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# Newsletter 32



Von Wobeser y Sierra

# Editorial



In a panorama filled with insecurity and violence, one of the most important changes in our recent constitutional history has occurred: the reforms in human rights and amparo. These reforms are a very important step toward the anxiously awaited and—now more than ever—necessary Rule of Law.

The first of these changes, the primary purpose of which is to seek a more secure codified law, is intended to update our old position on human rights, and it finally places us in a position to adopt current international trends. With this reform, extremely important matters are at last taken into account, such as the insertion at the constitutional level of the human rights recognized in international treaties, the inclusion of the principle pro persona, the creation of a system of compensation for violations of fundamental rights, the expansion of the powers of the National Human Rights Commission, and the amendment of two of our most arbitrary and nationalistic laws: Article 33 (expulsion of foreigners) and Article 29 (suspension of individual rights).

In the area of the amparo, the changes are as encouraging. What was originally a novel and innovative institution had become worn-out and rigid. The amparo reform attempts to give new life to our celebrated amparo proceeding introducing concepts such as the general declaration of the unconstitutionality of laws, the circuit plenaries, and amparo for an authority's failure to act. With this reform we can assert that, although there is still a long road to travel, the amparo proceeding in Mexico seems to be in recovery.

At Von Wobeser y Sierra, S.C. we are aware of the need to adjust and update the most important legal institutions of the country to reflect modern times, and therefore we celebrate the issuance of both reforms, which we trust will be essential for the proper functioning of the Mexican legal system. Both reforms will be analyzed in detail in the next issue of our *Newsletter*.

***In Memoriam***

On July 4 we received with deep sadness the news of the death of Don Manuel Lizardi A., an of counsel member of this firm and father of one of our partners, Javier Lizardi. Recognized as one of the greatest Mexican specialists in corporate law, Manuel Lizardi studied law at the Universidad Nacional Autónoma de México. Between 1968 and 1982 he was the Legal Director, Advisor, and Secretary to the Board of Directors of Banamex. He was a member of the Mexican Bar Association (*Barra Mexicana Colegio de Abogados*) and the National Association of Mexican Lawyers (*Ilustre y Nacional Colegio de Abogados de México*). As a well-deserved homage to his exemplary professional life and his enormous contribution to Mexican society in the teaching and formation of lawyers, the Mexican Bar Association granted him the National Jurisprudence Prize in 2007. In July 2010, after almost 50 years of teaching, the *Escuela Libre de Derecho* named him Emeritus Professor in a ceremony held in the Mexico City Club of Industrialists. That day his book on the *Study of the General Law of Business Corporations and Comments on its Articles* (*Estudio de la Ley General de Sociedades Mercantiles y comentarios a sus artículos*) was launched. The members of Von Wobeser y Sierra, S.C. profoundly lament this irreparable loss and we join in the sorrow of Javier Lizardi and the entire family of Don Manuel. May he rest in peace.

**Claus von Wobeser**

# Articles 61 and 62 of the General Law of Business Corporations





## ARTICLE 61

### The Text of the Article

> No limited liability company will have more than fifty partners.

### Comments

Given prevailing conditions, it could be considered illogical, and even an error, for the latest reform to this Article to increase the maximum number of partners from 25 to 50.

An S. de R. L. (*Sociedad de Responsabilidad Limitada*) is similar to a capital corporation, specifically a stock corporation (*Sociedad Anónima, S. A.*), in the limitation on the liability of the partners to the amount of their contributions. But beyond this limitation on liability, the S. de R. L. is in its essence a company of persons in which *intuitu personae* is the dominant element.

Objectively it is sufficient to see in Article 86 of the General Law of Business Corporations (*Ley General de Sociedades Mercantiles*, LGSM) the list of articles that govern the general partnership and that are made applicable to the limited liability company.

The *intuitu personae* element can only exist among a limited number of persons. It is very difficult for it to exist among 25 partners and even less among 50. However, we believe that the reform is inconsequential because, given the current text, while it is not possible for an S. de R. L. to have more than 50 partners, it is possible to stipulate in the bylaws a maximum number of partners that is less than the maximum established in this article. It is difficult to know what has motivated this reform. Apparently it is to promote the formation of more limited liability companies and reduce the formation of stock corporations. But, at the same time that this reform was made, Article 89 of the Law was reformed to reduce the minimum number of partners in the stock corporation from five to two. The matter is to some extent incomprehensible, to increase the maximum number of partners in a company of persons, and to reduce the minimum number of partners of a stock corporation. If the purpose is to prevent an S. de R. L. from eventually becoming an S. A., the prohibition on the partnership interests being represented by negotiable instruments to order or to bearer is sufficient, coupled with limiting in the bylaws the maximum number of partners.

## ARTICLE 62

### The Text of the Article

> The corporate capital will never be less than three million pesos; it will be divided into partnership interests, which may have unequal value and class, but which in all cases will be one thousand pesos or a multiple of this amount.

### Comments

Over the years this article has been subject to several reforms, due to economic problems of the country and to monetary reforms, among other reasons. It is unnecessary to refer to these reasons when what interests us now is the current text.

In the past, a limited liability company was required to maintain corporate capital of no less than 5,000 pesos. But, by decree of June 2, 1992, published in the *Official Federal Gazette* (*Diario Oficial de la Federación*, *DOF*) on June 11, 1992, several articles of the LGSM were reformed, among them Article 62, which establishes the minimum fixed capital of the limited liability company in the amount of three million pesos. Furthermore, by decree of June 18, 1992, published in the *DOF* on June 22, 1992, a new unit of the monetary system of the United Mexican

States was created (the "new peso"), equivalent to 1,000 of the pesos in circulation on that date.

While the First Transitory Article of this decree provided that it would enter into force on January 1, 1993, with the exception of the Tenth Transitory Article, Transitory Article 9 also provided that "the expressions in Mexican currency contained in laws, regulations, circulars, or other provisions that have entered into force prior to January 1, 1993, will be understood to refer to the former monetary unit." Upon calculating, expressing, or paying such amounts in the new monetary unit, the equivalent established in Article 1 will apply."

Such is the case of Article 62 of the LGSM. Its text and the capital it refers to are those established in the decree of June 2, 1992 published, in the *DOF* on June 11 of the same year. The date on which this decree entered into force was June 12, 1992, which is before January 1, 1993, and therefore the capital of the S. de R. L. must be understood to refer to the capital set forth in the decree published in the *DOF* on June 11, 1992.

