



→ International Law Firm Alliance
COMPENDIUM 2013



ILP GLOBAL BITAR & MARCÍN it's one of the most recognized and fast growing law firms in Mexico, which provides a broad range of services to clients who have international and local matters requiring high quality and individual attention at a competitive cost. One of the main missions of ILP GLOBAL BITAR & MARCÍN it's to create value solutions for our clients considering their interests, while meeting all legal requirements.

ILP GLOBAL BITAR & MARCÍN in México and their international partners ILP GLOBAL ESTUDIO JURÍDICO OTERO (CHILE), ILP GLOBAL GALLEGOS VALAREZO & NEIRA (ECUADOR), ILP GLOBAL LR ABOGADOS (SPAIN) and ILP GLOBAL LAOS, AGUILAR, LIMA & ASOCIADOS (PERÚ), seek to satisfy our clients requirements in diverse jurisdictions always under a uniform proceeding, criteria, business vision, quality standards, as well as maintaining a close communication with our clients, without losing neither the idiosyncrasy of each country nor the particularity of each jurisdiction.

Practice Areas

■ **BUSINESS, COMMERCIAL AND CORPORATE LAW:** A major area for the firm, it is the Business, Commercial and Corporate law area which include the incorporation, handling and legal audit (due diligence) of all kind of corporations, drafting and participation in all types of shareholders' and board of directors' meetings, for which purpose we have full experience in all those businesses related to mergers and acquisitions, spin-offs, dissolutions, liquidations, assets sales and all kind of joint ventures projects.

An important part of our corporate area is the constant communication with our clients, in order to keep a permanent registry and control of all obligations, recordings, authorizations and/or updating necessary for their activities and operations.

Our services in the corporate area include the advice and consulting in tax matters, including the planning all those provisions applicable to the activities, operations and projects of our clients and, should it be the case, all those contained in the tax treaties executed by Mexico.

Likewise, our corporate and commercial services include the revision and drafting of all kind of contracts, agreements and trusts related to, among other matters, construction, financing, acquisition, lease, distribution, joint ventures and rendering of services.

■ **FOREIGN INVESTMENTS:** In response to the increasing globalization and participation of foreign investments in the different areas of our economy and the free trade agreements executed by our country, our services include the advice and consulting in all kind of projects and businesses related with foreign investment, cross border investment, as well as the preparation, representation and obtainment of any kind of authorizations, filings and notices before the General Direction of Foreign Investment and /or the National Registry of Foreign Investment.

■ **REAL ESTATE LAW:** ILP GLOBAL BITAR & MARCÍN has a great experience in all kind of projects related with acquisition, lease and trust of real estate, including corporate real estate and those located on the Mexican borders and coasts (restricted zone). In the event of foreigners, individuals or corporations, the different alternatives and modalities provided by the Foreign Investment Law and its Regulations are considered and advised by the firm to their clients.

Our services in this area include not only the fulfillment of all the applicable obligations (Use of soil, construction, licenses, permits, public registry, etc.) but also the advice and consulting, which covers the corresponding tax implications, rent reviews, zoning permits and land use regulation.

■ **GENERAL AND SPECIALIZED LITIGATION:** Litigation is an important area for ILP GLOBAL BITAR & MARCÍN therefore, we are aware that our clients rely on the Firm by entrusting the representation of their businesses, based on which our attorneys and law clerks constantly participate in updating courses in order to be able to render a better service.

In this area we provide consulting and representation in all kind of trials especially commerce trials, civil trials, business and commercial matters, administrative and tax procedures, bankruptcy, constitutional protection (amparo) and others.

The litigation area, has the capacity to manage a large amount of trials, including their appeals on local or federal courts, mainly in the metropolitan areas of Mexico City (Distrito Federal), Guadalajara, Monterrey, Veracruz and Cancun.

■ **CONSTITUTIONAL PROTECTION (AMPARO) AND ADMINISTRATIVE LITIGATION AND PROCEDURES:** We also represent our clients in diverse trials and administrative procedures,

at local or federal authorities, including constitutional protection trials (amparo), against government expropriation, new and modified laws, authorities actions, appeals in administrative matters at all kind of local and federal courts or official institutions.

■ **BIDDINGS AND CONTRACTS WITH LOCAL AND FEDERAL GOVERNMENT:** The acquisitions of goods and the reception of services by entities and bodies of the Mexican government and the public sector is one of the most regulated areas in Mexican law, therefore, we have full experience and practice in the advice and consulting in all kind of procedures related to public biddings, restricted invitations and direct awards by the public sector; as from the revision of the call and the basis, elaboration and filing of the proposal and documents provided by the basis, until the awarding and formalization of the corresponding contract(s), including the legal and tax implications of same.

Our services in this area consider and include the advice and representation of our clients in all kind of remedies, administrative procedures, trials, appeals, including constitutional protection.

