Message from the Co-Chairs by Susan Burns

Time flies when you are having fun! That adage certainly rings true as I note the completion of my first year as co-chair of the Mexico Committee.

Our committee continues to experience success with panel presentations at the ABA Section meetings, most recently with our panel What Lies Ahead For NAFTA: Are Unilateral Changes on the Horizon, or will Long-standing, Positive Economic Relationships Prevail? We managed a standing-room only attendance—on a Friday afternoon, nonetheless. The San Diego-Tijuana City Chapter was also active, hosting a brown-bag lunch on Cross-Border issues, which was well-received.

We contributed to the Year-In-Review, as is our custom, with a summary of a number of important Mexican legal developments. We are expecting to receive the completed publication in the near future. Stay tuned!

What I am most pleased about over the last year is the increase in the number of committee members who are actively participating. I love learning of your varied perspectives and being able to know each of you better as time goes on. We look forward to another great year of programs and fun.

Speaking of another great year, we hope to see a number of you in Miami for the Fall Conference. The Mexico Committee is sponsoring a panel, of course, and a number of our members are panelists for presentations that we are co-sponsoring. Updates are provided during our monthly conference call.

We continue to work on hosting the Fall 2018 Meeting in Mexico City and will keep you posted. We are working diligently and hope to have good news to report.

We look forward to receiving your articles for publication in the next newsletter (and possibly Year-in-Review) and to receiving your proposals for panel presentations. In the meantime, enjoy the valuable contributions in this edition. (Special thanks to Yurixhi Gallardo.)

Keep up the great participation. It is an honor and joy to work with you.

Co-Chairs: Ben Rosen, Rene Alva and Susan Burns

A Note from the Editors

In this issue we have articles that discuss recent reforms to the Mexican legal system, on the one hand, two articles regarding Simplified Joint-Stock Corporation (SAS), and on the other, the implementation of the new adversarial system in Mexico. Also, we have one contribution that analyzes Mexico’s Reputation in the Global Financial Markets and the Political Reform of Mexico City. The work of the Mexican Bar Association recognizing Hector Gonzalez Schmal with the “Award to the Legal Trajectory 2016” is inspirational. Finally, we want to thank the amazing contribution about Mexico’s Recent Experience at the Court of Arbitration for Sport in Lausanne, Switzerland. And the article regarding Advancements towards an equal footing for the recipient of widowhood pensions in Mexico is a reflective contribution.
About the Mexico Committee

Anchored by coordinators in cities in Mexico and the United States, the Mexico Committee seeks to grow its members’ involvement in dialog on current and potential developments of Mexican, United States and other law relevant to their practice of law and to the establishment of sound policy. Current substantive focuses of the Committee’s work include arbitration, antitrust law, criminal procedure reform, data privacy, environmental law, legal education, secured lending, and trade law. The Committee contributes to the annual Year In Review publication, is developing its newsletter in partnership with a leading Mexican law faculty, maintains its website, and actively organizes programs at the spring and fall meetings of the International Law Section.

The Mexico Committee’s membership is its most important asset. We encourage all Committee members to be involved in Committee activities and to communicate freely their suggestions and ideas.

Upcoming Events – Save the Date

INTRODUCTION TO HUMAN TRAFFICKING ISSUES & REGULATIONS FOR TRANSNATIONAL CORPORATIONS

Washington, D.C.

June 26, 2017

ARE YOU PROTECTED?: MAINTAINING CONFIDENTIALITY & ENFORCING TRADE SECRET RIGHTS IN CHINA

Webinar

June 27, 2017

2017 SECTION OF INTERNATIONAL LAW FALL CONFERENCE

Miami, FL

October 24-27, 2017
Mexican Limited Liability Corporation’s (SRL), advantages over the Simplified Joint-Stock Corporation (SAS)

