

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

e-mail: info@santistevan.com.mx
Jsantistevan@santistevan.com.mx
web: www.santistevan.com.mx

Homero 1804, suite 902
México, D.F. 11570
MEXICO

Tel. + (52-55) 5557-1515
Fax. + (52-55) 5395-7096
3098-3575

FEBRUARY, 2013

Basic Legal Aspects for Doing Business in Mexico

CONTENTS

- I. AGENCY, COMMISSION AGENCY, AND DISTRIBUTION
- II. TRANSACTION TERMS AND SECURING PAYMENT WHEN SELLING GOODS IN MEXICO
- III. MEANS OF SECURING PAYMENTS AVAILABLE IN MEXICO
- IV. IMPORTER'S LICENSE
- V. TECHNICAL ASSISTANCE AND LICENSING
- VI. ENTITY OF CHOICE FOR DOING BUSINESS IN MEXICO
- VII. ESTABLISHING A COMPANY IN MEXICO
- VIII. BASIC TAXES
- IX. LABOR LAW, HIRING, OUTSOURCING, FRINGE BENEFITS, TERMINATION, LABOR UNIONS
- X. GOVERNMENT PROCUREMENT IN MEXICO
- XI. FEDERAL GOVERNMENT COMPLIANCE IN MEXICO (ANTI-CORRUPTION)
- XII. ENVIRONMENTAL LEGISLATION
- XIII. PHARMACEUTICAL PRODUCTS, MEDICAL DEVICES & FOOD SUPPLEMENTS
- XIV. REAL ESTATE TRANSACTIONS IN MEXICO FOR FOREIGNERS
- XV. IMMIGRATION RULES

CONTENTS

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

I.	AGENCY, COMMISSION AGENCY, AND DISTRIBUTION.....	7
1.	DIRECT SALES AGENT.....	7
A.	IMMIGRATION REQUIREMENTS.....	7
B.	APPLICATION OF THE MEXICAN LABOR LAW TO SALES AGENTS.....	7
C.	CONSEQUENCES OF THE APPLICATION OF THE LABOR LAW.....	7
D.	TAX CONSEQUENCES - PERMANENT ESTABLISHMENT.....	7
E.	WHAT IS NOT CONSIDERED PERMANENT ESTABLISHMENT.....	8
F.	TAX BASE OF PERMANENT ESTABLISHMENTS.....	8
G.	INCOME TAX ON PERMANENT ESTABLISHMENTS.....	8
H.	PERMANENT ESTABLISHMENT AS A REGULATED INVESTMENT.....	9
2.	COMMISSION AGENT (COMMERCIAL INTERMEDIARY).....	9
3.	DISTRIBUTOR.....	10
A.	U.N. CONVENTION ON THE INTERNATIONAL SALE OF GOODS.....	10
B.	DEALERS ACTS.....	10
II.	TRANSACTION TERMS AND SECURING PAYMENT WHEN SELLING GOODS IN MEXICO.....	10
1.	WRITTEN AGREEMENTS AND DOCUMENTS.....	10
2.	DOCUMENTS IN LIEU OF CONTRACTS.....	11
A.	CREDIT APPLICATION BY THE BUYER.....	11
B.	PURCHASE ORDERS (PO's).....	11
C.	RECEIPT OF GOODS SOLD.....	11
III.	MEANS OF SECURING PAYMENTS AVAILABLE IN MEXICO.....	11
1.	COMMERCIAL PLEDGE.....	11
2.	MORTGAGE.....	12
3.	TITLE RESERVE-CONDITIONAL SALE.....	12
4.	BOND.....	12
5.	GUARANTEE.....	12
6.	LETTER OF CREDIT.....	12
7.	PROMISSORY NOTE.....	13
8.	DEBT ACKNOWLEDGMENT.....	13
IV.	IMPORTER'S LICENSE.....	13
V.	TECHNICAL ASSISTANCE AND LICENSING.....	13
VI.	ENTITY OF CHOICE FOR DOING BUSINESS IN MEXICO.....	14
1.	COMMON INITIAL OBJECTIVES FOR ESTABLISHING IN MEXICO.....	14
2.	BRANCH:.....	14
3.	REPRESENTATIVE OFFICE FOR PROMOTION PURPOSES.....	15
4.	SUBSIDIARY:.....	15
5.	JOINT VENTURE:.....	15
A.	ADDITIONAL AGREEMENTS DERIVING FROM THE JVA:.....	16
6.	TWO BASIC OPTIONS FOR DOING BUSINESS: (I) BRANCH, OR (II) SUBSIDIARY.....	16
A.	GENERAL OPINION.....	16
B.	REASONS FOR CHOOSING A MEXICAN COMPANY INSTEAD OF A BRANCH.....	16
a.	STEPS AND TIMING IN SETTING UP A COMPANY AND A BRANCH:.....	17
b.	CORPORATE APPOINTMENTS AND RESOLUTIONS EFFECTIVE IN MEXICO.....	18
c.	LIABILITIES (CIVIL, TAX, LABOR).....	18
VII.	ESTABLISHING A COMPANY IN MEXICO.....	19
1.	INCORPORATION.....	19

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

2.	TYPES OF COMPANIES (SRL or SA)	19
3.	INCORPORATION - STEPS:	20
VIII.	BASIC TAXES	20
1.	CORPORATE TAX:	20
2.	CASH-FLOW FLAT TAX (IETU):	20
3.	VALUE ADDED TAX (VAT):	21
IX.	LABOR LAW, HIRING, OUTSOURCING, FRINGE BENEFITS, TERMINATION, LABOR UNIONS	21
1.	FOREIGN EMPLOYERS WITH EMPLOYEES RESIDING IN MEXICO:	21
2.	PERMANENT ESTABLISHMENT FOR TAX PURPOSES (MEXICAN BRANCH):	21
3.	SALES AGENTS OR PROMOTERS:	22
4.	LABOR LAW, DRAFTED IN FAVOR OF EMPLOYEES	22
5.	DEEMED LABOR RELATIONSHIP ("Relación Laboral" Impuesta"):	22
6.	GENDER EQUALITY:	23
7.	AFFILIATION TO INFONACOT:	23
8.	EMPLOYMENT RELATIONSHIPS:	23
A.	INDEFINITE TERM	23
B.	DEFINED PROJECT	23
C.	DEFINED TERM	23
9.	NEW TYPE OF EMPLOYMENTS RELATIONSHIPS:	23
A.	SEASONAL AGREEMENTS	23
B.	TRIAL AGREEMENTS	23
C.	INITIAL TRAINING AND TEACHING AGREEMENTS	24
10.	WORKING SCHEDULE	24
11.	OVERTIME	24
12.	DAILY WAGE	24
13.	SALARY PAYMENT PER TIME UNIT (PER HOUR)	25
14.	FORM OF PAYMENT OF SALARIES	25
15.	FRINGE BENEFITS	25
A.	VACATIONS	25
B.	VACATION PREMIUM	25
C.	YEAR END BONUS:	26
D.	STATUTORY HOLIDAYS:	26
E.	MATERNITY & PATERNITY LEAVE:	26
F.	ADAPTATIONS FOR PERSONS WITH DISABILITIES:	27
16.	ALIMONY:	27
17.	LABOR RISKS AND INDEMNITIES:	27
18.	PROFIT SHARING:	27
19.	SERVICES COMPANIES FOR THE EMPLOYEES (OUTSOURCING):	27
20.	OUTSOURCING UNDER THE NEW AMENDMENTS:	27
21.	PAYROLL CONTRIBUTIONS FOR SOCIAL SECURITY	28
A.	MEXICAN SOCIAL SECURITY INSTITUTE - "IMSS"	28
B.	INSTITUTE OF THE NATIONAL HOUSING FUND - "INFONAVIT"	28
C.	RETIREMENT SAVING SYSTEM - "AFORES"	29
22.	PAYROLL TAXES	29
23.	LABOR TERMINATION AND SEVERANCE PAYMENTS	29
24.	TYPES OF TERMINATION OF LABOR RELATIONSHIPS:	29
A.	TERMINATION WITHOUT FAIR CAUSE	29
B.	TERMINATION WITH FAIR CAUSE	30
C.	TERMINATION BY MUTUAL AGREEMENT	30
25.	NOTICE OF TERMINATION	32
26.	ACCRUED WAGES	32
27.	DILATORY TACTICS	32
28.	EXTRA JUDICIAL AGREEMENTS:	32

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

29.	MEANS OF EVIDENCE IN LABOR PROCEEDINGS	33
30.	UPDATED FINES.....	33
31.	LABOR UNIONS AND COLLECTIVE BARGAINING AGREEMENTS:	33
A.	LABOR UNIONS CLAIM TITLE TO UNION AGREEMENTS.	33
B.	ENTERING INTO A UNION AGREEMENT WITH A FRIENDLY LABOR UNION.	33
C.	EMPLOYEES CAN ALWAYS REQUEST TO BE UNIONIZED.	34
D.	EMPLOYEES SHOULD KNOW OF THE LABOR UNION AGREEMENT.....	34
X.	GOVERNMENT PROCUREMENT IN MEXICO.....	34
1.	FEDERAL PROCUREMENT LEGISLATION:	34
2.	FEDERAL CONTRACTING PROCEDURE:	34
3.	SPECIFIC GOVERNMENT SUPPLIER REGISTRY:	35
A.	PUBLIC BIDDING:	35
B.	PUBLIC BIDS: (i) DOMESTIC, or (ii) INTERNATIONAL:	35
a.	DOMESTIC BIDS.....	35
b.	INTERNATIONAL BIDS:.....	35
C.	RESTRICTED BIDDING AND DIRECT AWARD	36
D.	LIMITATIONS ON PROPOSALS	36
E.	CLAIMS BY PROVIDERS.....	36
a.	DURING THE PUBLIC BIDDING.....	36
b.	DURING THE PERFORMANCE OF THE CONTRACT.....	36
F.	BREACH BY PROVIDERS	37
XI.	FEDERAL GOVERNMENT COMPLIANCE IN MEXICO (ANTI-CORRUPTION).....	37
1.	PURPOSE	37
2.	FEDERAL PUBLIC PROCUREMENT.....	37
3.	INTERNATIONAL COMMERCIAL TRANSACTIONS	37
4.	INDIVIDUALS AND ENTITIES SUBJECT TO COMPLIANCE STATUTE	37
A.	DIRECT PARTICIPANTS	37
B.	SUPPORTERS OF DIRECT PARTICIPANTS.....	37
C.	PARTICIPANTS OF INTERNATIONAL TRANSACTIONS	38
D.	PUBLIC SERVANTS	38
5.	ACTS IN VIOLATION OF THE COMPLIANCE STATUTE.....	38
6.	AUTHORITIES WHO WILL APPLY THE COMPLIANCE STATUTE	38
A.	ENFORCEMENT BY THE MINISTRY OF THE PUBLIC FUNCTION	38
B.	ENFORCEMENT BY FEDERAL ENTITIES	39
7.	PENALTIES	39
A.	TO INDIVIDUALS	39
B.	TO LEGAL ENTITIES.....	39
8.	FINAL CONSIDERATIONS	39
XII.	MEXICAN ENVIRONMENTAL LEGISLATION.....	39
1.	FEDERAL ENVIRONMENTAL STATUTE	40
2.	FEDERAL REGULATIONS	40
3.	OFFICIAL TECHNICAL STANDARDS (NOMS).....	40
4.	STATE AND MUNICIPALITIES LEGISLATION.....	40
5.	INTERNATIONAL TREATIES AND AGREEMENTS	41
6.	FEDERAL AGENCIES TO BE CONSIDERED.....	41
7.	FEDERAL MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES.....	41
8.	ENVIRONMENTAL REGULATIONS AND PROMOTION OFFICE.....	41
9.	FEDERAL ENVIRONMENTAL ENFORCEMENT OFFICE	42
10.	ENVIRONMENTAL COOPERATION COMMISSION.....	42
11.	DISTRIBUTION OF JURISDICTION AND ENFORCEMENT.....	42
A.	FEDERAL JURISDICTION:	42

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

B.	STATE OR MUNICIPAL JURISDICTION	43
12.	KEY ELEMENTS OF FEDERAL ENVIRONMENTAL ENFORCEMENT.....	43
A.	ENVIRONMENTAL IMPACT AND RISK STUDY	43
a.	PRELIMINARY REPORT.....	43
b.	ENVIRONMENTAL IMPACT MANIFEST	43
c.	RISK STUDY	44
13.	HAZARDOUS WASTE MANAGEMENT AT FEDERAL LEVEL.....	44
A.	DEFINITION	44
B.	REQUIREMENTS FOR HANDLING.....	44
a.	REPORTING AND TRACKING.....	44
b.	STORAGE AND CONFINEMENT	44
c.	COLLECTION, TRANSPORT, AND DISPOSAL.....	45
d.	EXPORT	45
XIII.	PHARMACEUTICAL PRODUCTS, MEDICAL DEVICES & FOOD SUPPLEMENTS.....	45
A.	REGULATORY PROCESS FOR IMPORTING, REGISTERING, AND DISTRIBUTING	45
B.	INCORPORATION OF A SUBSIDIARY.....	45
C.	COFEPRIS (Agency of the Health Ministry).....	46
D.	COFEPRIS - INTERNATIONAL:	46
1.	PHARMACEUTICAL PRODUCTS	46
A.	SANITARY REGISTRY	46
a.	NOTICE OF OPERATION	47
i)	CERTIFICATE OF GOOD MANUFACTURING PRACTICES	47
ii)	COMPLIANCE CERTIFICATE - MANUFACTURING SITE VISIT ABROAD	47
b.	SANITARY LICENSE.....	48
B.	SANITARY REQUIREMENTS FOR PHARMACEUTICAL PRODUCTS - NOMS:	48
C.	IMPORTER'S LICENSE	48
D.	SANITARY IMPORT PERMIT	48
E.	LABELING OF PHARMACEUTICAL PRODUCTS.....	48
2.	MEDICAL DEVICES.....	48
A.	DEFINITION AND CLASSIFICATION	49
B.	HEALTH AUTHORIZATION AND SANITARY REGISTRY.....	49
C.	CLASSES (I, II, III):	49
a.	CLASS I.....	49
b.	CLASS II.....	49
c.	CLASS III.....	49
D.	NOTICE OF OPERATION.....	50
E.	MEDICAL DEVICES MANUFACTURED ABROAD	50
F.	MEDICAL DEVICE REGISTRATION STEPS.....	50
G.	SANITARY REQUIREMENTS FOR MEDICAL DEVICES - NOM's	51
H.	RESOLUTION TIMING.....	51
I.	VALIDITY TERM	51
J.	IMPORTER'S LICENSE	51
K.	LABELING OF MEDICAL DEVICE	51
3.	FOOD SUPPLEMENTS.....	51
A.	ADDITIONAL COMPOUNDS ASIDE FROM VITAMINS AND MINERALS.....	51
B.	SANITARY IMPORT PERMIT, OR SANITARY IMPORT NOTIFICATION.....	52
C.	IMPORT APPLICATIONS	52
a.	PHYSICOCHEMICAL ANALYSIS	52
b.	MICROBIOLOGICAL ANALYSIS	52
c.	SPECIFIC ANALYSIS.....	52
i)	HEALTH CERTIFICATE	53
ii)	HEALTH DECLARATION	53
iii)	FREE SALE CERTIFICATE	53
D.	IMPORT - CONTENTS OF FOOD SUPPLEMENT	53
E.	NOTICE OF OPERATION.....	53

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

F.	SANITARY IMPORT PERMIT	54
G.	SANITARY REQUIREMENTS FOR FOOD SUPPLEMENTS – NOM’s	54
H.	LABELING OF FOOD SUPPLEMENTS	54
XIV.	REAL ESTATE TRANSACTIONS IN MEXICO FOR FOREIGNERS	54
1.	MEXICAN RECORDING SYSTEM	54
2.	NOTARY PUBLIC INVOLVEMENT.....	54
3.	TAXES:	54
4.	PRICE	55
5.	PREVIOUS AGREEMENTS.....	55
6.	ZONING.....	55
7.	CLEAN TITLE.....	55
A.	NON-ENCUMBRANCE CERTIFICATE.....	55
B.	REAL ESTATE TAX PAYMENTS CERTIFICATE.....	56
C.	AGRARIAN CERTIFICATE	56
8.	FOREIGNERS RESTRICTED ZONE.....	56
9.	REAL ESTATE TRUSTS	56
10.	REAL ESTATE TITLE INSURANCE.....	56
XV.	IMMIGRATION RULES.....	57
1.	VISITORS (“VISITANTE”)	57
2.	VISITORS WITH INCOME ACTIVITIES.....	57
3.	TEMPORARY AND PERMANENT RESIDENCY.....	57
4.	TEMPORARY RESIDENT	57
5.	TEMPORARY RESIDENTS WITH INCOME ACTIVITIES.....	58
6.	PERMANENT RESIDENT.....	58
7.	EMPLOYER REGISTRATION	59
XVI.	PRESENTATION OF THE FIRM	60

These Guidelines are based on 30 years of experience in this field. They provide general information and selected comments on legal issues of interest to our Clients. The following contents are not a comprehensive treatment of the subject matter covered and is not intended to provide specific legal or tax advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein

I. AGENCY, COMMISSION AGENCY, AND DISTRIBUTION

A foreign company that is testing the Mexican market for its products or services has traditionally used four basic commercial vehicles: (1) appoint a sales agent in Mexico; (2) appoint a commission (sales) agent (commercial intermediary); (3) enter into an agreement with an independent distributor in Mexico; or (4) license technology (for example in a franchise operation).