Given the time between the last establishment of the corporate capital fund of a S. de R. L. and the publication and entrance into force of the decree creating the new monetary unit, we think that it would be very advisable that, in publications made of the commercial law and especially of the LGSM, a small clarification be made as to why the amount of the minimum capital fund mentioned in the Article is the one set forth in the decree of June 2, 1992, published in the *DOF* on June 11, 1992. Since the decree of June 18, 1992 creating the new monetary unit, published in the *DOF* on June 22, 1992, entered into force, it must be understood that the minimum capital of the limited liability company is three thousand pesos of the new monetary unit. •

Licenciado Manuel Lizardi A.†

TAX

# Unconstitutionality of a Section of the Income Tax Law

On June 22, 2011, the Second Chamber of the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación*, SCJN) declared the unconstitutionality of Article 32, Section XVII, of the Income Tax Law (*Ley del Impuesto Sobre la Renta*, LISR), which entered into force on January 1, 2008.

This section establishes that the deduction—by legal entities with residence in Mexico—of losses generated in the alienation of shares is limited to the amount of the profit that is obtained from such transactions.

This is because Article 32 provides that the losses from the alienation of shares may only be deducted from the amount of any profits the same taxpayer obtains in the fiscal year or in the ten following fiscal years from the alienation of shares.

It should be specified that previously this provision also limited the deduction of losses caused by share alienation transactions, and the SCJN had declared it unconstitutional at that time. Generally, it was declared unconstitutional because such losses negatively impact the wealth of the private party and, therefore, they should not be considered for the purpose of the determination of the taxes owed by the private party.

Nevertheless, Article 32 was modified and, as of 2008, Section XVII entered into force with the new drafting, which suffers from the same unconstitutional defects by limiting the deduction of the losses.

Following the modifications, cases were presented in which the tax authorities considered that the court precedent that declared the provision unconstitutional was not applicable, because the Article had been amended subsequently. This situation led to the filing of various amparo claims by taxpayers and counterclaims by the Authority, which led to the scjn hearing the case for its final resolution.

In its session of June 22, 2011, upon establishing the criterion for ruling on the appeals filed by the authorities, the SCJN declared the unconstitutionality

# Constitutional Reforms Regarding the Amparo





of the article in question and correctly restated the criterion that originated the previously mentioned court precedent, which at that time determined the unconstitutionality of Article 32, section XVII of the LISR, which was in force until 2007. •

On June 6, 2011, a decree amending certain provisions contained in articles 94, 103, 104, and 107 of the Political Constitution of the United Mexican States regarding the amparo proceeding was published in the *Official Federal Gazette* (*Diario Oficial de la Federación*).

The Decree establishes that the reforms will go into effect 120 days from their publication, so that the Congress can issue the legal reforms resulting from the constitutional reforms.

One of the most important modifications contemplated is that the Congress of the Union may request the immediate resolution of amparo proceedings, constitutional disputes, and unconstitutionality actions when urgency is justified, without sidestepping the public interest or public order.

The amparo proceeding may now be filed against an authority's failures to act that violate the human rights protected in the Constitution and in the international treaties that Mexico has signed or will sign in the future.

In addition to persons with legal standing, persons who can show a legitimate individual or collective standing can also file amparo proceedings.

Perhaps the most significant reform is that regarding the general declaration of the unconstitutionality of general legal provisions. Now, when the unconstitutionality of a general legal provision is determined for the second consecutive time, the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación*, SCJN) will inform the issuing authority.

Similarly, when the bodies of the Federal Judicial Branch establish court precedent by reaffirmation in which the unconstitutionality of a general provision is determined, the SCJN will notify the issuing authority.

If after 90 calendar days following this notification the problem of unconstitutionality is not overcome, the SCJN will issue a general declaration of the unconstitutionality of the general legal provision, stating its scope and conditions according to the terms of the

regulatory law, which is the *Amparo* Law. This declaration must be approved by a majority of at least eight votes.

In this respect, it is very important to mention that it is expressly indicated in the Decree that the general declaration of unconstitutionality will not be applicable to general provisions in tax matters.

The Federal Executive does not provide any explanation of this exclusion. However, we can mention that the general declaration of unconstitutionality of a tax provision could seriously affect tax collection. Unfortunately, it can be presumed that once again the tax exception has more to do with collection interests than with protecting taxpayers from clearly unconstitutional provisions.

Nevertheless, it must be acknowledged that with respect to other matters, this reform is definitely an improvement. We hope that in the near future tax provisions will be included in a possible general declaration, as now happens with the rest of the provisions.

Finally, it should be mentioned that in a transitory article of the Decree, it is established that for the formation of court precedent by reaffirmation, decisions with the same holding that have been approved in matters resolved according to the content of provisions previously in effect will not be taken into account. •



# Transition Measure Agreed Upon Between Mexico and China and Anti-Dumping Investigation

In mid-2007, Mexico and China agreed to eliminate the anti-dumping duties that our country had imposed on the importation of various products of Chinese origin—such as toys, Christmas trees, pencils, footwear, and textiles—and to replace them with a commercial remedial measure that would be reduced over a period of four years and would finally be eliminated.

Under this agreement, beginning December 12, 2011, products of Chinese origin that have been subject to a transitional remedial measure can be imported without a tariff being imposed.

It is important to clarify the specific effects that come with the termination of the agreed-upon term of four years.

## Background

Before China's accession to the World Trade Organization (WTO), Mexico had imposed anti-dumping duties on products from China, duties that were set in accordance with Mexican rules. However, with the accession of China to the WTO in 2001, Mexico was obliged to conduct its trade relations with the Asian country in accordance with WTO agreements. If it decided to maintain its anti-dumping duties, it was required to follow the WTO anti-dumping investigation rules.

Thus, in order to maintain a cordial relationship, Mexico and China agreed that Mexico would keep the anti-dumping duties that it already had in force for six more years, and that at the conclusion of that term, any anti-dumping duty that the Mexican government sought to impose would follow the rules and requirements of wto anti-dumping procedure.

## Transitional Measure

Nevertheless, Mexico maintained the anti-dumping duties (imposed under the above-mentioned condi-

tions) even during the first half of 2008. By the middle of that year, Mexico and China agreed to the final elimination of the anti-dumping duties and their replacement with a transitional or commercial remedy measure. This measure would have a much lower cost than the anti-dumping duties, and its primary aim would be to permit Mexican producers to implement a production and investment scheme under which they could compete with Chinese imports.

This transitional measure was published on October 13, 2008, has been in force since October 15 of that year, and will continue to be until December 11, 2011. Under this measure, payments were to be reduced according to a four-period calendar, so that finally, as of December 12, 2011, the Chinese products might be imported without being subjected to the payments due under the transitional measure.