By Soyla H. León Tovar

In the last decades, the SRL has been the most widely used business structure, normally used in countries like Spain, France and Colombia, specially for small companies and for foreign investors for its similarity with the American Limited Liability Corporation (LLC), whose development in the United States has been favored since 1988, when the Internal Revenue Service (IRS) determined the tax treatment of the LLC in Revenue Ruling 88-76 and 93-38 as a Partnership rather than as a corporation. However, now days the SRL seems to share a preference with the Simplified Joint-Stock Corporation (SAS) in which, like in a SRL, the partners limit their payment liabilities to the amount of their contributions. The later is due to the flexibility in constituting a SAS and the elimination of burdensome requirements and formalities needed for other companies. Nonetheless, in Mexico the General Law of Commercial Companies (LGSM), contains other requirements and limitations for a SAS, different from those required in a SRL, which should be taken into account before opting for this type of business structure, despite of the apparent advantages of the SAS, as it is set out below.

A SAS may be constituted by one or more partners, whereas a SRL must be constituted with at least two partners. The former has to be constituted electronically and according to the statutory models provided by the Ministry of Economy (SE). SRLs are constituted before a notary or corridor public, excepting the subtypes regarding artisanal, microindustrial or public interest.

The contributions of the partners in a SAS integrate fractions of capital stock called shares that may be represented in securities with a free nominal value or without expression of said value, released or payable within the year that follows its issuance, freely transferable, or subject to any restriction on its circulation. The contributions of the members in a SRL integrate fractions of capital stock denominated social shares with legal value of the multiple of a Mexican peso, they must be disbursed in at least 50% of its value at the time of their subscription and paid in full on the date that the statutes or the assembly fix or whenever it is required to the partner; and they can only be transferred with the consent of the partners.

SAS unlike a SRL: a) are not obliged to separate from their net profits a five percent per year to constitute the legal reserve fund; b) can hold electronic assemblies whenever they have an information system; c) must grant the right to speak and vote.

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in the assemblies to all shareholders; d) cannot issue share classes, all shares must be of equal value and they must confer the same rights; e) can allow any shareholder to request to submit matters to the consideration of the assembly; and, f) unless otherwise agreed, it favors alternative dispute resolution mechanisms.

However, in a SAS only natural persons may be partners with the restriction of not being a controlling partner in any other company; While in a SRL, any natural person or legal entity can be a partner, who can simultaneously be a controlling partner of any other company or companies. The LGSM does not admit irregular SAS, but recognizes that a SRL has legal personality since it is externalized as such against third parties. A SRL is more versatile, it can be used for large companies with no income limitations, while a SAS cannot have total annual revenues exceeding 5 million pesos (upgradable). In the event of exceeding this sum, the company must be transformed into another social type and in the meantime, the partners respond subsidiarily, jointly and unlimitedly for their social obligations. And in a SAS the failure to publish the financial situation during two consecutive years results in the dissolution of the company, following a declaration of non-compliance by SE.

Finally, the LGSM imposes additional obligations and responsibilities on SAS partners different from those required for SRL members:

- a) each shareholder of a SAS must have a current certificate of advanced electronic signature; B) the shareholder is subsidiary or jointly liable, as the case can be, with the company, for commission of conducts punishable as crimes, and b) the founding partners are responsible for the existence and veracity of information provided in the electronic system. A SAS is subject of different requirements and formalities from the ones established for a SRL: a) a notice of having been subscribed and paid the entire share capital must be published in the electronic system of the SE; b) its financial statements must be published annually and by the same electronic means; c) one of the shareholders must have been authorized by the SE in order to use the company name; d) contracts concluded between the sole shareholder and the company must be registered in the electronic system; and e) the administrator must publish in the electronic system, the annual report on the financial situation of the company.

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1. According to “Datos por Provincias de Constitución de Sociedades Limitadas y Sociedades Anónimas de España entre los años 2007 y 2012”, of the Mercantile Registry of the Central Mercantile Register and of the Ministry of Labor and Social Security, http://www.crear-empresas.com/estadistica.htm, consulted on October 16, 2012, 84,399 SRL were constituted and only 554 SA; In Castilla y León, for April 2012, of 231 mercantile companies, only one was SA and 230 SRL.

