

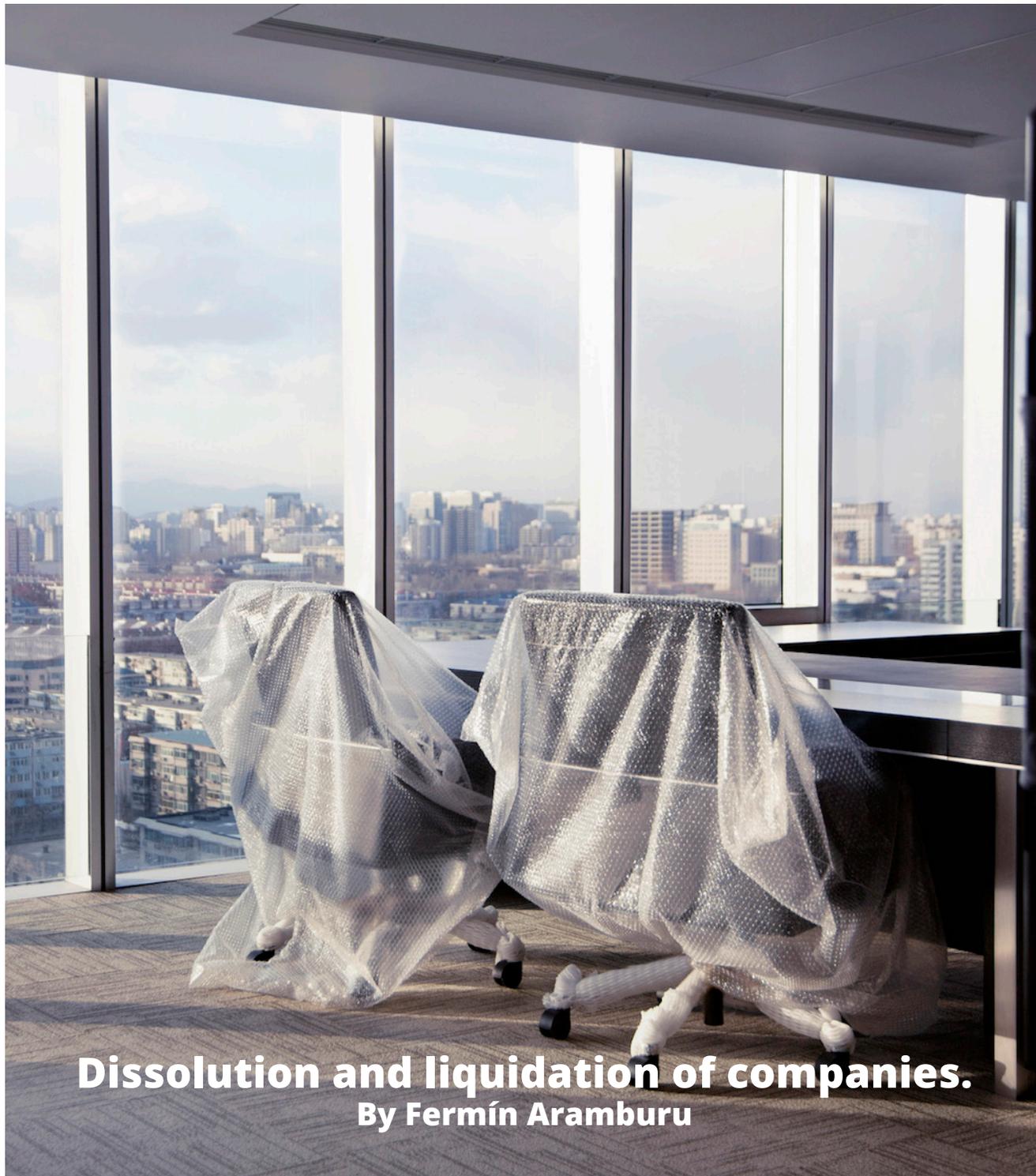
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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

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Dissolution and liquidation of companies.
By Fermín Aramburu

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by *Femín Aramburu*.

Provisions from Articles 229 to 249 Bis1 of the General Law of Mercantile Corporations (the Law), regulate the dissolution and liquidation of mercantile corporations in Mexico.

Notwithstanding the different assumptions that the Law establishes for which a company can be dissolved, an agreement between the partners shall be reached in an Extraordinary Shareholders Meeting. Once the meeting has been held, the caption "in liquidation" must be added at the end of the company name, which shall be notarized before a Public Notary, and later registered in the Public Registry of Property and Commerce of the company's domicile.

