed without "just cause" has the option to be reinstated to his former job instead of receiving the severance payment. In some cases, e.g., dismissal of an employee of "trust" as described in 7.2.5 below, the employer may avoid having to reinstate the employee to his former job by making the payments mentioned in the two preceding paragraphs.

7.2.2 "Just Cause" for Dismissal.

The FLL lists the specific causes for which an employer may dismiss an employee without being liable for severance pay. These causes include, for example, immoral conduct, repeated absenteeism, unauthorized disclosure of trade secrets and unreasonable refusal to follow directions.

7.2.3 Employee's "Just Cause" for Resigning.

An employee may resign and be entitled to severance pay if his employer commits specified acts against him, which are listed in the FLL. Such acts include, for example, reduction of salary, failure to pay salary when due,

and causing or allowing unsafe working conditions. In this case, employees are entitled to ask for 3 months of salary, 20 days per each year of services rendered, seniority premium and accrued benefits as described above.

7.2.4 Termination of the Individual Labor Relationship.

The FLL provides that a labor relationship may be terminated without either party being liable under certain circumstances, including: i) mutual agreement of the parties; ii) death of the employee; iii) under limited circumstances, the conclusion of a specific job; and iv) the physical or mental incapacity or disability of the employee.

7.2.5 Employees of "Trust".

The FLL creates a special category of employees for managers in general and other employees in positions of trust (*trabajadores de confianza*). Employers are not required to reinstate employees of trust, as mentioned in 7.2.1 above. Employees of trust may form unions, but they must be separate from those of other employees.

The determination of whether an employee is an employee of trust depends not on his title but on his actual functions. The FLL defines functions of "trust" as those of direction, inspection, surveillance and supervision generally (*dirección, inspección, vigilancia y fiscalización*) and those that involve personal matters of the owner(s) of the company.

7.2.6 Seniority Premium.

The seniority premium discussed in 7.2.1 above, equal to 12 days of salary (limited to twice the minimum wage) per each year of services rendered, must be paid to all employees who i) voluntarily leave their jobs after completing fifteen years of employment; ii) leave their jobs for "just cause"; iii) are dismissed by the employer with or without "just cause"; or iv) die while still employed, in which case their beneficiaries receive the seniority premium.

Despite the current FLL provisions, employers have to determine the culture, needs, and way of thinking, among other factors, that characterizes the workforce in the place where is going to be established before starting. Likewise, it is advisable to keep in mind that, for purposes of the interpretation of the FLL provisions, it also depends on labor authorities' criteria and the fact that such legislation is likely to be amended.

7.3 Social Security.

The Social Security Law (SLL) first enacted on January 31, 1942, has undergone a series of amendments throughout the years.[3] In accordance with the SSL, last modified on December 20, 2001, all employers

[3] In December 1995, the Mexican Congress approved a New Social Security Law which came into effect on January 1, 1997. On December 20, 2001, the Mexican Congress approved a reform which brought major changes to the current Mexican social security system.

must register their employees before the Mexican Social Security Institute ("IMSS"). Such registration relieves the employer from the following: (i) work related risks; (ii) health and maternity insurance; (iii) disability pension and life insurance (iv) retirement, old age pension and old age unemployment insurance; (v) child care and social benefits. Upon creation of an employment relationship, the employee automatically becomes entitled to the various social security benefits, which are funded by contributions paid by both employers and employees, depending on the risk factor of the company.

Depending on the risk factor of the specific company, the contributions range from a minimum 19.95 percent to a maximum 26 percent of the integrated wage, of which the employees pay up to 5.2 percent and the employers pay the rest. The contributions in respect of each type of benefit are as follows:

