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MEXICO SEES A PROPOSED NEW GAMING LAW - DECEMBER 2009 BILL -

(General Overview)

By: **Jorge Santistevan, Esq.**

Introduction:

Over the past decade, Mexican legislators have wanted to replace the antiquated gaming law that has governed since 1947. The Mexican market, and the social and business culture has matured for allow for a new step building up on the Regulations of 2004 and almost 5 years of experience in this area. The rapid proliferation of gaming industry, the need for clearer rules a new tax base seem to have finally given rise to a serious legislative effort.

In mid December 2008, the House of Representative (“Camara de Diputados”) through its Federal Subcommittee on Games and Drawings issued a new Bill of the Law of Games with Bets and Drawings (Proposed Law). This Proposed Law will soon be which will be submitted to the House of Senators for (expectedly) final approval.

During those days I had an interview with the Diputado, Armando García-Méndez, (House of Representatives’ Congressman), Chairman of said Federal Subcommittee, who has pushed for the Proposed Law.

From such interview, and the acces I had to the Draft of the Proposed Law, please be advised of following general overview of the Proposed Law.

Access to the full text in double column English/Spanish version of the Proposed Law is found in our Web Page in its Legislation Section: <http://www.santistevan.com.mx/eng/ley.asp>

We hope that this information is of practical useful for doing business in Mexico in this industry.

General Overview:

The Proposed Law will repeal the old Federal Law of Games and Drawings published in 1947, as well as any opposing administrative provisions and resolutions granted under the prior Law. It is expected that provisions in the current regulations that do not conflict with the proposed law will continue to be in effect. Existing gaming Permits and authorizations already granted under the prior legislation will also continue to be in effect.

The proposed law requests for the enactment of a new set of administrative regulations within the twelve months following its publication.

Due to the new diversity of games and technological advances in the gambling and entertainment industry, the proposed Law has the purpose of regulating all types of betting games, such as roulette, cards, games with numbers, horse and dog racing, slots machines, Mexican traditional games such as cockfights, jai alai and games transmitted in real time, among others.

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Note that paying cards (“naipes”), Cockfights; Roulette; and Dice can only be played in temporary fairs that last no more than 28 days.

Booking through closed networks are allowed but gaming through Internet is not allowed.

Such games can only be performed in establishments authorized by the yet to be formed Federal Gaming and Drawings Commission (“*Comisión de Juegos con Apuestas y Sorteos*”) along with the approval of the corresponding State and local Municipal authorities. This new Commission is an independent agency of the Ministry of the Interior (“*Secretaría de Gobernación*”).

Under the current legislation only the Federal Government, through the Ministry of the Interior has the power to grant permits at its discretion and under a vague set of regulations. Now, under the new rules, in addition to a newly formed Federal Gaming and Drawings Commission, the Municipal and State Governments will also provide their opinions in the granting of the permits.

Taxes and government dues resulting from the games and drawings will be shared with the Municipalities and States.

Another new feature of the Proposed Law is the Technical Advisory Board (“*Órgano Técnico de Consulta*”). These will be “Ad Hoc” Mexican legal entities incorporated under Mexican Law, who from their expertise and experience on racetracks, dog tracks, frontons, horse racing in temporary venues or cockfights or other gaming areas, are hired by the Commission for the granting of licenses corresponding to their specialty. The Technical Advisory Boards must be registered before the Commission in accordance with the criteria and general provisions issued by the same.

The Law will apply to individuals and legal entities as well as to any kind of economic units of any form, including political parties, which engage in wagers with an economic purpose (fund raising) and activities related to the operation, management or offer to third parties of gambling and drawing games. In addition to the foregoing the new law will apply in any of the following situations:

- A. Where wagering operations are established either in a permanent or periodic form;
- B. Where an admission fee is charged;
- C. To Users of the establishments who are not part of the organizers, that is, any person who is different from: (i) the establishments’ employees, and (ii) the organizers.
- D. Where an amount or percentage of the bets is charged or withheld; or
- E. Where an amount or percentage or fee is charged or withheld in the winnings of players or users (participants).

In general, all operations regulated by Law must be done in Mexican Currency with the exception of remote horse and dog racing that may accept bets in United States Dollars if such currency is used for placing bets in their location.

The Law has the advantage of stating the (i) definition of all concepts and terminology related to Gambling, (ii) establish specific regulations for each type of game with bets or events where bets can be placed, even in those events promoted by political parties. The new law will also apply to (iii) regional and state fairs, which are a tradition in Mexico, and (iv) will forbid operators from granting of wagering credit to players.