■ **ANTITRUST LAW:** As the result of the integration of the different economic and commercial activities, members of our law firm have an active participation in the development and application of the antitrust provisions by the Federal Competition Commission, which allows us to advice and represent our clients in all kind of researches, denunciations, authorizations, notices and procedures before said authority.

■ **BANKING; INSURANCE AND FINANCIAL SERVICES:** Our banking, insurance and financial services area, represents banks, insurance companies, financial leasing and factoring companies, brokerage houses, exchange houses, bond companies and in general all kind of institutions and auxiliary organizations of credit, in all kind of acts related to their operation and functioning.

Members of this Law Firm have participated in different projects regarding financing and loans granted by foreign entities in favor of Mexican individuals and corporations, including the drafting of the corresponding agreements and the formalization of the securities interest (mortgages, pledges, trusts, etc.) granted.

■ **LOCAL AND INTERNATIONAL ARBITRATION, MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION:** Arbitration, Mediation and Alternative Dispute Resolution, are nowadays topical subjects and have great acceptance in a large number of transactions and operations, not only in the international scope, but in local transactions as well.

Members of this law firm have considerable experience in this area, acting as arbitrators or representing one party within an arbitration, mediation or alternative dispute resolution procedures.

■ **INDUSTRIAL AND INTELLECTUAL PROPERTY LAW:** In view of the importance of the trademarks, copyrights and the others symbols and information subject to protection, the Firm has developed an Industrial and Intellectual Property Law area that renders services which

comprise the recording, protection and defense of any kind of trademarks, commercial names, industrial designs, patents, utility models and copyrights.

Our services in this area include the development, negotiation and preparation of franchise agreements, either domestic or international.

The services for the defense and protection of the different intellectual and industrial property rights include the advice and representation in all kind of litigations and procedures against third parties or competent authorities, including constitutional protection.

■ **INTERNATIONAL LAW OTHER LAW AREAS:** Besides the areas mentioned before, ILP GLOBAL BITAR & MARCÍN in México and their international partners ILP GLOBAL ESTUDIO JURÍDICO OTERO (CHILE), ILP GLOBAL GALLEGOS VALAREZO & NEIRA (ECUADOR), ILP GLOBAL LR ABOGADOS (SPAIN) and ILP GLOBAL LAOS, AGUILAR, LIMA & ASOCIADOS (PERÚ), and the legal world network E-IURE, are specialized in other areas of national and international law, commerce and consulting in related issues.

Partners

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Associates

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Mexico

Mexico offers countless opportunities for those who wish to invest, increase their competitiveness in international markets and expand their business worldwide. Our territory enjoys a strategic geographical position, great natural wealth and the advantage of being a country primarily of young people. This, together with the plurality of its industrial sectors, solid

international trade relations, economic and financial stability, as well as a notable political maturity, consolidates it as one of the best destinations for international investment.

According to a study carried out by the consulting firm AlixPartners, Mexico is the country with the lowest costs for the manufacture of industrial components among the main emerging economies (Brazil, China and India) thanks to the fact that it possesses an attractive exchange rate against the dollar, relatively low transportation costs and a large number of Free Trade Agreements.

Worldwide, Mexico is highly ranked in several areas:

- Mexico is the world's 14th largest economy, measured by the value of its GDP;
- Mexico is the 13th most important country in the world in terms of its international trade in goods;
- Mexico is the 18th most important economy in terms of its proven oil reserves, and the sixth-largest oil producer in the world as of 2006
- Mexico is the world's 10th most important tourist destination, welcoming 21.45 million tourists.
- Mexico is the third recipient of Foreign Direct Investment flows, among developing economies in the world.

Mexico is the world's second country with more free trade agreements. It has 234 bilateral and 122 multilateral agreements, and it is the only country that covers two of the world's leading markets: North America and the European Union. Overall, Mexico covers 44 countries with its network of agreements, so it has been able to significantly increase its business participation in the world in the last 15 years.

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→ Foreign Investment

Authorities

- Comisión Nacional de Inversiones Extranjeras (National Commission of Foreign Investments)
- Registro Nacional de Inversiones Extranjeras (National Foreign Investment Registry)
- Secretaría de Economía. (Secretary of Economy)
- Dirección General de Inversiones Extranjeras (Directorate of Foreign Investments)
- Secretaría de Relaciones Exteriores (Secretary of Foreign Affairs)

The Law considers as foreign investment:

- The participation of foreign investors in any proportion in shares, equity participations or rights acquired from a Mexican company.
- The assets, rights, concessions, participations or interests that Mexican companies with majority of shares acquired by foreign investors may hold.
- The participation of foreign investors may have on the activities or acts according to the Law.