## Conclusion of the Transitional Measure

It is important to note that the elimination of the transitional measure does not mean that the Mexican government is not able to impose a new anti-dumping duty on products of Chinese origin. However, in the event that Mexico wishes to initiate new anti-dumping procedures, these will be subject to the rules and requirements established by the WTO.

To be able to impose a new anti-dumping duty, it must certify, among other things, that there is price discrimination in comparison to the price of the same product in China, that there is imminent harm or potential harm to national production, and that this harm is a direct consequence of the importation of the products originating from China.

Given that the transitional measures will terminate in December of this year, the Ministry of the Economy is communicating with national producers to tell them that if there is a dumping of products originating from China, they must initiate new procedures for imposing anti-dumping duties under the WTO rules.

Therefore, it is a good time for companies to initiate the analyses and evaluations necessary to determine the position that they will take before the possible initiation of the procedures in question. •

# New Commercial Establishments Act for the Federal District





On January 20, 2011, the Federal District's new Commercial Establishments Act was published in the *Official Federal Gazette*, and it came into force on March 4. This new law requires establishments to provide their customers two hours of free parking and a preferential rate on the regular cost of valet parking after those two hours.

The two hours of free parking are subject to a minimum purchase. This minimum purchase shall be determined by a regulation to be issued in the Federal District for such purposes. The establishments that do not provide this benefit to their customers could be sanctioned by fines of 351 to 2,500 days of the general minimum wage in the Federal District.

Although the authorities still cannot enforce the obligation to provide two hours of free parking, nor the related offenses, since the regulation that will set the minimum purchase amount has not yet been issued, it is important that establishments begin to define the legal strategy they will follow with this new measure.

The main establishments that were exempted from this obligation are those that occupy an area of less than 100 square meters, those that are in buildings protected by the National Institute of Anthropology and History and the National Institute of Fine Arts, and those that are located in pedestrian-only zones.

Another new measure is that the ballrooms, restaurants, lodging establishments, private clubs, and establishments that sell alcoholic beverages in open containers shall place, outside the establishment, a plaque containing (1) a telephone number and a website where customers can address complaints, (2) a statement indicating that there is no discrimination against any person, (3) a statement that there is no drink minimum nor open bar, and, where applicable, (4) a statement indicating that this is a private club.

Additionally, establishments whose principal business is the sale of alcoholic beverages in open containers shall have breathalyzers that are designed to measure the alcohol levels of their clients, if they give their prior consent. The managers of the establishment shall suggest to their clients not to drive if said levels are high.

We believe that this requirement puts the owners of the establishments in a difficult situation, because it imposes on them an obligation of oversight that may annoy their customers, especially since the establishments are not authorities to whom a task like this should be entrusted.

In short, this new law imposes various obligations on commercial establishments, obligations whose performance will be difficult because of their implications. •

# Reforms to the Federal Consumer Protection Act





On January 28 of this year, the above-named decree was published in the *Official Federal Gazette* (*Diario Oficial de la Federación*, DOF). It reformed articles 8 bis, 99, and 134 of the Federal Consumer Protection Act (*Ley Federal de Protección al Consumidor*, LFPC) and added Section XX bis to Article 24, Section XI to Article 27, and Sections V and VI to Article 99 to it.

Although these modifications to the LFPC relate to distinct themes (which shall be explained later), all seek to strengthen consumer protection. The changes that result from these reforms and additions and have already entered into force are the following:

a. *Responsible and intelligent consumption* is defined as consumption that is conscious, informed, critical, healthy, sustainable, supportive, and active. Responsible and intelligent consumption allows one to make good decisions in respect to the use of goods and services, the effects of said consumption, and the rights belonging to all consumers.

   Besides the definition, the reforms establish that the Federal Consumer Protection Agency (*Procuraduría Federal del Consumidor*, PROFECO) shall permanently promote an intelligent and responsible culture of consumption. For this purpose, PROFECO shall develop content and educational materials to be made available to the general public and will create offices and develop systems which will attend to the needs of consumers;

b. The reforms authorize the PROFECO to represent consumers in filing complaints with the Federal Antitrust Commission for possible monopolistic practices related to price increases, restrictions on the supply of goods or services, or market divisions;

c. The reforms advance group actions, also known as "collective actions," in the field of consumer protection. Group actions are based on the premise that certain resolutions have general application to all persons or members of a group affected regarding the same right. By allowing consumers to make complaints or claims individually or in groups, the reforms give greater access to administrative justice and, of course, reduce costs.

   However, the filing of group complaints[1] and claims in the Mexican legal system is limited by the procedural requirements established in the new Sections V and VI of Article 99 of the LFPC, stating that the following must be proved: (1) that the complainants acting as a group share the same cause, action, claims and supplier; (2) the representative capacity of the representatives of the group of complainants; (3) that the representation is offered for free, and (4) that the complainants are not linked to activities of political or electoral campaigning;

d. The reforms allow for the cancellation, reduction, or commutation of the penalties imposed and, exceptionally, of the fines resulting from enforcement measures when the consumer has reconciled with the defendant and compliance with what has been agreed upon has been reliably proved.

   When referring to a possible cancellation, reduction, or commutation of a penalty or fine, it is necessary to assess the motivations for its imposition, as well as the circumstances of the case, and the extent to which the consumer's complaint has been satisfied. It is also important to note that the authority may not condone,

1 The reforms and additions to Article 99 of the LFPC are closely linked to the reform passed on July 29, 2010, adding a third paragraph to Article 17 of the Political Constitution of the United Mexican States and establishing that the Congress shall issue laws governing collective actions.

reduce, or commute the fines that have been submitted for collection nor those arising from verification and monitoring procedures;

e. Finally, the addition of Section XI to Article 27 of the LFPC directs the Federal Attorney to "issue guidelines, criteria, or other administrative rules that permit this authority to exercise all the powers conferred upon it."

In addition, by the Decree published on January 28, 2010, the Federal Act for the Promotion of Activities of Civil Organizations was also reformed. Specifically, a section XVII was added to Article 5 of the Act to include, among the activities of civil organizations, "to promote and/or defend the rights of consumers." •



# Reforms to the Commercial Code: Oral Trails in Commercial Matters and Special Trails in Arbitration Matters

In 2009, several members of the Economic Commission of the Chamber of Deputies presented a bill to reform various provisions of the Commercial Code (*Código de Comercio*, CC). On November 3, 2010, the plenary session of the Senate approved the bill. On that same date, the bill was sent to the Federal Executive for its publication.

On January 27, 2011, the Reform was published in the *Official Federal Gazette*. It came into force on the day following its publication, except for the Title on the Oral Commercial Proceeding, which will enter into force the year following its publication.

Below we discuss the most relevant points of the Reform.