If the market is ripe foreign companies decide establish a subsidiary in Mexico to have a "hands on" control on the market

1. DIRECT SALES AGENT.

Is an agent of a foreign company performing business acts in Mexico in the name and on behalf of the foreign company.

Even though this scheme has the appearance of doing business from abroad, it actually is doing business in Mexico and creates a branch operation for tax purposes ("permanent establishment"), as explained below.

A. IMMIGRATION REQUIREMENTS.

The Immigration Act (*Ley General de Población*) is Mexico's current Immigration Act and provides for the terms and conditions upon which foreigners may enter into and conduct business in Mexico.

Typically, a sales agent is classified as either (i) "business visitor", and can stay in Mexico for up to 180 days; or as (ii) a "Temporary Resident" from 1 (one) to 4 (four) years.

A sales agent should not enter Mexican Territory as a tourist when the underlying purpose of his/her trip is to do business in Mexico (i.e. visit customers, take orders, engage in contract negotiations connected with the principal's business activities in Mexico). Failure to comply with immigration provisions carries penalties ranging from a fine or deportation to a felony charge.

B. APPLICATION OF THE MEXICAN LABOR LAW TO SALES AGENTS.

The Mexican labor legislation (the "Labor Law") applies to all labor relations performed within the Mexican Republic.

The Labor Law applies to any employer, within Mexico or abroad, that has a subordinate in Mexico performing services for the employer in Mexico. In such case, the legal effects of acts and contracts will be governed by - the Labor Law.

C. CONSEQUENCES OF THE APPLICATION OF THE LABOR LAW.

In Mexico, the Labor Law and other laws derived from it, such as the Social Security Law (*Ley del Seguro Social*) and the Workers Housing Fund Institute Law (*Ley del Instituto del Fondo Nacional para la Vivienda de los Trabajadores*) are applicable to both foreign Company and sales agent located in Mexico. These regulations cannot be waived. (For a detailed explanation on this, see below.).

The employee will have to declare its labor related taxes and pay it Social security and related quotas. The Foreign employer is exempted from that.

D. TAX CONSEQUENCES - PERMANENT ESTABLISHMENT.

Foreign companies performing business operations in Mexico, are deemed to be doing business in Mexico and creating a local branch operation for tax purposes ("permanent establishment").

There are several ways of creating permanent establishments in Mexico, but among typical ones are having:

- (i) Employees in Mexico with the power to execute contracts on behalf of the foreign company to fulfill its business activities;
- (ii) Goods and merchandise in Mexico delivered on its behalf; or
- (iii) An individual assuming business risks on behalf of the foreign company.

E. WHAT IS NOT CONSIDERED PERMANENT ESTABLISHMENT.

The following cases in which the law does not apply the concept of permanent establishment:

- (i) The use of an independent agent whose relationship with the foreign resident is arms-length;
- (ii) The maintenance of premises or installations for the sole purpose of storing, displaying or delivery of goods or merchandise;
- (iii) The keeping of goods or merchandise for a foreign resident, for the sole purpose of storing or displaying it or for being transformed by a third party (e.g. for "*maquila*" operations);
- (iv) Having a business place with the sole purpose of buying goods or merchandise or for obtaining information for the resident abroad;
- (v) Having a business place with the only purpose of performing "preparatory or auxiliary" activities for the foreign resident. These activities should consist of something similar to those of promotion, supply of information, scientific research, preparations to grant loans, or other similar activities; or
- (vi) Deposit of goods or merchandise of a foreign resident in a general deposit bonded tax warehouse, or their delivery for further importation into Mexico.

F. TAX BASE OF PERMANENT ESTABLISHMENTS.

In general terms, any foreign company with a permanent establishment in Mexico will be treated like a branch and taxed as a Mexican company.

The tax base for a permanent establishment will be all income derived from such establishment's business activities in Mexico.

This tax base includes income derived from the selling of goods or providing services in Mexico out by the permanent establishment.

The permanent establishment will be allowed deductions for expenses incurred in the particular operation in Mexico which may be prorated with the head office or other offices located outside Mexico as long as those expenses relate to the Mexican operations.

Remittances to such offices in payment of royalties, fees, commissions, etc. are not deductible.

G. INCOME TAX ON PERMANENT ESTABLISHMENTS.

A permanent establishment is subject to the corporate tax rate of 30% applicable to the tax base as described above.

Such permanent establishment must appoint a representative in Mexico who will be personally responsible before Tax Authorities for the corresponding tax filings.

H. PERMANENT ESTABLISHMENT AS A REGULATED INVESTMENT.

The existence of the foregoing permanent establishment tax treatment refers to a situation in which the foreign entity establishes a presence in Mexico.

A permanent establishment results in the foreign company doing business **"in"** Mexico for tax purposes. Therefore the foreign company may require a prior authorization or at least registration with Foreign Investments Authorities.

Such authorization will depend on the interpretation given by the authorities to the concept of "doing business **in** Mexico" for commercial purposes.

The test of what constitutes **"doing business in Mexico"** is twofold, that the foreign company:

- (i) Engages in commercial activities in Mexico; and if so,
- (ii) Does it conduct such activities regularly or continuously (a test of habit). This is a fact specific investigation and is decided on a case by case basis.

Conservatively speaking, it might be that Authorities will consider that the foreigner is regularly engaging in commercial activities in Mexico when performing two or more operations through a permanent establishment in a reasonably short period of time.

An agent in Mexico performing any of the foregoing activities will result in a "permanent establishment". Therefore, the agent will probably be deemed to be "doing business in Mexico" and therefore subject to authorization under the Foreign Investments Legislation.

2. COMMISSION AGENT (COMMERCIAL INTERMEDIARY).

There are no specific rules or legislation for commission agency agreements. The basic rules of contracts and the free will of the parties will apply to these agreements.

The appointment of a commercial intermediary implies the existence of a foreign contractor appointing an agent with limited powers.

The extent of these powers should not include activities that make the foreigner have a permanent establishment in Mexico.

A foreign company usual appoints a commission agent, usually agreeing on a pre-determined territory to win new business and increase the goodwill of the foreign company's products.

The commission agent is usually an individual or a company in a specific area where they have an excellent understanding of the market in order to generate sales for and raise the profile of the business.

A commission agent typically conducts market research, and promotes, solicits, and negotiates the sale of the contractor's products.

The agent will only be furnishing the prospective Mexican clients with information such as pricing and payment policies. The agent can also process and forward orders, and can even accept payments on behalf of the foreign resident. Hence, the agent performs "preparatory or auxiliary" services for the contractor.

The contractor abroad maintains authority to accept the purchase orders made by the Mexican customer, and in general determines the policy to be followed in the acceptance of the different offers.

The legislation in Mexico allows for arms-length negotiations among both contractor and the commission agent including compensation or the termination of an agency relationship.

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

The typical fee for an agent may consist of a straight commission on orders accepted, or a monthly retainer plus commission.

If it is an independent contractor is hired in Mexico for such purposes, it is customary to advise the agent to refrain from using the name and logo of contractor in his/her offices, business cards, or letterhead. This will avoid the appearance of having an establishment in Mexico and insure that the intermediary agreement is not a sham transaction.

A foreign company having a significant export volume or an extensive product range most commonly takes this route. It is probably best to contract with a company rather than hire an individual for these activities due to the fact that Mexican labor law favors the dismissed.

The final customer in Mexico is the one that acquires title of the product abroad and imports them into Mexico.

3. DISTRIBUTOR.

As a third alternative is a distributorship agreement.

Under This agreement a foreign company further develops its sales and offers adequate servicing through an independent Mexican company or individual, who acquires the products outside of Mexico from the foreign company and resells them in Mexico.

The distributor acquires title of the product abroad, imports them into Mexico, and resells them in Mexico.

The distributor may not appear as an attorney-in-fact of the foreign seller, but shall only purchase and further wholesaler/retailer the merchandise to its customers in Mexico.

It will not have authority to bind the foreign company and therefore being able to avoid the "permanent establishment" issue.

A. U.N. CONVENTION ON THE INTERNATIONAL SALE OF GOODS.

Mexico is a party to the U.N. Convention on the International Sale of Goods (1980), which has rules on the creation, development, enforcement and termination of the sale of goods among parties from Member States of such Convention. Parties in an international operation for sale of goods can waive the application of the provisions of the Convention.

B. DEALERS ACTS.

Mexico has not enacted a Dealers Act like many other Latin American jurisdictions. Such Acts regulate all distribution agreements in the host country, stating limitations as to the execution, performance and the causes of termination.

In Mexico There are no specific rules or legislation for distribution agreements. Any distribution agreement will be governed by the general contract provisions of the Civil and Commercial Codes which are very similar to the ones found in Civil and Commercial Code and Status worldwide. The basic rules of contracts and the free will of the parties will apply to these agreements.

II. TRANSACTION TERMS AND SECURING PAYMENT WHEN SELLING GOODS IN MEXICO

1. WRITTEN AGREEMENTS AND DOCUMENTS

Although a written agreements are not necessary in Mexico to consider an international commercial transaction valid and enforceable in court, documentary evidence substantially helps to bring a stronger case upon collection and make for shorter proceeding.

International companies should to support the sale of goods with a formal written contract.

2. DOCUMENTS IN LIEU OF CONTRACTS

In lieu of such a contract they should try to have hard evidence on every detail about the transaction with the use of relevant information in signed documents, and with exchange of faxes and/or mails. Such relevant information is:

- (i) Statement from the debtor on its identity and location;
- (ii) Terms of sale;
- (iii) Parties' obligations, the
- (iv) Status of the amount in debt.

Such conditions can be achieved by implementing the following documents:

A. CREDIT APPLICATION BY THE BUYER

This represents an essential document to support a claim. It will be important to include, among others, the terms of sale, the debtor's identity, the authorized personnel to make purchase orders, and personal guarantees by key shareholders.

An original signed copy of such application must be requested at some point during the initial stages of the transaction.

B. PURCHASE ORDERS (PO's)

Equally important is to have documents that prove that certain goods were requested (thoroughly specified), that buyer promised to pay on certain terms, and to receive such goods on a specific location.

Such PO's are only to be considered if submitted and signed by appropriate personnel. The carrier can also help request the original signed PO.

C. RECEIPT OF GOODS SOLD

This is fulfilled by handling and obtaining a proper bill of lading by the carrier. The carrier must be instructed to specify the date of delivery, and obtain the full name of the person receiving the goods and obtain its acknowledging receipt signature.

If there is no carrier because buyer is taking care of freight or transportation, a receipt for such goods must still be obtained by the buyer.

III. MEANS OF SECURING PAYMENTS AVAILABLE IN MEXICO

As follows are the most common and helpful legal instruments for securing payments in financed sales in Mexico:

1. COMMERCIAL PLEDGE.

This pledge is a device that creates a security interest on debtor's personal or "movable" property, such as goods recently acquired out of an international sale.

For years, Mexican law required that goods securing a credit be delivered to the creditor (supplier-seller). Now, recent amendments to the Negotiable Instruments and Credit Transactions Law (May, 2000) allow creditors to retain an interest in the pledged property while debtors retain possession.

Another feature of this new pledge is the possibility of creating a security interest in present and future collateral, as well as to secure present and future obligations. Future collateral include after-acquired property, proceeds, account receivables, etc.

2. MORTGAGE.

The mortgage agreement allows a creditor to establish a security interest in the debtor's real estate property to secure payment of any credit with priority over other creditors.

Upon default of the obligation secured, the creditor has the right to request the foreclosure of the mortgaged property before a judicial court and obtain payment of its debt with the proceeds derived from the foreclosure.

3. TILE RESERVE-CONDITIONAL SALE.

Here the seller reserves title to the goods sold until buyer completes full payment. This method is effective and appropriate when the goods sold can be identified and can be recorded at the Buyer's Merchant File at the Public Registry of Commerce of the Buyer's place of business.

Proper recording allows a seller immediate repossession of the goods in case buyer defaults payment, even in bankruptcy or strike proceedings.

4. BOND.

In a bond the obligor guarantees the fulfillment of an obligation of a third party buyer-debtor. Bonds are usually granted through bond agreements.

Bonds can be granted by private individuals or companies, but are usually granted by government chartered bonding companies.

If the bond is granted by a private individual or company as obligor, the obligor is usually the main owner of the buyer-debtor company, and should pay with its personal assets in the event of default by the buyer-debtor. Bond obligors can be sued first regardless of the action against the original buyer-debtor being exhausted or not.

Private bonds are usually called internationally as guarantees.

5. GUARANTEE.

Bonds are also known internationally as a "guarantee." Guarantees are also known as a personal guarantees or unconditional endorsement guarantees.

These are usually unilateral declarations. They are often granted by individuals or companies related to the third party buyer-debtor, and guarantors are jointly and severally liable for the debt of the buyer-debtor.

Guarantors can be sued first regardless of the action against the original buyer-debtor being exhausted or not.

6. LETTER OF CREDIT.

Through a letter of credit the issuing bank commits up front to pay on behalf of buyer-debtor a specified amount of money to the seller-supplier when presented with a specified set of documents evidencing delivery of the goods: invoices, packing list, bills of lading, etc.

Although this is the safest way of securing payment, it is also the more expensive and difficult to get since the buyer will have to secure a line of credit from the issuing bank and the banks charge high commissions.

A letter of credit issued by a Mexican bank and dishonored can be enforced against the bank through summary proceedings.

7. PROMISSORY NOTE.

It is advisable to have debtors sign promissory notes ("pagarés") for current or past due accounts. This helps by limiting defensive arguments and excuses a debtor may have in responding to a claim in court. This also enables a creditor to obtain an immediate attachment upon filing a complaint before the court. Drawing up a promissory note is fairly simple and promissory notes follow similar principles worldwide. Dishonored Promissory Notes can be enforced against the issuer through summary proceedings.

8. DEBT ACKNOWLEDGMENT.

It is advisable to have buyer-debtors sign a Debt Acknowledgment ("Reconocimiento de Adeudo") for current or past due accounts.

These Debt Acknowledgments have to be signed before two witnesses. Debt Acknowledgments do not have to be executed before a Notary Public or registered at the Registry of Commerce to be valid; however that is advisable to have hard evidence of their existence, and to notify third parties once registered.

A dishonored Acknowledgment of Debt Agreement can be enforced against the debtor through summary proceedings.

IV. IMPORTER'S LICENSE

Any individual or legal entity, such as the Mexican Subsidiary of a foreign company, that will be bringing products into Mexico on a commercial manner, it must be registered at the Importers Registry.

This Registry depends on the Ministry of Treasury and its purpose is to have well established companies as importer and to avoid contraband.

The Importers must be duly incorporated, registered at the registry of commerce, and at the Federal Registry of Tax Payers and be current in their tax obligations.

For occasional imports you can use the services of an international courier company, or a Mexican customs broker. Customs brokers usually have importing/trading companies that can provide such service for a fee.