According to the Mexican legislation there are three forms recognized by means of which investments projects can be carried out in Mexico, as follow:

THROUGH THE ESTABLISHMENT OF A FOREIGN MORAL PERSON IN THE MEXICAN TERRITORY, WHICH CAN ADOPT TWO MODALITIES:

- As a branch or office of representation able to receive income. These are companies legally constituted abroad and legally recognized in Mexico. A permit from the Secretary of Economy (Secretaría de Economía) is required, in order to register in the Public Commerce Registry (Registro Público de Comercio), moreover, these companies cannot acquire nor participate in any activity reserved or subject to specific regulation under the Foreign Investment Law (Ley de Inversión Extranjera).

- As a branch or office of representation without income. These are foreign moral persons who do not conduct mercantile operations, they only represent foreign entities and its only purpose is to provide information, services and counseling regarding the activities, products or services provided by its holding abroad. They require a permit by the Secretary of Economy (Secretaría de Economía) to be established in the territory, however, they do not require to be registered in the Public Commerce Registry (Registro Público de Comercio), and they have to disclose its discharge in zero before the Ministry of Finance and Public Credit. (Secretaría de Hacienda y Crédito Público).

THROUGH THE CONSTITUTION OF A MEXICAN MERCANTILE COMPANY, IN WHICH THE FOREIGN INVESTMENT CAN PARTICIPATE UP UNTIL 100% IN ITS STOCK CAPITAL. The general law for mercantile societies (Ley General de Sociedades Mercantiles) recognizes six kinds:

- Sociedad en Nombre Colectivo
- Sociedad en Comandita Simple
- Sociedad de Responsabilidad Limitada
- Sociedad Anónima
- Sociedad en Comandita por Acciones
- Sociedad Cooperativa (being the most common Sociedad Anónima)

According to the Foreign Investment Law, foreign investors can participate freely on a Mexican mercantile society. The only restriction is if it is a society, in which the activities are subject to a specific regulation.

THROUGH A MEXICAN COMPANY SUBJECT TO SPECIFIC REGULATION: Foreign investment can participate in any proportion with shares in any Mexican Company, also can acquire property and participate in new fields of the economic activity, unless those activities are reserved for nationals according to the Foreign Investment Law. Furthermore, the proportion of the participation of the foreign investment subject to maximum limits will not be considered as a direct investment as long as such participation is made through Mexican registered companies with majority of shares, which also should not be controlled by foreign capital.

Maximum limits

The maximum limits for the foreign investment participation to the following economic activities are as follow:

UP TO 10%:

- Sociedades Cooperativas de Producción.

UP TO 25%:

- National air transportation
- Air-Taxi Transportation
- Specialized air transportation

UP TO 49%:

- Insurance institutions
- Surety institutions
- Exchange houses
- General deposit warehouse
- Financial lessor
- Financial Enterprises
- Limited object financial societies
- Corporations and civil societies
- Resources manager
- Administration retirements funds
- Any activity involved on the elaboration and dealing of explosive, guns, munitions and fireworks, without including the acquisition and usage of explosives for industrial activities
- Publication of newspapers for the exclusive local distribution.
- Shares Type "T" of Companies dedicate to agricultural, cattle or forest land activities.
- Fresh water fishing, coastal fishing and in the exclusive economic zone, excluding aquaculture.
- Port management in general.
- Harbor services of pilotage to the boats to conduct operations of inner navigations in terms of the correspondent Law.
- Shipping companies dedicated to commercial operation of boats for inner navigation and cabotage, except tourist cruises and the operation of dredges and naval devices for the construction, conservation and harbor operation.

- Fuel provision and lubricants for boats and airships and railway equipment.
- Companies with permits allowed under the terms of articles 11 and 12 of the Federal Telecommunications Law (Ley Federal de Telecomunicaciones).

Favorable resolution is required from the National Commission of Foreign Investments (Comisión Nacional de Inversiones Extranjeras) where the foreign investment tries to participate in a greater proportion to 49% in the economic activities and societies which are mentioned as follows:

- Harbor services to the boats to conduct its operations of inner navigation such as tow, mooring of ends.
- Shipping companies dedicated to the operation of boats exclusively in height traffic.
- Concessionary companies dedicated to render services of aerodromes to the public.
- Private services of pre-school, primary, secondary education, high school or above and combined services.
- Legal services.
- Credit information societies.
- Value institutions.
- Insurance agents.
- Mobile phone services.
- Oil transportation.
- Gas and oil well perforation.
- Construction, operation and exploitation of public service railroads.

Also, it is required a favorable resolution from the Commission allowing the foreign investors to participate in Mexican companies, either as a direct or indirect investment on an percentage over 49% on its corporate capital solely when the total value of assets of the societies in question, at the time of the submission of the acquisition request, exceeds the amount determined by the Commission on annual basis.