## ORAL TRAILS ON COMMERCIAL MATTERS

Through the "Decree Reforming Several Provisions of the Commercial Code" (the "Decree"), published on January 27, 2011, oral proceedings in commercial matters were introduced into the Mexican judicial system, significant modifications were made in the form in which judicial intervention in arbitration is regulated, and a "special proceeding on commercial transactions and arbitration" was created.

The Reform provides that commercial matters whose principal amount is less than $220,533.48 pesos will be processed orally. It is important to mention that only ordinary proceedings will be carried out orally. The special proceedings contemplated in the CC will be carried out in the same form as before.

The Reform establishes that the oral commercial proceeding shall be governed by the principles of orality, publicity, equality, immediateness, rebuttal, continuity, and concentration. This will require the judges to be present in the hearings and will give greater speed to the ordinary commercial proceedings processed in this way.

The oral commercial proceedings will be carried out, in essence, in the following manner:

I. The claim shall be filed in writing and shall include the following information:
   1. The judge before whom it is filed;
   2. The name of the plaintiff and his address to receive notices;
   3. The name and address of the defending party;
   4. The claims presented;
   5. The facts on which the claim is based, indicating the documents, public or private, relating to the facts of the claim, as well as the full names of the witnesses that have witnessed the facts;
   6. The legal grounds and the action filed, citing the applicable legal provisions or principles;
   7. The amount claimed;
   8. The production of the evidence that will be rendered in the proceeding, and
   9. The signature of the plaintiff or plaintiff's legal representative. If the claim is obscure or irregular or does not comply with the above-mentioned requirements, the judge will indicate the deficiencies. The plaintiff must comply with this requirement within three days from the date of its notification. If the plaintiff does not do so, the claim will be thrown out;

II. Once the claim is admitted, the judge will order service of process on the defending party with a copy of the claim and the attached documents. Once the defending party has been served, it will have nine days to present its answer in writing. In this respect, it is important to mention that the process serving will be the only notification that will be made personally in the oral commercial proceeding.

   The defending party shall, if applicable, file a counterclaim against the plaintiff in its answer to the claim. The plaintiff, in turn, shall answer the counterclaim within five business days from the date on which the respective notice takes effect;

III. Once the claim is answered and, if applicable, the counterclaim, the judge will indicate the date and time for holding a *preliminary hearing*, which shall be carried out within the next ten days.

   At this hearing, the judge will examine the questions regarding standing in court and will resolve any procedural defenses. This is in order to eliminate any procedural flaws in the proceeding.

   If no procedural defenses have been filed or those filed are considered invalid, the judge will attempt to conciliate the parties. If the parties reach an agreement, the judge will approve it and the agreement will be considered *res judicata*. If the parties do not reach an agreement, the judge will continue with the hearing.

   It is during this stage that each party must object to the scope and probatory value of the documents that are presented by the other party.

   In addition, the parties may jointly request the judge to recognize the parties' agreement to facts that are not in dispute. The judge may also make proposals for the parties to reach evidentiary agreements with respect to evidence offered in order to determine which may be unnecessary. If the parties do not reach the corresponding evidentiary agreements, the judge will proceed to rule on the admission of the evidence. In the ruling that is issued for this hearing, the judge shall indicate the date for the *proceeding hearing*, which must be held within 10 to 40 days;

IV. In the proceeding hearing, the evidence that has been duly prepared will be presented. The evidence will be presented in the order that the judge considers relevant.

   Once the evidence is presented, each party will be granted the floor to speak for a maximum of fifteen minutes, to give its closing arguments.

   Once the hearing is concluded, the judge will declare the matter heard and summon the parties for the continuation within 10 days of the hearing, at which the corresponding judgment will be issued;

V. In this hearing continuation, the judge will briefly explain the factual and legal grounds on which his/her judgment is based and will only read the ruling.

Furthermore, the Decree establishes that whatever is not provided for in the Oral Commercial Proceeding Title will be governed by the general rules of the CC.

With respect to the testimony of a party, the decree establishes that the testimony will be presented in the proceeding hearing. For this purpose, the other party will formulate questions in the hearing. The judge shall examine and qualify the questions carefully, before they are orally formulated to the testifier.

Regarding the testimonial evidence, the Decree establishes that, *ex officio*, the judge may fully interrogate the witnesses on the facts related to the evidence. The parties, for their part, may also interrogate the witnesses. The questions that the parties ask the witnesses must be limited to the disputed facts or points.

In relation to expert witness evidence, the Decree establishes that it shall be presented with the claim. When filing an answer, the defending party must designate its expert and ask for the expansion of other points and matters in addition to those proposed by the offerer.

Once the evidence is admitted, the judge will declare a 10-day period of time for the opinions to be exhibited. If the opinions are substantially contradictory, the judge can designate a court-appointed expert witness, who will render his/her opinion in the proceeding hearing.

The Decree also establishes that the experts must attend the hearing in order to verbally explain their opinions and respond to the questions that the judge or the parties may have.

According to the first transitory article, the Decree regarding Oral Commercial Proceedings will enter into force on January 27, 2012.

As can be seen, the inclusion of oral commercial proceedings in the CC is intended to improve the judicial process, expediting the proceedings and allowing the parties to directly explain to the judge their arguments. Furthermore, these reforms require the judge to be in direct contact with the evidence offered by the parties in order to have more and better information on which to base their decisions.

## JUDICIAL INTERVENTION IN COMMERCIAL TRANSACTIONS AND ARBITRATION

Although on some points the Reform improves our regulation and updates it, serious contradictions and inconsistencies are introduced by it with respect to arbitration as a legal discipline.

### Regulatory Inclusions

First we refer to the regulatory inclusions.

Within Chapter V of the Special Title, "The Oral Commercial Proceeding," which comprises articles 1461 to 1480 of the CC, the lawmakers decided to include, in general, the following topics:

a. Submitting to arbitration;
b. Special matters to be processed through voluntary jurisdiction;
c. Special proceeding on commercial transactions and arbitration;
d. Recognition and enforcement of the commercial award;
e. Joinder of proceedings on annulment, recognition, and enforcement of commercial awards;
f. Arbitral precautionary measures.

Specifically, the above-listed matters are regulated in the following terms:

#### *Submitting to Arbitration (Articles 1464 and 1465)*

This section regulates (1) the form in which the submission to arbitration will be processed and (2) the cases in which the submission will be denied.

