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XIV Sensitive areas

The following is a selection of possible problem areas often not given the attention merited when planning an investment in Mexico, and which could suddenly become critical in the course of operations. It is noteworthy to underline that each business plan should take into account its own sensitive areas, as this section only aims to introduce a few of them, in a broad fashion.

A. Zoning

Most municipalities within Mexico have areas designated for residential, commercial, office and industrial purposes, and each state has the authority to enact administrative general rules for the use of land and for the operation of establishments. In most states, the rules require an operations license, a land use permit, and a construction permit issued from the corresponding state and/or municipality. In some cases, depending on the type of establishment, an opening notice must be given. It is important to note that the opening of establishments and the use of the land (zoning) have different requirements, and should be addressed separately.

For example, in the Federal District, hotels, restaurants and sports clubs require an operations license, whereas only a notice of opening is required for the operation of an office or a commercial establishment.

Several official documents are required to obtain an operations license, such as a zoning permit, license for the use and occupancy of the premises, construction permits, and authorization from the health authorities. When dealing with industrial facilities, in order to obtain the operations license, it is necessary to comply with federal environmental requirements as well.

In the case of an opening notice, it is necessary to file some of the aforementioned documents.

The municipality can impose fines, close temporarily, or even close permanently, those establishments operating without the required licenses or that fail to file the opening notice.

B. Environmental regulation

1. General legal framework

Environmental regulation is a significant area of concern for businesses with operations in Mexico. The Ministry for Urban Development and Ecology was created in 1982 to regulate urban development, housing, land use and ecology. Later, it changed its name to Ministry of Environment, Natural Resources and Fishing in 1994.

However, in 2000 it adopted its current name as Ministry of Environment and Natural Resources (“The Ministry of Environrnent”), which is in charge of environmental matters. There are also environmental related decentralized entities, such as the National Institute of Ecology, which is in charge of formulating environmental regulations and the Environmental Protection Agency (“PROFEPA” for its Spanish acronym), in charge of environmental land regulations and technical standards enforcement.

Another important agency is the National Water Commission, which has the duty of issuing titles of concession, assignment relating to the use and exploitation of federal waters and authorizations for the discharge of residual waters, in accordance with applicable *NOMs.* It also keeps track of the Public Register of Water Rights.

In 1988, Mexico enacted its first comprehensive environmental law known as the General Law of Ecological Equilibrium and Environmental Protection (the "Law"), with the purpose of defining environmental policy and regulation; preserving and restoring the

environment; establishing environmental protection areas for flora and aquatic and wild fauna; promoting a rational use of natural resources; preventing and controlling water, soil, and air pollution; and regulating the competence of federal, state and municipal authorities regarding the environment.

The Law is divided into six titles addressing the following aspects: (i) general provisions, (ii) biodiversity, (iii) sustainable advantages of the natural elements, (iv) protection of the environment, (v) social participation and environmental information, and (vi) control measures, security measures and sanctions.

The Law has been supplemented with regulations in the following areas: environmental impact, toxic waste, prevention and control of the atmospheric pollution, vehicles circulating in Mexico City and the metropolitan area, and generation of noise. In addition to the Law and its Regulations, most Mexican states and municipalities have adopted its own environmental laws.

An amendment to the Law was published on December, 1996, which expanded the law's purpose to include concepts such as the preservation of biodiversity and the establishment of specific environmental policies. The amendment also introduced the concept of sustainable preservation of natural resources, thus replacing the notion of rational development. Minor modifications to the Law were also published on 2001, 2003 and 2005.

Furthermore, the 1996 amendment better defined the jurisdiction of federal, state and municipal authorities regarding environmental-related matters. Currently, the determination of jurisdiction is based on grounds, such as the territory in which the activities will take place, the type of activity and the sources of pollution. According to article 5 of the Law, the following are some of the principal areas that fall within federal jurisdiction:

- Formulation and management of national environmental policy;
- Application of the environmental policy in terms of the law, to preserve and restore the ecological balance and the environmental protection in the federal jurisdiction;
- Matters that affect ecological equilibrium within national territory or in zones subject to Mexican sovereignty and jurisdiction, originating from territory or areas subject to the sovereignty and jurisdiction of other countries, or from zones outside of the jurisdiction of any country;
- Matters originating within national territory or areas subject to Mexican sovereignty and jurisdiction, that affect the ecological equilibrium in territory or areas subject to the sovereignty and jurisdiction of other countries, or areas outside of the jurisdiction of any country;
- Issuing official Mexican standards and oversight to ensure compliance with environmental laws;
- Regulation and control of activities considered to be of high risk and of the generation, handling and disposal of hazardous waste for the environment and ecosystems and to preserve natural resources;
- Prevention and control of environmental emergencies according to civil protection policies and programs;
- Establishment, regulation, administration, and oversight of federally-protected natural areas;
- Design, application and evaluation of the general ecological programs, both in-land and off-shore;
- Evaluation of environmental impact of the works and activities described in the Law, as well as the issuance of permits and authorizations;
- Regulation of sustainable development, protection and preservation of forest areas, land, water, biodiversity, flora, fauna; as well as other natural resources under federal jurisdiction;
- Regulation of atmospheric pollution from any source, fixed or movable, as well as the prevention and control in zones of federal jurisdiction;
- In coordination with state and local authorities, the fostering of the use of technologies, equipment and processes that reduce emissions and discharges of pollutants from any source, as well as the establishment of regulations for the sustainable development of

energy resources;

- Regulation of activities related to exploration and exploitation of minerals, substances, and other underground resources under federal jurisdiction, with regard to their environmental and ecological effects;
- Prevention of pollution caused by noise, vibration, thermal energy, luminous energy, electromagnetic radiation, and odors which affect the ecological balance and the environment;
- Promotion of participation by the society in environmental matters;
- Implementation of the National System of Environmental and Natural Resources Information for public use; and,
- Taking care of the issues that affect the ecological balance of two or more states.