Restricted Zone

There is a two-tier corporate scheme where a holding company directly owned by foreigners and a land company held by the holding company is used in order to allow foreign investment to legally acquire property in this area without violating the constitutional mandate, therefore, the Mexican companies which articles of association include the exclusion of foreign investor's clause are allowed to acquire assets in the Mexican territory and also on the restricted zone regarding property, also permit from the Secretary of Foreign Affairs (Secretaría de Relaciones Exteriores) is necessary.

The Law allows direct ownership by a foreign held corporation through a renewable maximum 50-year trust which was created to vest title to real property in a trustee bank for the benefit of a foreigner or foreign-held business entity, where a permit from the Secretary of Foreign Affairs is necessary.

The permit is granted to credit institutions (banks) so that is required for financial institutions to acquire as trustees, rights on real property located in the restricted zone, provided the purpose of the trust is to allow the use and enjoyment of such property but without thereby creating any rights in rem thereon, and provided further that the beneficiaries of the trust are foreign individuals or corporate entities acquire as trustees, according to what is stated on articles 11 of the Foreign Investment Law and article 9 of the Statute of the Foreign Investment Law and the National Foreign Investment Registry.

Neutral Investment

Foreign Investment in Mexican companies or through authorized trusts according to the Foreign Investment Law will not be taken in account to decide on the foreign investment percentage in the Mexican companies' stock capital.

It is considered as neutral investment those shares without right to vote or with limited corporate rights, where authorization by the Secretary of Foreign Affairs and/or the National Banking Commission (Comisión Nacional Bancaria y de Valores), as the case may be, is needed.

Requirements, procedures and special provisions

The permit for the incorporation of companies to which article 15 of the Law refers shall be granted to those entities which its corporate name is not already used by a different company or in which name are included words or specific terms regulated by other specific piece of regulation. Therefore the Secretary of Foreign Affairs shall condition the permits to such regulation.

Also, it is committed before the Secretary of Foreign Affairs to be treated themselves as nationals with respect to all of the above issues and it will be understood to waive to invoke the protection of their governments under penalty otherwise of losing their rights and assets acquired in favor of the Mexican Nation, thus the foreigners exclusion clause should be included on the articles of association according to article 15 of the Foreign Investment Law.

However, when in the company by-laws the foreigner exclusion clause is not agreed, an express agreement or pact must be entered into which shall form an integral part of the by-laws, whereby the present or future foreign equity holders obligate themselves, before the Ministry of Foreign Affairs, to be considered as nationals with respect to:

- The shares, equity participations or rights acquired from said companies;
- The assets, rights, concessions, participations or interests that said companies may hold, and
- The rights and obligations derived from the contracts to which said companies may be a party.

The mentioned agreement or pact must include the waiver of invoking the protection of their governments under penalty of otherwise losing their rights and assets they acquired in favor of the Nation.

In the case of change of the corporate name, the Foreign Investment Law provides that the Secretary of Foreign Affairs shall grant the permit in compliance with article 16 of such regulation, provided always that, in addition to compliance the desire of the legal entity to carry out the change is evidenced.

Within the ninety (90) business days following the date on which the Ministry of Foreign Affairs grants the permits for the incorporation of companies or change of corporate name or business name, the interested parties must go to execute before person vested with notarial authority, the corresponding instrument for the incorporation or the by-law amendments of the company involved. Upon expiry of such term without the execution of the corresponding public instrument, the permit shall have no further effect.

Within six (6) months following the issue of the permits for the incorporation of companies or change of corporate name or business name to which article 15 and the first paragraph of article 16 of the Law refers, the interested party must give notice of the use thereof to the Secretary of Foreign Affairs.

In the case of the permit for the incorporation of companies, the notice must specify the inclusion in the corresponding instrument of the foreigners' exclusion clause or, if applicable, the agreement provided for in article 14 of the Regulations of the Foreign Investment Law(Reglamento de la Ley de Inversiones Extranjeras).

In the case of liquidation, merger or spin-off, notice must be given to the Secretary of Foreign Affairs within one (1) month following the date in which the act took place.

The interested parties may opt to present the notices through the Ministry of Finance and Public Credit, when in accordance with the fiscal provisions notices must be filed before the Federal Taxpayers Registry regarding the incorporation, change of corporate name or business name, liquidation, merger or spin-off of companies. The Ministry of Finance and Public Credit must deliver to the Ministry of Foreign Affairs the information contained therein within the three (3) months following their filing.

The Secretary of Foreign Affairs shall reserve for the companies, the exclusive use of the corporate names or business names in accordance with the permits it grants, except when the interested party breaches the provisions of the first paragraph of the 18 article of the Regulations of the Foreign Investment Law(Reglamento de la Ley de Inversiones Extranjeras) or the corresponding company is extinguished.