1. Regarding the form for processing the submission to arbitration, the lawmakers provided that: (i) the request must be made in the first submission that the party requesting it files in the commercial proceeding in question; (ii) the judge give notice to the parties and rule on the submission immediately; (iii) if the submission to arbitration is ordered, a suspension of the proceeding will be ordered; (iv) the arbitration will be carried out and, once a resolution has been reached, the judge (at the request of a party) will close the proceeding; (v) if in the arbitration the matter is not terminated in whole or in part, at the request of a party and all interested parties having been heard, the suspension of the proceeding will be lifted. The ruling on the submission to arbitration cannot be appealed;
2. The lawmakers reduced the cases in which the submission may be denied to two specific situations, and therefore, in any other case, assuming the requirements to order the submission have

been met, such submission must be declared. In the following cases a request for submission shall never be valid: (i) if it is proven in the response to the request for submission made that the arbitration agreement had been declared invalid; and (ii) if the invalidity, ineffectiveness or impossibility of enforcing the arbitration agreement is obvious according to the judge (the latter must do a rigorous analysis).

### *Special Matters to be Processed through Voluntary Jurisdiction (Articles 1466 to 1469)*

The lawmakers provided that the following matters will be decided through voluntary jurisdiction according to the terms of the Federal Civil Procedures Code: (1) appointment of arbitrators, (2) judicial assistance for production of evidence in arbitration, and (3) arbitrators' fees.

In the case of the appointment of arbitrators, the judge may, except when not inconvenient under the circumstances of the case, (1) hear the parties, (2) consult with specialized institutions, and (3) make use of the list system (propose arbitrators). If the parties still do not appoint arbitrator(s), the judge will make the appointment(s). The ruling of the judge in this case cannot be appealed. This, of course, does not exclude the right of the parties to recuse themselves.

With respect to judicial assistance for the production of evidence, before this assignment is made, all the parties must be heard, except when the circumstances of the case make it inconvenient.

Nothing more is specified regarding the arbitrators' fees than what has already been mentioned.

### *Special Proceeding on Commercial Transactions and Arbitration (Articles 1470 to 1476)*

"Special proceedings on commercial transactions and arbitration" are considered those that address the following matters: (1) recusal of an arbitrator, (2) competence of the Arbitral Tribunal, (3) precautionary measures in arbitration, (4) annulment of commercial transactions and arbitral awards, and (5) the recognition and enforcement of an award requested as a defense in a proceeding or trial.

Such proceedings will be processed in the following manner: (1) once the claim is admitted, the defending parties will be served process and will have 15 days to answer; (2) if the parties do not present evidence (and the judge does not consider it necessary) the parties will be summoned to attend the closing arguments hearing within three days from the expiration of the above-indicated term (it will be held even in the absence of the parties); if evidence is presented (or the judge considers it necessary) before the closing arguments hearing, a 10-day term to allow parties to produce evidence will be opened, and (3) once the hearing is held, the parties will be summoned to hear the decision. Neither the decision resolving this type of proceeding, nor the intermediate rulings issued in it, can be appealed.

### *Recognition and Enforcement of the Commercial Award (Article 1471)*

Recognition and enforcement under this reform simply disappears from the CC.

### *Joinder of Proceedings on Annulment, Recognition, and Enforcement of Commercial Awards (Article 1477)*

In order to join proceedings on annulment, recognition, and enforcement of arbitral awards, it is necessary that (1) the closing arguments hearing has not been held and (2) they are not proceedings from different territorial jurisdictions or abroad, nor procedures carried out between federal courts and those of the states. The ruling issued on joinder cannot be appealed.

### *Arbitral Precautionary Measures (Articles 1478 to 1480)*

As a general rule, any precautionary measure ordered by the Arbitral Tribunal must be recognized and enforced, unless the judge shows that (1) the arbitral agreement is not valid, (2) the principle of equity and rebuttal in arbitration was not respected, (3) the decision of the Arbitral Tribunal on the guarantee was not respected, (4) the precautionary measure was revoked or suspended by the Arbitral Tribunal, (5) the precautionary measure is incompat-

ible with its powers, or (6) enforcement of the precautionary measure would violate public order.

Both the party requesting the precautionary measure and the Arbitral Tribunal issuing it will be held liable for it and therefore both will pay any damages and losses caused.

## Comments





Secondly, we mention the essential points of the Reform that in themselves are deficient, that do not affect the practice of arbitration, and do not reduce the effectiveness of our legal system.

### *Submitting to Arbitration*

There is a contradiction between Section I of Article 1464 and Article 1424 of the draft reforms. The first indicates that the submission to arbitration has to be requested in the first submission, while the second indicates that it will occur "immediately," at the time it is requested, and not necessarily in the first submission.

On this point in particular the lawmakers did not follow the text of the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) for commercial arbitration, and they created ambiguity and ineffective regulation.

### *Recognition and Enforcement*

In order to make the recognition and enforcement of arbitral awards easier, it is established that recognition and enforcement (*homologación*) is not required, except when recognition and enforcement is requested as a defense in a trial or other proceeding. Article 1471 of the draft reforms is an example of the deficiency of the drafting, since neither the premise nor the justification for its inclusion is clear.

### *Joinder of Proceedings*

It is indicated that the special proceedings on annulment or recognition and enforcement of commercial awards can be joined. For joinder to be appropriate, the closing arguments hearing cannot have been held.

Regarding joinder, unfortunately it was indicated that it's not valid in the case of proceedings processed in different states of the Republic. This will not result in the advantage that was sought with the joinder of the proceedings and could generate contradictory decisions across the Mexican legal system.

### *Precautionary Measures*

The strongest criticism of the reform is the inclusion of the last paragraph of Article 1480 of the draft decree.

It indicates that: "every precautionary measure is the responsibility of the party requesting it, as well as of the Arbitral Tribunal issuing it, and therefore they are liable for any damages and losses that are caused."

Although the precautionary measure ordered by an Arbitral Tribunal will be recognized as binding, it is clear that making the requestor of the measure and the Tribunal liable is unfortunate. This compromises the effectiveness of the measure requested.

First of all, the paragraph is inconsistent, given that on the one hand it conditions the granting of the measure on the requester providing a guarantee. In other words, any possible damages and losses would be guaranteed and it would not be necessary to consider the tribunal liable.

In addition to the above, the inclusion referred to represents a regression in the regulation of arbitration in our country, given that in matters of contractual liability, our legal system permits the limitation of liability, except for conduct derived from acts intended to cause harm or for serious negligence.

It could be interpreted with the new reform that liability is being attributed to the arbitrator for the issuance of a precautionary measure that results in damages and harm to the party against whom it is issued, without evaluating the conduct of the arbitrator, which broadens, without a logical or legal basis, contractual liability. In other words, it could be considered that, regardless of having acted with diligence and without intention to harm upon issuing the precautionary measure, the arbitrator could be liable for the damages and losses caused.

