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Reforms to Commercial
Legislation.

by Vera García
P. 01-02

SEPTEMBER NEWS on
Mexican Aviation
P. 03

Contributors
P. 04

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

Reforms to Commercial Legislation.

by Vera García.

On June 13, 2014, the amendments to the Commerce Code (*Código de Comercio*), General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*), Investment Fund Act (*Ley de Fondos de Inversión*), General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de crédito*), Federal Law of Duties and Organic Law of the Federal Public Administration (*Ley Federal de Derechos y de la Ley Orgánica de la Administración Pública Federal*) were published in the Federal Official Gazette¹, in respect to miscellaneous area of commerce (*Miscelania en material mercantile*). The purpose here is to briefly mentioning some of the most relevant amendments to the Commercial Code and the General Law of Commercial Companies.

Amendments to the Commerce Code.

With these amendments to the Commerce Code, merchants are no longer required to publish their status as mercantile merchants or inform the media about the opening of their commercial establishments. Previously the merchants had the obligation to do this.

It is important to mention the reformed provisions regarding the Movable Assets Guarantee Registry ("RUG"), as now it acquires more importance. The reform clarifies that all the security interests over movable assets shall be registered before the RUG to be enforceable against third parties. Likewise, recession and reserve of title provisions, financial leases, factoring agreements and assignment or commercial credits shall be registered so as to be enforceable against third parties as of the date of its registration in the RUG. The aforementioned, with the exception of movable assets for which there is a special registry.

Also, the movable assets are defined more precisely. For example, a guarantee trust that has movable assets in its patrimony would now be deemed to be movable asset guarantees and are now required to be granted in a public instrument or its signatures need to be ratified before a notary public.

Another important aspect of the reform to the commercial code is the recognition of information contained in electronic media as proof in mercantile trials. The recognition of this kind of proof is a big step in jurisdictional proceedings; taking into account, that important information is contained in electronic media, which before the amendment, was not able to be used or was not considered as full evidence in mercantile trials.

"The reform to commercial companies (*Sociedad Anonima S.A.*) were very significant; most of them were similar to the provisions established in the Security Market Law for the Promotion of Investment Companies."

Amendments to General Law of Commercial Companies

The amendments to the General Law of Commercial Companies which are the ones in the Commercial Code were also very important. First, article 4 of the General Law of Commercial Companies was reformed, in order to grant more liberty to the commercial companies. The article now establishes that the commercial companies could perform every commercial act required for the accomplishment of their corporate purpose, except such acts that are expressly prohibited by the law.

1.- The Official Gazette is the Mexican organ which has the function of publishing in the country all laws, regulations, agreements, circulars, orders and other acts issued by the federal government so that they are properly observed and applied in their respective areas of competence.

Another important amendment was to article 5 of the General Law of Commercial Companies, that previously stated that commercial companies had to be registered before a notary public. Now the law establishes that the commercial companies can be registered before a notary public or commercial public notary (*Corredor Publico*).

The reforms to commercial companies (Sociedad Anonima S.A.) were very significant; most of them were similar to the provisions established in the Security Market Law for the Promotion of Investment Companies. The Reform now grants more flexibility to the commercial companies to establish in their bylaws, among others things, the following:

- Implementation mechanism for the resolution of disputes.
- Extend, negate or limit the preferential right to subscribe shares.
- Tag Along and Drag Along rights are now permitted.
- Impose broader restriction for the transfer of their shares.
- Issuance of shares without the right to vote or without restricted vote rights; with non-economic rights or special rights; with veto rights or that require affirmative vote of specific shareholder(s).
- Enter into shareholders agreements among themselves.
- Establishing grounds for exclusion of shareholders or to exercise rights of separation, retirement, or to redeem shares and the price or basis for its determination.
- Limits the responsibility for damages caused for its directors and officers arising from acts done or their decisions, provided that there is no case of illegal or intentional acts.

In addition, the percentage of share participation in the company is reduced (from 33% to 25%) for shareholders to:

- Exercise directly a civil liability action against directors;
- Request postponement of the voting of any issue in a meeting;
- Request judicial relief against shareholder's meeting resolutions.

“...the Ministry of Economy will create an electronic registry within a year, in order to detail for consultation, the administration and registry of the information regarding the Commercial Companies...”

The provisions regarding the minority rights, mentioned in the paragraph above, entered into full force and effect 10 working days after the day of publications, unlike most of the amendments to the commercial legislation that entered into full force and effect the day that it was published in the Federal Official Gazette.