2. According to the Institut National de la Statistique et des Études Économiques (INSEE) on 1 January 2004, about 85% of the companies that are constituted, do so in the form of SRL, Portal.uned.es/pls/portal/docs/PAGE/UNED_MAIN/ LAUNIVERSIDAD/UBICACIONES/06/PUBLICACIONES/ REVISTA%20DIGITAL%20FAUCILTAD%20DE% 20DERECHO/NUMEROS%20PUBLICADOS/NUMERO% 20111/PUBLICACION.PDF. Retrieved on October 24, 2013.


4. FINCK, Kevin W., How to Form a California Corporation or LCC from any State; SmartStart Series, Entrepreneur press, California, 2005, p. 4 y 70.

5. Ley de Sociedades de Responsabilidad Limitada de Interés Público y Ley Federal para el Fomento de la Microindustria y la Actividad Artesanal.

6. The LGSM alludes to evidence "with the social contract of the constitution of the society ..." but loses sight that the SAS can be constituted with a single partner and that for that contract is required of at least two parties to form consent.
Amendments to the General Law of Commercial Companies (Ley General de Sociedades Mercantiles “LGSM”) - Incorporation of the Simplified Stock Corporation (Sociedad por Acciones Simplificada “S.A.S.”)

By Ana Karen Inzunza Sánchez

Recently, the Mexican Ministry of Economy (the "Ministry") published several new amendments (the "Amendments") to the General Law of Commercial Companies (Ley General de Sociedades Mercantiles ("LGSM") in its Official Gazette (Diario Oficial de la Federación "DOF"), including presentation of a new corporate entity known as the Simplified Stock Corporation (Sociedad por Acciones Simplificada) ("SAS").

The SAS is unique among Mexican corporate structures since unlike other Mexican corporate structures, it allows for ownership by a single shareholder. While the ability to be owned by a single shareholder may appeal to many entrepreneurs, the S.A.S. is not without its limitations, including the requirement that shareholders have to be natural persons, and cannot have more than $5 million Mexican pesos in annual revenue.

With respect to the limitation that shareholders must be natural persons, the Mexican legislature added the additional requirement that no shareholder of an SAS may simultaneously be a shareholder of another type of corporation, if that shareholder's participation would allow him or her to have full legal or administrative control of the corporation. The intent of the legislature was to prohibit SAS’s from becoming subsidiaries of other Mexican business structures, and limit its application to small and medium businesses.

In order to establish an SAS, the shareholder must incorporate the business as a corporation with variable capital, and the company must be registered in the Public Registry of Commerce (Registro Público de Comercio) ("RPC") in order for it to become enforceable before third parties. This requirement applies to all Mexican entities and is aimed to provide legal protection to third parties.

Unlike other types of entities, the SAS does not have to be notarized before a notary public. This is a substantial benefit to small businesses and start-ups which have limited capital to initiate operations as this tremendously reduces the cost of incorporation versus establishing other types of business entities. Nor are SAS's required to open separate legal funds pursuant to Article 20 of the LGSM.

As to the SAS's limitation on revenue, if a SAS receives income exceeding $5 million Mexican pesos, it will be restructured into another type of Mexican business structure. In order to enforce this restriction, all SAS's must report their income annually. If a shareholder (s) fails to restructure an SAS that exceeds $5 million pesos in revenue, the shareholder (s) will lose their limited liability protection, and will be jointly and severally liable to third parties for any liabilities the SAS incurs.

Incorporation

In order to incorporate as an SAS, four requirements must be met:

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**Mexico Update**

- One or more shareholders;
- That the shareholder(s) agree on the incorporation of the entity under the corporate bylaws provided by the Ministry;
- Authorization of the corporate name issued by the Ministry; and
- Electronic signature of the shareholder(s).

