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NEWSLETTER & BOLETIN

VON WOBESER Y SIERRA, S.C.

Mexico

Contents

Versión en español en el reverso

NOVEMBER 2006

EDITORIAL

The long process of electing a President of the United Mexican States finally concluded on September 5, 2006 with the decision of the Electoral Court of the Federal Judicial Power, with which Licenciado Felipe Calderón Hinojosa was formally declared the winner of the electoral process. Although the electoral process has been questioned by the former presidential candidate Licenciado Andrés Manuel López Obrador, and by members of the Democratic Revolution Party and the Labor Party, the election has without doubt been the most transparent and effective election in the history of Mexico, as was confirmed by national and foreign observers.

The small margin by which Licenciado Felipe Calderón Hinojosa won the elections and the great discontent of the opposition has generated a profound division in some sectors of Mexican society, and has certainly made manifest the great social differences that exist in Mexico, which will be a challenge for the new administration of President Elect Calderón.

The composition of the new Congress, where the National Action Party has a relative majority, will force President Calderón to establish alliances with the opposition parties, including the Democratic Revolution Party, in order to achieve the agreements and carry out the legal reforms so urgently needed in the country to promote economic growth and thereby generate the resources necessary to satisfy the needs of the entire population, but particularly of those living in poverty.

Although Mexico is currently experiencing one of the best periods in its history in terms of the stability of macroeconomic factors, the benefits of this condition have not yet been reflected in the household economies of many Mexicans. Legal reforms in the areas of energy, tax and labor are urgently required, but most important is a structural reform of the Mexican State. As could be seen during this last administration, the Mexican political system established in our current Constitution has been surpassed by the strengthening of democracy, the division of powers and Federalism. The institutions are debilitated and a profound reform of the structure of the State through the Constitution itself is needed.

Aside from these great challenges, we see the future of Mexico with optimism. Mexicans chose a national vision based on the rule of law, which undoubtedly could be strengthened by a President who is a

lawyer with graduate studies in economics and politics, also having a profound knowledge of the functioning of the Mexican State and much experience in working with the opposition given his past positions as former President of the National Action Party and Federal Deputy.

We are certain that even though we have gone through difficult months in Mexico and we have been the center of attention in the international press, democracy in Mexico is being consolidated, which is also resulting in a robust macroeconomic outlook, and this in the end is in benefit of all Mexicans, as well as foreign investors in our country.

Sincerely,

Claus von Wobeser

CORPORATE

ANALYSIS

GENERAL LAW OF COMMERCIAL COMPANIES. ARTICLE 206

The Article

When the general shareholders meeting adopts resolutions on the matters encompassed by sections IV, V, and VI of article 182, any shareholder that has voted against a resolution will have the right to withdraw from the company and obtain the reimbursement of its shares, in proportion to the company assets, according to the last approved balance sheet, provided that such is requested within fifteen days from the closure of the meeting.

Comments

The resolutions to which sections IV, V, and VI of article 182 refer are based on the stipulations of the corporate by-laws that refer to the corporate purpose or objectives, to the applicable law and to the type of company recognized by the law. When the company is incorporated and its duration established, the shareholders/partners are obligated to remain together during a set period, but not for just any purpose, rather specifically for engaging in the stipulated corporate purpose or objectives. However, that union and activity also have a special form and regulation that the law establishes in order to set forth the obligations and responsibility between the shareholders/partners and the shareholders/partners before third parties, depending on the type of company adopted. Finally, all the shareholders/partners know and are aware that the company they are forming is a legal construction of the law of the country, and it is governed by that law.

All this is what determined the will of the shareholders to organize the company, because no one wanted corporate objectives other than those agreed upon; because no one wanted to be obligated under any form other than the one chosen among those recognized and accepted by the law; and finally, because no one wanted nor legally could accept that the company they formed be regulated by another country's law.

However, the right of the company and its shareholders/partners to amend the corporate by-laws and change the corporate purpose, adopt another corporate form, and change nationality is recognized. But it cannot be denied that the resolutions adopted by the majority of the capital in a general extraordinary shareholders meeting are an imposition on the minorities who at least did not consider the possibility of these changes when the company was incorporated.

This article does not attempt to compensate this grievance —for lack of a better word— caused to the minority shareholders in general, but it does attempt to do so for those that voted against the resolution. The situation of the absent shareholders is not addressed.