V. TECHNICAL ASSISTANCE AND LICENSING

Another way of doing business **"with"** Mexico without creating a permanent establishment is to enter into a technology transfer or licensing agreement with a Mexican Party.

Such agreements include:

- (i) License or authorization of exploitation of trademarks, patents or improvements, or industrial designs and utility models;
- (ii) Assignment of trademarks or patents;
- (iii) Supply of technical know-how and technical assistance in any form;
- (iv) Supply of basic or detailed engineering;
- (v) Rendering of advisory, consulting and supervisory services;
- (vi) License of copyrights that involve an industrial application; and
- (vii) Licensing of software.

A combination of the foregoing licensing agreements (i.e. trademark licensing and know how) are Franchise Agreements, which are very popular in Mexico.

A common method used by businesses seeking to increase their profile and profits is to enter into a franchise agreement. Under a franchise agreement the business will allow other companies to purchase the "model" of their

business, common examples of franchises are Subway and McDonalds who benefit from increased revenue and profile but control the brand. For a franchisee they can rely on ready made goodwill.

VI. ENTITY OF CHOICE FOR DOING BUSINESS IN MEXICO

International companies frequently ask which is the best corporate vehicle to establish their operations in Mexico. Their main objective is to have a direct handle of the Mexican Market.

These guidelines are for general information, based on 30 years of experience and do not constitute specific business, legal or tax advice. Once the decision to invest in Mexico is taken we recommend verify with local counsel and tax advisor.

1. COMMON INITIAL OBJECTIVES FOR ESTABLISHING IN MEXICO

International companies with experience in selling their products or providing their services through local commission agents or reseller-distributors have the question as to "how" they enter into such market.

The following are common denominators and similar objectives by international companies that want to establish in Mexico:

1. Initially establish in Mexico with a light structure to develop the Mexican market;
2. The Headquarters are abroad and wish to keep the main management and control of the local entity. This management group will not reside in Mexico.
3. Keep a legal representative for Mexican matters, who will be residing in Mexico with certain managerial activities and limited powers of attorney, including signing of contracts, hire and fire personnel, and opening and closing bank accounts.
4. The Mexican Entity will also have local agents with powers of attorney for specific matters such as obtaining the tax ID, file tax reports, act before government agencies, file claims and perform collections. Normally these powers are given to local accountants and lawyers.
5. To ensure technical and commercial and follow-up the International Company can enter with the Mexican Entity into sales promotion and commission agreements, and/or into technical assistance and management agreements; and
6. Foreign Headquarters employees can come and go, or will reside in Mexico for periods of time. For them business visas can be obtained. These visas can be sponsored by the International Parent Company or by Mexican Entity.

To achieve these objectives, the International Companies usually face the following options to establish in Mexico, and they need to determine which the best one is:

- Branch;
- Representative Office;
- Subsidiary; or
- Joint venture.

2. BRANCH:

A branch will be a new location, division, department, office, or extension of the International Company. A branch will not be a separate legal entity from the Headquarters of abroad.

A branch will not have its own capital equity or its own board of directors, and it will be totally controlled by the International Company abroad.

A branch will have to use in Mexico the International Company's name the since the branch is a part of such International Company.

Also a branch will not be considered as an independent employer for Mexican labor purposes. The Foreign Headquarters will be considered the employer of record for Mexican law.

A branch in Mexico known as a "sucursal". Foreign companies when think about a branch, want it for generating income. This is known as: "Sucursal con Ingresos."

3. REPRESENTATIVE OFFICE FOR PROMOTION PURPOSES

Foreign companies, whose intentions are just to promote their products or services without closing sales in Mexico, or charity institutions or foundations, will look to have a "Sucursal sin Ingresos" also known as Representative Offices or "Oficina de Representación sin Ingresos". These are branches with no income.

4. SUBSIDIARY:

A subsidiary will be an independent legal entity incorporated in Mexico. It will be Mexican Company.

Note that Mexico has the requirement to have at least 2 shareholders/partners for each legal entity.

Usually foreign companies become the parent of the Mexican subsidiary, owning or controlling most of the equity of the subsidiary; the minority may be owned by another equity holder from its same group, or even from Mexico. This is situation is commonly known as "wholly owned subsidiary".

No need to have a mayoralty Mexican equity in any company except for strategic trade areas reserved to the Mexican Government or to Mexicans.

The Subsidiary will be defined by its own By-Laws, and will be a stand alone company, and will have its own (i) capital structure, (ii) scope of business, (iii) administration, and (iv) agents, with powers on behalf of the subsidiary.

The subsidiary's accounting and tax treatment will be totally independent from any other entity abroad (contrary to a branch).

The subsidiary will be considered as an independent employer for labor purposes.

5. JOINT VENTURE:

A joint venture is normally achieved by entering into an association agreement with a local Mexican Partner. Joint Ventures translate into an agreement

A Joint Venture Agreement (also "JVA") is a private agreement which can take any form or name, but is one where two ore more individuals or legal entities jointly undertake a business venture for a period of time.

Even though verbal/oral agreements are valid in Mexico, a written JVA is recommended.

A JVA is recommended before establishing a company or performing any deal with local associates in Mexico. Joint Venture Agreements are usually entered with local Mexican Partners because they already know the Mexican market and can provide the International Company with easier accesses to the market.

International Investors frequently wish to enter into Joint Venture Agreements with their local commission agents, or reseller-distributors.

The JVA can take any form that the parties decide. The exact type of business venture determines the liability and tax treatment.

Sometimes a JVA takes the form of an "association in participation agreement" with an active partner (in Mexico) and a silent partner (abroad).

In a JVA, the Parties agree on how they will provide their respective contributions, share risks and divide profits. It defines the "business equation" among the parties.

However, most of the time a JVA results in further establishing a Mexican company, whose By-Laws become public and are registered at the Registry of Commerce.

We recommend that the "business terms" be only included in the JVA, but not in the By-Laws of the Mexican company, since third parties will have access to privileged commercial information and the "business equation" among the parties.

The reason for this is that the By-Laws of a Mexican company are registered before the Public Registry of Commerce, and the terms of the JVA are not.

Both, the terms of the JVA and the provisions of the By-Laws, have the same validity among the parties. Nevertheless, the By-Laws will also have effects before third parties.

The By-Laws typically refer only to the (i) capital structure, (ii) scope of business, (iii) administration, and (iv) powers of attorney of agents of the company.

The sole existence of the By-Laws of a company without a previous JVA among the parties could lead to misunderstandings.

A. ADDITIONAL AGREEMENTS DERIVING FROM THE JVA:

Aside from the creation of a Mexican Company, the JVA usually results into additional agreements among the Parties, to be carried through the Mexican Company, such as: financing; technical assistance; management consulting; sale of assets; marketing services; distribution; labor support; supply; etc.

The parties individually can enter into agreements in all these areas.

6. TWO BASIC OPTIONS FOR DOING BUSINESS: (I) BRANCH, OR (II) SUBSIDIARY

Considering the above explanations and from experience, we can basically divide the options for legal entity in Mexico in 2 (two): (i) a branch, or (ii) a Mexican subsidiary or local company.

A. GENERAL OPINION

From experience, and considering the typical business objectives of international companies doing business in Mexico, and how to best protect the international investors under Mexican legislation, in our opinion is preferable to establish a COMPANY in Mexico (subsidiary), rather than a BRANCH.

Note however that for business reasons some clients are required by their customers to establish branches rather than subsidiaries. For example that happens when the customers are government agencies.

B. REASONS FOR CHOOSING A MEXICAN COMPANY INSTEAD OF A BRANCH

The decision of establishing a BRANCH or a MEXICAN COMPANY is usually related to:

- (i) Difficulties and timing in setting up in Mexico,
- (ii) Corporate, accounting and tax control, and
- (iii) Liabilities from the corporate, labor and tax perspectives.

Legal Support for Business

From experience, sales promotion offices, that will always be promoting sales without engaging into trade, tend to be established as branches in the form of representative offices with no income.

The same is true for international charity institutions or foundations that give grants and economic assistance to groups in peril or under health risks ("sucursal sin ingresos").

However if the International Company wishes to get involved into the local market for selling products or servicing to clients and generating income, the best vehicle will be to establish a Mexican company.

Locally incorporated Mexican commercial companies have no obligation to yield profits, nor obligated to generate any sales. Tax reports can be declared in zeros ("0") until profits start to appear.

a. STEPS AND TIMING IN SETTING UP A COMPANY AND A BRANCH:

In practice the steps to incorporate a Mexican Company and to register a Branch in Mexico are very similar.

However, the time frames and costs of incorporating a Mexican Subsidiary are less for than registering a Branch.

To establish a Branch in Mexico, the International Company will have to take a corporate resolution abroad resolving on establishing the Branch in Mexico. The International Company will also need to grant special powers of attorney a local agent (our Firm) to establish the Branch in Mexico.

Said corporate resolutions and POA will have to be notarized abroad and legalized abroad ("Apostille" or "consularization" at the Mexican Consulate abroad).

Legalization, through an Apostille, means that the foreign country in question is part (together with Mexico) of the Hague Convention on the Legalization for Foreign Public Documents, for validating documents of the Member Countries. You can find information on the Apostille legalization process in many Web Pages.

Canada is not Member of the Hague Convention.

This process is usually by notarizing the document and taking it to the Apostille Agency or the Mexican Consulate abroad in which the document is issued.

All these documents, plus the Evidence of the legal existence of the Company abroad (certificate of good standing), and its By-Laws and Articles of Incorporation, have to be also legalized, and then sent to Mexico, to be translated by certified Mexican translator.

Thereafter, we will need to present those Documents to the Mexican Foreign Investment Authorities (Ministry of Economy) and file for a Permit on behalf of the International Company to establish the Branch in Mexico, and thereafter continue the fling with the Ministry of Foreign Affairs.

Once approved all Documents should be notarized in Mexico, and file for the Commercial and Tax Registrations.

Opening a branch will place the International Company within the jurisdiction of the Mexican (i) laws, (ii) authorities, and (iii) local courts.

On the other hand, establishing a Mexican Company, we will just need to get:

1. The approval of a corporate name for the Mexican Company, from the Ministry of Foreign Affairs/Ministry of Economy;
2. Get from the International Company abroad special powers of attorney in favor of our Firm to incorporate the Mexican Company (legalized-apostille);

Legal Support for Business

3. Draft the local By-Laws and First incorporating Meeting deciding on (a) Capital Structure, (b) Management, and (c) local special agents; and
4. Get those POA notarized in Mexico.

Once that is done, the Company becomes incorporated.

Thereafter we will apply for the Commercial and Tax Registrations, and notify the Foreign Investment Registry that the Company has been incorporated.

b. CORPORATE APPOINTMENTS AND RESOLUTIONS EFFECTIVE IN MEXICO

From the corporate point of view, it will be more burdensome to operate a Branch than a Company in Mexico because of the following.

Branches or Mexican Companies need to appoint agents with corresponding powers for carrying out several aspects of their daily businesses in Mexico.

Under Mexican commercial legislation, such appointments and powers need to be granted in writing, through a corporate resolution, or delegation from an administrator or empowered agent.

Thereafter such resolution or delegation should be formalized before a Mexican Notary Public, and many times registered at the Mexican Registry of Commerce.

These appointments and powers may fall on one or more persons. Some times these appointments and powers are needed for urgent filings or to answer litigation claims.

In the case of a Branch, any corporate resolution from the International Company, resolving on powers and appointments need to happen at the Headquarters of the International Company and then make them valid in Mexico. Therefore the stages will be:

1. The International Company should hold a Corporate Resolution abroad;
2. Obtain Notarization abroad of such Resolution;
3. Obtain Legalization (Consularization or Apostille) abroad of such Resolution;
4. Send in Original to Mexico;
5. Prepare certified translations into Spanish of such Resolution and Legalization;
6. Notarize the translated Resolution and Legalization with a Mexican Notary; and
7. Further Registration at the Tax and Commercial Registries.

From experience, the foregoing steps will require around 3 (three) WEEKS or more, with the additional burden and cost.

The danger of time delay arises in case of emergencies to fulfill with business operations, or for government filings, claims or litigations.

In a Mexican Company, most times the corporate resolutions just require:

1. Preparing paper minutes (previous instructions from abroad) including the terms of corporate resolutions;
2. Send those Minutes, and obtain the signed proxies from shareholders/partners abroad by e-mail;
3. Take the Minutes to the Mexican Notary and
4. If necessary, send the notarized minutes and resolutions to registration.

This usually takes between 2 (two) to 3 (three) DAYS, and is less costly.

c. LIABILITIES (CIVIL, TAX, LABOR)

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

A Mexican subsidiary company will insulate (protect) the International Company, abroad, from liabilities in Mexico derived from the activities of the subsidiary that may result in civil (tort), tax, labor liability (except, possibly, for product liability).

This because a Mexican company/subsidiary will be a different entity than the International Company abroad, and therefore any liability or claim, by any third party, will remain in Mexico and will not affect the Parent Company abroad.

On the other hand, a Branch will make the International Company abroad, totally responsible for what will happen with its Branch in Mexico.

VII. ESTABLISHING A COMPANY IN MEXICO

1. INCORPORATION

Usually the incorporation of Mexican Company (technically a "Subsidiary") takes between 2 (two) to 4 (four) weeks, depending on how fast we can get all the information requested from the client.

The initial documents and information will be: Special Powers of Attorney (in our favor) to incorporate the Subsidiary, certificate of incorporation of any legal entity abroad that will hold the equity of the Subsidiary, the names of local agents in Mexico for government and tax filings, and the By-Laws and First Incorporating Meeting Minutes. We will provide you with those Special Powers, By-Laws, and Minutes.

Mexican Law requires two partners/shareholders for any Mexican legal entity (local requirement). Those partners/shareholders could entities or individuals. For example, one can have 99.99% and the other 00.01% of the equity.

2. TYPES OF COMPANIES (SRL or SA)

There are several types of companies to incorporate in Mexico, however the most common are a:

- Limited Liability Company ("Sociedad de Responsabilidad Limitada" or "SRL"), which is like a closely held corporation for a close group of owners; or
- Limited Liability Stock Corporation ("Sociedad Anónima" or "SA"), which is a stock corporation with diverse owners.

On a Tax note: If the Parent Company has in its country of origin a tax treatment of a "flow or pass through" (taxed only once at "distribution" but not at "corporate" level), it will be best to establish in Mexico an SRL.

For example in the United States the following legal entities: S Corporation, LLP, or LLC are treated with "flow or pass through" tax treatment, and the IRS (Internal Revenue Service) has resolved that they can "mingle" (mix) its profits with those of the Mexican SRL subsidiary [but not with those of a SA (stock corporation)].

In any case, in Mexico, both the Stock Corporation (SA) and the Limited Liability Company (SRL) have the following same characteristics:

- (i) The shareholder's/partners' liability is limited to their capital equity contribution;
- (ii) The directors are liable for loyally and diligently administering the Company (they can live abroad);
- (iii) Must have at least 2 shareholder/partners (can be foreigners);
- (iv) No tax on dividends if Mexican Generally Accepted Accounting Principles are followed.

Main differences:

- (i) The SA can quote at the Mexican Stock Exchange, but not the SRL; and
- (ii) The SRL is a closely held company and appropriate for a single owner.

There is no exchange controls in Mexico. Any repatriation of dividends, and any other transfers of monies (e.g.: interest or royalties) are possible.

3. INCORPORATION - STEPS:

The process for the incorporation in Mexico basically implies the following:

- Filing for the Incorporation Permit;
- By-Laws (English-Spanish);
- Incorporation Powers to be granted in abroad (English-Spanish);
- Coordinate the obtainment of Legalization-Apostille of the POA abroad;
- Coordinate certified translations into Spanish of Legalization-Apostille;
- Incorporating Partners' Minutes to include: capital, management and powers;
- Coordinate your accountants and their appointment for tax filings;
- Coordinate the Notary Public and sign the Incorporation Deed;
- Registration at the Tax Registry);
- Registration at the Registry of Commerce;
- Registration at the Foreign Investments Registry; and
- Communications with you and all relevant parties in the process.

VIII. BASIC TAXES

1. CORPORATE TAX:

The Rate applicable for this tax will be 30% for 2013. It is calculated after subtracting from the gross income the deductible expenses.