Any wagering games or drawings can “ONLY” be offered or organized by Mexican Individuals or Mexican Companies that meet and fulfill specific requirements stated in the Law. However foreigners can invest up to 50% of Licensee Companies (Permit Holders).

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Notwithstanding, Operators and Technical Advisory Boards have to be Mexican Companies but can be wholly owned by foreigners and be involved as such in the gaming industry. The proposed Law allows foreigners to participate in these activities with the requirement of incorporating Companies in Mexico according to Mexican Law.

The agreement between Licensees and Operators will have to be disclosed to the Commission.

In order to be a gaming Licensee (permit holder) or Operator, the new law would impose the following requirements:

- 1) Permit holders must be Mexican Individuals or Mexican Companies incorporated according to Mexican Laws. As indicated foreigners can invest up to 50% in Licensee Companies. Operators can be wholly owners of Mexican Companies.
- 2) Obtain the corresponding authorization from the State, Municipal, Federal District, and Local Counties (“Delegaciones”) of the Federal District;
- 3) Disclose the origin of any investment to ensure the strict compliance to law;
- 4) Demonstrate economic solvency;
- 5) Demonstrate the legal possession to property or the real estate where the gaming establishment will be installed;
- 6) General Business Plan;
- 7) Programs and investment commitments with the purpose to improve tourism;
- 8) Technical and operational specifications including a description of betting games to be offered or operated;
- 9) Any additional requirements imposed by any local authority;
- 10) Internal regulation and compliance processes; and
- 11) The term of the kind of permit requested.

The Commission will be in charge of granting gaming Permits that must contain: (i) a description of the activities authorized to perform, (ii) rights and obligations of the owner-operator, (iii) government fees, (iv) the term, and (v) causes for termination or revocation, among others requirements.

In addition, the proposed new Law will establish uniform standards for facilities, equipment, maintenance, safety measures, and insurance policies requirements that the Concessionaire’s establishment must fulfill in order to begin operations.

The Proposed Law includes the standardization and minimum requirements for the construction and layout of the establishments as well as standards for the gaming equipment, installations and accessories. The Ministry of Economy at the suggestion of a new Gaming Commission will issue standards called “Mexican Official Standards” (“NOM’s”) specifically applicable to the gaming industry.

The new Gaming Commission will also be in charge of creating and conducting policies and programs related to the performance and operation of betting games and drawings, as well as the surveillance, control and regulation of the activities and establishments related to games with bets and drawings.

One of the main purposes for creating the Commission is to ensure the free competition and free performance of the activities regulated by the Law in accordance with the Economic Competence Commission (Antitrust Commission). The Commission will also be in charge of conciliating any claim or problem between concessionaires and players with the purpose of protecting the interests of the public.

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In addition, the Proposed Law want that customers and players to be able to participate in a safe and controlled environment, therefore the parties subject to the Proposed Legislation will also be subject to verification under the Federal Law Against the Organized Crime, as well as to the provisions issued by the Federal Public Prosecutor and the Ministry of Treasury on money laundering.

Operators and Licensees are obligated to notify of any “suspicious” activities related to organized crime or money laundering.

The Commission will be directed and managed by the Board of Commissioners which will comprised of: (i) the Secretary of the Interior, (ii) the Secretary of Treasury, (iii) the Secretary of Tourism, (iv) the Secretary of Public Safety and (v) Five Individual Commissioners with professional and recognized honorable reputation whom will be appointed by the Mexican President and ratified by the Senate. The Chairman of such Board will be elected by all the Commissioners and will have the deciding vote in case of tie.

Concessionaires are bound to pay all the taxes stated by the Production and Services Special Taxes (“*Ley del Impuesto Especial Sobre Producción y Servicios*”). Taxes generated by gaming operations will be distributed between the Federal Government, States and Municipality and Local Counties (“Delegaciones”) of the Federal District in which the establishments are located and are in operation, in the proportion that the foregoing law states. Likewise any person that obtains any income from betting games and drawings will be bound to pay any tax established by federal, states, municipal laws or regulations.

Finally the Law establishes crimes and administrative sanctions related to gambling activities with a penalty up to fifty thousand times the minimum wage or the revocation of an issued Gaming Permit and up to fifteen years in jail for any crimes committed.

While the proposed new legislation was submitted for debate in December, it is not expected to be out of committee or considered for a vote until mid-summer.

Respectfully

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