The notice of change of the foreigners exclusion clause to the one of admission to which the second paragraph of article 16 of the Law refers, must be accompanied by a copy of the public instrument which contains the by-law amendment and which includes the agreement to which article 14 of these Regulations refers. The company involved must state in a said notice if it is the owner of real estate in the restricted zone and the use for which they are intended.

Registration

The recordings, renewals of registration records, cancellations of registration records and notations on the Registry, shall be carried out provided that:

- The provisions set out in the Law or these Regulations are observed and, if applicable, the corresponding authorizations and permits are obtained;
- The filing with the Registry of the notices or reports provided in these Regulations has not been omitted;
- They are presented in the formats referred to in Section I of article 33 of these Regulations, complete and with all due requirements, as well as with the evidentiary documentation which, as the case may be, supports the applications and the notices that must be made to the Registry;
- The payment of the duties provided in the Federal Duties Law is previously proven, and
- The payment of the penalty which, if applicable, may have been determined in accordance with article 38 of the Law is previously proven.

→ Tax Law

Most important tax laws

■ Código Fiscal de la Federación	Tax Code
■ Ley del Impuesto sobre la Renta	Income Tax Law
■ Ley del Impuesto Empresarial a Tasa Única	Corporation Tax Single Rate
■ Ley del Impuesto al Valor Agregado	Value Added Tax Law
■ Ley del Impuesto a los Depósitos en Efectivo	Law for Tax on Cash Deposits
■ Ley de Impuesto Especial sobre Producción y Servicios	Excise Tax, Tax on Production and Services
■ Ley de Ingresos de la Federación	Internal Revenue Law

Ley del Impuesto sobre la Renta (Income Tax Law)

Individuals and legal entities are required to pay Income Tax Law, in the following cases:

- *Mexican residents*: With regard to all their incomes, no matter the source.
- *Residents in a foreign country with permanent establishment*: With regard to the incomes coming from the permanent establishment.

■ *Residents in a foreign country:* With regard to the incomes coming from sources inside the national territory, when there's not permanent establishment in the country, or when having it, those incomes don't come from it.

The General Tax Rate for legal entities is 30% for 2011 and 2012, for 2013 it will be 29% and for 2014 28%

Ley del Impuesto Empresarial a tasa única (Corporation Tax Single Rate)

Individuals and legal entities residing in the national territory, as well as, foreign residents having a permanent establishment in the country, are required to pay Corporation Tax Single Rate on the revenues they obtain, regardless of the place where the revenues are generated, by carrying out the following activities:

- Transfer of assets.
- Rendering of Independent Services
- The granting of temporary use or enjoyment of assets.

Foreign residents with permanent establishment in the country are required to pay Corporation Tax Single Rate, for income attributable to that establishment, derived from those activities.

In general the Corporation Tax Single Rate is calculated by applying the rate of 17.5% (There are special rules regarding this tax combined with the Income Tax Law, which one can be compensated.)

Ley del Impuesto a los Depósitos en Efectivo (Law for Tax on Cash Deposits)

Individuals and legal entities are obliged to pay the Law of the Tax on Cash Deposits, with respect to all deposits in cash in National or foreign currency, that they make into any type of account that they might have in their name in the institutions of the financial system.

Should not be considered cash deposits, those which are made for individuals and corporations through wire transfers, account transfers, credit or any other document or system agreed with institutions of the financial system in terms of the applicable law, even though when they are in charge of the same institution that receives them.

They are not obliged to pay the Law of the Tax on Cash Deposits:

- The Federation, Federal States, Municipalities and Government Entities paraestatal, under Title III of the Income Tax Law or the Federal Revenue Law, are considered non-Income Tax Law.
- Legal entities with non-profit under Title III of the Income Tax Law.
- The individuals and legal entities, for cash deposits held in their accounts, up to an aggregate amount of \$15,000.00 for each month of the fiscal year, except for cash purchases of cashier's checks. For the excess of such amount shall be paid the tax on cash deposits under the terms of Law of the Tax on Cash Deposits.
- Among others.

The Law of the Tax on Cash Deposits is calculated by applying the rate of 3% to the cash deposits on the bank accounts.

Ley del Impuesto al Valor Agregado (Value Added Tax Law)

Individuals and legal entities are required to pay Value Added Tax Law, for carrying out the following acts or activities in the national territory:

- Transfer of assets.
- Rendering of Independent Services.
- The granting of temporary use or enjoyment of assets.
- Imported assets or services

The Value Added Tax Law is calculated according to the values stipulated by applying the rate of 16%

Impuesto Especial sobre Producción y Servicio (Special Tax on Production and Services)

The natural and legal entities are required to pay Tax on Production and Services, for carrying out the following acts or activities:

- The Transfer in the National Territory, definitive importation of assets
- The Act for rendering services.