Monthly advanced payments, which will be credited against annual tax.

No tax on Dividends when those Dividends are paid from profits that previously paid Income tax under special rules.

There are very formal requirements to obtain the deduction of expenses from the taxable basis of income tax.

2. CASH-FLOW FLAT TAX (IETU):

This Cash-Flow Flat Tax is called IETU ("Impuesto Empresarial a Tasa Única") that applies a 17.5% rate to all the cash income received less authorized deductions during the monthly period.

This payment can be offset with the Corporate Tax during the same calendar year under certain circumstances.

3. VALUE ADDED TAX (VAT):

This Tax is calculated on top of all commercial transactions on products and services provided among companies and individuals.

In 2013 the general VAT rate on the price of the product or service is 16% and 11% in Border Zones.

The VAT is not levied on food and medicines, and certain services.

The VAT rate is added to the price of the products or services to be paid and charged over to the buyer.

The seller, in turn, can offset the VAT received against the VAT paid when, in turn acquired other products or services in the month, and at the end of the year.

Most imports of products have a VAT applied. This tax is paid through the customs broker.

IX. LABOR LAW, HIRING, OUTSOURCING, FRINGE BENEFITS, TERMINATION, LABOR UNIONS.

This Brief includes the recent Labor Reform to the Mexican Labor Law published on November 30, 2012 (the "Amendment") entering into effects on December 1st, 2012.

The Labor Law provides for the minimum rights of employees. The Law in general favors employees.

The Law does not accept employment "at will", so termination at will is not possible. Therefore, is advisable to have well drafted labor agreements that well define and limit the rights and obligations of employees, such as trial and training periods, schedules, work place, scope of employee's activities, overtime, confidentiality obligations, etc.

The success of any business operation in Mexico will depend upon the quality of the individuals hired, and on how they will be hired. That is why, if possible, we recommend previous "employment screening" and "background checks" before hiring, particularly at positions of trust.

1. FOREIGN EMPLOYERS WITH EMPLOYEES RESIDING IN MEXICO:

The Labor Law also applies to employees that work in Mexico who are foreign or Mexican, who are hired by a foreign employer.

When a foreign national resides in Mexico for more than 183 days within a 12 month period such foreign employee is solely responsible for registering with the Mexican tax authorities, obtaining a tax ID, and filing monthly and annual tax returns.

A foreign employer who is an employer is not obligated to make withholdings on employees residing in Mexico.

The foreign or Mexican employee who fails to comply with such registrations and tax filings will be subject to penalties and surcharges. The foreign employer residing abroad will not be jointly liable.

Notwithstanding the foreign entity employer will be regarded as such for all other labor-related obligations such as severance payments.

2. PERMANENT ESTABLISHMENT FOR TAX PURPOSES (MEXICAN BRANCH):

Foreign companies must be careful of not giving to their local employees in Mexico powers of attorney to enter into business contracts on their behalf.

If an employee residing in Mexico enters into agreements, or otherwise engages and obligates the foreign resident company employer into business deals, the foreign employer it will be deemed to have a "permanent establishment" in Mexico for tax purposes, and considered to be "doing business in México" and "de facto" will create a branch of the foreign company in Mexico.

In such case, the foreign company employer will be obligated to pay Mexican corporate income tax, and subject to all the Mexican tax system.

3. SALES AGENTS OR PROMOTERS:

This will not occur if the employee residing in Mexico will only "promote" the goods or services of the foreign resident employer.

In this case the employee can take orders and receive payments from customers, but never accept orders, or engage the foreign resident employer.

Sales agents or sales promoters, or similar agents, are considered employees when their activity is permanent, except if they participate in isolated operations, or have other "clients" for whom they provide services, in which case they will be independent contractors.

4. LABOR LAW, DRAFTED IN FAVOR OF EMPLOYEES

The Labor law is "strongly" drafted in favor of employees, putting the employers in disadvantage. The success of any business operation in Mexico will depend upon the individuals who are hired, and on how they will be hired. Previous "employment screening" and "background checks" before hiring is recommended.

Examples of how the Mexican Labor law is drafted in favor of employees are:

- No employment "at will" (firing at will) is not possible;
- No legal obligation work "efficiently", unless the labor agreement has well drafted benchmarks, or in case of trial agreements, as indicated below;
- Outsourcing is limited by specialty and not for all the employees (see below);
- Employees are only terminated for a few statutorily defined reasons;
- Employees are always right until proven otherwise by the employer;
- Mandatory severance payments are steep;
- 10% profit sharing distribution (not applicable to the general manager); and
- Labor unions claim title to Union Agreement regardless of the employees' will.

5. DEEMED LABOR RELATIONSHIP ("Relación Laboral" Impuesta):

Note a "labor relationship" is considered to exist if one or both of the following elements are present **(i)** subordination and **(ii)** economic dependency. The Labor Relationship will exist regardless of the existence of a written labor agreement or the will of the parties.

In general terms, subordination means the employee is following the directions and engages in the activities of the employer; and economic dependency means the income of the employee comes in more than 50% from the employer.

Once the Labor Relationship is established, the whole set of provisions of the Labor Law and others derived thereof (such as the Social Security Law and the Workers Housing Fund Institute Law) will apply to both the employer and the employee; and the employee may not waive them.

The Amendment prohibits working conditions that could imply discrimination based on ethnic background, nationality, gender, age, social status, health status, religion, migratory status and sexual preferences.

6. GENDER EQUALITY:

It prohibits requesting certificates of non-pregnancy for hiring women, as well as firing them for being pregnant.

Furthermore, it provides women who adopt a child the right to a six week leave with pay.

7. AFFILIATION TO INFONACOT:

Employers must affiliate their workplace before the INFONACOT (Workers Consumer National Fund Institute ["Instituto del Fondo Nacional para el Consumo de los Trabajadores"]) so that employees may be entitled to receive credit from INFONACOT, which is used for the purchase of consumer goods.

This obligation must be completed before December 1st, 2013 (12 months after the Amendment enters into effects).

8. EMPLOYMENT RELATIONSHIPS:

Under Mexican Labor Law the employment relationships are considered:

A. INDEFINITE TERM

In principle all labor relations are for an indefinite term and cannot be terminated at will by the employer, unless it can be established that are for a defined project or a defined term.

B. DEFINED PROJECT

Are labor relationships that are for a specific works. For example to built up a wall or for a bidding process, or assisting in the drafting of blueprints, etc.

C. DEFINED TERM.

Define term relationships can only be held when they are warranted by the temporary "nature" of the project or work being performed, for example the temporary need to substitute another employee.

Usually define project and term relations go together

9. NEW TYPE OF EMPLOYMENTS RELATIONSHIPS:

The Amendment brought 3 (three) new types of labor agreements. In all 3 (three) cases, the employees will have the same rights (fringe benefits and social security) and obligations of indefinite term employees.

A. SEASONAL AGREEMENTS

When the services required are for specific, periodic and discontinuous works, or which do not require the provision of services throughout the entire week, month or year. The labor agreement will be for indefinite term but the working period will be limited only to the specific season;

B. TRIAL AGREEMENTS

"Trial Periods" to verify if the hired employee has the knowledge and skills needed for the position can be established in expected indefinite time labor relationships or labor relationships that exceed 180 (one hundred eighty) days.

The trial period can not exceed up to 6 (six) months for managing or technical positions, or 30 (thirty) days for the rest of the employees.

C. INITIAL TRAINING AND TEACHING AGREEMENTS

These agreements are designed for an employee to acquire the necessary knowledge and skills needed for the position.

Training and teaching period can not exceed up to 6 (six) months for managing or technical positions, or 3 (three) months for the rest of the employees.

In Trial and Initial Training Agreements the employers may terminate the labor relationship without any responsibility if at the end of trial or training period the employee does not prove to have the necessary knowledge and skills needed for the position.

To that effect, Employer will need a favorable opinion of the Joint Commission on Productivity Development and Training (*Comisión Mixta de Productividad, Capacitación y Adiestramiento*) if Employer has more than 50 employees.

Trial or Training Periods can not be extended or applied simultaneously or successively, to the same Employee for more than one time, even if for different positions or once the employment relation is concluded and another one arises with the same Employer.

If once the Trial or Training Period conclude and the employment relation subsists, then the employment relationship will be considered for an indefinite term and the time of trial or training will be part of the seniority.

10. WORKING SCHEDULE

The Labor Law stipulates a maximum of 48 (forty eight) hours work week.

There are 3 (three) type of shifts:

- (i) Day Shifts are 8 (eight) hours long, and take place are between 6:00 AM and 8:00 PM.
- (ii) Night shifts are 7 (seven) hours long, and take place are between 8:00 PM and 6:00 AM.
- (iii) Mixed Shifts are 7:30 (seven and a half) hours long, and comprise part of the Day and Night Shifts, but never more than 3:30 (three and a half) hours of the Night Shift schedule, otherwise it will be considered a Night Shift.

11. OVERTIME

It is possible to extend working shifts, though never exceeding 3 (three) hours daily or 3 (three) days a week. In this case, overtime will be paid at 100% (one hundred percent) over the corresponding wage for a shift.

If the overtime is over nine hours per week, workers will be paid 200% (two hundred percent) over the corresponding wage for a given shift.

We recommend to include in the labor agreement that for the employee to work overtime he/she should have prior written authorization from the employer. This because in labor trials the burden of the proof is on the employer, so this written requirement will shift the burden of the proof is on the employee.

12. DAILY WAGE

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

An employee should receive at least a minimum general daily wage as defined annually by the National Commission of Minimum Daily Wages.

Such daily wage is determined for geographical area and is calculated and published every year on the Official Gazette.

For Mexico City during 2013 the daily wage equals to Pesos MxCy\$64.73, which represents approximately USD\$5.00.

In practice, hardly any employer pays as low as the minimum daily wage, but is taken as reference.

13. SALARY PAYMENT PER TIME UNIT (PER HOUR)

With the Amendment, the per-hourly payment is now expressly regulated.

The per-hourly payment must be established in writing within the labor contract.

Under the Amendment an employee may not earn less than one minimum daily wage salary per day regardless if said employee worked less than the 8 (eight) hour shift.

Therefore, if an Employee works even for an hour, the Employee will earn the minimum daily wage. Such daily wage will not be fractioned.

14. FORM OF PAYMENT OF SALARIES

The Amendment recognizes and regulates existing forms of salary payments such as bank deposits, debit cards, wire transfers or payments by any other electronic mean.

15. FRINGE BENEFITS.

The Employee is entitled to receive minimum statutory fringe benefits. Such minimum statutory fringe benefits include:

A. VACATIONS

Employees, who have completed one year of service, will enjoy an annual period of paid vacations which will not be less than 6 (six) days.

This period will increase in two working days per year until reaching twelve days, and after the fourth year or services the vacation period will increase in two days for every five years of service.

See the following Table for convenience:

YEARS OF SERVICE	DAYS OF VACATIONS
1	6
2	8
3	10
4	12
5-9	14
10-14	16
15-19	18

B. VACATION PREMIUM

During the enjoyment of vacations period, employees must receive a 25% on top of their normal daily salary as vacation premium per each day of vacations.

C. YEAR END BONUS:

Employees are entitled to receive a Year End Annual Bonus which shall be of at least 15 days of salary and must be paid before December, 20th.

D. STATUTORY HOLIDAYS:

The Mexican Labor Law establishes the following obligatory paid holidays throughout the country:

- January 1;
- First Monday of February on celebration of February 5;
- First Monday of March in celebration of March 21;
- May 1;
- September 16;
- Third Monday of November in celebration of November 20;
- December 25; and
- December 1 is an obligatory holiday every six years for the inauguration of new Federal Administration.

Most business offices, banks and large stores observe religious holidays. This includes the Thursday and Friday of Easter week, November 1 and 2, and December 12 (Virgin of Guadalupe).

E. MATERNITY & PATERNITY LEAVE:

Women will enjoy a 6 (six) weeks paid leave before, and 6 (six) weeks paid leave after childbirth.

Women who adopt a child have the right to a 6 (six) week paid leave.

The Mexican Social Security Institute ("IMSS") will cover 100% of the employee last salary as long as her pregnancy is certified by the IMSS and the filing is complete to cover the dates considering her due date.

Therefore, these payments are also made by the IMSS and not by the employer.

The employer should require the employee to separate from her job during the pre-and postpartum periods (42 days delivery, 42 days after birth).

Said 6 (six) weeks leave periods may be extended to women if they are unable to work because of issues during pregnancy or childbirth. A medical certificate has to evidence that situation. In such extension cases, they will only receive 50% (fifty per cent) of their salary and for a period no longer than 60 (sixty) days.

Mothers may return to their previous post if no more than 1 (one) year has elapsed from the date of childbirth.

During pregnancy, women should not perform jobs that will require considerable efforts and represent a danger to their health in relation with their gestation period, such as lifting, pulling or pushing large weights, that produce trepidation, standing for a long time, or that may alter or could alter their psychological and nervous state;

Childcare services will be provided by the Mexican Institute of Social Security and the employer is not obligated to provide them.

Under the Amendment now male parents also enjoy a 6 (six) weeks paid leave in case of child birth or adoption.

Male parents also have the right to get a paid a paternity leave for 5 (five) days after the child is born or is adopted.

F. ADAPTATIONS FOR PERSONS WITH DISABILITIES:

Workplaces with more than 50 (fifty) Employees must have appropriate facilities for access and labor use for people with disabilities.

Employers must adapt their facilities before December 1st, 2015 (36 months from entering the Amendments into force).

16. ALIMONY:

Under the Amendment now the Employer is obligated to inform the competent family court and the alimony creditors in the event the Employee ceases to provide services at the workplace, within 5 (five) working days after the Employee ceases working.

17. LABOR RISKS AND INDEMNITIES:

Ministry of Labor will be updating (i) compensations for occupational diseases, and (ii) valuate of permanent disabilities resulting from labor risks, by June 2013 (6 months from entering the Amendments into force).

18. PROFIT SHARING:

The employees are entitled to receive a 10% of the annual net pre-tax earnings of the Employer to be distributed among all employees other than certain high officers such as the general manager, general director (Profit Sharing Distribution).

19. SERVICES COMPANIES FOR THE EMPLOYEES (OUTSOURCING):

If the operation will have several employees many companies consider incorporating additional services companies or use the services of independent outsourcing companies for their employees.

Since employers are obligated said to said Profit Sharing Distribution the additional outsourcing company will reduce such Profit Sharing Distribution since such companies do not work on a profit basis but under a minimal labor cost plus basis.

20. OUTSOURCING UNDER THE NEW AMENDMENTS:

Labor outsourcing is now defined and is more strictly regulated.

Outsourcing is only accepted when an Employer/Contractor (Contractor) supervises the works or services of its employees performed in favor of a Company/Client (Client).

Outsourcing is not allowed when the Client deliberately transfers all of its Employees to the Contractor in order to reduce the employees' labor rights.

The Amendment provides 3 (three) requirements to be met so that the Company/Client is not vicariously considered as employer of outsourced employees:

- (i) Contractor cannot cover the entirety of the activities of the work place of the Client. This means that Contractor cannot have all employees of the workplace;
- (ii) Contractor must be in the position to justify the outsourcing services due to its specialized nature; and
- (iii) Contractor cannot cover tasks that are equal or similar to those tasks already performed by employees of the Client.

If any of these 3 requirements is not met the employees of the Contractor working in the work place of the Client will be automatically considered employees of the Client for all labor and social security legal effects (including Profit Sharing Distribution).

In addition, Contractor must comply with the documentation necessary for its operations, its obligations before the Social Security Institute, hygiene and environment working conditions, among others.

When outsourcing becomes warranted, the Client must verify that the Contractor renders its outsourcing services in compliance with the Labor Law.

21. PAYROLL CONTRIBUTIONS FOR SOCIAL SECURITY.

Such contributions are made to: **(i)** the Mexican Social Security Institute – “IMSS”, **(ii)** Institute of the National Housing Fund – “INFONAVIT” and **(iii)** Retirement Saving System – “AFORES”. Payroll fees and taxes are deductible for income tax purposes.

A. MEXICAN SOCIAL SECURITY INSTITUTE – “IMSS”

The Mexican Social Security Institute is the Governmental Agency that guarantees the employee’s right to health and medical assistance.