The incorporation will be made electronically through software established by the Ministry, and the procedure to electronically establish the SAS is as follows:

- A serial number will be opened for each incorporation;
- The shareholder(s) must select the clauses composing the corporate bylaws;
- The incorporation deed must be signed with the shareholder’s / shareholders’ electronic signature;
- The Ministry will review the corporate bylaws to ensure their compliance with the requirements of the LGSM. If in compliance, the Ministry will send notice to the Public Registry to publish notice of the establishment of the SAS; and
- The Registry will generate an approval notice.

As a simplified business structure, the bylaws of an SAS do not need to be notarized, and no other formalization of the company’s existence is required other than compliance with the above listed procedures.

**Corporate Bylaws**

According to the LGSM, the corporate bylaws of an SAS must contain the following:

- Corporate name;
- Shareholder(s) name(s);
- Shareholder(s)’s address(es);
- Shareholder(s)’s Taxpayers ID;
- Shareholder(s)’s Email;
- Corporate address;
- Duration of corporation;
- The manner and terms in which the shareholder(s) are obliged to issue and pay for their shares;
- The quantity, value and nature of the shares in which the social capital is divided;
- The number of votes corresponding to each shareholder regarding his or her shares;
- Corporate purpose; and
- The type of administration of the corporation.

Any modification to the corporate bylaws must be decided by a majority of votes in a shareholders’ meeting. Unless otherwise agreed, all controversies among shareholders or with third parties must be resolved through the alternative dispute resolution methods contained in the Mexican Code of Commerce.

**Shares**

Shares of an SAS must be paid for within a year from the date of inscription of the corporation in the Registry of Commerce. Once the shares are fully issued and paid for, it is necessary to publish an electronic notice using Ministry software.

**Supreme Body – Board of Directors**

If the corporation only has only one shareholder, he or she will be considered the Supreme Body of the corporation. However, if the corporation has two or more shareholders, all of them will constitute the Board of Directors.

The decisions approved by the Assembly shall be taken by a majority of votes, and shareholders may agree that all resolutions be taken with the physical presence of each other or by electronic means, if permitted by the corporate bylaws. In either case, a registry book must be kept with all the approved resolutions.

The LGSM also establishes the following with...
in business outside the scope of the structure of the SAS or outside its corporate purpose, the shareholders must restructure the SAS into a different type of corporate entity, and formalize the new structure before a notary public.

The administrator must also publish the corporation's financial information by way of software provided by the Ministry. The lack of such publication for two consecutive periods will lead to the company's dissolution.

The above describes the method by which SAS's are incorporated and regulated. The SAS was designed to encourage greater entrepreneurship and the creation of small businesses by reducing the legal barriers and costs associated with establishing Mexican corporations. The primary goal is for small businesses to incorporate using the SAS structure, and hopefully benefit greater amounts of people considering opening up small businesses. Additionally, the SAS may also attract additional foreign investors into the Mexican economy who otherwise would not have had enough capital to invest in Mexico's large corporations. Given the relative newness of the SAS, business analysts will have to take a wait and see approach over the next few years to determine if the SAS has achieved these goals.

The Amendments were approved on March 16, 2016, and became enforceable on September 15, 2016.
Mexico’s recent experience at the Court of Arbitration for Sport in Lausanne, Switzerland

By José Edgardo Muñoz López

In the past, some Mexican athletes, in particular football players, have been involved in proceedings at the Court of Arbitration for Sport (Tribunal Arbitral de Sport) ("CAS") in Lausanne, Switzerland. The CAS, an adjudicatory body established to handle disputes related to sports through arbitration, hears appeals to decisions made by most national and international sport associations. These decisions usually involve disciplinary sanctions imposed by the internal investigative bodies of sport associations, such as, sanctions arising from an athlete's breach of antidoping rules. The appeal proceedings at CAS also decide claims regarding rules on the transfer of players and the eligibility or the qualification of an athlete to compete in sport events or leagues.

The jurisdiction of the CAS arbitral panels derives from two main sources. Either an athlete may be required to make a declaration during registration at a sporting event whereby he or she submits to the exclusive jurisdiction of CAS as the appeals authority to challenge any disciplinary decision taken by the disciplinary authorities of the game in question; or more often, the jurisdiction of the CAS panels stems from a reference to CAS arbitration in the particular sport association’s bylaws or statutes. By becoming a member of an international sport association, the conduct of the athlete, the club or the national federation and its members, is covered by all relevant regulations including the CAS arbitration clause found in the statutes and disciplinary codes of the international sport association in question.