It should be noted that this article does not grant a right of withdrawal to the shareholders who vote against the extension of the duration of the company (sec. I art. 182), and that for analogous reasons it should be granted to them since they are obligated to stay within the company for a specific time period, and before such period expires there is no basis for requiring them to continue a longer period in the company, based on the principle that no one should be obligated to something he or she did not agree to. In addition, the expiration of the term established in the corporate charter is a cause for the dissolution of the company; and it operates by the sole passage of the time established for its duration. It should also be mentioned that section VIII of article 228 Bis grants to the shareholders or partners that vote against a spin-off the right to leave the company, applying this article 206 to the extent applicable.

The article being discussed attempts to establish the manner in which the shareholders that withdraw from the company can obtain the reimbursement of their shares. This is established in the final part, but in an imperfect manner, first of all for the improper use of the language. It provides that the shareholder who has voted against any of the mentioned resolutions "will have the right to withdraw from the company and obtain the reimbursement of its shares." *Reimbursement*, according to the *Spanish Language Dictionary*, means "action and effect of reimbursing," and *reimbursing* means: "Return an amount to the possession of the person who disbursed it." Therefore, what would have to be reimbursed to the shareholders would be the nominal value of the shares plus the premium that they would have had to pay when they subscribed them. Clearly this would be unjust. In addition, it establishes as a basis for the previously mentioned reimbursement "the corporate assets according to the last approved balance sheet," which is absurd. The value of the shares cannot be determined based on the corporate assets if the debt and other elements are not also taken into account. Finally, it must be criticized that the last balance sheet is taken as a base, since with the passage of time and other circumstances, this balance sheet could no longer correspond to the financial condition of the company. Given the importance of the matter, a special balance sheet should be taken as a base, using an accountant and expert appraisal.

There is another situation that this article does not address, which we feel is necessary to mention because of the possible consequences. The article refers to the situation of the shareholders who voted in favor of the matters referred to in article 182, since they are obligated to the changes approved. The shareholders who voted against the resolution have the right to withdraw from the company and obtain the payment of their shareholder equity. But what is the situation of the absent shareholders? This would have to be resolved in accordance with justice and equity, but based on an assumption of a fictitious decision that would have to be either affirmative or negative. If the presumption is that the absent shareholders voted against it, there would be no problem, since they would have to be paid their shareholder equity, just as for the shareholders that voted against it. But if the presumption is that the absent shareholders voted in favor of the approved resolutions, legal situations would arise that would be impossible to carry out, due to lack of knowledge or imposition of the real decision of the shareholders absent from the meetings.

There are several important examples. It would be imposed to those who were absent the extension of the duration of the company preventing the dissolution upon the expiration of the term agreed to in the charter deed; it would be imposed to them the change of the corporate purpose; it would be imposed to them, through the change of nationality, the change of governing law; it would be imposed to them greater obligations due to the transformation of the stock corporation into a general partnership. Clearly, this article needs to be amended.

Given the purpose of our comments, we think it is necessary to consider the final part of this article, which provides that to obtain the reimbursement of their shares, the shareholders must request it "within fifteen days from the closure of the meeting." But this term of fifteen

days set by article 205 is only to notify the company that they will exercise their right of withdrawal and will request the payment of their shareholdings. Therefore, what is the sequence or succession of events that will have to take place? Some of those events could complicate the situation.

The company will have to wait for fifteen days from the closure of the meeting, within which period it will receive the requests for reimbursement from the shareholders who have voted against the previously mentioned resolutions. At the end of this term, the company will know the number and names of the shareholders who requested the payment of their shareholdings, based provisionally on the last balance sheet. At the same time, the company would have to debit the capital account with the nominal value of the shares and any premiums paid, and register as creditors for the same amount the shareholders that are withdrawing.