The registration before the Mexican Institute of Social Security relieves the employer of any liability in connection with job-related illnesses or accidents and provides certain benefits to the employee and her/his dependants, including:

- i)** Medical and hospitalization insurance for any illness, accident or maternity;
- ii)** Insurance for disability, old age, unemployment during old age and death, and child care.

Social Security contributions go up to approximately 22.57% based on the payroll salary. They should be paid by the Employer at the Offices of the Social Security Institute by registering as an employer.

Social Security contributions must be withheld and paid by an employer and remitted to the Mexican Institute for Social Security every month.

Additionally, employers are required to contribute to their employees’ Social Security. Both contributions will be based on a percentage of the employees’ wages.

The following rates are applicable:

- i)** Sickness and maternity - approximately 8.75% by the employer and 1% by the employee;
- ii)** Invalidity- 2.80% by the employer and 3.125% by the employee; and
- iii)** Retirement fund, old age, severance pay- 5.150% by the employer and 1.125% by the employee.

B. INSTITUTE OF THE NATIONAL HOUSING FUND – “INFONAVIT”

The Institute of the National Housing Fund is a financial institution whose basic objective is to provide mortgage credit in Mexico to low-income workers in private sector corporations.

The registration before the Mexican Institute of Social Security bind the employer to pay a bimonthly 5% fixed payroll tax on the employee’s wage, and contributing to a federal program which objective is to provide benefits allowing its employees to more easily acquire a home.

C. RETIREMENT SAVING SYSTEM – “AFORES”

The Retirement Savings System is a social security benefit additional to those established by the Law on Social Security. Employers, Government and Employees make contributions to form Employees Retirement Savings System; such contributions are made depend upon the payroll salary to the Retirement Fund Administrators.

The Retirement Fund Administrators are Mexican Financial Companies that specializes in managing and investing the Employees’ savings for retirement.

22. PAYROLL TAXES

Employers that have personnel and pay them wages (in cash or in kind) must pay Payroll Taxes (“Impuesto sobre Nóminas”), and be registered under a State Registry to pay the local Payroll Tax at the rate determined in each State.

In the case of Mexico, D.F. (Mexico City), such Payroll Tax is a flat rate of 2.5%.

23. LABOR TERMINATION AND SEVERANCE PAYMENTS

The mandatory severance payments in case of termination of labor relationships are based on the current daily wage of the employee.

The concept of wage takes into account any type of premium, bonus, commissions or any other payment that the employee is entitled to receive from the employer, both in Mexico and abroad, derived from his/her labor relation including additional economic benefits provided by the employer, such as, a car, club fees, etc.

If the employee is compensated on the basis of commission for his/her services, to determine the daily salary from such commission, the total monies received from commissions in the last calendar year for such services will be divided by 365, or if the employee worked for less than a year the monies received will be divided by the actual period worked.

24. TYPES OF TERMINATION OF LABOR RELATIONSHIPS:

For paying severance a distinction is made between the types of labor termination:

- (a) without fair cause;
- (b) with fair cause; and
- (c) by mutual agreement.

The indemnification rights that an employee could claim are different in each case.

A. TERMINATION WITHOUT FAIR CAUSE.

Employees may be dismissed without "fair cause," as statutorily defined.

The term "fair cause" is narrowly defined basically to include only significant violations by employees of employment terms to the detriment of the employer.

A List of those “Fair Causes” are indicted below, under Termination with Fair cause.

In the event of dismissal without fair cause, the terminated employee will, at his/her option, have the right to:

- i. Demand reinstatement, unless he/she is a trusted employee ("empleado de confianza"), in which case he/she will only receive payment of certain termination indemnities.
- ii. The Labor Law defines trusted employees in the context of their responsibilities given the nature, importance and confidence of his/her services and his/her relation with the employer.

Sales agents, for example, are considered trusted employees.
- iii. An employee not reinstated will be entitled to receive:
 - (a) Three (3) months of salary;
 - (b) Twenty (20) days of salary for each year of employment;
 - (c) Seniority premium equal to twelve (12) days salary per year of employment, with a maximum cap of twice (2) the minimum daily wage per day;
 - (d) Proportional share of vacation, Christmas bonus, and profit sharing for the year in which the employment was terminated; and
 - (e) Salaries accrued from the date of termination to the date of payment of indemnities.

B. TERMINATION WITH FAIR CAUSE

An employer may dismiss its employee at any time based on a fair cause (rescission). In such case, the employee, as trusted employee, can ask for the following accrued rights:

C. TERMINATION BY MUTUAL AGREEMENT

A termination by mutual agreement finalizes a labor relation without the fault or breach of obligations by any of the parties. In this case, the employee will be entitled to the following accrued rights:

- i. Proportional part of the following payments for the year during which the employment was terminated, calculated as follows:
 - (a) Vacation: at least 6 working days to be compensated at 125% of salary per day;
 - (b) Christmas Bonus: at least 15 days of salary;
 - (c) Profit Sharing: 10% of pre-tax earnings of the company to be distributed among all employees depending upon the number of days worked in the year and the amount of salaries received in such year; and
- ii. Seniority premium in the amount of twelve (12) days of salary per year of service, provided that the employee has completed 15 (fifteen) years of employment.

Experience has shown that an employee will typically not consent to a mutual termination unless the employer is willing to pay an additional termination indemnity.

Depending on the circumstances, such indemnity is usually less than what the employee would have received under a termination without fair cause.

Legal Support for Business

A termination agreement to be entered into with the employee should be ratified by the local Labor Arbitration Board.

If the agreement is not ratified, theoretically such agreement could be open to challenge by the employee arguing unfair dismissal.

The Fair Causes under the Labor Law are the following, when the employee:

1. Provides false certificates or references or has claimed a capacity, abilities, or skills which lacks. The employer may only claim this cause of termination within 30 days from the time the employee started its services;
2. Performs, during labor time, incurred in lack of probity or honesty, violence acts, threats, slander, or bad treatment against the employer, relatives, or staff or administrative personnel of the company, except that provocation existed, or that the employee acted in self defense;
3. Performs any of the acts in the foregoing paragraph against its co-workers and as a consequence the discipline at the working place is altered;
4. Performs any the acts mentioned in paragraph 2, outside of labor time, against the employer or his family, or directive or administrative personnel, in a manner so grave that make impossible the continuation of the labor relationship;
5. Intentionally produces material damages during labor time or as a consequence its labor tasks, in either the premises, their infrastructure, in the machinery or instrumentation, raw materials and other objects related with the job;
6. Unintentionally but negligently directly produces any of the damages mentioned in the foregoing paragraph as long as they are grave;
7. Compromises the security of the working place or personnel because of his inexcusable imprudence or inattentiveness;
8. Performs immoral acts in the working place establishment or place;
9. Reveals manufacturing secrets, or publishes reserved matters, causing damage to the employer;
10. Has more than 3 (three) assistance faults during a period of 30 (thirty) days, without the employer's permission or with out a justified cause;
11. Disobeys the employer or its representatives, without a justified cause, as long as it relates to the agreed scope of work;
12. Does not adopt the preventive measures or to follow the indicated procedures to avoid accidents or diseases;
13. Attends the work place in a drunken state or under the influence of any narcotic or nerve-racking drug, unless, in the latter case, that there is a medical prescription that justifies it. Before the worker begins its labor; however the employee must give notice to the employer of such fact and present the medical prescription.
14. Has received a final court resolution imposing imprisonment so it impedes the fulfillment of the working relationship;

Legal Support for Business

15. Incurs in lack of probity, lack of honesty, acts of violence, threats, injuries or improper treatment against clients or suppliers of the employer (added by the Amendment);
16. Incurs in sexual harassment within the workplace (added by the Amendment);
17. Lacks of the necessary legal documents (as required by the statutes and regulations) required for the rendering services, when attributable to the Employee (added by the Amendment);
18. Any other "similar causes" to the foregoing as long as they are of the same "gave level" and of "similar consequences" in relation the work in question; and
19. In case of "employees of trust", the employer may terminate if there exists a reasonable cause to loose confidence on the employee. The category of employee of trust will depend upon the nature of the functions developed, and not of the formal designation given to such position.

The functions of trust are normally the ones of direction, inspection, vigilance and investigation, when they have a general character, as well as those functions related with personal tasks for the employer within the company or establishment.

25. NOTICE OF TERMINATION

The notice of justified termination of the Labor Relationship by the Employer shall be personally delivered to the Employee at the time of dismissal or noticed to the competent Arbitration and Conciliation Board ("Junta de Conciliación y Arbitraje") within the following 5 (five) working days.

In case the notice is made through the Arbitration and Conciliation Board, Employer must indicate the last registered domicile of the Employee, so that the Board may deliver the notice in person.

26. ACCRUED WAGES

In case the Employee bring any claim for wrongful dismissal again Employer, now the obligation of the Employer to pay Accrued Wages (Salarios Caidos) is limited to 1 (one) year, provided that the Employee wins the claim against its Employer.

In this case the Employee will only receive as indemnity for Accrued Wages:

- (i) An amount equivalent to 3 months of salary ("Fixed Indemnity");
- (ii) 100% of accrued wages during the labor proceeding but limited (capped) for up to 12 (twelve) months ("Capped Variable Indemnity"); and,
- (iii) As of the thirteen month and forward (had the proceeding continued), only the payment of a 2% monthly interest rate on the Fixed Indemnity plus the Capped Variable Indemnity, i.e. 15 (fifteen) months.

27. DILATORY TACTICS

There are new penalties to Attorneys who intentionally delay the labor proceeding. Such penalties vary from fines of up to 1,000 times the general minimum daily wage in effects at the time of imposing the penalty.

28. EXTRA JUDICIAL AGREEMENTS:

Employees and Employers are allowed to reach out-of-court agreements or settlements in order to conclude the employment relationships.

In such agreements, there should be a break-down of the amounts to be delivered to the employee for salary, accrued fringe benefits, and profit sharing.

If the rights of the Employee are not affected, the Labor Court shall approve the agreement, which ratified by the parties shall have the effects of a definite award.

29. MEANS OF EVIDENCE IN LABOR PROCEEDINGS

New forms of evidence in a labor proceedings now include photographs, cinematographic tapes, finger print scanner registries, audio and video recordings, and information and communication technology means, such as, computer systems, optical electronic means, faxes, e-mail, digital documents, electronic signatures and passwords.

30. UPDATED FINES

The amounts of fines in case of failing to comply with Federal Labor Law were updated. In some cases the amounts were increased to more than 1600%, for example, fines consisting of 3 minimum wages were increased in to 50 minimum wages. That is why it will be important to timely comply with new provisions included by the Amendment.

31. LABOR UNIONS AND COLLECTIVE BARGAINING AGREEMENTS:

A. LABOR UNIONS CLAIM TITLE TO UNION AGREEMENTS.

As mentioned labor unions will "claim" title to collective bargaining agreement (union agreement) independently of the employees' choice or will.

It is not mandatory/compulsory for a company to have an agreement with a Union in Mexico; however it is most recommendable for the reasons stated below.

The way the Mexican Labor Law is drafted and interpreted, allows any labor union to claim the Union agreement on a company, and the union, by such claim, can establish its own terms and charges.

Even though the Labor Law gives the impression that once the company has at least 20 employees, the employees can seek the protection of a labor union, in practice it operates differently.

The Labor Unions are the ones that pray on newly created companies (or companies without a labor union agreement) who claim title to the union agreement. Otherwise they will place the company in strike until it obtains the union agreement signed.

B. ENTERING INTO A UNION AGREEMENT WITH A FRIENDLY LABOR UNION.

Therefore, when having several employees, in any trade (industrial, commercial or services) is important to ponder the possibility of entering into a union agreement with a "friendly" labor union.

This will insulate the company from a negative or aggressive labor union that will force the company to enter into a collective bargaining agreement and establish negative labor demands.

Entering into a union agreement with a friendly labor union is preventive measure.

Usually that is done through a "soft" or "sweetheart" agreement under which the Union will not disturb the Company, and just charge the annual fee. Such fee is calculated considering the number of employees involved. For example in the case of around 30 employees the cost will be between US\$1,000.00 to US\$1,500.00 per year.

Legal Support for Business

An unfriendly labor union can claim larger quota and file for strike at the labor Board if such demand is not satisfied.

C. EMPLOYEES CAN ALWAYS REQUEST TO BE UNIONIZED.

Also consider that the right to claim the protection of a labor Union is never waived, so if the employees are not unionized, they can, at anytime, approach a labor union and subsequently make the Company to enter into a labor union agreement.

The Union Agreement does not apply to trusted employees ("empleados de confianza") who have positions of trust and management in a company.

D. EMPLOYEES SHOULD KNOW OF THE LABOR UNION AGREEMENT.

In our experience some employees get restless in belonging to a Labor Union because Labor Unions have a reputation of affecting the economy and business of the Company. Therefore they should receive an explanation that the friendly labor union exists for their protection, and for the protection of the company, from an unfriendly labor union.

Sometimes the employees do not know that they are unionized. This is because the true negotiations are between the union leaders and the company. However, in principle the employees should be aware of the Union Agreement existence.

Note that the union agreement is filed before the Labor Board and any employee will have access to it.

Also any employee may ask its Employer for a copy of the agreement, and the employer cannot deny its review.

X. GOVERNMENT PROCUREMENT IN MEXICO

The following Guidelines are applicable when becoming a supplier of the Federal Government in Mexico.

Note that The State Governments and the different Municipalities, within those States, will also have particular procurement legislation when becoming a supplier under their budgets.

1. FEDERAL PROCUREMENT LEGISLATION:

All Federal Government Procurement in Mexico is governed by the:

- (i) Acquisitions, Leases and Public Services Law, and
- (ii) Public Works and Related Services Law.

They apply to Federal Government Agencies, Companies and Utilities.

They also apply to State Governments, when using Federal Funds for the Project in Question.

They DO NOT APPLY when the LOCAL STATES use THEIR OWN FUNDS. In such case, their own local procurement statutes apply instead.

2. FEDERAL CONTRACTING PROCEDURE:

The Federal Government may contract suppliers through 3 procedures:

- (i) Public bidding,
- (ii) Restricted bidding, and
- (iii) Direct award.

3. SPECIFIC GOVERNMENT SUPPLIER REGISTRY:

Many Government Agencies, Entities and Utilities, require that, all the participants in a Request of Proposal, be previously registered as suppliers at their particular at roster.

For that they should fulfill certain minimum requirements applicable to the trade or specialty of such Agency, Entity or Utility.

For example The Ministry of Defense, The Power Utility Company, The State Oil Company (PEMEX) have their own Supplier Registry.

A. PUBLIC BIDDING:

It is the most common procedure. The Call is published by the Government indicating the requirements to become a Participant.

Those Requirements generally are:

- (i) Entering Fee;
- (ii) Good Standing Evidence;
- (iii) Legal Representative & Evidence of Powers;
- (iv) Domicile Data;
- (v) Resume;
- (vi) Audited Financial Statements;
- (vii) Current Tax Filings;
- (viii) Technical and Economic Proposal; and
- (ix) Bonds for Performance and Use of Advance Payments.

According to the broadcasting media used, the Public Bidding Procedure can be: in person, electronic or mixed;

The awarding will be based on the best (i) technical, and (ii) economic proposal.

The Government may call for a second bid if no proposals meet the original call.

B. PUBLIC BIDS: (i) DOMESTIC, or (ii) INTERNATIONAL:

a. DOMESTIC BIDS

Only Mexican citizens/entities may participate, and the goods to be acquired should be produced in Mexico with at least 50% of domestic content.

b. INTERNATIONAL BIDS:

Should be called when:

- (a) An International Treaty so Requires; or
- (b) No Mexican Providers Exist; or
- (c) A National Bid was Called and No Mexican met the Requirements; or
- (d) The acquisition or project is financed with foreign credits.

Foreigners from of a Country with no reciprocal treatment for Mexican providers can be denied participation in International Bids.

C. RESTRICTED BIDDING AND DIRECT AWARD

Government Agencies may not call for a Public Bid, but rather:

- (1) INVITE A FEW BIDDERS (at least 3) and choose one among the best proposal, or
- (2) Award the contract to ONE ENTITY sine there are no competitors in the market.