Benefits	Employer's contribution	Employee's contribution
Fees for Benefits in Kind to Pensioners	1.050% of the BQW	0.375% of the BQW
Occupational Hazard	Minimum: 2002.- 0.25% of BQW 2003.- 0.31% of BQW 2004.- 0.38% of BQW Maximum: 15.000% of the BQW	0
Illness and Maternity	a) Benefits in kind: • From July 2002.- 17.15% of GMW for Mexico City • From July 2003.- 17.8% of GMW for Mexico City • From July 2004.- 18.45% of GMW for Mexico City • From July 2005.- 19.1% of GMW for Mexico City • From July 2006.- 19.75% of GMW for Mexico City • From July 2007 and on.- 20.4% of GMW for Mexico City For salaries greater than 3 GMW for Mexico City: • From July 2002.- 3.55% of the difference between the BQW from the 3 GMW for Mexico City • From July 2003.- 3.06% of the difference between the BQW from the 3 GMW for Mexico City • From July 2004.- 2.57% of the difference between the BQW from the 3 GMW for Mexico City • From July 2005.- 2.08% of the difference between the BQW from the 3 GMW for Mexico City	a) 0% - for salaries lower than 3 GMW for Mexico City For salaries greater than 3 GMW for Mexico City: • From July 2002.- 1.2% of the difference between the BQW from the 3 GMW for Mexico City • From July 2003.- 1.04% of the difference between the BQW from the 3 GMW for Mexico City • From July 2004.- 0.88% of the difference between the BQW from the 3 GMW for Mexico City • From July 2005.- 0.72% of the difference between the BQW from the 3 GMW for Mexico City

Benefits	Employer's contribution	Employee's contribution
	• From July 2006.- 1.59% of the difference between the BQW from the 3 GMW for Mexico City • From July 2007 and on.- 1.1% of the difference between the BQW from the 3 GMW for Mexico City b) Monetary benefits:0.70% of the BQW	• From July 2006.- 0.56% of the difference between the BQW from the 3 GMW for Mexico City • From July 2007 and on.- 0.4% of the difference between the BQW from the 3 GMW for Mexico City b) Monetary benefits:0.70% of the BQW
Disability and Life	1.750% of the BQW	0.625% of the BQW
Day Care Centers and Social Benefits	1% of the BQW	0
Retirement, Dismissal in Advanced Age, and Old Age	Retirement: 2% of the BQW Dismissal in Advanced Age and Old Age: 3.150% of the BQW	01.125% of the BQW

GMW for Mexico City: General minimum wages for Mexico City
BQW: Base Quotation Wage

The IMSS assumes all responsibility for providing the benefits and, unless the employer has not complied with its registration and payment obligations, the employer is released from any liability for workrelated accidents or illnesses. If the employer does not comply with its registration and payment obligations, the IMSS will nevertheless provide the benefit to the employee but it will revert the actual cost thereof to the employer and will impose penalties. Social Security benefits are provided at the IMSS facilities located throughout Mexico.

The basis for the Social Security contributions is the integrated wage, which includes all monetary and inkind compensation and benefits received by the employee, excluding only the following:

(i) Work tools and clothing;

(ii) savings funds, provided they include matching contributions by the employer and the employee;

(iii) contributions paid by the employers for social or union purposes;

(iv) contributions made by the employer to the SAR for workers housing;

(v) profit sharing paid to the employees;

(vi) food and shelter, provided the employee pays a portion thereof;

(vii) food baskets;

(viii) attendance bonuses; and

(ix) overtime pay, unless such service is agreed upon on a permanent basis.

Any employer who fails to properly withhold and pay the corresponding social security contributions, who submits false information to the IMSS or who otherwise fails to fulfill its obligations under the SSL may be subject to a range of penalties.

8. Environmental.

The General Law of Ecological Balance and Environmental Protection (the "Environmental Protection Law"), enacted in 1988 (and amended on December 13, 1996 and on December 31st 2001 respectively), is the primary Mexican environmental statute. It contains specific chapters concerning environmental impact permitting, prevention and control of air, water and soil pollution, and hazardous waste handling and disposal among others. It also sets out enforcement procedures and other provisions concerning the respective responsibilities of the federal and state government. In addition, many of Mexico's 31 states have also promulgated environmental laws. All activities conducted in Mexico must comply with federal, state and/or municipal laws.