Property Tax: this is a state tax and rate depends on the rules provided by each of the 32 states in Mexico.

Fiscal obligations for foreigners

Foreign residents who obtain an income in México, and do not have a permanent establishment in the country, or if they have it, and income is not from said establishment, have the following obligations:

- Registration to the Federal Taxpayer's Registry (RFC)
- Pay income tax for the income obtained. This obligation is fulfilled when the person who makes the payments withholds the tax and pays it to the Tax Administration Service (Servicio de Administración Tributaria).
- When the person who makes the payments is not obliged to withhold the tax, the taxpayer who obtains the income must pay by means of a return filed at the banking window or through the Internet, within the next 15 days following that on which income was obtained.
- People who offer independent professional services, and obtain income from fees, must issue professional services receipts.

■ People who obtain income from real property leasing, or in general from granting the temporary use or benefit of said real property, must issue receipts for the collected rents. It is important to mention that the tax paid through withholding, or directly by the taxpayer, is considered as definitive payment, which means that there is no obligation to file a return.

Foreigners should pay the following taxes

INCOME TAX (Impuesto sobre la renta): People with Mexican or foreign nationality, who reside abroad and obtain income in Mexico, are obliged to pay income tax.

VALUE-ADDED TAX (Impuesto al valor agregado): They must pay the value-added tax if they obtain income from the disposition of property or from the lease of real property different from residential property. Value-added tax must also be paid if it has to do with leasing of furnished real property, or with hotels or boarding houses.

Furthermore, the value-added tax due in accordance with the Value-added Tax Law (Ley de Impuesto al Valor Agregado), must be paid by any individual or legal person who make payments to residents abroad for rendering services in Mexico, for the use or benefit of tangible or intangible property, among other cases, since this is considered as importation.

TAX ON CORPORATE ASSETS (Impuesto al activo): Nonresidents are obliged to pay the tax on corporate assets (until 2007) when they have a permanent establishment in Mexico, for the property or the assets that are used in said establishment.

CORPORATION TAX SINGLE RATE. IETU (Impuesto empresarial a Tasa Única)

This tax must be paid by companies and persons living in national territory, as well as foreigners with permanent business activities in Mexico. The tax will be paid according to the income obtained, no matter the place where the income was generated (specifically for: selling fix assets, independent services and temporary rent of assets). (There are special rules regarding this tax combined with the Income Tax Law, which one can be compensated.)

Foreigners

For tax purposes, foreigners are individuals or juridical persons (commercial companies, associations or civil companies, among others) who are ruled by the legislation of another country for reasons of nationality, domicile, residence or operations center, among other criteria. In order to explain the applicable tax regime, we separate foreigners as:

■ **RESIDENTS IN MEXICO:** The tax legislation considers residents in Mexico the following people:

- The national and foreigner individuals that have their house in Mexico. People can also be considered as residents when they have their house in another country if they are in the following cases:

- When more than the 50% of their annual income is obtained in Mexico.
- When the center of their professional activities is located in Mexico.

- People who are Civil servants or Mexican workers, even when the main base of its business is abroad.

- The legal entities (Business partnerships, Associations or Civil partnerships, among others) that have been established according to the Mexican Law, as well as the ones that have established the main base of its business or their working headquarters in Mexico.

■ **RESIDENTS ABROAD:** For fiscal purposes, the following are considered foreign residents:

- Individuals, nationals or foreign, who do not have their residential property in Mexico. If they do, they are considered nonresidents if their main business location is not in this country, that is to say, if more than 50% of their annual income does not proceed from a wealth source located in Mexico, or if the center of their professional activities is not located in national territory, among other reasons.

- Any legal person such as commercial companies, associations and civil companies, among others, which are not constituted in accordance to the Mexican laws, as well as those which have not established in Mexico their main business location or the seat of their bureau, but keep one or more permanent establishments in national territory. Individuals of Mexican nationality are presumed to be residents in Mexico unless they prove that they are residents in another country. Individuals or juridical persons who, according to what was previously mentioned, are nonresidents, must pay taxes in the following cases:

- When they obtain income from any source of wealth located in the national territory.

- When they have a permanent establishment in the country, for the income derived from said establishment.

Foreigner residents pay taxes in Mexico in the following cases

Foreign residents who obtain income in Mexico or when they have a permanent establishment in the country, they have to pay for the income obtained from such establishment. The before mentioned people must pay taxes in Mexico when they obtain income from the following concepts:

■ **SALARIES:** Salaries are those obtained from wages and other benefits derived from a labor relation, and include overtime and additional benefits, indemnities, retirement income, retirement annuities, retirement insurance, bonus, among others, except the remunerations to members of the board of directors, of surveillance, advisory or of any other nature, as well as fees to managers, commissioners and general managers.