Those cases are when:

- (i) Only one entity is the SOLE HOLDER of certain copyrights, patents, trademarks, or other exclusive rights;
- (ii) Due to EMERGENCY / UNCONTROLLABLE CIRCUMSTANCES (i.e. Force Majeure, Acts of God), and in order to avoid additional losses or costs since it is impossible to obtain goods or services on a timely basis;
- (iii) For MILITARY Purposes, or to Guarantee the SECURITY OF THE COUNTRY.

D. LIMITATIONS ON PROPOSALS

The Government may not receive proposals from:

- (i) Those with whom the Awarding Officer shares a personal, familiar or business interest or relationship;
- (ii) Other Government Officers;
- (iii) Those to whom the Government had previously rescinded a contract for default;
- (iv) Suppliers who delayed the delivery of the goods or services related with a Contract currently in issue; and
- (v) Participants who are subject to bankruptcy.

E. CLAIMS BY PROVIDERS

a. DURING THE PUBLIC BIDDING

A Participant may claim the illegality of the bidding procedure or the ward before:

- (1) The Same Government Agency (recourse); or
- (2) The Ministry of Public Function ("Secretaría de la Función Pública") (claim).

Both will investigate and resolve by either:

- (i) Nullifying the act claimed; or
- (ii) Nullifying the whole procedure; or
- (iii) Declare the claim unwarranted.

b. DURING THE PERFORMANCE OF THE CONTRACT

The Contractor may also file a claim before the Ministry if the Government is breaching any provision of the Contract.

F. BREACH BY PROVIDERS

Government may apply penalties to providers who do not timely comply with the Contract obligations.

Such penalties shall not exceed the amount of the performance bond given by the provider under the Contract.

In case of breach, the Government may also terminate the Contract.

XI. FEDERAL GOVERNMENT COMPLIANCE IN MEXICO (ANTI-CORRUPTION)

The Federal Anti-Corruption Law on Government Procurement ("*Ley Federal Anticorrupción en Contrataciones Públicas*") [the "Compliance Statute"], was published on June 11, 2012 (Federal Official Gazette).

1. PURPOSE

To avoid corruption in federal procurement, and penalizing the following Individuals and Entities for breaching the Compliance Statute:

- (i) Mexicans and foreigners, when participating in "federal public procurement"; and
- (ii) Mexicans, when participating in international commercial transactions.

2. FEDERAL PUBLIC PROCUREMENT

Are all those contractual procedures, preparatory acts, and those acts which derive from entering into, performing, fulfilling contracts, concerning acquisitions, leases, services, public works and related services, implemented by federal public agencies, and pursuant to the federal procurement legislation.

The foregoing includes acts and procedures related to public bids or requests for proposals (RFP) for federal permits or concessions, or for their extension.

3. INTERNATIONAL COMMERCIAL TRANSACTIONS

Are those acts (defined below) implemented by foreign state public entities, or that involve the participation of a foreign public servant, in which Mexican individuals or entities will be involved, directly or indirectly.

Those acts are any international commercial transaction, and related acts and procedures, related to entering into, performing, and fulfilling contracts concerning acquisitions, leases, services, public works and related services; including acts and procedures related to granting and extending permits or concessions, and any other related authorization or arrangement.

4. INDIVIDUALS AND ENTITIES SUBJECT TO COMPLIANCE STATUTE

A. DIRECT PARTICIPANTS

Mexican or foreign individuals or entities, participating in federal public procurement either as interested parties, bidders, guests, suppliers, contract awardees, independent contractors, permit holders, concessionaries or similar.

B. SUPPORTERS OF DIRECT PARTICIPANTS

Mexican or foreign individuals or entities, acting in the name of, or on the account of the interest of the individuals or entities mentioned above, either in the roll of shareholders, partners, associates,

representatives, attorneys-in-fact, legal representatives, commission agents, agents, filing managers, advisors, counselors, subcontractors, employees, in any other similar capacity.

C. PARTICIPANTS OF INTERNATIONAL TRANSACTIONS

Mexican individuals or entities participating, directly or indirectly, in international commercial transactions; and

D. PUBLIC SERVANTS

Public Servants participating, directly or indirectly, in federal public procurement procedures.

5. ACTS IN VIOLATION OF THE COMPLIANCE STATUTE

The mentioned Individuals or Entities will violate the Statute when during federal procurement acts they, directly or indirectly, perform any of the following:

- Promise, offer, or give money or a gift, to a public servant or a third party related to such servant, as a consideration for performing or abstaining from an act related with the authority of such public servant or of other public servant, with the purpose of obtaining or maintaining a benefit or advantage, regardless if such money or gift was accepted or the expected result was obtained;
- Promise, offer or give money or a gift to a non-Mexican public servant, or a third party related to such servant, in relation with an international commercial transaction, so that that such servant will refrain from doing any act within the authority of such public servant;
- Perform acts that imply or have the purpose or effect of obtaining an unlawful benefit or advantage during a federal public procurement procedure;
- Participate in federal public procurement notwithstanding a legal impediment to do so;
- Perform or abstain from acts with the purpose or effect to evade requirements or rules in federal public procurement procedures, or simulate their fulfillment;
- Participate directly, but in the interest of another who is impeded from participating, in a federal public procurement procedure, with the purpose of obtaining for the other the benefits derived from such procurement;
- To obligate a public servant, without the right to do so, to give, subscribe, grant, destroy or deliver any document or asset in order to obtain an advantage for the enforcer or a third party;
- Promote or use influence, economic power or political power, either real or fictitious, on any public servant for the purpose of obtaining a benefit or advantage for itself or for a third party, regardless of whether it is accepted by such public servant or the expected result is obtained;
- Present documents or information false or altered for the purpose of obtaining an advantage or benefit.

6. AUTHORITIES WHO WILL APPLY THE COMPLIANCE STATUE

A. ENFORCEMENT BY THE MINISTRY OF THE PUBLIC FUNCTION

The Ministry of the Public Function (*Secretaría de la Función Pública*) will enforce the Statue on the following Entities involving federal procurement activities:

- All Agencies of the Federal Public Administration;
- Office of the Federal Attorney General (*Procuraduría General de la República*);
- State Governments of the United Mexican States;
- Municipal Governments of such States; and

- Counties (Delegaciones) of the Federal District (Mexico City).

B. ENFORCEMENT BY FEDERAL ENTITIES

This enforcement is by acts performed within those Federal Entities:

- House of Senators (*Cámara de Senadores*);
- House of Representatives (*Cámara de Diputados*);
- Nation's Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*),
- Council of the Federal Judiciary (*Consejo de la Judicatura Federal*);
- Electoral Court of the Federal Judiciary (*Tribunal Electoral del Poder Judicial de la Federación*);
- Federal Court of Tax and Administrative Justice (*Tribunal Federal de Justicia Fiscal y Administrativa*);
- Arbitration and Conciliation Boards (*Juntas de Conciliación y Arbitraje*);
- Arbitration and Conciliation Court (*Tribunal Federal de Conciliación y Arbitraje*);
- Agrarian Courts (*Tribunales Agrarios*);
- Federal Electoral Institute (*Instituto Federal Electoral*);
- Federal Superior Auditing Office (*Auditoría Superior de la Federación*);
- National Commission of Human Rights (*Comisión Nacional de los Derechos Humanos*);
- National Institute of Statistics and Geography (*el Instituto Nacional de Estadística y Geografía*); and
- Bank of Mexico (*Banco de México*).

7. PENALTIES

A. TO INDIVIDUALS

- a. Fines range from 1,000 to 50,000 times the minimum general daily wage in the Federal District (Mexico City) [minimum wage].

This results in amounts from US\$4,800.00 to US\$ 240,000.00 [considering a minimum wage is Mex\$ 62.33 in 2012, resulting in @ US\$ 4.80 per day at an average rate of 13 to 1]; and

- b. Inability to participate in federal public procurement for no less than 3 months and no more than 8 years.

B. TO LEGAL ENTITIES

- a. Fines range from 10,000 to 2'000,000 times the minimum wage, resulting from US\$48,000.00 to US\$9'600,000.00; and
- b. Inability to participate in federal public procurement for no less than 3 months and no more than 10 years.

Under certain circumstances, individuals or entities may obtain a reduction of sanctions in case of confession and cooperation with the competent authorities.

8. FINAL CONSIDERATIONS

With the enactment of Procurement Statue, Mexico complies with the Inter-American Convention Against Corruption of the Organization of American States, the Convention on Combating Bribery of Foreign Public Servants in International Business Transactions of the Organization for Economic Co-operation and Development, and the United Nations Convention Against Corruption.

XII. MEXICAN ENVIRONMENTAL LEGISLATION

Mexican Environmental Legislation represents a complex system which allows the Federation, the States and their Municipalities to enact and enforce environmental provisions and penalties.

1. FEDERAL ENVIRONMENTAL STATUTE

In 1988, Mexico's Congress enacted the General Law of Ecological Equilibrium and Environmental Protection (the "Federal Environmental Statute") as the principal Federal environmental statute. Other Federal Statutes also address more specific topics, e.g., the Law of National Waters, the Forestry Law, Fisheries Law, Health Law, etc.

2. FEDERAL REGULATIONS

Several Regulations ("Reglamentos") were enacted that cover in greater detail various aspects addressed by the Ecology Statute.

Mexico's Ecology Statute emphasizes preservation of a good ecological "balance" or equilibrium between social/community activities and nature.

This Statute also supports environmental protection of Mexico's Natural Resources that generally refer to the quality of air, water, land, wildlife (flora and fauna), and soil (land).

To protect these Resources, one of the Ecology Statute's Regulations requires the assessment of the "environmental impact" of certain activities or by-products of certain activities, for example, hazardous waste generation, wastewater discharges, and air emissions that impact, whether negatively or not, the environment.

There has been a trend towards harmonization of environmental rules between the NAFTA Countries.

3. OFFICIAL TECHNICAL STANDARDS (NOMS).

Further implementing Mexico's environmental laws and regulations are the Official Technical Standards known as official Mexican norms (Normas Oficiales Mexicanas or "NOMs") which are issued and enforced by the Federal Administration.

4. STATE AND MUNICIPALITIES LEGISLATION

However, many of Mexico's environmental laws are enforced by Federal environmental agencies or authorities, while other related statutes, regulations and technical standards may contain environmentally related matters enforced by different Federal or State Government agencies.

The authority to enforce environmental law derives from the Mexican Constitution which expressly assigns powers to the federal government. Those powers not vested in the federal government may be exercised by the states and its municipalities.

On the other hand the Ecology Statute specifically maintains responsibility for certain environmental matters at the federal government level, and allows for the decentralization and enforcement of specific matters to the local governments, through concurrent (shared) jurisdiction on environmental protection.

State laws and regulations also deal with the environment in areas related to health, urban development and planning.

It is necessary to understand which activities are usually enforced by each level of government, and whether there has been delegation of any Federal enforcement authority to the local level in a particular region.

Such delegation for enforcement of law normally maintained by the Federal government varies considerably throughout Mexican states, and is dependent on the level of competence the local authority may have to assume this responsibility.

Thus the investor should be aware that the comprehensive, a collection of Mexico's environmental laws include a broad range of Federal, state, and municipal laws, regulations and NOMs with environmental content.

5. INTERNATIONAL TREATIES AND AGREEMENTS

Mexico is a signatory to several international treaties dealing with the environment, among which are the 1944 International Water Treaty with the U.S., the Basel Convention, the La Paz Accord on the Environment of 1983, the North American Free Trade Agreement (NAFTA), with its Environmental Side Agreement, the Border XXI Plan and others.

6. FEDERAL AGENCIES TO BE CONSIDERED

Any company planning to do business in Mexico or engaging in industrial, manufacturing or agricultural, hospitality or activities related with the environment should review compliance with the legal and technical implications of its activities.

With respect to facilities currently in operation, conducting periodic environmental audits, both of a legal and technical nature is highly recommended. This will avoid potential penalties resulting from inspections by federal, and/or state, and/or local environmental authorities.

7. FEDERAL MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES

At the Federal level, is the Federal Ministry of Environment and Natural Resources ("SEMARNAT") is the Agency principally responsible for enforcing the environmental legislation in Mexico.

SEMARNAT has two divisions (i) the Environmental Regulations and Promotion Office, that generally authorizes activities, and the Federal Environmental Enforcement Office ("PROFEPA"- its initials in Spanish), which has the responsibility for enforcement.

SEMARNAT is concerned, among other matters, with issues related to industry, as follows:

- Encouraging the protection, restoration, and conservation of natural ecosystems and resources, to ensure their sustainable development;
- Guiding national policy regarding national resources and the environment, urban development, environmental regulations, mining and fishery development;
- Establishing, in conjunction with other federal authorities as well as state and municipal authorities, Mexican Official Standards on the preservation and restoration of the environment and natural ecosystems, the appropriate use of natural resources, waste water discharge, and the safe management of hazardous material and hazardous wastes;
- Evaluating and approving environmental impact assessments and environmental risk assessments for development projects proposed by public, social, and private sectors, as well as evaluating and approving environmental accident prevention programs;
- Managing, controlling and governing the use of water considered as federal property such as basins, reservoirs, rivers, and springs and federal zones including beaches and river banks; and
- Granting contracts, concessions, licenses, permits, authorizations and assignments in protected areas, waters, and for forests and mining as well as the use of beaches, federal marine and land zones, etc.

8. ENVIRONMENTAL REGULATIONS AND PROMOTION OFFICE.

The Environmental Regulations and Promotion Office, is the one that prepares all general policies on environmental matters, issues environmental standards and guidelines, grants licenses and permits of a federal nature, and publishes the Ecological Gazette.

There are a number of permits, approvals and reports, federal or at state level, concerning environmental matters which must be obtained to operate an industrial plant in Mexico and/or filed during the course of such operations, among them are:

- Environmental impact authorization;
- Operating license or one step environmental license ("LAU," - its initials in Spanish);
- Environmental Annual Report ("COA," - its initials in Spanish);
- Registration as a generator of hazardous waste followed by subsequent reports concerning production, transport, and disposal of hazardous wastes;
- Water use concession, if the company is going to use water from wells or any other source not provided by a municipal or state water board or council;
- Wastewater discharge applications and registration.

9. FEDERAL ENVIRONMENTAL ENFORCEMENT OFFICE

The PROFEPA's main activities are to deal with complaints, conduct inspections and, in general, verify compliance with all federal environmental laws and regulations.

It also imposes penalties for violations of environmental laws and regulations and monitors compliance with any preventive and mitigating measures issued by it. PROFEPA also conducts environmental audits.

10. ENVIRONMENTAL COOPERATION COMMISSION

The Environmental Cooperation Commission was created after the North American Free Trade Agreement (NAFTA). This Commission has a Council, a Secretariat, and a Joint Public Consulting Committee.

This Commission promotes the cooperation between the three member countries: Mexico, United States, and Canada, for:

1. Making effective environmental laws;
2. Compliance with such laws and their regulations; and
3. Technical cooperation.

11. DISTRIBUTION OF JURISDICTION AND ENFORCEMENT

A. FEDERAL JURISDICTION:

The Federal Environmental Statute (Article 28) assigns federal jurisdiction and enforcement authority on:

The following Environmental Matters:

- Air emissions from fixed sources under federal jurisdiction;
- Wastewater discharges to the nation's property (land) or waters (rivers, streams, lakes, estuaries, oceans, etc); hazardous materials and waste; and
- "Highly" hazardous activities (as defined).

On Certain Industrial and Commercial Activities including:

- Hydraulic (water) works,
- public communication /transport works (railroads, highways),
- pipelines for oil and gas and carbons, oil and petrochemical industry,
- steel industry,
- chemical industry,
- paper and cellulose industry,
- sugar industry,
- cement industry and
- energy industry,
- the exploration, exploitation and extraction of minerals and substances reserved to the federal government,
- the treatment, confinement or disposal of hazardous or radioactive wastes,
- the exploitation of forests, jungles, rain forests, and endangered species,
- and cultivation of forests, zoning changes in forests, jungles or dry (desert) areas,
- industrial parks housing highly hazardous activities,
- real estate developments affecting coastal ecosystems,
- natural reserves under federal jurisdiction, and
- activities carried out in rivers, lakes, lagoons, creeks discharging into the sea, including adjacent land or federal areas,
- fishing or farming activities where one or more species may be endangered or there could be harm to the ecosystem,
- certain works under federal jurisdiction that may: harm the environment through damages beyond restitution, damage public health or ecosystems, or exceed the limits or conditions set forth under applicable law.