8.1 Environmental Authorities.

The Ministry of Environment and National Resources ("SEMARNAT"), is the federal authority entrusted with setting and overseeing national policy in the area of environmental protection. In addition, it is responsible for enacting Official Mexican Standards that establish maximum allowable pollutant limits for air emissions and wastewater discharges, as well as Standards that establish the criteria to determine when wastes are considered legally hazardous. The Federal Bureau of Environmental Protection ("PROFEPA") is an agency of SEMARNAT in charge of carrying out enforcement activities.

The Environmental Protection Law establishes a licensing system based upon media-specific discharge limitations for air emissions and wastewater discharges and for the generation, transportation, handling and disposal of hazardous waste. All companies operating in Mexico must limit the amount of pollutants that they release or discharge within the specific ranges decreed by SEMARNAT. The regulations and standards governing air pollution limit, for example, the amount of carbon dioxide that a fixed source may emit. In addition, the Environmental Protection Law states that the glass, oil, petrochemical, chemical, automotive, paint, paper, iron and steel as well as hazardous waste management industries are considered fixed sources of air pollution under federal jurisdiction. Emission sources from industrial activities other than those described above, may be regulated by state and municipal environmental authorities. In the area of wastewater discharges, Official Mexican Standards regulate wastewater discharges to national soils and waters and discharges into municipal sewer systems from industrial activities.

8.2 Environmental Impact Authorization.

Prior to initiating operations, industrial facilities must secure an environmental impact authorization ("EIA"). If the activity to be carried out at the facility is federally regulated[4] pursuant to the Environmental Protection Law, such an EIA must be secured from SEMARNAT.

If the activity to be carried out is not federally regulated, the EIA must be secured from the corresponding State or Municipal Environmental Authority (the "Local Environmental Authority").

It is important to note that if an industrial facility uses or intends to use certain toxic, flammable or explosive substances, it may be considered a high-risk activity under Mexican law. High-risk activities are those in which specific threshold limits for toxic, flammable or explosive substances are surpassed[5]. For example, the use of 500 kilograms or more of propane gas is considered a high-risk activity. Facilities engaging in high-risk activities are required to submit before SEMARNAT a risk study in addition to the environmental impact manifest necessary to secure an EIA.

[4] Federally regulated activities include oil, petrochemical, steel, paper, sugar, mining, cement and electricity generation industries, as well as hazardous waste treatment, confinement and disposal activities.

[5] The Mexican government has published Two Listings of High-Risk Activities. The first one in 1990 for toxic substances and the second one in 1992 for flammable and explosive substances.

It is important to note that industrial facilities that initiated operations prior to 1988 (year in which the Environmental Protection Law was enacted) were not required to secure an EIA.

8.3 Prevention and Control of Air Pollution.

Industrial facilities that emit into the atmosphere gases, fumes or solid particles are required to secure an Operating License. Such License must be secured from SEMARNAT if the fixed source in question is federally regulated[6]. Otherwise, such License must be secured from the Local Environmental Authority.

In addition to the above, industrial facilities must comply with the following requirements:

(i) Operate air pollution control equipment should their pollutant emissions surpass the maximum allowable limits established under applicable Official Mexican Standards;

(ii) Keep an update air pollution control equipment maintenance and operating log;

(iii) Submit an air emissions inventory before SEMARNAT or the Local Environmental Authority;

(iv) Periodically monitor their air emissions.

8.4 Water Quality.

Industrial facilities must secure a Wastewater Discharge Permit or Registration from the Local Environmental Authority if they discharge wastewater into a municipal or urban sewer system. If their wastewater is discharged into a federal body of water such as a river, pond, lake or natural or man-made waterway, they must secure a Wastewater Discharge Permit from the National Water Commission. ("CONAGUA").

In addition, industrial wastewater must not exceed the maximum allowable discharge limits established under the following Official Mexican Standards:

(i) NOM-001-ECOL-1996, which regulates wastewater discharges into federal land and water;

(ii) NOM-002-ECOL-1996, which regulates wastewater discharges into municipal or urban sewer systems.