In addition to administering appellate proceedings, the CAS also handles “ordinary” arbitration proceedings. In this type of proceeding, the jurisdiction of CAS arbitral panels stems from an arbitration agreement that is part of a contract. The Code of Sport-related Arbitration and Mediation Rule ("CAS Code") stipulates rules that are specific to “ordinary” proceedings and other rules that apply to “appeal” proceedings only.

The position of the Mexican respondents to not be bound by the penalty clause in the Host City Agreement led to retaliation by FINA.

In 2015, the City of Guadalajara, together with the State of Jalisco, the Mexican Swimming Federation ("FMN") and Mexico’s National Sport Commission ("CONADE"), was sued by the International Swimming Federation ("FINA") for the cancelation of the 17th FINA World Championships that were planned to take place in Guadalajara in 2017. FINA's claim for payment of a contractually penalty of USD 5 million was submitted to the CAS based on an arbitration clause in the Host City Agreement, which designated the CAS as the proper venue to solve any disputes. FINA's complaint gave rise to the initiation of “ordinary” arbitration proceedings under the CAS Code. All the Mexican respondents in the arbitration, except for the FMN, argued that they were not parties

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to the Host City Agreement based on different arguments.

The position of the Mexican respondents to not be bound by the penalty clause in the Host City Agreement led to retaliation by FINA. In January of 2016, FINA announced the temporary suspension of the FMN for “not fulfilling contractual obligations concerning the cancellation of the 2017 FINA World Championships in Guadalajara.” The suspension was based on clause 12 of the FINA Constitution that stipulates that “[a]ny Member, member of a Member, or individual member of a Member may be sanctioned [...] if duties and financial obligations to FINA are not fulfilled”. The FINA sanction resulted in Mexican swimming athletes being able to participate as FINA athletes only and barred them from participating as members of the FMN in international competitions. In the middle of the FMN’s suspension, Mexican diver Rommel Pacheco won a gold medal in the 3-meter springboard competition at the FINA Diving World Cup 2016 in Rio de Janeiro. Despite the Mexican victory, the flag that was raised highest during the medal ceremony was that of FINA. Mexican swimmers were also unable to use the Mexican kit or to hear their national anthem when winning gold.

Relying on clause 26 of the FINA Constitution, the FMN filed a separate appeal at CAS against FINA’s sanction.

Relying on clause 26 of the FINA Constitution, the FMN filed a separate appeal at CAS against FINA’s sanction. Simultaneously, the FMN made a request to the President of the CAS Appellate Division to issue a provisional measure to lift all sanctions against the FMN until both the appeal and ordinary arbitration proceedings were concluded. Following this appeal, FINA spontaneously agreed to lift the suspension over the FMN; allowing the Mexican swimmers and divers to use the Mexican kit, see the Mexican flag and hear their national anthem again during the 2016 Rio Olympic Games.

Meanwhile, both the ordinary and appellate CAS proceedings continued as expected until the final hearing that took place in Switzerland in September of this year. After all parties orally presented their respective positions, the Arbitral Tribunal invited them to carry on constructive talks with the aim of finding an agreed solution to their dispute. At the end of the day, all parties involved in both proceedings realized that the CAS arbitration had offered them an opportunity to hear and know the positions of their opponents and that those positions converged on one point: all parties were willing to work for the improvement of the aquatic sport in Mexico and the world. Against this background, some of the Mexican respondents acknowledged that the penalty clause became payable to FINA as a penalty under the Host City Agreement, but that the penalty was already paid from funds available to FINA under a different contract. In light of it, FINA permanently lifted the sanction against the FMN, while all parties agreed on a full and final settlement of any and all claims against each other, including any claims between the Mexican respondents, based on the subject-matter of the ordinary arbitration.