Apart from the theoretical discussion on the responsibility of arbitrators, it is a fact that the inclusion of this text will inhibit arbitrators from issuing precautionary measures, which will render nugatory

the application of all the articles that the reform includes on this matter. This reform will draw attention to our country as an unfavorable place for arbitration, since a jurisdiction with this limitation is not attractive for foreign parties. •



# Analysis of the Antitrust Law Reform





On May 10, 2011, a decree (hereinafter the "Reform") was published in the *Official Federal Gazette* amending various antitrust provisions of the Federal Economic Competition Law (*Ley Federal de Competencia Económica*, LFCE), the Federal Criminal Code (*Código Penal Federal*, CPF), and the Federal Tax Code (*Código Fiscal de la Federación*, CFF). Below the principal issues of the Reform are briefly analyzed.

## MAIN CHANGES

### 1. Joint Substantial Power

One of the principal matters that was modified in the Federal Economic Competition Law, with the amendment of Article 13 and the addition of Article 13 bis, was the inclusion of the power of the Federal Antitrust Commission (*Comisión Federal de Competencia*, CFC) to evaluate and declare the existence of joint substantial power by two or more economic actors within the same market. This could result in the CFC being able to evaluate and make decisions regarding monopolistic practice carried out by two or more economic actors, who together have substantial power in the market, even though they do not have such power individually. The CFC can also rule on joint substantial power in any matter related to effective competitive conditions.

### 2. Mergers

With the Reform, Article 21 bis of the LFCE was amended in order to define with greater clarity the premises under which it is possible to file a notification under the simplified format. Now Article 21 bis also limits the ordinary procedure to only those transactions that are especially complex.

In addition, Article 21 bis 1 of the LFCE was reformed to establish certain premises for transactions, corporate restructurings, and organizational

corporate changes within companies, regarding which it will not be necessary to file any notification, simplified or ordinary, before the CFC.

## 3. Procedural Reforms

The Reform includes several modifications and additions that concern the investigation process and administrative proceedings carried out by the CFC regarding monopolistic practices. The following are the principal matters amended or added:

### *a. Inspections*

According to Article 31 of the LFCE currently in force, during an investigation of monopolistic practices, the CFC has the authority to carry out inspections of the economic entities involved in the investigation.

These powers were previously limited in various aspects. They were modified by the Reform as follows:

i. The limitation on the scope of the inspections to only the information and documents that have been requested in advance by the CFC and that have not been delivered by the economic entities from which they were requested, is eliminated. This expands the scope of the inspection to all information and documents related to the investigation in question;
ii. An inspection can now be carried out, regardless of who is in the facility when the inspection agents arrive;
iii. Several facilities of the economic entity can be inspected simultaneously;
iv. If the economic entity under investigation prevents the CFC officers from entering the facilities, the latter can call upon law enforcement agents to admit them.

### *b. Drafting Commissioner*

The Reform creates the figure of the Drafting Commissioner, who will prepare the draft resolution with respect to any administrative proceeding related to monopolistic practices.

### *c. Oral Hearings*

Under the Reform, the economic entities can request an oral hearing within the ten days following the presentation of pleadings. The hearing will address the arguments formulated by the entities in answer to the Ruling of Probable Liability. There will be at least three commissioners at the hearing, including the Drafting Commissioner, as well as the officers of the CFC who have been involved in the investigation.

### *d. Commitments*

Article 33 of the LFCE has been amended to include the possibility of not imposing any fine on those economic entities who assume commitments to eliminate relative monopolistic practices or prohibited mergers in accordance with this Article.

### *e. Provisional Measures*

Article 34 bis 4 was added to establish the power of the CFC to impose provisional measures during a monopolistic practices investigation. This can consist of requiring businesses to refrain from the practices being investigated as potentially monopolistic.

The provisional measures can have a duration of four months, which can be extended twice for the same length of time.

The economic entities on which such measures have been imposed can request that they be lifted with a granting of a bond.

*f. Ordinary Administrative Proceeding*

An Ordinary Administrative Proceeding can be held to challenge rulings of the CFC. The proceeding can be advanced, at the election of the economic entity involved, before or after the motion for reconsideration contemplated by the LFCE.

## 4. Publicity of the Proceedings

The Reform amends Article 31 bis to prohibit the CFC from making statements publicly with respect to any administrative proceeding until the economic entities involved have been notified of the ruling of the plenary commission of the CFC.

## 5. Sanctions

The Reform modifies the sanctions that the CFC can impose on economic entities found guilty of a monopolistic practice or prohibited merger. Such sanctions were amended in the following laws:

*a. Federal Economic Competition Law*

Article 35 of the LFCE was amended principally to establish the following sanctions:

i. Fines for up to the equivalent of 10 percent of the income of the business for having engaged in an absolute monopolistic practice;
ii. Fines of up to the equivalent of 8 percent of the income of the business for having engaged in a relative monopolistic practice;
iii. Fines of up to the equivalent of 8 percent of the income of the business for having engaged in a prohibited merger;
iv. Fines of up to the equivalent of 10 percent of the income of the business for violating an order to suspend the actions referred to in Article 34 bis 4.

In the case of recidivism, a fine of up to double the amount previously imposed by the CFC may be imposed.

It is relevant to mention that in the Reform, Article 69 of the CFF was amended to permit the tax authorities to share information about the business leader being investigated in order to be able to calculate their fines.

*b. Federal Criminal Code*

Article 254 bis was also added to the CPF in order to establish a penalty of three to ten years of prison for anyone who engages in an absolute monopolistic practice.

The crime in question will be prosecuted with a complaint filed by the victim, and may only be accused by the CFC once a final ruling in the administrative procedure in question has been issued.

Furthermore, the CFC can request that the proceedings underway for the mentioned crime be dismissed at any time before the final ruling. •

# Final Modifications to the IMMEX Decree





As we had mentioned in previous issues of our *Newsletter*, the Ministry of the Economy (*Secretaría de Economía,* SE) and the Ministry of Finance (*Secretaría de Hacienda*) evaluated the possibility of making several modifications to the Decree for the Promotion of the Manufacturing Industry, Maquiladora, and Export Services (*Decreto para el Fomento de la Industria Manufacturera y Maquiladora de Servicios de Exportación*, IMMEX). The modifications finally made were published on December 24, 2010, and are basically the following:

## Definition of a *Maquila* Operation for Fiscal Purposes

Perhaps the most important modification concerns the definition of a *maquila operation* for purposes of the Income Tax Law (*Ley del Impuesto Sobre la Renta*, LISR). According to this modification:

1. The raw material, parts, components, and other consumables shall be provided directly or indirectly by a resident abroad, shall be imported temporarily, and shall return to the country of origin upon their transformation. They are provided directly when the foreigner with whom the IMMEX company has executed a *maquila* contract provides them. They are provided indirectly when the merchandise is the property of a third party resident abroad who has the commercial relationship of manufacturer with the foreign company with which the IMMEX company has executed its contract, and provided that the merchandise is supplied for purposes of such commercial relations.