Another amendment to the Law was published on May, 2006. Its purpose was to establish the collaboration and coordination between the Ministry of Environment and Natural Resources and other ministries of the Executive Power, such as the Ministry of Defense and the Navy.

The following are some of the main environmental issues under the jurisdiction of the states:

- Formulation and management of state environmental policy;
- Application of the environmental policy measures provided by local laws, as well as ecological preservation and restoration and environmental protection regarding areas of state jurisdiction;
- Prevention and control of atmospheric pollution from fixed industrial or transient sources, in areas specified by the Law as not falling within federal jurisdiction;
- Regulation of activities not considered as high-risk activities, as defined in the Law;
- Regulation of systems for collection, transportation, storage, handling, treatment and disposal of non-hazardous solid and industrial waste;
- Prevention of environmental pollution caused by noise, vibration, thermal energy, luminous energy, electromagnetic radiation and odors which affect the ecological balance and the environment from fixed industrial or transient sources, in areas specified by the Law as not falling within federal jurisdiction;
- Regulation of sustainable usage, prevention and control of pollution of waters under state jurisdiction, as well as cases in which the oversight of federal waters has been assigned to the states.

The environmental legislation also includes technical standards to determine parameters for maintaining the health of the population, the preservation and restoration of the ecological equilibrium and the protection of the environment

In addition, other laws contain provisions on specific subjects related to the environment. Such laws include the Mexico City Environmental Law that was published in 1996 and began to implement its specific regulation in 1997; the Health Law, which takes care of the negative effects of the environment as an influence on human health; the Communications Law, which provides that the establishment and exploitation of general means and routes of communication must be done in such a manner not affecting the ecosystems and the ecological equilibrium; and the Law of Urban Development, which provides that population centers must be established taking into account the prevention, control and monitoring of ecological risks and emergencies, as well as the preservation and improvement of the environment. Other important laws are the Forest Development General Law, the Fishing Law, Law for Prevention and Integral Managing of Waste and the Law on the Biosecurity of Genetically Modified Organisms, which contain important environmental related provisions.

2. Environmental impact

Anyone wishing to carry out any of the following activities shall apply for prior

authorization from the Ministry of the Environment:

a) Hydraulic works, general means and routes of communication, oil and gas pipelines for the transportation and distribution of hydrocarbons and dangerous substances.

b) Petroleum industry, petrochemicals, chemicals, iron and steel works, paper, sugar, cement, and electricity;

c) Exploration and profit from minerals and substances reserved to the nation under the Mining Law and under regulations to article 27 of the Constitution regarding nuclear materials;

d) Installations for treatment, storage or disposal of hazardous waste, as well as radioactive waste;

*e)*Forestry in tropical jungle areas and slow regeneration species;

*f)*Forest plantations;

*g)*Changes in zoning of forest areas, as well as jungle and desert areas;

*h)*Industrial parks in which high-risk activities are to be carried out;

*i)*Real estate development that affect coastal ecosystems;

*j)*Works and activities in and around wetlands, mangrove swamps, lakes, rivers and estuaries connected with the sea and littorals;

k) Works in protected nature areas;

*l)*Fishing, aquaculture or agriculture activities that may put a species at risk or harm the ecosystem;

m) Federal works or activities that may cause ecological imbalances, harm to public health, harm to ecosystems, or pass the limits or conditions established by law related to the environment.

To obtain the authorization for engaging in these activities, interested parties must submit an environmental impact manifest to the Ministry, which shall contain:

i) a description of the possible environmental impact of the activity or project; and,

ii) the preventive, mitigating and other necessary measures to avoid or minimize any impact on the environment;

When high-risk activities are involved, as defined in the Law, the environmental impact manifest must include a risk study. Once the environmental impact manifest is filed, the Ministry begins the evaluation process to determine whether the application fulfills the requirements set in Law and its regulations, as well as the applicable official standards. The Ministry has 10 days to analyze the application. The authority may authorize, modify or reject the performance of the activity within 60 days from the receipt of the environmental impact manifest.

The activities listed in *a)* through *m)* above require a preventive report rather than an environmental impact manifest in the following cases:

- Should there be NOMs or other rules on emissions, discharges, use of natural resources and, in general, all environmental effects that may be caused by the activity;
- The works are expressly provided for in a partial urban development plan or in an ecological regulation that has been evaluated by the Ministry;
- The activities shall be performed within facilities located at an industrial park authorized by the Ministry for the activity involved.

In the above cases, once the Ministry has analyzed the preventive report, it will determine the need of an environmental impact manifest.