B. STATE OR MUNICIPAL JURISDICTION

Generally, activities not under Article 28 of the Federal Environmental Statute are left to the States (local authorities). This would include air emissions from fixed sources under local jurisdiction; wastewater discharges to urban and municipal sewage systems, non-hazardous materials and solid waste; and activities not deemed highly hazardous.

12. KEY ELEMENTS OF FEDERAL ENVIRONMENTAL ENFORCEMENT

A. ENVIRONMENTAL IMPACT AND RISK STUDY

All private and public activities must have an Environmental Impact Authorization, prior review, and approval of an impact analysis. The process includes three stages:

a. PRELIMINARY REPORT

Is required when any part of the activity under consideration includes air emissions, wastewater discharges, exploitation or use of natural resources, or any relevant environmental impact to which a Mexican Official Standard applies, or where the activities are part of an urban development plan or environmental program approved by SEMARNAT, or where an activity will be performed in authorized industrial parks.

b. ENVIRONMENTAL IMPACT MANIFEST

Three types of Impact Manifests are described in the Statute: (i) General, (ii) Intermediate, and (iii) Specific. All three are described in the specific regulation to the Federal Environmental Statute. The authority may require the applicant to file any type of EIM, depending on the complexity or risk of the activity involved.

c. RISK STUDY

This Study may be required where highly hazardous activities are performed. These activities are included on lists of substances, the use of which above a certain threshold level, is deemed a highly hazardous activity, one where there is a use of toxic substances, and the other where there is use of flammable or explosive substances.

13. HAZARDOUS WASTE MANAGEMENT AT FEDERAL LEVEL

A. DEFINITION

Hazardous waste is any material generated in an extraction, benefit, transformation, production, consumption, use, control or treatment process which quality does not allow it to be used in the process that generated it." Hazardous waste is "any waste in any physical form which due to its corrosive, reactive, explosive, toxic, flammable, or biologically-infectious characteristics, represents a hazard to the environment or environmental equilibrium."

B. REQUIREMENTS FOR HANDLING

There are separate requirements for all phases of hazardous waste management, to include:

- (1) Reporting and tracking,
- (2) Storage and containment,
- (3) Collection, transportation and disposal, and
- (4) Export.

a. REPORTING AND TRACKING

Include:

- (a) submission of a hazardous waste Generator Manifest for each waste stream generated at a facility,
- (b) preparation and update of waste generation storage logs,
- (c) preparation and filing of BI-annual waste disposal reports,
- (d) preparation and submission of a training program for hazardous waste,
- (e) preparation and submission of a hazardous waste contingency plan, and
- (f) preparation and submission of report on what individuals are responsible for day-to-day handling of operations.

b. STORAGE AND CONFINEMENT

Include:

- (a) storage of hazardous waste in accordance with federal regulations, and

(b) compliance with containment and labeling requirements.

c. COLLECTION, TRANSPORT, AND DISPOSAL

Include:

(a) preparation of a collection, transportation, and final disposal manifest, and

(b) optional transfer of liability resulting from contracting authorized companies.

d. EXPORT

Include:

(a) hazardous waste generated from raw materials imported into Mexico under a temporary import regime must be exported to their country of origin,

(b) an exporter's registration number, and

(c) an export notice for each shipment.

XIII. PHARMACEUTICAL PRODUCTS, MEDICAL DEVICES & FOOD SUPPLEMENTS

A. REGULATORY PROCESS FOR IMPORTING, REGISTERING, AND DISTRIBUTING

These guidelines compile current information and experience on registration, and importing into Mexico, or local manufacturing:

(i) Pharmaceutical Products,

(ii) Medical Devices, and

(iii) Food Supplements,

These Guidelines are for general information only, and do not constitute specific legal advice.

The information herein may change since the applicable legislation may also change.

Once the decision to invest, or ship the products to Mexico is taken, we recommend that the foreign company verifies with their Mexican counsel the current legal requirements.

In terms timing and processes, it takes less for the Food Supplements, followed by the Medical Devices and, finally, by the Pharmaceutical Products.

B. INCORPORATION OF A SUBSIDIARY

International companies, depending upon their business plans, can simultaneously incorporate a subsidiary in Mexico for the distribution of its (i) Pharmaceutical Products, (ii) Medical Devices, (iii) Food Supplements, or use a local Mexican distributor.

In our experience, it is recommendable to incorporate a subsidiary in Mexico to have control on the filings, imports, and the distribution in the Mexican market.

C. COFEPRIS (Agency of the Health Ministry)

The filings to obtain the Certificates and Sanitary Registrations will have to be made before the Federal Commission for the Protection Against Sanitary Risks, known as: "**COFEPRIS**", which is an Agency of the Health Ministry.

COFEPRIS's mandate covers:

- i) Applying the Policy on National Health Risk Protection;
- ii) Regulate, control and improve: (i) sanitary surveillance, and (ii) evaluation of health risks deriving from products, activities and establishments;
- iii) Implement the Ministry of Health's attributions on environmental impact on: (i) health in general, (ii) occupational health, (iii) hazardous residues, (iv) sanitation, (v) accidents involving toxic, dangerous or radioactive substances, and (vi) health protection in advertising.

COFEPRIS comprises the following 5 interrelated **General Directorates**:

- i) Medicines and Health Technologies,
- ii) Sanitary Control of Products and Services,
- iii) Environmental Health,
- iv) Sanitary Control on Advertising, and
- v) The National Public Health Laboratory.

D. COFEPRIS - INTERNATIONAL:

COFEPRIS participates at international organizations, associations and forums, with the purpose of exchanging information and increase the protection against sanitary risks.

COFEPRIS is also part of the denominated Trilateral Cooperation, where, together with the United States through the Food and Drug Administration, and Canada, through the Department of Health, the three Parties collaborate and exchange information on pharmaceutical and biological products, medical devices, food and nutritional safety, with the purpose of protecting and promoting human health.

1. PHARMACEUTICAL PRODUCTS

Both: (i) pharmaceutical products manufactured abroad, or (ii) pharmaceutical products manufactured in Mexico but with raw materials totally or partially from abroad, that will be distributed in Mexico, need to be **previously registered** in Mexico by obtaining a "**Sanitary Registry**."

Only a **Mexican company** can file for and be responsible for such registration.

Such Mexican Company will also be registered as a **Health Representative** for such of such pharmaceutical products before COFEPRIS.

The Sanitary Registry of a pharmaceutical product can be transferred later to another Mexican company, including a subsidiary of foreign manufacturing company incorporated in Mexico.

A. SANITARY REGISTRY

After having filed for the Notice of Operation or the Sanitary License, as described below, the next step will be to obtain a **Sanitary Registry** of the pharmaceutical product.

The Health Representative is the one who files and applies for such Sanitary Registry.

COFEPRIS will resolve on this Sanitary Registry Application in around one year.

This Sanitary Registry has a validity of 5 years, with the possibility to be renewed and/or modified by the Health Representative.

COFEPRIS maintains direct a relationship with the Mexican Institute of Industrial Property (IMPI), to make sure that no Sanitary Registry is attempted on a pharmaceutical product, when another is already registered and protected with a current patent in Mexico or abroad (patent linkage).

The **previous step** for obtaining a Sanitary Registry is for the Health Representative to file for either a:

- a. Notice of Operation**, for products manufactured abroad; or a
- b. Sanitary License**, for products manufactured in Mexico with foreign raw materials

a. NOTICE OF OPERATION

For product manufactured abroad.

This Notice applies to pharmaceutical products manufactured abroad to be distributed in Mexico.

To obtain this Notice of Operation the Health Representative has to be previously registered as the Importer of Record of the Product on behalf of foreign manufacturer.

COFEPRIS must verify and certify that the manufacturing process of the Pharmaceutical Product done by the foreign manufacturer complies with all the current requirements established by COFEPRIS and the Health Ministry.

For such certification COFEPRIS will ask from the foreign manufacturer for either a:

i) CERTIFICATE OF GOOD MANUFACTURING PRACTICES

This Certificate is given if the manufacturing company is listed within the Agreements that COFEPRIS has entered into with other Countries. This list is kept and updated by COFEPRIS and is not published. It needs to be consulted on a case by case basis; or

ii) COMPLIANCE CERTIFICATE - MANUFACTURING SITE VISIT ABROAD

If the foreign manufacturer is not part of the foregoing COFEPRIS' List, COFEPRIS Officers will visit the Manufacturing Site of the foreign manufacturer, to determine if it complies with all the requirements and obligations of the Mexican Official Standards for Manufacturing Sites.

This visit has a cost for traveling and lodging, established by COFEPRIS, and it will be performed within 3 to 6 months after the filing request was made.

Once COFEPRIS certifies that the Manufacturing Site abroad complies with all the requirements and obligations of the Mexican Official Standards, it will grant a Certificate of Compliance.

Thereafter the foreign manufacturing company can apply for a Certificate of Good Manufacturing Practices.

The Certificate of Good Manufacturing Practices is issued by COFEPRIS within 10 working

days from application.

BOTH CERTIFICATES (Compliance and Manufacturing Practices) are essential in order to obtain the **Sanitary Registry** of the Pharmaceutical product; **or**

b. SANITARY LICENSE

For product manufactured in Mexico with foreign raw materials.

This License applies in case of pharmaceutical products that will be manufactured in Mexico with raw materials totally or partially from abroad.

Similarly, a Health Representative is registered as the importer of the raw materials, for and on behalf of the foreign company supplier.

B. SANITARY REQUIREMENTS FOR PHARMACEUTICAL PRODUCTS - NOMS:

The Health Ministry has issued several Mexican Official Standards ("NOMs"), detailing specific sanitary requirements for certain pharmaceutical products to be allowed to be distributed for human consumption.

The NOM's indicate specific details on the physicochemical and microbiological characteristics that pharmaceutical products must comply, setting the limits and tolerances that required documentation must report.

C. IMPORTER'S LICENSE

Simultaneously the Health Representative should obtain an Importer's License, which should be filed before the Mexican Tax Administration ("SAT").

D. SANITARY IMPORT PERMIT

Thereafter the Health Representative should apply for the corresponding Sanitary Import Permit before COFEPRIS.

COFEPRIS will grant each Import Permit within a term of 40 working days.

After importing the pharmaceutical product, the sale and distribution could be made by any third party (agent or distributor) as convenient.

E. LABELING OF PHARMACEUTICAL PRODUCTS

Mexican labeling legislation, through Mexican Official Standards ("NOM's"), specifies the information expected to appear in Pharmaceutical Product.

Among others, the NOMS require that such information be in Spanish, legible, and understandable.

The label must also show the generic and specific names of the pharmaceutical product, country of origin (as applicable), Sanitary Registry number, expiration date, serial or lot number, and contents.

If a pharmaceutical product is manufactured by a third party the label must include the name of the third party manufacturer. Symbols in the labels are also regulated.

2. MEDICAL DEVICES

Mexico has become an attractive market to medical (health) device manufacturers worldwide. There has been a substantial increase of imports of medical devices into the Mexico in the last years.

The regulatory framework is the General Health Law (the "Health Law"), and the Regulations on Health Devices.

For some time now there have been delays in the reviews of medical device submissions in Mexico due to the high volume of submissions and shortage of staff reviewing such submissions.

Recent legal amendments will help speeding the regulatory process.

The amendment sets out strict rules on deadlines for reviewing submissions for imported devices. It also allows the applicant to know at any time the status of a medical device submission.

A. DEFINITION AND CLASSIFICATION

There is no formal definition in the legislation on what are Medical (Health) Devices.

However, considering the different descriptions in the Health Law, and the COFEPRIS Guidelines for registering medical devices, a definition can be:

Any substance, or mixture of substances, or material, apparatus or instrument, including its applicable software for its use or application, either used alone or in combination, for the: diagnosis, monitoring, or prevention, or process of an illnesses, or disability in humans; as well as those devices employed in the replacement, correction, restoration or modification of the human anatomy, or used for human physiological process.

B. HEALTH AUTHORIZATION AND SANITARY REGISTRY

The Health Law defines which Medical Devices require **Health Authorization** and **Sanitary Registry**.

The Law describes 7 categories of Medical Devices which require Sanitary Registry if they are to be produced, sold or distributed in Mexico:

1. Medical equipment;
2. Prosthesis,
3. Orthosis and Functional Aids;
4. Diagnostic Agents;
5. Odontological Supplies;
6. Surgical Materials and Wound Care; and
7. Sanitary Products.

C. CLASSES (I, II, III):

Under the Regulations on Health Devices, the Medical Devices are divided into **3 Classes** according to their risk level when used in human beings:

a. CLASS I

Are known in the medical practice to have a proven safety and effectiveness, and are generally not introduced into the human body;

b. CLASS II

Are known in the medical practice to have variations in their materials or in their concentrations, and are generally introduced into the human body for less than 30 days; and

c. CLASS III

Are new or recently accepted in the medical practice, or are introduced into the human body permanently or for longer than 30 days.

If the manufacturer has questions on the Classification, those questions should be submitted simultaneously to COFEPRIS and a Mexican customs broker.

Customs brokers keep customs code classification books where they can determine if a permit or registration is required for importation.

D. NOTICE OF OPERATION

This Notice applies to any Medical Device to be distributed in Mexico, either manufactured in Mexico or abroad.

The Distributor applies for this Notice of Operation. If the Medical Devices is imported, the Distributor has to be registered as the Importer of Record of such Medical Device on behalf of the foreign manufacturer.

Through the Notice of Operation the Medical Device will be registered and classified within the Classification maintained by COFEPRIS under the Regulations.

E. MEDICAL DEVICES MANUFACTURED ABROAD

For importing Medical Devices manufactured abroad Mexico the following additional information is required:

- A **Free Sale Certificate**, or equivalent, issued by the health authority of the country of origin, responsible for ensuring that such device complies with local legal requirements of such country of origin, and that it can be used or consumed freely, with no restrictions, in the country of origin. Such certificate should be valid for one year;
- A **Certificate of Manufacturing** from the manufacturer, indicating that the manufacturing was made according to the accepted procedures of the manufacturer's country of origin;
- A **Good Manufacturing Practices Certificate** of the device, issued by the health authority of the country of origin, or the equivalent medical device quality system certification (ISO 13485:2003 certificate); and
- A copy of the **Certificate of Analysis** issued by the manufacturing company, signed by its quality control representative.

F. MEDICAL DEVICE REGISTRATION STEPS

The basic documentary information to include in the Medical Device Registration Filing is:

- Scientific and technical information substantiating that the device complies with safety and effectiveness characteristics;
- The label in Spanish according to corresponding NOM's. See below;
- Additional references to corresponding Sanitary NOM's. See below;
- The instructions for use in Spanish;
- The general description of its manufacturing process;
- A description of its structure, materials, parts, and functions;
- The laboratory tests verifying the specifications of the medical device; and

- Biographical references.

G. SANITARY REQUIREMENTS FOR MEDICAL DEVICES – NOM's

The Health Ministry has issued several Mexican Official Standards ("NOM's") detailing specific sanitary requirements that certain medical devices must comply in order to be allowed to be distributed for human consumption.

The NOM's indicate specific details that medical devices must comply, setting the limits and tolerances that required documentation must report.

H. RESOLUTION TIMING

The time for resolving the registration of a medical device can decrease from 1 year up to 30 days if the Medical Device fulfils with the requirements of either the:

- "Food and Drug Act", and the "Medical Devices Regulations" of Canada, or
- The "Federal Food, Drug and Cosmetic Act" and the "Code of Federal Regulations" of the United States, both under the Agreement that Mexico entered into with these Countries, published in 2010.

Currently the **European Union** is advancing in negotiations with COFEPRIS so that the medical devices originating from countries of the European Union will be granted the same short term approval that the medical devices originating from Canada and the United States receive.

I. VALIDITY TERM

The Medical Device Registry has a validity of **5 Years**, and can be renewed and/or modified through the request of the local Health Representative.

J. IMPORTER'S LICENSE

The Mexican Company acting as the Distributor of Medical Devices has to previously obtain its own Importer's License from the Mexican Tax Authorities ("SAT").