■ **FEES:** It is considered as income obtained from fees those received for rendering professional independent services, such as medical, administration, financial, accounting, architecture, engineering, computing, designing, artistic, sports, music, singing, among others, as long as services are not rendered in a subordinate way, that is to say, there is no work relationship.

■ **REMUNERATIONS TO COUNCIL MEMBERS, ADMINISTRATORS, COMMISSIONERS AND MANAGERS:** Inside this concept are considered the fees that are paid in Mexico or abroad, by resident companies in Mexico, to:

- Members of directive councils, of vigilance, consultative or others.
- Administrators, commissioners and managers.

■ **REAL PROPERTY LEASING AND RENTING:** Considered as income from leasing are the amounts a foreign resident obtains for leasing, and in general from granting the use or benefit, and other rights agreed, on real property even when income is obtained from the sale or transfer of the rights mentioned above, as long as said assets are located on national territory.

■ **CONTRACTS OF TIME-SHARING TRAVEL SERVICE:** In contracts of time-sharing tourist services we consider those related to real property destined to tourism, vacation, recreation or sports purposes or any other that falls into anyone of the following suppositions:

- To grant the use or benefit, or the right to occupy or enjoy, in a temporary or definitive way, - one or several real properties or part of the same.
- To offer lodging or a similar service in one or several real properties, or in only a part of them, for a specific period of time, or at intervals previously established, determined or determinable.
- To transfer or other dispositions of memberships or similar titles, whichever name is used, allowing the use, benefit, enjoyment or lodging in one or several real properties or in only a part of them.
- To grant a third party the administration of one or several real properties located in national territory, to provide lodging or shelter to people different from the taxpayer.

■ **SALE OR OTHER DISPOSITION OF SHARES:** People who obtain income from sale or other disposition of shares or other bonds representing the property of assets, will consider that the source of wealth is located in Mexico when:

- The person who has issued them is a resident in the country.
- The accounting value of shares or bonds results, for more than 50%, of real property located in national territory.

Income from the sale of profits of profit sharing associations is also considered in this concept, only when business activities are carried out in Mexico through said associations.

■ **FINANCIAL LEASING:** It is considered as interest income from financial leasing, that obtained from leasing with option to buy or with the right to participate, when the asset is sold to a third party, as long as said asset is used in the country, or in case payments are made abroad, these payments be totally or partially deducted by a permanent establishment in the country. It is

presumed that assets are used in the country, when whoever uses or benefits from the asset is a resident in the country, or a foreign resident with a permanent establishment in the country.

■ **COMMISSIONS, TECHNICAL ASSISTANCE AND PUBLICITY:** On the subject of income from royalties, we consider those obtained for the use or benefit of patents, invention certificates, improvement or trademarks, commercial names, copyright, as well as the quantities perceived by means of transfer of technology, or information concerning industrial, commercial or scientific, for transmission of visual images, sounds or both, or other right or similar property.

Incomes for technical assistance, which should be collected by independent in providing non-patentable knowledge that do not involve the transmission of confidential information services, are considered. Income shall be provided that the property or rights for which royalties are paid or technical assistance to be forced across Mexico, or when payments - including advertising - are made within the national territory to residents or to residents abroad with permanent establishment in the country.

■ **PRIZE:** It is considered as income obtained from prizes (in lottery, raffles, drawing, gambling or contests of any kind) those held and paid for in Mexico.

■ **ARTISTIC ACTIVITIES, SPORTS OR PUBLIC SHOWS:** It is considered as income obtained by foreign residents when sport activities, artistic or public shows are held in Mexico, and among the services rendered by a foreign resident, related to said public shows there are those destined to the promotion of such shows, as well as the activities carried out in national territory, including those caused by the foreign resident's prestige as an artist or sportsman. Furthermore, there are also included those obtained by a foreign resident for services, leasing or disposition of property related to the presentation of public, artistic or sports shows.

■ **DISTRIBUTABLE REMAINDER OF JURIDICAL PERSONS WITH NONPROFIT PURPOSE:** Residents abroad to obtain income through a moral person non-profit, it is considered to be income recorded in Mexico where the moral person is established.

■ **CONSTRUCTION WORK, INSTALLATION, MAINTENANCE, OR MOUNTING IN REAL ESTATE, INSPECTION OR MONITORING SERVICES:** Any person providing services of construction work, installation, maintenance, or mounting in real estate, or inspection or monitoring activities relating to them, such payment is to be considered as income obtained in the country when made in national territory.

■ **OTHER INCOME FROM A SOURCE OF WEALTH LOCATED IN MEXICO:** Also Income tax must be paid when receiving the following:

- The amount of the debts released by the creditor or paid by another person. It is considered that the income is established in the country when the creditor who carries out the pardon is resident in the country or resident abroad with permanent establishment in Mexico.