There are exemptions to the filing of an impact manifest. A notice of no requirement of manifest shall be filed in the following cases: the widening, modification, infrastructure substitution, rehabilitation and maintenance of installations related to works and activities of those listed in *a)* to *m)* above, which are already in operation.

Local authorities will be competent in those activities not reserved to the Ministry of Environment.

3. Emissions to the atmosphere

Emissions into the atmosphere are released either by fixed or mobile sources.

a) Fixed sources

All facilities releasing pollutants to the atmosphere located in a fixed place in which industrial, commercial and service activities are performed, are considered as fixed sources. Such emissions shall not exceed the maximum levels established in the corresponding NOMs.

Fixed sources shall comply with several requirements. For example, they need to have maintaining systems and equipment to control atmospheric emissions; they are also required to keep an inventory of emissions and install measuring equipment.

As previously described, atmospheric pollution from any source falls under federal jurisdiction; as does the prevention and control of atmospheric pollution in federal zones, and cases of fixed or mobile sources of atmospheric pollution. Among the fixed sources of pollution which are under federal jurisdiction, the following are noteworthy: chemical, petroleum, petrochemical, paint, dyes, automotive, paper, metallurgy, glass, electric energy generation, asbestos, cement, and treatment of hazardous waste.

These fixed sources require an operating license from the Ministry of Environment.

Once the license has been obtained, the holder must submit every February, an inventory with information regarding the company emissions' level to the atmosphere and its operations, which shall be in accordance with the applicable law. When applicable, the facility must comply with local or municipal requirements.

b) Mobile sources

The Law includes mobile sources that must comply with the limits established in NOM. Automobile manufacturers must use methods, processes, parts and equipment that ensure that the maximum levels of atmospheric pollution specified of the NOM are not exceeded. All vehicles with motors manufactured after 1990 are obliged to have catalytic converters.

Vehicles rendering federal public transportation services must comply with emission control standards. Further, passengers vehicles in Mexico City and the metropolitan are a must comply with a verification program carried out twice a year and are barred from circulating once a week, depending on their license plate number and the year of manufacture.

Finally, the Kyoto Protocol on Climate Change, which regulates the emissions of greenhouse gases to a lower percent, was enacted in 2006, as discussed in detail herein.

4. Water pollution

The discharge of residual waters into any receiving body of water or onto ground is subject to authorization by the National Water Commission. If discharges are made into the sewer system, an authorization must be obtained from the municipal authorities, unless toxic wastes are discharged in receiving bodies of federal jurisdiction, in which case, the Ministry of Environment would have jurisdiction. Industries with water discharges must also comply with the corresponding technical NOMs.

5. Hazardous waste

The General Law for the Prevention and Integral Management of Hazardous Waste (the "Law") was published on October, 2003.

The Law has the objective of guaranteeing the right of all persons to an adequate environment and encourages sustainable development through preventing the generation, valorization, and integral management of hazardous and of special handling urban solid waste. Furthermore, the law pretends to prevent the pollution of places with these wastes

and contemplates actions in case violations occur thereto. Radioactive residues are subject to specific regulations and are exempt from this law' s application.

The law confers to the Federation, the states and municipalities sufficient authority to exercise attributions in prevention of the generation, usage, and integral managing of waste, as well as the prevention of pollution in facilities. Moreover, the law confers redress actions in conformity with the distribution of competences.

The Secretariat of Environment and Natural Resources shall set up groups and subclassify hazardous waste, domestic solid waste and special management into the respective categories. The categorization shall be done with the purpose of carrying out the corresponding inventories and setting out decisions based on risk criteria and management.

Generator is defined as the natural person or an entity who produces waste through a productive or consumption process. A major generator is the natural person or juridical person who generates an amount greater than or equal to a l0-ton gross weight of waste per year, or the equivalent in other units of measurement.

Small generator is the natural person or entity who generates greater than or equal to 400 kilograms and less than 10-tons in gross weight of residues per year, or its equivalent in any other units of measurement. Micro-generator is an industrial, commercial, or service establishment, which generates any amount up to 400 kilograms of hazardous waste per year, or its equivalent in any other unit of measurement.

The classification of hazardous waste is established in the Law for the Prevention and Integral Handling of Wastes published in 2003. The generators and hazardous waste possessors can hire waste management services with companies or natural people that are duly authorized by the Secretariat or, they can transfer the waste for industries to use them as energy generators or combustible within their processes.

Before issuing an authorization, the Secretariat requires those companies to file a guarantee enough to cover any damage produced by the rendering of their services and damages caused at the conclusion thereof.

The hazardous waste generators must identify, classify, and manage their waste in accordance with the provisions contained in the Law, as well as with those determined by the NOMs issued by the Secretariat.

The major generators of hazardous waste are obligated to be registered in the Secretariat of Environment and submit a management plan for hazardous waste. Major generators must also keep a logbook and file an annual report on the generation and management of hazardous wastes.

The small generators of hazardous waste shall also register before the Secretariat and keep a log book where they will record the annual amount of hazardous waste generated and its management modalities. People considered as micro generators of hazardous wastes are obligated to register before the competent governmental authorities of their state or municipality, as determined by the local legislation.

An authorization is required from the Secretariat to undertake the following activities: to provide management services of hazardous waste, to use it within a process for collecting and storing third party hazardous waste, to undertake any activity related to the management of third party hazardous waste, for: incineration of hazardous waste, transportation of hazardous waste, establishment of solid waste confinements within the facility where hazardous wastes are managed, transferal of authorizations issued by the Secretariat, for the use of thermal waste to sterilize or for thermolysis, or to import or export hazardous wastes.