By issuing an arbitral award based on the agreed terms by the parties, the CAS Panel opened the way for the renewal of fruitful cooperation and the further development of aquatic sports in Mexico [...]

By issuing an arbitral award based on the agreed terms by the parties, the CAS Panel opened the way for the improvement of the aquatic sport in Mexico and the world.
development of aquatic sports in Mexico and the world.

1The author of this contribution acted as counsel for the City of Guadalajara in the CAS arbitration proceedings commented in this contribution. No confidentiality duty is breached with the publication of this contribution since the parties involved in the CAS arbitration agreed that the proceedings and awards were not confidential.

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3The CAS was first created as part of the International Olympic Committee (IOC) in 1984. However, after a decision from the Swiss Federal Supreme of 15 March 1993 119 II 271, it was drawn attention to the closed relationship which existed between the CAS and the IOC, which was sufficient closed to call into question the independence of the CAS in the event of the IOC's being a party to proceedings before it. As a result, the CAS Statute and Regulations were completely revised to make it definitively independent of the IOC which had sponsored it since its creation. The main change resulting from this reform was the creation of an “International Council of Arbitration for Sport” (ICAS) to look after the running and financing of the CAS, thereby taking the place of the IOC.

4For example, Article 66(1) of the FIFA statutes states that FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players' agents.

5The CAS CODE stipulates the Special Rules Applicable to the Ordinary Procedure from R38 to R48, while the Specific Provisions Applicable to the Appeal Arbitration Procedure are found in R47 to R59. The current edition of the CAS Code is 2016.


7Cf. PR 5 - FINA Bureau Meeting - Budapest 2016, p. 2 available at www.fina.org/printpdf/22558

8Id. Cf. also FINA Constitution available at http://www.fina.org/content/constitution

9Proceedings CAS 2016/A/4523. FINA Constitution Clause 26 Arbitration: “Disputes between FINA and any of its Members or members of Members, individual members of Members or between Members of FINA that are not resolved by a FINA Bureau decision may be referred for arbitration by either of the involved parties to the Court of Arbitration for Sport (CAS), Lausanne. Any decision made by the Arbitration Court shall be final and binding on the parties concerned”.

10The application of this interim measure was made pursuant to R37 CAS Code.
The Adversarial Accusatorial System

By María del Rocío de Orta Abúndis

On June 18, 2008, the Constitutional Security and Justice Amendment was published in the Mexican Official Gazette (Diario Oficial de la Federación), initiating one of the most ambitious reforms in recent years of Mexico’s legal system. The genesis of this reform lies in the Mexican penal system’s deep failure to prevent most crimes in Mexico from going unpunished. Criminal investigations rely on prefabricated evidence or coached witnesses, most judges miss hearings, and day-to-day penal system functions remain muddled in corruption. For these reasons, important change is sought for our criminal justice system.

Given this situation, various articles of the Mexican Constitution were amended and updated by implementing a new type of accusatorial justice system based on the five main principles enshrined in Article 20 of the Constitution, which reads literally as follows:

“Article 20. The penal system shall be accusatorial and oral. It shall be governed by the principles of openness, challenge, concentration, continuity and immediacy.”

The foregoing aims to improve operations at various institutions that make up the Mexican criminal justice system, which are responsible for public safety, prosecution, justice and social readaptation.

Another aspect worth considering as part of this reform is the importance of human rights for both victims and accused parties [...]

Some of the new criminal justice system’s most important objectives include eliminating corruption, which has plagued the Judicial Branch throughout various levels of government, and overcoming bad practices by judicial system participants. Thus, when penal reform started, it was deemed viable to have separate judges supervising each stage of the case in order to reach greater impartiality and adherence to the law, both for party motions and case decisions.

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However, despite amendments to various articles of the Constitution, the creation of new institutions and even the National Criminal Procedure Code for successful operation of the new justice system requires the will, commitment and work of the entire Mexican government, given its huge challenge not only to institutions charged with administering justice, but also to attorneys and society itself.