   If, in the transformation processes, national or foreign merchandise that is not temporarily imported is used, it shall be exported together with the temporarily imported merchandise;
2. The machinery, equipment, tools, instruments, molds, and spare parts must be the property of the resident abroad with whom the *maquila* contract has been executed and cannot have been the property of the IMMEX company or of any other related party in Mexico.

   These assets may also (i) be the property of a resident abroad who has a commercial relationship with the resident abroad with whom the IMMEX company has executed its *maquila* contract, (ii) be the property of the same IMMEX company, or (iii) be the property of an unrelated third party that leases them. The above is conditioned on the assets not having been the property of another company residing in Mexico that is a related party of the IMMEX company, and that the resident abroad with whom the maquila contract has been signed is the owner of at least 30 percent of the assets.

   This last part will not be applicable when the IMMEX company, as of December 31, 2009, has complied with all its income tax (*Impuesto sobre la Renta*, ISR) obligations pursuant to Article 216 bis of the LISR, which establishes the requirements with which the IMMEX companies must comply for the calculation and payment of their ISR as *maquiladoras*;
3. Finally, the transformation or repair of merchandise that is alienated in Mexico and that is not covered by an export declaration (*pedimento*) will not be considered a *maquila* operation, and therefore Article 216 bis of the LISR will not be applicable.

It is also established that for purposes of the Value Added Tax (*Impuesto al Valor Agregado*, VAT) Law, any manufacturing operation carried out by IMMEX companies will be considered a *maquila* operation. Likewise, any submanufacturing operation will be considered a *submaquila operation*.

In terms of this tax, it is also contemplated that IMMEX companies will be entitled to the refund of VAT

within a term not to exceed 20 business days, except for IMMEX companies with a Certified Company registration, in which case the term will be five business days.

## Modification of the Time Period Products Considered Sensitive Can Remain in the Country

Sugar, cacao, and aromatized syrups will have a time period for remaining in the country of six months. The products of the metallurgic industry such as steel and its alloys have a period of nine months. Certain types of pneumatics and textiles have a period of 12 months.

Furthermore, IMMEX companies with a services program (IMMEX services) may not import sugar, cacao, and syrups. The only IMMEX services that can import products of the metallurgic industry will be those having a Certified Company registration.

Nonetheless, none of the above time periods will apply to companies with a Certified Company registration. Such companies simply must return the goods within the general 18-month time period indicated in the Decree.

## Modifications to Adjust the IMMEX Decree to the Administrative Simplification Decree

The only purpose of other modifications is to adjust the provisions of the IMMEX Decree to practice, such as to include the benefits contained in the "Decree Granting Administrative Simplification in Customs and Foreign Trade Matters," published on March 18, 2008, in the *Official Federal Gazette* (*Diario Oficial de la Federación*). Such benefits include (1) the elimination of the obligation to request the expansion of the program in order to add inputs to import (except sensitive imports) or final export products; (2) the elimination of the obligation to present the geographic coordinates of the tax domicile, from which the companies were already exempt based on the General Foreign Trade Rules; (3) the registration in the Specific Sectors Importers Registry (except merchandise that presents a public health or national security risk); and (4) the processing of the customs clearance by any custom house (except merchandise that presents a public health or national security risk).

## New Obligations

The company must collect the particulars of the partners or shareholders and the legal representatives and provide them to the SE. In addition, as of March 24, 2011, the company also has the obligation to report to SE any changes made to its structure of partners, shareholders and legal representatives. It is very important that companies take the above into account when they make these types of changes since they are obligated to inform the SE of them.

When a company intends to import sensitive merchandise, it must provide the tariff classification of the merchandise to be imported and of the final product to be exported, and an investment program must be prepared.

The IMMEX services companies must also provide such investment program, regardless of whether or not they intend to import sensitive merchandise.

As a general rule, the SE is the only agency that carries out the inspection in order to grant the program. Through the modification, however, when it is intended to import sensitive merchandise, the inspection will be done by SE jointly with the Tax Administration Service (*Servicio de Administración Tributaria*, SAT), in order to confirm that it has what is necessary to operate.

If the authorities observe that the company only has the real estate, they will authorize an IMMEX pro-

gram for only three months, which will only allow the import of machinery and equipment. Once these are actually installed, a second inspection will be carried out in order to then authorize the temporary import of the merchandise.

## New Cancellation Causes and Procedures

The causes for cancellation are established for (1) not having the documentation that covers the company's foreign trade operations; (2) the fact that the legal status is not evidenced of merchandise originating from abroad when the tax liability determined by the SAT is greater than 400,000 pesos or when the value of such merchandise is greater than five percent of the total value of the temporarily imported merchandise in the prior six-month period; (3) the proven linkage of the partners or shareholders to companies for which a program had previously been cancelled.

In order to cancel the program the SE must notify the IMMEX company of the causes. It will immediately suspend the possibility of importing merchandise temporarily, or *even transferring it*, granting the company 10 days to present evidence disproving the causes of the cancellation. The SE will have a term of three months to issue a ruling on the status of the IMMEX program.

In addition to the above, a new IMMEX program will not be granted to companies, or to partners or shareholders related to them, whose programs were cancelled because: (1) they were not located in the domiciles registered, (2) the imported merchandise was not found in the registered domiciles, (3) the SAT determined that the merchandise did not enter the country it was destined for, (4) false or altered documentation was presented and (5) it was determined that the partners/shareholders of the company are linked to an IMMEX company whose program had been cancelled for any of the above reasons.

## Repeal of other Development Programs

The decrees of Large Exporting Companies (ALTEX) and of Foreign Trade Companies (ECEX) were repealed since an IMMEX services program together with the Certified Company registration will provide the same benefits as those programs, such as a faster refund of VAT.

## Entrance into Force of the Modifications

The modifications will enter into force as of March 24, 2011, except with regard to the definition of *maquila operation* for purposes of Article 2 of the ISR Law and the VAT Law, which entered into force on January 1, 2011, and the repeal of the other programs, which entered into force on December 25, 2010. •

MIGRATION

# New Legislation on Immigration

On May 25, 2011, the Immigration Act (*Ley de Migración*, LM) was published in the *Official Federal Gazette* (*Diario Oficial de la Federación*). This act aims to regulate the entrance and exit of Mexicans and foreigners into and out of Mexican territory, as well as the transit and stay of foreigners in the territory. It also seeks to protect human rights, contribute to national development, and establish principles that underpin the immigration policy of the State.