- The obtained by granting the right to participate in a business, investment, or any payment to celebrate or participate in legal transactions of any nature. In this case, it is considered that the income are obtained in the country when the business, investment or legal act is carried out in the country, and it is not considered capital contributions of a moral person.

- Those arising from compensation for damages, and the income derived from criminal or conventional clauses. It is considered that the income obtained in the country when the one who makes the payment is resident in Mexico or resident abroad with permanent establishment in the country.

- Those that derive from the sale or transfer of commercial credit. It is considered that the income is obtained abroad in the country when the commercial credit is attributable to a resident in the country, or to a nonresident with a permanent establishment in Mexico.

→ Labour Law

Employment contracts

Individual and Collective Agreements

Cost of dismissal and wrongful dismissal

If the labor relationship is for a fixed period of less than a year: The amount of the wages of half of the time worked. If the labor relationship is for a fixed period of more than a year: Six months of wages for the first year and twenty days for each of the following years. If the labor relationship is not for a fixed period: Twenty days of salary per each year of work. In any case, three months of salary and the expired wages starting from the date of dismissal.

Employment contracts for directors; an especial regime

In Mexico , these workers are named "Trust employees" Those are ruled by Title Six "Special Works" Chapter Two, of the Ley Federal del Trabajo (Federal Labor Law) Conditions: They are set up depending on the nature and relevance of the service they render.

Employees, representatives and union representation

Brief idea of the influence of these groups in labor contracts. The law recognizes the right of coalition of workers and employers, therefore Labor Unions are essential when talking about collective bargaining agreements.

Wages and other types of compensation

- **MINIMUM SALARY:** Set by the law after taking into account the cost of living.
- **REMUNERATED SALARY:** More than minimum salary, according to the quality and quantity of the work.
- **BEATEN SALARY:** The one that should be paid since the date of dismissal.

General Minimum salary in 2011

\$62.33 (SIXTY TWO PESOS, 33/100, LEGAL TENDER IN MEXICO), daily for the Geographic area "A".

\$60.57 (SIXTY PESOS, 57/100, LEGAL TENDER IN MEXICO), daily for the Geographic area "B".

\$59.78 (FIFTY NINE PESOS, 78/100, LEGAL TENDER IN MEXICO), daily for the Geographic area "C".

Cost of overtime hours

By paying the same amount per hour in a working day, with a limit of three extra hours per day and nine extra hours per week. The extent of nine extra hours per week, will give the result of 200% of the amount paid per hour.

Employment regulations

Conditions cannot be under what is detailed by law, they should be in proportion to the importance of the services rendered, and equal for equal jobs, they cannot be different because of nationality, sex, age, politics, race, etc.

- **WORKING DAY:** The time in which the worker is available to the employer.
- **DAY:** Eight hours from 6 to 20 hrs.
- **NIGHT:** Seven hours from 20 to 6 hrs.
- **MIX:** Seven and half hours in periods in both of them.

During the working day, there should be a working break of at least half an hour. For six days of work the worker will have at least one day of rest. Obligatory days of rest: January 1st, the first Monday of February, the third Monday of March , May 1st, September 16 , the third Monday of November, December 1st just in Presidential Elections year, December 25th.

- **VACATIONS:** The workers with more than one year service, will have 6 days of vacations. This period will increase two days per following year of service until fourteen days of vacations, and then after the fourth year it will increase two additional days for each period of five years of services.

Social security

They are the shares given by the workers and bosses, IMSS (Mexican Institute of Social Security) set the shares each year for both of them. The payment of shares is done by the SUA (Unique System for Own-Determination)

→ Real Estate Law

In México there are three classes of real estate property: Private property, social property and public property. Foreigners or legal entities, in order to acquire real estate, must follow the requirements of article 27 of the Mexican Constitution.

Land Register

In México the system of real estate register works with a State Public Registry for each one of the 32 States of the Federation, and those Registers only inscribed public deeds.

Transfer Formalities

When the transfer relates to real estate, the parties must formalize the transaction before a Notary Public and the public deed has to be inscribed at the correspondent Public Registry. In case of lease, the agreement has to be formalized by writing, the parties can ratify their signatures before a Notary Public and also inscribed before the Public Registry when the duration of the agreement is for more than six years.

Mortgages

It is a real guarantee constituted by assets that are not given to the mortgagee. The mortgage only can be constituted on specified assets, and it extends to the following:

- The right of the owner of a property to everything produced thereby or incorporated therewith, naturally.
- The improvements done by the owner of the assets
- The objects of movable property permanently incorporated by the owner and that cannot be separated without damage or detriment.
- The new buildings constructed by the owner over the land in mortgage, or new floors over the building in mortgage.

Important note. At the closing of this edition, there are various reforms to laws and regulations which are being discussed by the legislatures, most important of all the Labor Law (Ley Federal del Trabajo).