The people responsible for disposal facilities and for health damages involving health hazards are obligated to indemnify for all damages caused in accordance with applicable legal regulations.

Further, people responsible for the generation and management of hazardous solid waste, and who are liable for the pollution of these sites, are obligated to take the appropriate measures to provide remedy in accordance with the Law and the applicable regulations.

The owners and possessors of private property and areas operated under concession which are contaminated, are severally liable to carry out necessary remedial measures without detriment of their right to act against the party responsible for the contamination.

The transfer of contaminated property with hazardous waste is subject to approval by the Secretariat of Environment.

Those people transferring real estate contaminated by solid or hazardous wastes must inform these third parties of the contamination, in light of the activities, which took place thereon. In addition to redress, those who are responsible for the contamination of a site shall be liable for offenses and administrative sanctions.

6. Transportation of hazardous waste and materials

One of the most important issues regarding hazardous waste is its transportation. The rules for the transportation of hazardous waste and materials, which set the provisions for the transport by earth of hazardous waste, were published in 1993.

The importance of the rules lies in the fact that it establishes the characteristics of the labeling and marking of the containers, as well as the characteristics and specifications of the motor vehicles or units used to move the materials. It also establishes the duties of the people rendering the transportation services, generators and recipient of the hazardous waste or materials.

7. Other pollutants

The emission of noise, vibrations, thermal and luminous energy, odors and visual pollution, is subject to compliance of the corresponding NOM. PROFEPA and in some cases, even the Secretariat of Health may conduct on-sight inspections to determine whether any of these emissions are hazardous to human health.

8. Sole Environmental License

Several accords establishing mechanisms and procedures to obtain a Sole Environmental License (LAU for its acronym) were enacted in 1997. Before said date the environmental procedures for industries in Mexico were carried out in different offices, which provoked waste of time when carrying out any procedure or consulting the authorities.

The LAU for fixed sources of federal jurisdiction substituted the Operation License. This is an instrument to regulate directly industrial establishments of federal jurisdiction and concentrates in a sole procedure the evaluation, reporting and follow up of the environmental duties of industries in the area of impact and environmental risk, emissions into the atmosphere, hydraulic services, production and handling of dangerous waste. The LAU is compulsory to companies of new incorporation and the companies, which operate and require its regularization.

During the first four months of the year the companies must file before the Secretariat of Environment an annual report on the emission and transfer of polluting materials during the past recent year. This report is filed through the Annual Operation Cell (COA for its acronym), and is part of the duties established in the Operation License and the LAV. The companies having the Operation License or the LAV must file the COA if they are of federal jurisdiction.

9. Inspection and sanctions

The law authorizes PROFEPA to make inspections to assure the execution of the Law regarding hazardous wastes with the purpose of establishing corrective measures and sanctions, in case of violation of the Law.

The non-compliance may result in sanctions. They range from temporary to definitive seizure of pollutant substances, temporary or definitive closing of polluting sources,

neutralizing or any similar action aiming to stop any material or dangerous waste from producing effects which may affect human health.

In addition to the above, some amendments were made to the Federal Criminal Code in 2002, which classified the offenses committed against the environment and the environmental handling. The Code imposes sanctions up to nine years of prison and fines equivalent up to 3000 times the daily minimum wage regarding those conducts related to technological and dangerous activities that may be classified as offenses against biodiversity, biosecurity and, in general, against environmental handling and the environment itself.

C. The use of water

1. Legal grounds

The legal sources for the use of water in Mexico are the article 27 of the Mexican Constitution; the Law of National Waters, published on December, 1992 as amended on April, 2004; the Regulations of the Law of National Waters; and the Official Mexican Standards related to water.

The purpose of the Law of National Waters is to regulate the exploitation and usage and enjoyment of national waters within Mexico, as well as the discharge of residual water. Furthermore, it regulates the water's distribution and control and preserving its quantity and quality, so that national waters may be a sustainable.

2. Authorizing a concession

The Executive branch through the National Water Commission (a central authority) or the corresponding agency (at a regional level) authorizes concessions for the use and exploitation of national waters and its public benefits, inherent to a natural person or a juridical person for a period not less than 5 years, and no more than 30 years, and can be extended for the same period of time whenever there are no grounds for termination.

In addition to the application for the concession of nationa1 waters, there is a requirement to obtain a title to discharge residual waters. The National Water Commission authority issues a concession title for the discharge of residual waters in which it shall identify at least the location and description of the quantity and quality of the discharge, the regime to which it is subject to (to prevent and control water contamination), as well as the expiration of the title.

Water may be used industrially in factories or in businesses that carry the following activities: extraction, conservation, or transformation of commodities or minerals; the production of goods; in kettles, or cooling devises; for washing or in bathrooms; or in any other service within a business that extracts any type of substance or vaporized water for the purpose generating electric energy. Furthermore, water can be used for cattle growth, poultry in aquaculture, environmental use and in other areas.

As a consequence of the concession, fiscal rights shall be paid for the extraction, consumption, and volumetric discharge. The lack of compliance constitutes grounds for suspension or revocation of the concession title. **In** neither case should the holder of the title of the concession or assignee dispose of larger volumes of water than those authorized.