8.5 Hazardous Waste Management.

According to the Environmental Protection Law, a hazardous waste is defined as "any waste in any physical form which is either corrosive, reactive, explosive, toxic to the environment, flammable or biologically infectious and which represents a hazard to the ecological balance or the environment".

Hazardous waste may include any of the following:

(i) Spent lubricant oil;

(ii) Spent solvents;

(iii) Chemical waste;

(iv) Paint waste;

(v) Oil, solvent or paint-impregnated shop towels or rags;

(vi) Empty oil, solvent, paint or chemical containers;

(vii) Polychlorinated biphenyls (PCBs);

(viii) Asbestos fibers.

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[6] Federal fixed sources of air pollution include the following industries: automobile, chemical, oil and petrochemical, paint and ink, paper, metallurgic, glass, asbestos, cement, coal and hazardous waste treatment.

8.5.1 Reporting Requirements.

Hazardous waste generators must meet the following reporting requirements:

1. Submit before SEMARNAT on a one-time basis, a Hazardous Waste Generator Manifest for each hazardous waste generated;
2. Keep an updated monthly hazardous waste generation log;
3. Keep an updated daily hazardous waste storage log;
4. Submit before SEMARNAT a biannual hazardous waste transportation and disposal report.

8.5.2 Handling Requirements.

In the area of hazardous waste handling, the following requirement apply:

1. Generators must construct and operate a hazardous waste storage area. Such storage area must be kept separate from offices, raw material storage (even if hazardous materials are stored therein) production and finished product areas. It must also be located in areas in which the risk of possible emissions, leaks, fires, explosions or floods are reduced, and must comply with a number of technical requirements, depending on whether the storage area is enclosed or in the open;
2. Hazardous waste containers must be properly sealed and must have adequate signs posted describing the type of waste being handled.

8.5.3 Transportation and Disposal Requirements.

With regard to hazardous waste transportation and disposal, the following requirements must be met:

1. The hazardous waste generator must make sure that the company hired to collect, transport and dispose of its waste has secured an authorization from SEMARNAT and by the Ministry of Communications and Transports ("SCT"). Otherwise, liability related to the transportation and disposal of the waste stays with the generator, according to the General Law.
2. Each time hazardous waste is collected for transportation and disposal, a Hazardous Waste Collection, Transportation and Disposal Manifest must be prepared. The generator, transporter and consignee must sign such Manifest. Once the original Manifest has been received and signed by the consignee, it must be sent to the generator so that it may keep it for ten (10) years.
3. Hazardous waste generated from raw materials imported into Mexico on a "temporary" basis (under a *maquiladora permit* for example), must be exported to its country of origin. In order to export hazardous waste to the United States, the exporter must submit before SEMARNAT an Export Notice. Upon filing such Notice, the exporter has five (5) days to export the waste. Once the hazardous waste has been exported to the U.S., the exporter or generator must provide SEMARNAT with a copy of the export manifest (*pedimento de exportación*).
4. As for hazardous waste that must be exported to a country other that the U.S. (such as PCBs which are exported to Finland), the exporter must first secure from SEMARNAT an Ecological Waybill (*Guía Ecológica*).

8.6 Community Right to Know.

As a result of the amendments to the Environmental Protection Law, SEMARNAT as well as State and Municipal authorities will create a public pollutants registry, comprised of data furnished by individuals and entities that (i) emit pollutants into the air, soil or water and (ii) handle hazardous substances. This means that all information regarding a facility's air emissions, wastewater discharges and waste stream will now be made public. This is consistent with a chapter of the Environmental Protection Law that allows any person the right to receive environmental information from SEMARNAT as well as from State or Municipal authorities.

It will therefore be very important for industrial facilities to take the necessary actions to ensure that their air emissions, wastewater discharges and hazardous waste handling and disposal practices fully comply with applicable laws and regulations.

8.7 Administrative Penalties.

The Environmental Protection Law imposes administrative penalties, remedial actions and fines on violators. PROFEPA has wide authority to select and apply penalties. In the past, PROFEPA has generally handled violations of the environmental laws by ordering violators to take corrective actions and, in certain cases, to shut down their businesses until the violations were corrected. PROFEPA may also order a violating business to close permanently.