Thereafter the Distributor should apply for the corresponding **Sanitary Import Permit** before COFEPRIS.

The Import Permit will have a validity of 180 calendar days, extendable.

K. LABELING OF MEDICAL DEVICE

The NOM's specify the information expected to appear in medical device labels. Among others, such information must be in Spanish, legible and understandable.

The label must show the generic and specific names of the device, country of origin, Sanitary Registry number, expiration date, serial or lot number, and content materials, as applicable.

The label must include the Sanitary Registration Holder, and name of the Manufacturer, as the case may be. Symbols in the labels are also regulated.

3. FOOD SUPPLEMENTS

A. ADDITIONAL COMPOUNDS ASIDE FROM VITAMINS AND MINERALS.

Under the Health Law, the food supplements must contain additional compounds aside from vitamins and minerals.

If the supplement only contains vitamins and minerals, it will not be called food supplement but "Vitamin Medication". In this case the Vitamin Medication will be subject to the legislation of pharmaceutical products above mentioned.

B. SANITARY IMPORT PERMIT, OR SANITARY IMPORT NOTIFICATION

On September, 2007, in coordination with the Ministry for the Economy, the Health Ministry published the "Agreement that Establishes the Classification of Products whose Import or Export is Subject to Sanitary Regulations from the Ministry of Health".

This Agreement lists the tariff codes of products subject to Health Ministry regulation and specifies which products require either a:

- "Sanitary Import Permit" or
- "Sanitary Import Notification", which must be included in the import documentation submitted by the customs broker.

C. IMPORT APPLICATIONS

There are no specific guidelines for drafting and presenting these documents. COFEPRIS constantly changes the application requirements. It is best to request advice from local counsel with experience in this area.

Once filed, COFEPRIS will indicate which information/documentation additional will be necessary and which it was not.

Currently the documentation to be presented on the food supplements is the following, and depending upon the specific components, as the case may be:

a. PHYSICOCHEMICAL ANALYSIS

Determination of the representative values of the products or supplies to be imported, carried out in the country of origin by the producer or a domestic or foreign laboratory accredited by the corresponding government agency or office, printed on official paper, with the name, signature and position of the Health Representative of the country of origin.

The Health Representative could be a lab supervisor, quality control manager, chemical engineer or any related position.

The validity of such analysis should be specified by lot number.

b. MICROBIOLOGICAL ANALYSIS

Determination of pathogen and non-pathogen microorganisms, carried out in the country of origin by the related government agency or office, printed on official stationery, with the name, signature and position of the Health Representative of the country of origin.

The validity of such analysis should be specified by lot. Most of the times, the microbiological analysis information is described in the products according with the corresponding Mexican Official Norm (NOM);

c. SPECIFIC ANALYSIS

This analysis is carried out in the country of origin by the producer or a domestic or foreign laboratory accredited by the related government agency, printed in official paper.

Specific analyses are requested when products originate from highly polluted regions, radioactive contaminated areas or regions affected by particular diseases such as cholera.

Currently, no specific analyses are required for products from the United States.

- Original labels of the food supplements abroad,
- Label under which it will be distributed in Mexico, and
- As the case may be the following documentation:

i) HEALTH CERTIFICATE

Document issued by the country of origin's health authority which declares that the product complies with sanitary regulations.

It should be valid for one year.

ii) HEALTH DECLARATION

Document issued by the country of origin's health authority, responsible for regulating the process and quality of the products or supplies to be imported, where evidence is provided to guarantee that the product is safe for human use/consumption, indicating its physicochemical composition and including microbiological and specific analysis, when applicable.

The Declaration should also state the geographical origin of the supplement, and the validity of such analysis should be specified by lot number.

iii) FREE SALE CERTIFICATE

For sanitary purposes, the Free Sale Certificate will be a document issued by the foreign health authority responsible for ensuring that the supplement and its inputs comply with all legal requirements and can be used or consumed freely, with no restrictions, in the country of origin.

Such certificate should be valid for one year.

D. IMPORT – CONTENTS OF FOOD SUPPLEMENT

The next step is the specific determination by the Manufacturer and Customs Broker of the contents Food Supplement.

The Mexican importer with its customs broker, are responsible for submitting all needed documentation to the Mexican authorities.

Foreign exporters may be asked to provide additional information to comply with Mexican import provisions. Such information may include labels, certificates of origin, and microbiological analysis. Each case could require different complementary information.

E. NOTICE OF OPERATION

This Notice of Operation should be obtained by the Distributor established in Mexico when importing food supplements that are manufactured abroad and are distributed in Mexico.

The Mexican company that will be acting as the Distributor has to previously obtain its own Importer's

License from the Mexican Tax Authorities ("SAT").

F. SANITARY IMPORT PERMIT

Thereafter the Distributor should apply for the Sanitary Import Permit before COFEPRIS of the corresponding Food Supplement.

The Import Permit will have effects for 1 month, extendable.

Such Permit will be granted by "Specific Number of Food Supplements" or by "Lot of Food Supplements" covering the import permit.

The Import Permit can be obtained in 5 business days.

G. SANITARY REQUIREMENTS FOR FOOD SUPPLEMENTS – NOM's

The Health Ministry has issued several Mexican Official Standards ("NOM's") detailing specific sanitary requirements that certain food supplements must comply in order to be allowed to be distributed for human consumption.

The NOM's indicate specific details that food supplements must comply, setting the limits and tolerances that required documentation must report.

H. LABELING OF FOOD SUPPLEMENTS

The NOM's specify the information expected to appear in food supplements labels. Among others, such information must be in Spanish, legible and understandable.

The label must show the generic and specific names of the food supplements, country of origin, expiration date, serial or lot number, and contents, as applicable.

XIV. REAL ESTATE TRANSACTIONS IN MEXICO FOR FOREIGNERS

1. MEXICAN RECORDING SYSTEM

The real estate recording system is based on the track of land. Real estate transactions are recorded at the local Registry of Property in a Lot File. The grantor and grantee, including liens and encumbrances are registered at the Lot File.

2. NOTARY PUBLIC INVOLVEMENT

Real estate transactions should be ultimately closed before a Notary Public.

The Notary Public makes sure that the transaction is legal, that title is marketable and belongs to the seller, that powers of attorney are in order, and that taxes are paid.

The roll of Notaries in Mexico is different than in other countries. Here Notaries are lawyers with a local government concession to verify the legality of many corporate acts and real estate transactions.

Notary Fees are under a government schedule of which we do not have control. Notary Fees tend to be high based on a percentage of the transaction. The Notary will bring in

3. TAXES:

Transfer of property is subject local transfer tax payable by the buyer. It varies from State to State and tends to be around 3% of the purchase price.

In addition, the seller has to pay federal income tax.

Under the Mexican Fiscal Code, real estate subject to trust, is deemed to be directly transferred as a real estate property when:

- The settlor designates a beneficiary and is not entitled to reacquire the trust assets; or
- The settlor loses the right to reacquire the assets of the trust, if it had previously reserved such right; or
- The settlor receives participation certificates of the assets subject to trust, or
- In the assignment of trust beneficiary rights to another beneficiary, or the Trustee is instructed to make such assignment; or
- When the Trustor assigns its rights in an operation which results that the real estate is transferred in its favor.

Under the Income Tax Law, there is a withholding on the income resulting from real estate under trust transferred by foreigners residing abroad, with no permanent establishment in Mexico.

The tax applicable will result from applying a 25% rate on the total income earned, without any deductions.

4. PRICE

Prices cannot be below the price assessed by Government Appointed Appraisers, who assess the "market price" over which the taxes are paid. Note that the parties tend to bargain the price/consideration of the property in higher terms.

The Notary usually brings a Government Appointed Appraisers to assess the price; however the parties can bring their own Government Appointed Appraiser from the list of Appraisers available.

5. PREVIOUS AGREEMENTS

A private "option" or "promise to sell" agreement, are used to "tie" the operation for a few days before closing.

The meeting of the minds is enough to have a valid agreement. There is no need to exchange consideration (\$) for a valid agreement.

However a real estate transaction need to be ultimately validated before a Notary, and registered at the registry of Property, to have a valid property title before third parties.

6. ZONING

Zoning Regulations should allow the type of transaction.

Zoning changes can take up to 1 (one) year of filings depending upon the municipality, state and type of zoning regulation.

7. CLEAN TITLE

Before the transaction takes place, is important, to verify that the Title has NO liens or encumbrances. Therefore we suggest to previously obtaining the following CERTIFICATES:

A. NON-ENCUMBRANCE CERTIFICATE

"Certificado de Libertad de Gravámenes", it is obtained at the local Registry of Property.

It provides the description of the Lot, name of the owner, and any encumbrances and liens, and indicates if the title is marketable.

B. REAL ESTATE TAX PAYMENTS CERTIFICATE

"Certificado de No Adeudos Fiscales", it is obtained from the Real Estate Tax Payers Registry.

This Tax Registry is usually next door to the local Registry of Property.

C. AGRARIAN CERTIFICATE

"Certificado de Inafectabilidad Agraria", it is obtained from the Local Agrarian Agency. It insures that the Lot is not claimed as "communal property" ("Ejido").

Ejido is an old government grant to peasants given during last Century under socialists Federal Administrations.

In case of an Ejido affectation on the land, we need a resolution from the General Communal Assembly terminating the Ejido affectation.

8. FOREIGNERS RESTRICTED ZONE

The so called "Restricted Zone" for the direct acquisition of real estate title by foreigners is a strip of Mexican Territory of 100 kilometers wide along the borders (U.S. and Guatemala), and 50 kilometers wide along the coastlines.

In such Zone foreigners cannot acquire "direct" real estate rights (fee simple) for residential purposes. However they can "personal possession rights" of the real estate as a beneficiary of a "trust".

However, foreigners can acquire direct real estate rights in the Restricted Zone for business activities, such as a hotel or a shop. Such rights have to be previously approved by the Ministry of Foreign Affairs by waiving the protection of their governments in case of dispute, and by becoming subject to Mexican law in relation to such real estate.

The concept of "Foreigners", apply to individuals of foreign nationality, and to Mexican incorporated companies with a majority of foreign participation.

9. REAL ESTATE TRUSTS

As indicated, foreigners can acquire "personal possession rights" on real estate in the Restricted Zone, through a Trust ("fideicomiso").

In this case, the foreigner will be the beneficiary of the use and enjoyment of the real estate (personal rights).

Only banking institutions can be trustees.

The duration of trusts is for a maximum period of 50 years, but renewable.

Any transfer of trust beneficiary rights will pay real estate taxes.

10. REAL ESTATE TITLE INSURANCE

In Mexico estate title insurance does not exist as such.

US title insurance companies have become popular among foreign investors in resort areas. The insurance policy is payable in the U.S.

XV. IMMIGRATION RULES

The New Immigration Rules appear with the Mexican Immigration Law ("Immigration Law") that came into effects in 9th, 2012.

The New Rules provide for 3 (three) basic immigration status: (i) Visitor, (ii) Temporary Resident, and (iii) Permanent Resident.

1. VISITORS ("VISITANTE")

Tourists or business visitors for up to 180 days can receive a Multiple Migratory Form ("Forma Migratoria Múltiple" or "FMM").

Business visitors traditionally perform preparatory business activities, promote products or services, or come for business negotiations that finally close outside of Mexico.

A Visitor may not ask to change for Temporary or Permanent Residency once in Mexico. The foreigner will have to leave the Country and ask for either Temporary or Permanent Residency prior to entrance to Mexico.

An exemption to this is people that enter into a marital or common-law link to a Mexican citizen or a person who holds a Temporary or Permanent Residency status:

2. VISITORS WITH INCOME ACTIVITIES

Such business visitors should not receive income from Mexican resources, nor receive employment from a local employer.

However if a Visitor will be receiving income from Mexican resources they will require a permit to be obtained at the Mexican Consulate where the visitor requesting the permit resides.

An example of a Visitor with income activities is a an artist that will be performing in a concert in Mexico.

3. TEMPORARY AND PERMANENT RESIDENCY

One of the major changes is the Temporary and Permanent residency instead of the FM3 and FM2 respectively.

Ex-pats with current FM3 (No-Inmigrante Visitantes) visa will receive a Temporary Resident Status upon expiration of their FM3.

Ex-pats who currently hold an FM2 Visa who fall into any of the category of "Inmigrante" will be eligible at the time of renewal for Permanent Residency.

4. TEMPORARY RESIDENT

The Temporary Resident document will be issued for periods from 1-4 (one to four) years, based on the decision of the immigration authority.

Temporary Residency does not confer automatic permission to work in Mexico, although it may be granted upon request of the foreigner and pending a job offer.

According to the regulations, and congruent with the law, people in ANY OF the following situations will be eligible for Temporary Residency in Mexico:

- People with job offers;
- People registered in the federal tax registry who are trying to work independently in Mexico;
- People who have been invited by a government or private institution to participate in a non-lucrative activity;
- People who can prove their economic independence;
- People who own real estate in Mexico above a "certain value" (to be determined by further regulations),
- People who have invested a certain amount (to be determined by further regulations) in stock in a Mexican company, production machinery or other assets in Mexico or economic activities.
- People that acquire a marital or common-law link to a Mexican citizen or a person who holds a Temporary or Permanent Residency status.

5. TEMPORARY RESIDENTS WITH INCOME ACTIVITIES

Temporary Residents may have a permit to perform lucrative (income yielding activities) in Mexico.

A permit for such income yielding activities is filed before the Immigration Authority in Mexico where the Foreigner requesting the permit resides.

6. PERMANENT RESIDENT

Permanent Resident is actually a permanent status, except for children under 3 years old who need to renew their documents yearly until reaching 3 years of age.

Permanent Resident status includes express permission to work in Mexico, but changes in employer and updates of activities are required.

Any of the following people are eligible to become Permanent Residents in Mexico:

- Refugees and political prisoners,
- People that acquire a marital or common law link to Mexicans or Permanent Residents (after 2 years of Temporary Residency),
- Retired people (to be defined by further regulations),
- Grandparents, parents, children or grandchildren a Mexican who acquired their nationality by birth,
- People who have a certain number of points based on the following criteria (to be defined by further regulations):
 - Level of education,
 - Work experience in vital areas with high demand,
 - Other work experience,
 - Investments in Mexico,
 - Aptitude in science or technology,
 - International recognitions or prizes,
 - Fluency in the Spanish language,
 - Knowledge of Mexican culture.

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

7. EMPLOYER REGISTRATION

Employers hiring foreigners under any status should be registered as Employer of Record and obtain a "Constancia de Empleador" (Employer Certificate) with the Immigration Authorities indicating the foreigners its hires.

* * *

We hope you find this information useful for your operations in Mexico.

Respectfully

Santistevan & Duclaud

Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

XVI. PRESENTATION OF THE FIRM

We maintain an excellent reputation for over 22 years, with high ethical standards, quality controls, and excellent organization systems.

Our Legal Services are to international and national companies in all business areas, from initial agreements to complex operations.

We constantly work with North American, Japanese and European clients.

Our services add value and provide timely solutions to our clients.

Those Services include:

- Company incorporations,
- Inter-company agreements,
- Corporate governance, business contracts,
- Credit & secured transactions including services to various parent companies and foreign banks issuing credits to Mexican subsidiaries and companies,
- Mergers & acquisitions,
- Distribution and agency agreements,
- General advice on tax, labor, real estate and health,
- Also regulatory filings including intellectual property and immigration (visas), and
- Government biddings and claims.

It's Founder, Jorge Santistevan, has over 32 years of experience. He is lawyer admitted to professional practice in both (i) Mexico, and (ii) in the United States (Illinois). He has full legal education, and practice experience in reputable law firms in Chicago and Mexico.

He was also a Fulbright Scholar, lecturing on international legal transactions at University of San Diego, and as a Visiting Lecturer at University of Houston.

Our Professionals work as TEAM participating in the services according to their knowledge, experience, availability and rates.

We can prepare Budgets to defined services considering the value to the client. Budgets consider normal and expected circumstances, without substantial change of instructions or long unexpected negotiations.

We are recommended by prestigious international corporations and consulting firms, and by embassies and international chambers of commerce. Please visit: www.santistevan.com.mx

We look forward to add value, and provide useful and timely services.

* * * * *