3. Transfer of concession títles and discharge title

Concession titles for the exploitation and use of national waters, currently in force and registered at the Public Registry of Water Rights and discharge titles, may be partially or totally assigned.

4. Responsibilities for environmental damages

Natural persons or entities who exploit, use, or enjoy national waters, have the responsibility of environmental damages caused due to the unauthorized water extraction or for discharging water in violation of the general conditions or particular authorization. The infringing person shall cover an indemnification for the damages and carry out all necessary measures to prevent the waters contamination, or reintegrate it to adequate conditions and maintain the equilibrium of vital ecosystems.

5. Infringements and administrative sanctions

Violations of the law will be subject to an administrative sanction, such as a fine up to 20,000 times the daily minimum wage established in the Federal District, as well as the temporary or definitive closing, either partial or total of the wells, and the revocation of the title concession. Such fines are independent of the criminal charges.

6. Administrative sanctions

Within fifteen business days computed from the date of proper notice of an act or resolution by the National Water Commission, a motion to revoke said resolutions may be filed. The purpose of these remedies is to revoke, modify or confirm the resolution challenged. If one resorts the imposition of a pecuniary sanction, the collection will be suspended until the legal remedies are resolved. However, this remedy will be available only if the challenging party guarantees the result with a bond.

D. Consumer protection

1. General comments

Two fundamental institutions are the cornerstones of consumer protection in Mexico: the Federal Consumer Protection Attorney's Office (an agency called PROFECO), and the Ministry of Economy. The latter is in charge of coordinating the country's commercial sector. The responsibilities and attribution of tasks of the two agencies in matters of consumer protection are set out in two basic laws, the Federal Consumer Protection Law (FCPL) and the Federal Metrology and Standardization Law (FMSL).

The FCPL and the FMSL are of "public order and social interest", wherefore the terms -rights and obligations- under said laws can not be waived. The FCPL is the result of various legislative efforts to ensure the consumers' rights in their commercial relationships with suppliers.

2. Basic principles

The basic principles upon which the consumer protection system is structured in Mexico are the following:

- The protection of life, health and safety of the consumer from risks caused by products, practices in the supply, and services considered dangerous or harmful;
- Education and information on consumption, adequate for the products and services,

that guarantee the freedom of choice and equity in contracts;
- Satisfactory and clear information on the different products and services, with correct specifications of quantity, characteristics, composition, quality, and price, as well as the risks that they represent;
- The effective prevention and repair of individual or collective damages to assets and companies;
- The access to the administrative organs with oversight on the prevention of individual or collective damages to assets and companies, guaranteeing legal, administrative, and technical protection to the consumers;
- The granting of information and of resources to the consumers for the defense of their rights;
- The protection from deceptive and abusive publicity, coercive and unfair commercial methods, as well as abusive practices, clauses or taxes on the supplying of products and services;
- The real and effective protection of the consumer in transactions made through the use of conventional, electronic, optical, or any other means of technology, and the adequate utilization of the data provided, and
- The respect of the rights and obligations derived from consumer relations and the measures that guarantee their effectiveness and compliance.

3. Rights of the consumer

A list of consumers' rights as per the FCPL is considered as follows:

- Right to receive sufficient and truthful information about the products acquired;
- Right to receive guaranties in clear and precise terms;
- Right to receive information that advises of the risks and danger of the products;
- Right to acquire the products that are in existence or the rendering of a service, without negative or conditioning;
- Right to participate in the benefits that are stipulated in the promotions and offers;
- Right to receive detailed information about the conditions and periods of credit operations;
- Right to just conditions in the charging of interest due to credit purchases;
- Right to rescind the contract when the products acquired are defective in manufacture or hidden defects;
- Right to receive a refund when more than the maximum price was paid;
- Right to replacement of the product when the content is less than indicated on the packaging;
- Right to replacement, discount (allowance), compensation or return, if the products do not meet the conditions of quality, brand or specifications offered;
- Rights to receive evidence of the commercial operation;
- Right to receive quality in the repair service, with the use of appropriate parts and replacement parts;
- Right to receive indemnification for products that are damaged upon receiving maintenance;
- Right to have at any one's reach the information on the prices of the services;
- Right to enjoy in equal conditions those services offered to the public in general;
- Right to request the intervention of the Consumer Protection Agency when the consumers' interests and rights are affected;
- Right to receive the information of the contracts of adherence that are written in Spanish and in lettering that is legible at normal view;
- Right to personal integrity of the consumers. (Article **10** of the Federal Consumer Protection Law):
- When the purchase is made outside the commercial local and there is a decision not