It could happen that at a given time, the company lacks the liquid capital to pay these debts and therefore such payment would have to be negotiated by the parties. But there are other problems. Is article 9 of the General Law of Commercial Companies (LGSM) applicable? And if so, to what extent? This article provides that the reduction of the capital by reimbursement to the shareholders will be published three times in the official gazette of the state in which the company has its domicile, in intervals of ten days; and that the creditors of the company jointly or separately can challenge such resolution before the judicial authority up to five days after the last publication. From there, two specific questions arise in any of the cases in which the shareholders vote against the resolutions referred to in this article 206. The first is if the publications to which article 9 of the LGSM refers should be made, and the second is if the creditors can challenge the capital reduction. Our opinion with respect to the first question is affirmative, since the reduction of capital of the company in any form reduces its solvency, which is of interest to its current or possible creditors. With regard to the second question, our opinion is also affirmative, although there may be a conflict of interest between the shareholders that want the payment of their shares and the normal creditors that challenge the reduction of the solvency of the company and the increase of its debt due to the concurrence of their debts with those of the ex-shareholders.

Finally, we see another problem. When can the shareholders who oppose the above-mentioned resolutions, as well as those absent (if the observations we have made are accepted) receive their equity in the company? The provisions of the general part of articles 14 and 15 of the LGSM, applicable to all types of companies, cannot be ignored. Article 14 provides that the shareholder who withdraws or is excluded from a company will remain responsible before third parties for all the operations pending at the time of the withdrawal or exclusion; any contrary agreement will not be effective against third parties, and article 15 in turn provides that "in the cases of exclusion or withdrawal of a partner/shareholder, except in variable capital companies, the company may withhold the part of the capital and profits of the partner/shareholder until the operations pending at the time of the exclusion or withdrawal are concluded, at that point liquidating the equity corresponding to the withdrawing partner/shareholder."

Some of the resolutions to which we have referred can be taken in any of the types of companies that article 1 of the LGSM recognizes. The partners or shareholders of a stock corporation (sociedad anónima) and a limited liability stock partnership (sociedad en comandita por acciones[1]) who have voted against a resolution have the right to which we referred previously. In the case of general partnerships (sociedad en nombre colectivo) and limited liability partnerships (sociedad en comandita simple), the partners in fact have the same right or protection, since article 34, applicable to both types of companies, provides: "The corporate by-laws cannot be amended except by the unanimous consent of the partners, unless such by-laws establish that they may be amended by a majority of the partners. In this case, the minority will have the right to withdraw from the company."

By omission, we believe, this article 86 of the LGSM does not make article 34 of such law applicable to the limited liability company (sociedad de responsabilidad limitada). It seems to us that in a given case it should be applied by analogy.

Licenciado Manuel Lizardi A.

[1] The "sociedad en comandita simple" is a form of partnership having both limited partners, whose liability is limited to their contributions, and general partners, who are liable for all the obligations of the company. The "sociedad en comandita por acciones" is the same figure as the "sociedad en comandita simple" except that in the former, the interests of the partners are represented in stock certificates.

INTERNATIONAL

NOTE

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

As part of the legislative policy of the Mexican State to combat corruption,[1] on November 14, 2005, the United Nations Convention against Corruption entered into force in Mexico.

Recognizing the problem of corruption as a transnational phenomenon that affects the political and economic stability of the countries that suffer from it, as well as the ethical and democratic values of their people, the purpose of the Convention is to prevent and efficiently combat corruption by means of "international cooperation" and "to promote integrity, accountability and proper management of public affairs and public property."

In order to achieve this, the Convention obligates State parties to assume certain anti-corruption practices and policies in accordance with their domestic laws.

Among these practices and policies, the Mexican state assumed the obligation to establish an appropriate law in order to comply with the purpose of the Convention, and a Code of Conduct for Public Officials. In the same regard, the obligation is established to review the existing legal instruments and administrative measures in order to verify their adequacy in combating corruption. State parties, whose role may correspond to the Ministry of Public Office, must also create a specialized agency for applying and reviewing these policies.

With regard to corruption in the private sector, Mexico must adopt the measures necessary to promote greater transparency and the best accounting and corporate practices in companies. Similarly, through this instrument, the Mexican government agreed to raise awareness among the public with respect to the existence, causes, and seriousness of corruption, as well as the threat it represents.

An interesting aspect of the Convention is that while it does not define the term "corruption," it does indicate that the following activities are considered to fall under its scope:

a) Money-laundering;

b) Bribery, whether of national or foreign public officials, including within the private sector;

c) Misappropriation of public funds or embezzlement, in benefit of oneself or a third party. The embezzlement of private funds is also contemplated;

d) Trading in influence;

e) Abuse of functions;

f) Illicit enrichment.

The State parties must establish each of these offenses as criminal conducts according to the terms set forth in the Convention. This obligation extends to concealment or other forms of participation in such offenses, as well as the obstruction of justice.