This new law makes important changes in terms of the immigration situation of foreigners, identifying the conditions for staying of three groups: visitors, temporary residents, and permanent residents.

This replaces more than 30 immigration qualities and characteristics identified by the General Population Act (*Ley General de Población*, LGP) for the following:

1. Visitor
   - without permission to engage in paid activities
   - with permission to engage in paid activities
   - regional
   - border worker
   - present for humanitarian reasons
   - present for purposes of adoption
2. Resident
   - temporary
   - temporary student
   - permanent

In accordance with transitory articles 1 and 2, the reforms to the LGP entered into force on May 26, 2011, with the exception of the derogations under articles 7 to 75, which shall not enter into force until the entrance into force of the Regulation of the LM. •

ENVIRONMENTAL

# Criminal Liability for Legal Entities Regarding Environmental Crimes

In Mexico, as in many other Latin American countries, the issue of security is of vital importance to the State. To facilitate the fight against organized crime, the head of the Executive Branch proposed on April 14, 2011, a bill to amend various provisions of the Federal Criminal Code (*Código Penal Federal*, CPF) and the Federal Code of Criminal Procedure (*Código Federal de Procedimientos Penales*, CFPP).

Under this proposal, the liability of a private legal entity shall be separate from the criminal responsibility of its legal representatives, of those having the power to obligate it, or of those acting as its representatives, and such liability shall continue even where there are causes for the extinction of criminal liability under the CPF for individuals. This reform bill will apply to crimes in different areas, such as copyright, industrial property, bankruptcies, human trafficking, stockpiling and arms trafficking, fraud, terrorism, trafficking of organs, and environmental crimes.

The proposal aims to create new criminal offenses that refer not only to the commission of the crime, but also to participation in the criminal conduct. This is in order to reduce the strength of organized crime, punishing behavior such as informing criminals of the activities of the State in order to prevent the State from acting. Two new offenses are proposed: (1) *conspiracy*, which consists of the decision to commit a criminal injustice that benefits crime (its means of commission are defined), and (2) *criminal facilitation*, which occurs when a party spies on the members of the armed forces or on members of the institutions in charge of public security, enforcement of justice, administration of justice, or execution of sanctions, in order to obtain information about these institutions' operations and to report such movements or operations to members of a criminal organization, or when said spying activity inhibits or affects in any way the

performance of the duties and obligations of these institutions.

The core reform we identified is in Article 11 of the CPF, which provides that private legal entities will be liable for crimes committed by their own means or by means supplied by them, such that they are committed on their behalf or under their protection and for their benefit, when they are carried out by their legal representatives or by those holding themselves as their representatives.

Likewise, it also provides a specific list of crimes, in order to provide legal certainty to the companies that do not have criminal relationships, and includes a special procedure to institute criminal proceedings against legal entities. The penalties proposed in the initiative are threefold:

1. *Financial penalty*: refers to fines that depend on the behavior engaged in;
2. *Temporary disqualification to do business*: suspension of rights of the firm to participate in procurement procedures with the public sector;
3. *Confiscation*: the State will confiscate the goods that have been the subject to the crime or, if they no longer exist, the equivalent in other goods.

In the environmental sphere, it is proposed that the crimes established in Title XXV, "Crimes Against the Environment and Environmental Management," remain as they are, but with sanctions based on the reformed Article 11. In other words, the reform proposes that legal entities also be liable for environmental crimes.

The penalties that a legal entity may incur for willfully committing crimes against the environment will be those provided for in the reform: a fine, temporary disqualification to do business, and/or confiscation. The following persons will be sanctioned:

1. Whoever unlawfully, or without applying the appropriate measures for prevention or safety, engages in activities related to production, storage, traffic, import, export, transport, abandonment, disposal, or discharge of substances considered hazardous due to their corrosive, reactive, explosive, toxic, flammable, radioactive, or similar characteristics, and who performs, orders, or authorizes any other activity with this type of substance that causes damage to natural resources, flora, fauna, ecosystems, water quality, soil, subsoil, or the environment;
2. Whoever, without implementing the relevant measures for prevention or safety, emits, releases, or discharges into a protected area gases, fumes, dust, or contaminants that cause damage to natural resources, fauna, flora, ecosystems, or the environment, or who authorizes or orders such an activity. Also sanctioned will be the persons responsible for emissions from stationary sources under federal jurisdiction, as provided in the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*), or who generate emissions of noise, vibration, or heat or light energy from emission sources under federal jurisdiction causing damage to natural resources, flora, fauna, ecosystems, or the environment.
3. Any entity who illegally discharges, deposits, or puts wastewater, liquid chemicals, or biochemicals, waste, or pollutants in the soil, subsoil, seawater, rivers, lake, basins, or other deposits or waterways under federal jurisdiction, or an entity who authorizes or orders such activity, causing a risk of injury or damage to natural resources, flora, fauna, water quality, ecosystems, or the environment. This only applies to waters that are deposited in or flow into a protected area;
4. Anyone who cuts, extracts, knocks down, or chops down trees outside the urban area;
5. Whoever unlawfully transports, trades, collects, stores, or transforms wood into rolls, chips, or

charcoal, as well as anyone who transports, etc., any other timber or land forest resource from forest lands in excess of four cubic meters or, if appropriate, its equivalent in lumber; or who does so repeatedly, in which case the wood may be less than the amounts listed above but must collectively amount to more than four cubic meters;

6. When the activities of any entity take place in a protected area or affect such an area, any entity that captures, harms, or deprives of life any variety of turtle or marine mammal; any entity that collects or stores any of said species' products or byproducts; any entity that captures, transforms, stores, transports, or damages any aquatic species in a declared closed season, including abalone and lobster, whether during or outside the closed season; any entity that engages in hunting, fishing, or capture, without a permit, of any species of wildlife, or jeopardizes the biological viability of a wild population or species; any entity that carries out any activity for purposes of trafficking, or the capture, possession, transportation, storage, or introduction into the country or extraction from the country of any species or product or any byproduct or genetic resource of a species of wild flora or fauna—terrestrial or aquatic—during the off season, considered endemic, threatened, endangered, subject to special protection, or regulated by any international treaty to which Mexico is party, or damages a specimen of the species of wild flora or fauna, terrestrial or aquatic, as indicated in the preceding section.

As can be seen, the list of environmental crimes for which a legal entity may be criminally liable is extensive; therefore, companies must pay special attention to their activities so as not to commit any of these crimes. This initiative is being discussed in the Federal Congress and we assume that its approval and corresponding publication in the Official Federal Gazette (*Diario Oficial de la Federación*) will occur fairly soon. •

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