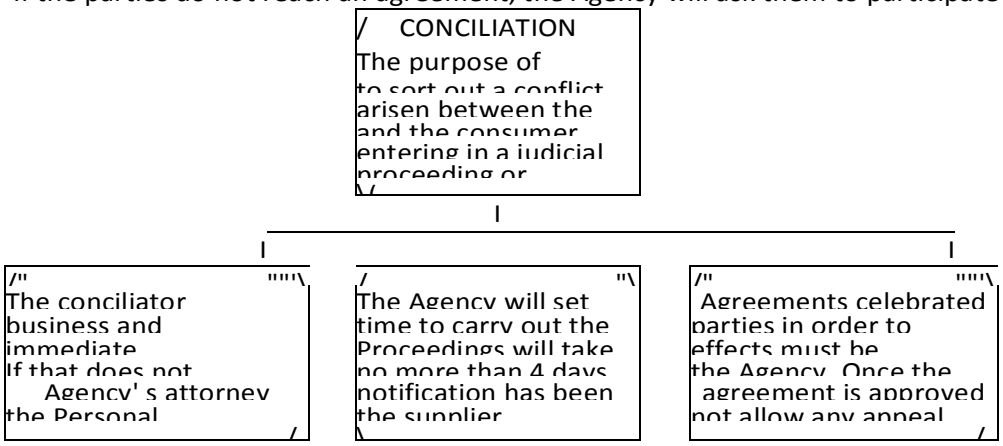
to acquire the goods or services, right to rescind within five business days as of the delivery of the goods or the signing of the contract, whichever comes last;
- Right to receive clear and sufficient information about the acquisition of time share;
- Right to receive compliance with the delivery of the real property;
- Rights of the incapacitated consumer;
- Rights of non-discrimination of consumers; and
- Rights of the consumers in internet operations.

4. Administrative action before the Consumer Protection Agency

When a supplier hampers or damages the rights of a consumer under the FCPL, the 1atter may bring an administrative action before the Consumer Protection Agency (the Agency) acting as conciliator or arbitrator or may initiate an action directly in the Mexican courts. **In** the former case, the time bar for bringing to court a civil action will be suspended. The consumer may file an administrative complaint within six months following the suppliers noncompliance. If the Agency can not lead the parties to an agreement -conciliation-, arbitration by the Agency may be requested either in amicable composition or in lawful judgment as set out below:

Please note that conciliation can be done through electronic means with the requirement that afterwards obligations acquired must be given in written form.

If the parties do not reach an agreement, the Agency will ask them to participate in:



The Agency can also order sanctions, close the suppliers establishment and impose fines up to the equivalent of 2,500 times the minimum daily wage in effect in the Federal District. In case of reoccurrence the fine can amount to twice this amount and arrest may be ordered.

5. Adhesion contracts

The FCPL contains a specific chapter regulating adhesion contracts (drafted by the supplier). Said agreements must be in Spanish. The Ministry of Economy may determine, by NOMs, to register with the Agency the contracts that contain disproportionate or abusive obligations for consumers granting the latter with administrative competence in order to settle any dispute that may arise from the interpretation or execution of the contract. Failure to register a contract when a standard requires its registration will entail an economic fine to the responsible party. Adhesion contracts subject to compulsory registration are the following:

- Time-sharing (NOM-029-SCFI-1998);

- Social events (NOM-lll-SCFI-1995);
- Dry cleaner's, laundry and similar (NOM-067-SCFI-1994);
- Skill programs and technical training without recognition of official validity (NOM-137-SCFI-1999);
- Real state maintenance and furniture contained in (NOM-138- SCFI-1998);
- Graduate school services (NOM-136-SCFI-1999);
- Funeral services (NOM-036-SCFI-2000);
- Vehicles repair and/or maintenance (NOM-068-SCFI-2000);
- Second hand vehicles sale, purchase and consignment (NOM-l22- SCFI-1997);
- Leasing of vehicles (NOM-124-SCFI-1997);
- Photographique services (NOM-126-SCFI-1998);
- Sale and purchase of construction materials (NOM-135-SCFI-1999);
- Sale of furniture (NOM-117-SCFI-2005);
- Repair and maintenance of electronic and gas appliances (NOM-085- SCFI-2001);
- Medical assistance through direct recovery (NOM-071-SCFI-2001);
- Embellishment of body (NOM-II0-SCFI-2004);
- Real state restoration and maintenance and furniture contained in (NOM-130-SCFI-2006);
- Pet company (NOM-148-SCFI-2001);
- Sale of new vehicles (NOM-160-SCFI-2003);
- Suppliers not regulated by financial laws, who regularly or professionally carry out contractual relationships or operations regarding interest-bearing loans with a security interest (as of June 2006)

Finally, it should be mentioned that the Agency is in charge of vigilance and oversight of the compliance with the law. Consequently, it is authorized to inspect or visit suppliers' facilities, either on its own (by operation of law) or pursuant to a consumers request.

6. Product liability

Mexican Law does not contain specific provisions governing product liability. Notwithstanding the protection granted under the Consumer Protection Law, the local civil codes provide general rules applicable to damages, either to persons or to their property, which encompass those caused by products. For example, the Civil Code of the Federal District states: *a)* that those persons acting illegally or against good customs, cause damage, must indemnify unless it is proved that the damage was caused as a consequence of fault or negligence of the injured party; and *b)* that if a person uses apparatus, instruments, mechanisms or dangerous substances (explosive or flammable, for example) he has to repair the damage caused unless it is proven that the damage was caused as a consequence of fault or negligence of the injured party.

The damage must be repaired either by reestablishing the prior situation or by indemnifying. Note that Mexican law does not include some of the damage concepts developed in Anglo-Saxon common law, and therefore damage awards are generally low by comparison

7. Price controls

Consistent with Mexico's deregulation policy, only a limited number of products and services are subject to price controls. Products of general consumption indispensable for nutrition, like bread, corn, tortillas, sugar and milk, which were formerly subject to price controls, have been recently deregulated.