It is important to mention that the above described offenses have already been established as crimes in Mexico, although not with the exact criminal classifications as proposed by the Convention.

The State parties are also required to create a witness protection program and to consider the possibility of implementing a program to protect reporting persons, and of granting immunity from prosecution to persons who provide substantial cooperation in the investigation or prosecution of these types of crimes.

Similarly, State parties are obligated to assume jurisdiction over these crimes. In this respect, the Convention establishes rules under which jurisdiction should be exercised, depending on the place the crime was committed and the persons involved.

Another interesting part of the Convention is Chapter IV regarding International Cooperation. Under this chapter,

[1] This policy is reflected in domestic law and the international treaties signed by Mexico in this area. In this respect, domestically we can mention the following laws: (i) Federal Law of Administrative Accountability of Public Servants; (ii) Federal Law of Accountability of Public Servants; (iii) Law of Professional Trade Service; (iv) Federal Law of Transparency and Access to Information; (v) Law of Public Works and Related Services; (vi) Federal Law of Acquisitions, Leases and Public Sector Services; (vii) Federal Criminal Code, as well as the Criminal Codes of each of the states and the Federal District. In the international sphere, in addition to this Convention, we can mention the following conventions: (i) Inter-American Convention against Corruption (OEA); (ii) Convention on Combating Bribery of Foreign Public Officials in International Commercial Transactions (OCDE); and (iii) European Criminal Law Convention on Corruption (ONU).

the State parties shall consider the possibility of establishing mechanisms for assisting each other in not only criminal investigations and proceedings but also civil and administrative ones related to corruption.

Consistent with the above, provisions related to extradition, transfer of sentenced persons, and mutual legal assistance are also put forth. In this regard, there are provisions directed toward cooperation in complying with the law, establishing for such purposes means of exchanging information and even specialized technical personnel.

Another central aspect of the Convention is the regulation of the recovery of assets obtained from corrupt acts, for which State parties are obligated to require their financial institutions to take reasonable measures to identify their clients and beneficiaries and provide enhanced scrutiny of suspicious operations and of the accounts of high public officials. In that respect, the possibility of creating a financial intelligence agency to investigate and confront illicit operations is set forth.

As can be seen, the Convention contains preventive and corrective anticorruption measures. In fact, it is specifically established that State parties may annul contracts arising from acts that involve corruption and revoke concessions that have been granted under such circumstances.

In order to facilitate and promote the implementation of the Convention, a Conference of the State parties is established, which will meet periodically.

Finally, if disputes arise between the State parties regarding the interpretation and application of the Convention, they shall be resolved by conciliation, and if such is ineffective, they may be submitted to the International Court of Justice.

The adoption of this United Nations Convention and above all the compliance with its terms, constitute and will continue to constitute very important steps in the struggle of the Mexican State against corruption. Time will tell whether the desired results are achieved. If we each assume our responsibility in this struggle, surely the good intentions represented by the Convention will prevail.

ENVIRONMENTAL

NOTE

COMMENTS ON THE NEW LAW OF ORGANIC PRODUCTS

On February 7, 2006, the new law of Organic Products, hereinafter referred to as the "Law," was published in the *Official Federal Gazette*. One of its primary objectives is to regulate the promotion and the necessary requirements applicable to the production, elaboration, preparation, packaging, distribution, transport, verification, and certification of products produced organically.

According to the preliminary recitals of the referenced Law, organic products shall be understood as those products produced without chemicals or pesticides and which are controlled during all the phases of their productive chain in order to guarantee healthy food for the consumer and great benefits to the environment during and after their production.

Those persons or companies who carry out or certify agricultural activities by means of production, harvesting, and handling systems, including organic processing and commercialization, will be subject to compliance with the Law.

Those who are subject to the Law will be assisted by the Ministry of Agriculture (hereinafter referred as the "Ministry"), which is responsible for encouraging the development of organic production as well as for coordinating and following up on its promotion and development. The Ministry will have the support of the National Council of Organic Production, which was created as a consultative agency and has as one of its functions to issue opinions to the Ministry regarding national and international regulatory instruments that affect organic production.

This Council will be composed of the head of the Ministry, who will preside over it, two representatives of the organic processors organizations, one representative of the merchants, four representatives of the certification agencies, one consumer representative, and seven representatives of national organizations of products from the different sectors of organic production.