Moreover, PROFEPA has the power to (i) impose administrative fines and to double their amounts in the case of repeat offenses, (ii) order the seizure of pollutant equipment or devices, (iii) order the cancellation of environmental licenses or permits and (iv) order the administrative arrest for up to 36 hours. PROFEPA may also seek criminal prosecution before the Attorney General's Office. Environmental crimes are defined in the Federal Criminal Code. Prison terms may range from 3 months to 6 years depending on the seriousness of the violation.

9. Intellectual Property.

For the last decade, Mexico has taken a very aggressive policy towards protecting Intellectual Property Rights ("IPRs"). Mexico is part of most conventions and treatises concerning IPRs and related rights, etc. Mexico is part of the WTO and has entered into free trade agreements with the United States and Canada (NAFTA), Costa Rica, the "G-3" (Colombia and Venezuela), Bolivia, Chile, Nicaragua, Uruguay, Israel, El Salvador, Guatemala, Honduras, Switzerland, Liechtenstein, Norway, Sweden and the European Union. All these agreements include provisions for the protections and promotion of IPRs.

Following international standards, the Mexican IP system is divided into Industrial Property and Author's Rights. The former is regulated by the Mexican Industrial Property Law, and comprises patents, industrial designs, utility models, trade secrets, trademarks, trade names, and slogans; the latter includes author's rights, related rights (neighboring rights) and "reservation of rights".

The Industrial Property Law (IPL) was enacted on June 25, 1991, and last amended on December 26, 1997, its purpose being to promote the improvement of Mexican processes and products, promote inventive creativity and the quality of goods, and to protect industrial property by regulating and granting patents, registering utility models, industrial designs, trademarks, slogans, publishing trade names, declaring the protection of appeals of origin and regulating trade secrets.

9.1 Patent Protection.

Under the IPL, patents are protected in Mexico for a period of 20 years from the date the application for registration is filed. New inventions that have some industrial application are generally capable of receiving patent protection. Inventions in the following fields are now patentable: pharmaceutical products, medications, food and drinks for animal and human consumption, fertilizers, insecticides, herbicides, fungicides, plant varieties[7], biologically active products, and inventions applying to or related to microorganisms.

The following inventions continue to be unpatentable or are deemed not to be inventions: theoretical and scientific principles, natural phenomena, computer programs, purely aesthetic creations, surgical, therapeutic or diagnostic treatments for humans and animals, vegetable species, breeds of animal, naturally occurring biological material, genetic material, and inventions related to living human tissues.

The owner of a foreign patent may file an application for the corresponding patent in Mexico if the priority period under the Paris Convention or the National Phase Entry period under PCT for the protection of industrial property is observed.

Under the IPL, any patent license or assignment of patent rights must be registered with the Mexican Industrial Property Institute ("MIPI"). If they are not registered, such licenses or assignments will not be effective against third parties.

9.2 Utility Models

Deemed as utility models are the articles, utensils, apparatus, or tools that, present a different function with respect to the parts that compose them or the advantages insofar as their utility is concerned. The IPL also grants protection to Industrial Designs, i.e., drawings, models, prototypes and the like that have an industrial application.

9.3 Trademark Protection

Trademark protection in Mexico arises only upon registration with the MIPI. It is therefore an advantage to file an application for registration of a trademark as early as possible. In order to establish the earliest possible filing date it is important to ensure that the application is complete. Incomplete applications are deemed not to be filed until the application is completed and all formalities have been complied. Any trademark license or assignment of trademark rights must be registered with the MIPI.

The trademarks are registered according to the international classification of goods and services, of which 34 classes refer to goods and the remaining 7 to services. The system handled is a single class application.

The life term of trademarks is of ten years as of their filing date and must be renewed for equal periods. Using the mark in at least one product or service, for which it was registered, will suffice to prove that its use has not been interrupted for 3 or more consecutive years.

Upon registration, the mark should be labeled with the legend "Marca Registrada", the abbreviations "Marc. Reg." or "MR". The new law also allows the use of the ® symbol to indicate registration. However, the use of these legends is not mandatory under the new law.