"It is important to mention that the Board of Directors will cease in their functions solely until the Dissolution Assembly is registered in the Public Registry of Property and Commerce, and once the liquidator(s) accepts their position and start their functions."

In such an assembly, one or more liquidators must be appointed, who must be granted all needed authority to be able to execute their role and comply with their obligations. Once the appointment has been accepted by the liquidator(s), the following duties shall be performed: (i) to register in the Public Registry of Commerce of the company's domicile the resolution of dissolution adopted by the Assembly; (ii) to request and obtain from the Board of Directors the corporate books of the company; (iii) to conclude with the corporate operations pending as of that date; (iv) to collect all the amounts owed to the company and, if applicable, sell its assets; (v) to pay to the company's personnel all the amounts to which they are entitled, in accordance with the current Federal Labor Law; (vi) to pay all creditors the amounts owed; (vii) in due course and in the event of a holdover, to distribute it among the shareholders, in the proportion that corresponds to them; (viii) to make the publications referred to in the Law; (ix) to file all respective notices before the Tax Administration Service (*Servicio de Administración Tributaria, SAT*); and, (x) once such publications have been made, to call a General Extraordinary Shareholders meeting for the approval of the final liquidation balance.

It is important to mention that the Board of Directors will cease in their functions solely until the Dissolution shareholders meeting is registered in the Public Registry of Property and Commerce, and once the liquidator(s) accepts their position and start their functions. At this time, the Board of Directors must serve to the liquidator(s) all assets, books, and documents of the company, for which an inventory of the company's assets and liabilities must be made.

Once the final liquidation balance has been published in the electronic system established by the Ministry of Economy, and once the 15-day term has expired, the liquidator(s) must summon all shareholders to a General Extraordinary meeting to proceed with the liquidation.

At this Extraordinary shareholders meeting, the shareholders must (i) agree on the liquidation of the company; (ii) approve and ratify each and every operation and action executed by the liquidator(s); (iii) approve the financial and accounting statements of the liquidation; (iv) approve the final liquidation balance; (v) instruct the liquidator(s) of the company to proceed with the notarization of the Assembly's minutes before a Notary Public and to arrange before the Public Registry of Property and Commerce of the domicile of the company its registration; (vi) instruct the liquidator(s) to store the corporate books of the company for a 10-year period from the date of the liquidation's registration in the Public Registry of Property and Commerce.

Once the Liquidation shareholders meeting is registered in the Public Registry of Property and Commerce, the liquidator will proceed to file before the SAT, the notice of commencement of liquidation, which must be filed within the following month from the day in which the liquidation begins. The annual statement for an irregular financial year due to dissolution must also be filed. Likewise, the notice of the end of liquidation and cancellation of the company's Federal Taxpayers Registry (Registro Federal de Contribuyentes, RFC) by virtue of the total liquidation of its assets must be filed before the SAT within the following month in which the latest compulsory tax declaration was filed.

Unfortunately, the SAT can sometimes be a bit reluctant in granting the aforementioned cancellations of the Federal Taxpayers Registries. Therefore, it has been common to effectively witness several visits to the SAT just to be able to definitively file the respective notices of cancellation, which many times originates oversights conducted by the SAT. This can lead to being able to conclude such a process not only with delay but several months or years after it has been initiated.

“Once the final liquidation balance has been published in the electronic system established by the Ministry of Economy, and once the 15-day term has expired, the liquidator(s) must summon all shareholders to a General Extraordinary Assembly to proceed with the liquidation.”

The foregoing constitutes the general procedure to dissolve and liquidate a company in Mexico. However, there is a simplified procedure to dissolve certain companies that meet certain features.

Such conditions can be founded in article 249 Bis of the Law that establishes the requirements to liquidate and dissolve these companies. Among other requirements, it establishes that companies (i) must be formed exclusively by partners or shareholders who are natural persons; (ii) must have published in the electronic system the corresponding notice of registration in the special book of registration of shares the shareholding structure in force at least 15 business days prior to the date of the shareholders meeting by which the dilution was agreed; (iii) must not perform any operations, nor have issued electronic invoices during the last two years; (iv) must be up to date with the compliance of their tax, labor and social security obligations; (v) and that their legal representatives must not be subject to criminal proceedings for the possible commission of tax or patrimonial offenses.