Further, the reform requires directors to maintain confidentiality in respect to the information of the company, for up to a year after the termination of their services.

On the other hand, the Ministry of Economy will create an electronic registry within a year, in order to detail for consultation, the administration and registry of the information regarding the Commercial Companies. Some formalities now shall be registered such as the constitution, transformation, fusion, dissolution and liquidation of the commercial companies. These procedures were previously published in the Federal Official Gazette.

Shock for the Mexican currency.

The Mexican currency has plunged against the dollar. Analysts affirm that the Mexican peso fall is product of the shock departure of Bill Gross, Pimco's former chief investment officer, which rumbled shares and bonds. Bill Gross, has called the peso a "great currency", however Pimco's control of \$2 trillion assets are no longer in the low levels of sovereign debt and the stability of the lending Mexican rate. *The Telegraph* 26/09/2014.

Fair Telecommunications play for Mexico.

As part of the Structural Reforms enabled in Mexico, and the creation of the Federal Institute of Telecommunications, Mexico's biggest and acclaimed monopoly has lost the 18 lawsuits to keep its predominant stand in the industry, and has been obliged to sell part of its shares in several of the telephonic companies it held as subsidiaries. The resolutions have opened the market to new companies that are to give telephonic, television and wireless services, changing the future of Mexican telecommunication sectors. *El Financiero*. 28/09/2014.

Labor productivity shows positive economic trend.

In the second quarter of 2014, the Labor Productivity Index Global Economy (IGPLE), based on hours worked, continued a positive trend, increasing 2.2 percent over the same period of 2013, and thus add two continuous annual rate increases. This result was supported by improved performance of the primary and tertiary industries; however, productivity in the secondary sector continued to reflect contractions. According to the report released by the National Institute of Statistics and Geography (INEGI), groups of activities, labor productivity in primary increased 2.4 percent annual rate, while the tertiary sector rose 3.8 percent. In contrast, on the sidelines productivity fell 1.2 percent, which falls eight continuous annual rate accumulate. Based on seasonally adjusted labor productivity, based on hours worked, rose 1.59 percent in the April-June quarter of 2014, compared to the previous quarter. *abc News*. 29/09/2014.

Energy control center opened.

The Secretary of Energy Pedro Joaquín Coldwell formally opened the National Center for Energy Control (Cenace). The Cenace Administration Council, headed by Coldwell, designated Fernando Zendejas Reyes from the energy secretariat (Sener) as secretary of the council and Ernesto Montes Macedo, as deputy secretary of the council. The administration council also instated the electricity undersecretary from Sener, César Emiliano Hernández Ochoa; the revenue undersecretary from the Treasury and Public Finance Secretariat (SHCP) Miguel Messmascher Linartas; the general director of analysis, monitoring and electrical information in Sener, César Alejandro Hernández Alva; and independent advisors Luis Agustín Álvarez Icaza Longoria and Juan de Dios Enrique Rosellón Díaz. *The News*. 29/09/2014.

New Transparency Laws for Mexico.

The Federal Institute for Information Access (IFAI for its initials in Spanish) has released a series of proposals for the Mexican Senate in order to complete the necessary Bylaws on information transparency for Mexico. As part of the structural reforms Mexico has undergone in the last year, the government has established the need for a well developed law that regulates the transparency of governmental entities to combat corruption and the laws to protect personal data and information. The Federal Institute has stated that the bylaws are to be published as official and in force by February. Mrs. Puente de la Mora, president of IFAI has stated that the bylaws will be the opportunity to create a never seen law with the highest standards for protection. *CNN EXPANSIÓN* 29/09/2014.

Senate to discuss child law.

The plenary Senate will discuss the bill of the preferential initiative to issue a General Law for the Protection of Children delivered Sept. 1 by President Enrique Peña Nieto. The united commissions for Human Rights; Vulnerable Groups; Rights of Children and Adolescents; Education; First and Second Legislative Studies and Gender Equality in the Senate unanimously approved the bill. The members of these working groups agreed that the reservations in particular will be discussed in the plenary. The committees modified the president's initiative with the following principal changes: the alternation of the law's original title to The General Law for the Rights of Girls, Boys and Adolescents and the reduction of the original penalty of 18.8 million pesos (\$1.3 million) to 4.3 million pesos for electronic or printed media that disseminates images, voice or information that affects or disrupts the integral development of children and adolescents. *The News* 29/09/2014.

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