As to the pharmaceutical industry, in recent years, the government has also loosened price controls to give the industry greater flexibility. Maximum prices are set in consultation with the Secretariats of Health and Economy, as well as with the Mexico's Chamber for the

Pharmaceutical Industry (CANIFARMA), the primary trade association.

Some public services and goods provided by the Mexican government, either directly or through concessions, are still subject to official tariffs and prices. Electricity, gas, water, oil and gasoline are subject to price controls. Public transportation services such as buses, the subway (metro), collective transportation and taxi cabs, are also controlled by the government.

The Ministry of Economy may enter into agreements with private entities, such as chambers of industry and commerce and companies to limit increases in prices for the benefit of consumers. These agreements only bind the parties and are not mandatory for those companies or members of the chamber who are not signatories of the agreements.

8. Multilateral achievements

In recent years, the Agency has carried out multiple operations to expand its presence in international fora. Furthermore, the Agency has increased its activities performed in collaboration with national institutions which are also in charge of protecting consumers' rights in order to enforce international cooperation. Some of these activities have been the participation of Mexico as member of several international organizations according to the following:

- United Nations.-The Agency has worked in direct contact with two of its specialized organs: the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Organization for Agriculture, in its committee of World Alimentary Security.
- Organization for Economic Co-operation and Development (OECD).-Mexico is a member since 1994 and in recent years has paid special attention in works carried out by the Committee on Consumer Policy (CCP).
- Consumers International.-Federation of consumers organizations dedicated to the protection of consumers rights worldwide, in which the Agency has been highly involved in working with other Latin American countries.
- International Consumer Protection and Enforcement Network.-International organization in which Mexico has been developing programs in accordance to multilateral needs.

9. Bilateral achievements

A recent example of bilateral agreements is the Memorandum of Understanding (MOU) entered into between the Agency and the Federal Trade Commission of the United States of America in 2005. This understanding represents a great step in cooperation practices and is a clear sign of trust between agencies due to the creation of a great project of coordination among countries, to allow information exchange, to promote notification as well as enforcement. In recent years, the Agency has also collaborated with other agencies from the USA such as the National Association of Consumer Agency Adminstrators (NACAA), in the legislative compilation on consumer protection.

Further, there are recent cases of collaboration between Canada-USA-Mexico in order to take action against groups carrying out fraudulent activities against consumers in these countries.

E. Competition Law

The Federal Economic Competition Law (the "Law"), effective as of June, 1993 and it's amendments published on June, 2006, as well as its implementing regulations issued on March, 1998, comprise the antitrust act to promote economic efficiency and protect the

process of free competition and market participation. The Law also created a Competition Commission as an autonomous agency separate from the Ministry of Economy. The Commission, although not a judicial entity, is responsible for enforcing the Law, conducting investigations, issuing administrative rulings and fighting monopolies, monopolistic practices and concentrations in accordance with the Law.

The Competition Law is divided into two principal areas: monopolistic market practices and concentrations, and applies to all individuals and companies, Mexican or foreign, regardless of the economic activities carried out by the companies in Mexico. Federal, state and municipal agencies, professional associations, and other economic groups are also included. Nonetheless, there are some exceptions, such as owners of patents and trademarks, which are enumerated in article 28 of the Mexican Constitution.

1. Monopolistic practices

The Law distinguishes between absolute and relative monopolistic practices. Absolute monopolistic practices are considered anticompetitive *per se* (meaning that they are always unlawful), while the legality of relative monopolistic practices depends if the economic agent involved in such practice enjoys or not substantial market power in the relevant market. However, the "rule of reason" evaluation, is applied to the net impact on competition, and the competitive process is taken into consideration, so a relative practice can be considered illegal.

"Absolute" monopolistic practices are commonly referred to as horizontal practices that take place among competitors. Absolute monopolistic agreements are illegal *per se* and therefore, are not enforceable. The Law establishes several presumptions regarding absolute monopolistic agreements between or among competitors, including, (i) price fixing or manipulation; (ii) placing restrictions or limitations on production, processing, distribution or commercialization; (iii) dividing or segmenting the market; and (iv) coordinating bids or abstaining from bidding in calls for bids, auctions or public sales.

The Law also sanctions "relative" monopolistic practices, which consist of vertical agreements among non-competing businesses with substantial market power for the purpose of unfairly driving competitors out of the market. Presumptions of relative monopolistic practices include: (i) the fixing, imposition or establishment of exclusive distribution and commercialization of goods or services, or the division or allocation of customers or supplies; (ii) limitations imposed upon the manufacture or distribution of goods; (iii) the imposition of obligatory prices or other conditions on distributors or suppliers; (iv) linkage of the transaction to the sale or distribution of an additional good or service usually distinct from the transaction product or service; (v) sale or transaction subject to obligation not to use, acquire, sell, commercialize or provide goods or services of a third party; (vi) unilateral refusal to sell or supply to certain agents goods that are normally offered to third parties; (vii) agreements to exert pressure on certain customers or suppliers as retaliation to dissuade them from certain conduct, or to force them to act in a certain manner; (viii) the sale of a product or services below cost and the losses to be recovered by means of future price increases; (ix) Utilization of profits of one product or service in order to finance los ses regarding the sale or marketing of another product or service or any act, such as predatory pricing, giving of discounts in return for exclusivity, causing increases in costs, inhibiting production or reducing demand, that might impair free competition.