Besides Trademarks, the IPL also grants protection to Commercial Slogans, Trade names and Appellations of Origin.

Any trademark license or assignment of trademark rights must be registered with the MIPI. The registration procedure is similar to the one applicable to patents.

[7] With respect to plant varieties, since Mexico is member of the International Union for the Protection of new Plant Varieties (UPOV) there is a patent-like right granted to breeders of new plant varieties, such protection, however, is not covered by the IPL.

9.4 Trade Secrets

In Mexico, trade secrets are protected not only in the IPL, but also in other statutes, including the Federal Labor Law and the Criminal Codes[8] both at Federal and at State level. The legal regime of trade secrets in Mexico is complex and full of requirements:

The IPL defines a trade (and industrial) secret as any information susceptible to industrial or commercial application, maintained in secrecy and useful to obtain or to maintain a competitive or economic advantage over third parties in the performance of economic activities, secrecy having been preserved by taking *sufficient* measures to keep it confidential and by restricting access thereto.

Information comprising a trade secret must relate to the nature, characteristics, or purposes of products, production methods, or processes, or to ways or means of distributing or marketing products or rendering services.

Unlike in many other countries, the Mexican IPL provides that, for information to be considered a trade secret, it must be fixed in documents, electronic or magnetic media, optical discs, microfilms, films or other similar instruments, in order to avoid the complication of protecting intangible ideas.

Apart from the requirements mentioned below, throughout the Third Title of the IPL (the one dealing with trade secrets), there are additional requirements for information to be considered as secret. The actualization of these requirements is essential, especially in case of litigation. Their absence would make it easy for a violator to walk away unsanctioned after revealing a secret, leaving behind a company that would not be able to recuperate the lost information, since trade secrets, once revealed, completely lose their value.

It is a common mistake of foreign companies to use their local confidentiality and non-disclosure agreements for transactions in Mexico. It is important to stress the fact that the IPL includes provisions that must be observed in the transmission or authorization to use trade secrets or confidential information to employees, consultants, key personnel, etc. Consequently, in order to protect accurately trade secrets and confidential information in Mexico, the above-mentioned requirements must be observed.

Finally, the IPL and the Federal Criminal Code[9] consider as crimes the disclosure or use of third parties' trade secrets or reserved communication learned as a result of a person's job or position, without proper authorization.

9.5 Copyright

Mexico is a signatory to the Universal Copyright Convention ("UCC") and the Berne Convention. Consequently, by bearing the UCC copyright notice (i.e., © [name of owner]), an original work is automatically susceptible of copyright in Mexico. The Mexican Copyright Law ("CL") does not require works to be registered in Mexico to secure copyright protection, but does establish an optional registration procedure.

The CL defines copyright as the recognition by the State in favor of the creator of literary and artistic works through which the creator receives protection of his patrimonial and moral rights in the work. The holder of the patrimonial rights may authorize the temporary or permanent exploitation of the copyright, through license or assignment agreements.

The CL establishes that the following types of works, among others, may obtain copyright protection: literary, musical, dramatic, dance, pictorial or drawing, sculptural or plastic, cartoons, architectonic, cinematography, audiovisual, radio and TV programs, computer software (data bases are included, but

[8] The Banking Law also includes provisions dealing with the banks' confidential obligations.

[9] As well as the local criminal codes of most states.

software created to produce harmful effects to other software or hardware is excluded from protection), and photographic, as well as compilations, provided they constitute intellectual creations.

Copyright infringement is considered a crime penalized by imprisonment. In addition, Mexican law allows copyright holders whose rights have been infringed, to seek civil remedies, which include damages, lost profits and injunctive relief. The maximum amount of damages is not limited by statute; nonetheless, the CL states that the amount shall be at least equal to 40 percent of the value of the total sales of the violator. Very recently, in an attempt to further increase the protection granted to copyrighted works, the Mexican Criminal Code was amended imposing higher penalties on those who unlawfully use copyrighted works without the consent of their rightful owner.

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