Furtherly, provision 249 Bis 1 of the same Law establishes the procedure that a company must follow to proceed with its liquidation and dissolution, that being: first, it must hold a General Extraordinary shareholders meeting where its dissolution and liquidation is agreed and the liquidator is appointed from among the partners or shareholders; this agreement must be signed by all the shareholders, and published in the electronic system established by the Ministry of Economy no later than 5 business days following the date of this assembly; second, and once the agreement is published, the Ministry of Economy will verify that its settlement of dissolution and liquidation duly complies with the Law, and, if applicable, will send it electronically for its registration in the Public Registry of Property and Commerce; third, the shareholders will deliver to the liquidator all assets, books and documents of the company; fourth, the liquidator will execute the distribution of the remaining corporate assets among the shareholders; fifth, and once the company has been liquidated, the liquidator will publish its final balance in the electronic system established by the Ministry of Economy within 60 business days following the date of the dissolution and liquidation assembly; and finally, the Ministry of Economy will register the cancellation of the company's folio in the Public Registry of Property and Commerce and will notify the SAT to cancel its RFC.

In the last two years, Mexico's Attorney General's Office has employed programs for the mass spying of cell phones.

The current Attorney General's Office (FGR) has purchased intelligence programs for the geolocation of cell phones and massive data analysis. In 2019 and 2020. The purchases were made under the secret item on national security expenses, so the contracts were not disclosed by the Attorney General's Office. The Network in Defense of Digital Rights (R3D), which has been monitoring this type of contracting, considers that the operation of these systems may violate human rights because in some cases it constitutes a massive surveillance that violates the requirements of necessity, proportionality, and judicial authorization. www.felpais.com/mexico/2021-04-14/la-fiscalia-de-mexico-ha-contratado-en-los-dos-ultimos-anos-programas-para-el-espionaje-masivo-de-telefonos-moviles.html 14/04/2021.

Opportunity for Mexico in the U.S. market.

China is losing market share in the United States, so Mexico should be promoting public policies that allow it to take advantage of this situation and establish itself as the main trading partner of the world's largest economy. In the first two months of the year, Mexico once again became the main trading partner of the United States, representing 14.9 percent of total trade, a figure slightly higher than China's 14.7 percent share, although experts believe that this gap could be increased through a series of actions that encourage investment. www.elfinanciero.com.mx/economia/2021/04/19/ven-oportunidad-para-mexico-en-mercado-de-eu/ 19/04/2021.

AMLO 'shows solidarity' with India; announces that no COVID vaccines will be received to help that country.

President Andrés Manuel López Obrador said that Mexico will help India, which is dealing with a severe outbreak of COVID-19-related infections and deaths, by refusing to accept the vaccines that were contracted with that country. www.elfinanciero.com.mx/nacional/2021/04/26/amlo-se-solidariza-con-india-anuncia-que-no-se-recibiran-vacunas-covid-para-ayudar-a-ese-pais/ 26/04/2021.

Will pandemic-related measures fall at the U.S.-Mexico border?

Homeland Security Secretary, Alejandro Mayorkas, said that the controversial public health measure known as Title 42 would stay in place. It has been used to rapidly expel migrants since it went into effect in March 2020 as the coronavirus pandemic took hold. Under this measure, the asylum process has ground almost to a halt, and crime by smuggling groups has increased. Since the U.S. shut down traffic across the border that was deemed nonessential, many expelled under Title 42 try again to cross the border, often with the help of the smugglers, and potentially could further complicate efforts to stop the spread of the virus. Randy Capps, director of research for U.S. programs at the D.C.-based Migration Policy Institute declared that "the slower rate of vaccination in Mexico will remain a variable in decisions to end Title 42." www.dallasnews.com/news/2021/04/27/will-pandemic-related-measures-fall-at-the-us-mexico-border/ 27/04/2021.

The Senate approves new law so that no federal official earns more than AMLO.

On March 26, President Andrés Manuel López Obrador sent to the Chamber of Deputies an Initiative with a Draft Decree Amidst accusations by the opposition that the Executive Branch is making a new attempt to control the Judicial Branch, the Senate of the Republic approved the new Federal Law on Remuneration of Public Servants so that no federal official of the Legislative and Judicial Branches, nor of the autonomous bodies may earn more than the President. "In the previous six-year terms there was the phenomenon of giving stratospheric bonuses, there were salaries of up to 500 thousand pesos for public servants and to that were added over-salaries and other types of benefits. We want to put an end to that." said Martí Batres Guadarrama (Morena). However, criticisms from the opposition, mainly from PRI, were since the ruling does not contain clear or precise criteria to determine what the salary of the president and public officials should be. www.eluniversal.com.mx/nacion/aprueba-senado-nueva-ley-para-que-ningun-funcionario-gane-mas-que-amlo 27/04/2021.

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