A "relative monopolistic practice" will be sanctioned if it is proven that the responsible party has substantial power in the relevant market and the practice relates to goods or services corresponding to such relevant market.

The "relevant market" will be determined by grouping goods or services that can be substitutes for each other in terms of use and price. For this purpose, the Commission takes into consideration products characteristics, acquisition costs, opening of the economy to foreign markets, restrictions of access to alternate suppliers thereto or to other markets, their geographic location, and the ease of access to the product and its substitutes.

In determining "substantial power," additional criteria is used. Such criteria includes: the assessment of whether there is the capacity to fix prices unilaterally, or to produce or

considerably restrict the supply of goods or services in question, without competitors being able to fairly oppose the actions; the existence of natural or artificial entry barriers for the products, the possibility that competitors may access other sources; and the recent behavior of the accused, as this might indicate his capacity to act unilaterally.

2. Mergers and acquisitions (concentrations)

The Law governs all acts that have effects in Mexico. The analysis of mergers assesses an intended transaction's impact in Mexico**.** In some cases, however, the determination of the relevant market may include elements of overseas territories. The Law applies to all economic entities whose actions have a bearing on markets in Mexico.

The Law defines a concentration as the merger, acquisition of control, or other act whereby corporations, associations, stocks, corporate shares, trusts, or other assets merge, and such merger is realized between competitors, suppliers, clients, or other economic agents. The Commission will challenge and sanction any concentrations whose object or effect is to decrease, damage, or impede free competition with respect to equal, similar, or substantially related goods or services.

If the Commission determines that a proposed merger lessens, impairs or hampers competition in a relevant product area or geographic market, the Commission has broad authority to order divestiture, suspension, modification or annulment of the transaction. In making such a determination, the Commission considers a number of factors, including the degree of concentration in the market, barriers to entry of competing firms, the availability of substitute products, whether the transaction would give the resulting entity the power to set prices or restrict output unilaterally, and any other factor relevant to competition. The Law also contains a pre-merger notification requirement, which is triggered if one of three thresholds is met:

a) If the value of a single transaction or a series of transactions amounts to over 18 million times the minimum general daily wage prevailing in the Federal District, which on August, 2006, was approximately US$ 80 million; or

b) If a single transaction or a series of transactions create an accumulation of 35 percent or more of the assets or shares of an economic agent, whose assets or sales amount more than 18 million times the minimum general daily wage prevailing in the Federal District; which on August, 2006, was approximately US 80 million; or

c) If two or more economic agents participate in the transaction, and their assets or annual volume of sales, jointly or separately, total more than 48 million times the minimum general daily wage prevailing in the Federal District, which on August 2006 was approximately US$ 212 million; and such transaction creates an additional accumulation of assets or capital stock in excess of 8.4 million times the minimum general daily wage in the Federal District, which on August 2006, was approximately US$ 37.6 million.

Prior to closing, mergers exceeding the established thresholds must file a notification to the Commission. The Commission has ruled that the buyer is primarily required to file this notification, although the seller or transferor may comply with this obligation. In the case of mergers for consolidation purposes, all parties are obliged to notify the Commission. The initial notification must include, among other things, the corporate name, the corporations' legal representatives, the by-laws and articles of incorporation, financial statements, the shareholding structure, a description of the transaction, a description of the principal goods or services produced or provided, data related to the market share, and addresses of the plants or facilities involved.

Commission may request additional information within 15 days after receipt of the initial notification, to which the interested parties must respond within 15 days. The Commission has 35 calendar days to respond from the date of notification or from the date of receipt of the additional information. In exceptionally complex cases, the Commission may extend the period for the Commmission's response up to an additional 40 days. If it fails to render a decision within the statutory time period, it is deemed to have consented to the transaction.

Furthermore, economic agents may present to the Commission an analysis and other

pertinent information demonstrating that the merger will not have the objective or effect of decreasing, harming, or impeding free competition. The Commission has a period of 15 days to analyze the economic agent's analysis describing how the concentration does not affect free trade. If the time lapses without response form the Commission, it will be assumed that there is no objection to the realization of the transaction.

Under the new rules, within 10 days computed from the date of notification, the Commission may order the economic agents not to close the transaction until a favorable resolution is issued. If the time lapses without the Commission issuing resolution, the parties are able to close the transaction but assuming the risk the merger is determined to be anticompetitive and therefore, the Commission ordering divestiture or modification.

If the concentration is significant, the Commission studies whether the party or parties, by virtue of the proposed transaction, acquire "substantial power" in their relevant market, or whether the parties already have "substantial power." The Commission takes into consideration the existence and power of present and potential competitors, and the recent conduct of the parties participating in the merger, among other elements legally required.

Concentrations may not be challenged once a transaction has been approved, except where the parties provided false information to the Commission, or after one year in cases of concentrations that did not require notifications.

No other agency from the Executive Branch of the government participates in the Commission's decision-making process. Parties may appeal to the Commission for reversal of rulings unfavorable to them. If the appeal is rejected and the decision involves fines, the parties may later file an administrative adversary proceeding in Federal Tax Court. If the decision affects their constitutional rights, they may file suit in a District Court.