Those who wish to certify their products as organic will have to be evaluated by a certified and approved Certification Organization, which will determine whether

the products comply with the Law and other applicable legal provisions issued by the Ministry. If compliance is confirmed, the certification will be granted. Only the products that obtain this certificate and comply with the established procedure can be identified as "organic" or any other equivalent term on the label of the product, and advertised as such in advertising material, commercial documents, and points of sale.

In the international sphere, when a person wishes to import a product classified with the term "organic" or labeled as "organic," it must come from a country with regulations and control systems that are equivalent to those existing in Mexico, or such products must be certified by a Certification Organization approved by the Ministry, since the integrity of the product must be maintained from its importation until it is in hands of the consumer.

The Law also establishes the following conducts as an infringement of its provisions:

a) that an operator knowingly commercializes or labels materials, intermediary products, finished products, and sub-products with the term "organic" without complying with the requirements set forth in the Law;

b) that certified operators use forbidden substances in violation of the provisions of the Law;

c) that an approved certified organization certifies a product as "organic" when such product does not comply with the requirements of the Law in that forbidden practices, methods, materials, or ingredients have been applied to it;

d) the breach by an approved organization of the obligations set forth in the Law; and

e) the use by any third party of excluded methods and the use by any third party of prohibited substances or materials and any material, product, or ingredient that derives from or has been produced with a prohibited production method or from genetically modified organisms are prohibited in any production chain of organic products.

The Ministry will be entitled to impose fines from 5,000 to 15,000 times the minimum wage effective in the Federal District on whomever engages in conducts classified as an infringement of the Law, in addition to any damages or losses that may have been caused to the affected party, to human health, to biological diversity, property, or the environment, as well as any sanctions provided for in other laws and any indemnification due to the organic operator.

The persons affected by any act or resolution issued by the Ministry that finalizes an administrative procedure or a phase of the procedure, or closes a file, will be able to challenge such resolution or act in accordance with the procedures set forth in the Federal Law of Administrative Procedure.

Finally, it is also worth noting that the Federal Executive should issue the regulation of the Law by August of 2006.

COPYRIGHT

ANALYSIS

RIGHT TO A PRIVATE COPY. DRAFT AMENDMENT OF ARTICLES 40 AND 148 OF THE FEDERAL COPYRIGHT LAW

The *right to a private copy* is the right to possess a copy of a work (for example, of a book, a CD or a DVD) for personal use, without intention to profit from it.

In this respect and in general, the intellectual property laws of different countries allow individuals to copy or reproduce a protected work for private use. In fact, the Federal Copyright Law currently establishes as one of the exceptions to unauthorized uses of released literary or artistic works what is known as the private copy, in the following terms:

> Article 148 of the Federal Copyright Law.- The released literary and artistic works can be used, provided the normal exploitation of the work is not affected, without the authorization of the holder of the pecuniary rights and without remuneration, always citing the source and without altering the work, only in the following cases:
>
> IV.- Reproduction on one occasion, and just one copy, of a literary or artistic work, for the personal and private use of the person making the copy and without intention to profit.
>
> Entities may not make use of this section except in the case of an educational, research, or non-commercial institution…

Given the popularity of the Internet and digital copies or reproductions, some countries have established certain limits or conditions on their legality, such as the creation of a pecuniary compensation for such activity.

Taking into consideration the global trends for protecting intellectual property, in February, Guillermo Herbert Pérez, who was then Senator of the National Action Party, presented a draft bill amending articles 40 and 148 of the Federal Copyright Law so that in Mexico the right to make private copies can be exercised.

This proposal is based on the imposition of an obligation to pay on the manufacturers and importers of electric or electronic devices, such as photocopy machines, fax machines, recorders, and compact disk players that are used to reproduce (or copy) the works, as well as the manufacturers and importers of "virgin" support materials, such as cassettes, videocassettes, compact disks, and other similar products in which the works are reproduced. This obligation to pay would necessarily offset the losses from the effect on sales suffered by authors, artistic interpreters or performers, publishers, and producers holding rights in relation to the reproduction for private use of a book, phonogram, or videogram, and would be reflected in our legal text in the following manner:

> Article 40 of the Federal Copyright Law.- The Authors, Holders of the Pecuniary Copyright, as well as the related rights, will receive compensatory indemnification for any copy made without authorization that is for the personal and private use of the person making such copy without intention of profiting directly or indirectly, in accordance with the following:
>
> I.- The payment of the compensatory indemnification will be made by the manufacturer or importer of electronic or digital mechanical devices with capacity to store, compact, duplicate, or reproduce any type of work, interpretation or performance, productions, and broadcasts, as well as by the manufacturer or importer of virgin support materials, which are sold to the public without containing any work, and can be reproduced in any of the mentioned devices;
>
> II.- The distributors, wholesalers, and sellers to the public of reproduction devices and of the virgin support materials described in the above section shall verify that the importers and manufacturers of such devices and support materials have paid for the private copy right; otherwise, they will be jointly liable for such payment;
>
> III.- The Copyright Management Associations representing Authors and Holders of Pecuniary Copyrights and Related Rights will collect the payments referred to in this article and shall use an amount equal to 20% of the total of their income from such payments for cultural activities in the area corresponding to them;

IV.- The payment of the compensatory indemnification set forth in this article will not be applicable when the producers of phonograms and videograms legally introduce into the market support materials that contain mechanisms or systems that prevent third parties from the unauthorized reproduction thereof.

In addition, section IV of article 148 of the Federal Copyright Law, which established the private copy as an exception to the unauthorized use of a work, would be derogated.

Finally, it should be mentioned that this bill was sent for comment to the Commission on Education and Culture and First Legislative Studies of the Senate, where it is sure to generate interesting discussions not only because of the implications in relation to piracy, but also and principally for the harm it could cause with regard to the expansion and distribution of culture with the increase in acquisition costs with respect to such "copies for private use".

LABOR

ANALYSIS

AMENDMENT OF ARTICLE 74 OF THE FEDERAL LABOR LAW, CONCERNING MANDATORY FEDERAL HOLIDAYS

On January 17, 2006, a decree amending article 74 of the Federal Labor Law, which establishes the mandatory federal holidays companies must grant their employees, was published in the *Official Federal Gazette*.

The bill amending such article was presented by the Deputies Chamber and ratified by the Senate on December 15, 2005.

With the above in mind, we would like to comment on the most relevant aspects of mandatory federal holidays and the recent amendment in order to ensure that companies understand their legal obligations in this regard.

What is a mandatory holiday?

Mandatory holidays are holidays established in the Federal Labor Law that allow employees to enjoy certain days off in order to attend or participate in civil, political, or even religions events that are important for the community.

What are the mandatory federal holidays according to article 74 of the Federal Labor Law as amended?

a) **January 1st**. This holiday is to allow employees to have the day off following the celebration of the new year;

b) **The first Monday of February**, in celebration of February 5, which is the Anniversary of the Mexican Constitution. This is one of the federal holidays that was changed with the amendment, establishing its celebration on the first Monday of February rather than February 5;

c) **Beginning in 2007, the third Monday of March**, in celebration of March 21, the birth-

day of Benito Juárez, a former Mexican president. This is another mandatory holiday that was changed, beginning in 2007;

d) **May 1**. This day is granted to employees in celebration of Labor Day;

e) **September 16**. This day is granted to employees in celebration of Mexican Independence Day;

f) **The third Monday of November**, in celebration of November 20, the day of the Mexican Revolution. This is the last of the mandatory federal holidays that was changed with the amendment of the law;

g) **December 25**. This is granted in celebration of Christmas;

h) **December 1st every six years**, corresponding to the transfer of federal executive power. This holiday must be given to employees this December 2006, since the new President of Mexico will take possession of the presidency on this date;

i) Any days established in federal or local electoral laws in the event that ordinary or extraordinary elections are called for purposes of carrying out the voting process.

What is the purpose of amending article 74 of the Federal Labor Law?

The purpose of amending article 74 of the Federal Labor Law is to create long weekends in February, March, and November in order that:

a) Employees can extend their weekend with the federal holidays corresponding to February 5, March 21, and November 20;

b) The productivity of employees is not reduced by the interruption caused by having a holiday in the middle of the week;

c) Companies and particularly industrial plants do not have to interrupt the functioning of their machinery and equipment in the middle of the week, which can result in a significant economic cost.

Can companies grant holidays in addition to those established by the Federal Labor Law?

Companies may contractually establish other holidays.

For example, some companies also grant their workers the following days as holidays: Thursday and Friday of Easter Week, September 15, October 12, November 1 and 2, and December 24 and 31.

Can an employee be asked to work on a holiday, including those that were just changed by the amendment?

If because of the nature of the work done in the company it is necessary to work during holidays, an agreement must be reached with the employees determining who will work on such days. If an agreement cannot be reached, the company can bring the conflict before the labor authorities in order for the latter to decide which employees will work on those days.

Employees that work on holidays are entitled to receive the salary for that day plus a double salary for working on the holiday. However, if a holiday happens to fall on the employee's weekly day off, the payment of the double salary is not necessary, since such is not contemplated in the Federal Labor Law.

When does the amendment of article 74 of the Federal Labor Law go into effect?

It was applicable as of January 18, 2006, such date being the day following its publication in the *Official Federal Gazette*, except for the March 21 holiday, which, as was mentioned, does not go into effect until 2007.

These are the principal points to consider with respect to the amendment of article 74 of the Federal Labor Law. In this regard, it is important for companies to keep in mind that they must grant their employees these mandatory federal holidays on the dates indicated in the amended article in order to avoid any claim for double salary for working on any such holiday.

LABOR

ANALYSIS

LAW OF THE INSTITUTE OF THE NATIONAL FUND FOR WORKERS CONSUMPTION

On April 24, 2006, a decree creating the Law of the Institute of the National Fund for Workers Consumption (FONACOT) was published in the *Official Federal Gazette*. We would like to comment on the most important aspects of this Institute and its Law so that companies are aware of their purpose and scope.

What is the Institute of the FONACOT?

The Institute of the FONACOT is a public agency that was created to make credit accessible to workers for the acquisition of high-quality products and services at a price payable in cash.

What are the objectives of the Institute of the FONACOT, according to its Law?

The Institute of the FONACOT has the following objectives, among others:

a) To promote saving among workers;

b) To grant financing to workers;

c) To guarantee workers' access to credit for the acquisition of goods and the payment of services.

What powers does the Institute of the FONACOT have under the Law?

It has the following powers, among others:

a) It is responsible for administering the Development and Guarantee Fund for Workers Consumption, which grants financing so that stores and warehouses can operate for the acquisition of goods and payment of services for workers;

b) To coordinate with other institutions in order to grant and guarantee low-cost loans to workers for the acquisition of goods and payment of services;

c) To participate in programs and projects whose purpose is to promote saving among workers;

d) To instrument actions that allow workers to obtain financing for the acquisition of goods and services under the best price, quality, and credit conditions.

What are the principal benefits offered to the workers by the Institute of the FONACOT?

The principal benefits offered to the workers by the Institute of the FONACOT are the following:

a) The acquisition of a variety of products and articles, such as clothes, shoes, school articles, orthopedic articles, optical and auditory devices, tools, instruments, toys, construction materials, furniture, and automotive parts;

b) Acquisition of automobiles;

c) The possibility of remodeling or expanding housing;

d) Educational training and instruction;

e) The payment of maternity and health care expenses;

f) The payment of Notary Public services;

g) Access to insurance and funeral services;

h) The payment of vacations.

What requirements must an employee comply with in order to receive the benefits offered by the Institute of the FONACOT?

The employees must meet the following requirements:

a) That the company in which they work be affiliated with the Institute of the National Fund for Workers Consumption;

b) To have worked for at least one year in the company and to have signed an individual employment agreement for a permanent position with such company;

c) To have a monthly salary between 1 and 25 minimum wages;

d) To be over 18;

e) To be registered in the Mexican Social Security Institute (IMSS);

f) To not be on the past due receivables account of the Institute of the National Fund for Workers Consumption.

What requirements must the companies meet in order to be able to register with the Institute of the FONACOT?

All companies who wish to register with the Institute of the FONACOT may request their registration, for which the following requirements must be met:

a) To have two years of existence and at least eight workers, or ten years of existence and more than three workers;

b) That the company's relationship with its workers is governed by part A of article 123 of the Political Constitution of the United Mexican States;

c) That the company is registered as an employer before IMSS.

These are the principal points of the Institute of the FONACOT and its Law. It is important that companies know their benefits so that they can grant to their workers access to credit in order to improve their standard of living.

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Edition: Ignacio Ortiz Monasterio