As mentioned by Mexican President Enrique Peña Nieto at the inaugural ceremony of the Adversarial Accusatorial system this past June 18th, “Only through a continuous process of learning and improving will we be able to rectify failures and overcome the inevitable challenges.”

Words of wisdom, without a doubt. Just a few months have passed since introduction of the adversarial system, and deficiencies have already appeared in the system’s institutions and with its participants. Only with the passage of time will these matters be improved, made adequate and adjusted so that entities dedicated to seeking justice and maintaining safety may meet the objectives of the Constitutional Security and Justice Amendment.
The Political Reform of Mexico City

By Bianka Aryesha Llamas Covarrubias

In November 1824, Mexico City became a Federal District (D.F.), and the seat of all the country's executive, legislative and judicial power. Mexico City's legal status as a federal district was established in Article 50 of the Constitution of 1824 (and article 44 of the Federal Constitution currently in force) by instruction of Guadalupe Victoria, the first President of Mexico. However, on January 29, 2016, after years of attempts and through amendments to the Mexican Constitution, Mexico City, D.F. was made into the thirty second state of Mexico, called the Federal District.

Concept and legal nature of Mexico City

Article 44 of the Constitution of Mexico ("CPEUM"), establishes Mexico City as the Federal District. Based on this Article, many notable Mexican scholars believe that the the D.F. is a unique entity, with a different legal personality than the rest of the Mexican states. The D.F. is the seat of Mexican political power, and is the capital of the country. It is also an integral and permanent part of the Mexican Federation, the seat of the organs of local government, and has its own state taxes.

D.F. has also has one of the most infamous reputations as being ones of the largest population centers in the world. It is not only the seat of Mexican government, but is Mexico's most important political, economic, cultural, religious and social center.

As was previously stated, the seats of federal power are found in the territory of D.F., which encompasses the three branches of Mexican government: (1) President of the Republic (Federal Executive Branch), (2) the Congress of the Union with its two chambers, Deputies and Senators (Federal Legislative Branch), and (3) the Supreme Court of Justice (Federal Judicial Branch), all of which together govern the federation, as well as the D.F.'s local government. Due to its unique history and status, the organs of D.F.'s government are denominated differently than the rest of the country. For example, instead of having a governor, D.F. has a Head of Government, instead of having a local Congress, D.F. has a Legislative Assembly (Local Legislative Branch). With respect to the Superior Justice Tribunal (Local Judicial Branch), its nomination varies in each state. In some states, it is called Supreme Tribunal and in others, as in the state of Jalisco, it is called the Supreme Justice Tribunal. D.F. is also divided into delegations instead of municipalities and it does not have a local Constitution, but rather a Government Statute.

Presented initiatives

Aside from the acts from the various branches of government, 109 initiatives contributed to the transformation of this District into a federal entity.

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Legal and Political Consequences of the Reform

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While the D.F.’s name changed to Mexico City, it is still the capital, and seat of federal power. Now, instead of a Legislative Assembly and Assembly Representatives, there is a State Congress, and Deputies to the Congress. These Deputies will be able to vote and approve initiatives, including the creation of a new local constitution by January 31, 2017. This new Constitution is particularly controversial as the Deputies are debating whether gay marriage will be legalized in Mexico City, a right which had already been afforded to gay couples in the D.F. beginning in March 2010. Additional items being debated are the legalization of marijuana consumption. Mexico City's new Constitution will also govern how governors, mayor and local deputies will be elected and for how long they will remain in their posts. Presently, they will only remain in their current posts for a year after the passage of the new Constitution. In other words, Mexico will be governed by a Statute of the Government that the Congress of the Union previously approved, the Chief of Government will be called the Government, who will be able to name a Public Security Secretary, with the approval of the President of the Republic. The delegations will be divided up by territorial delegations, and will be under the authority of a mayor, which will allow greater cooperation between the municipal police force and the federal government. Mexico City will be able to set its own local taxes, while the federal government will retain the responsibility to fund education and health related services.

After 192 years of existence, D.F. was converted into a new federal entity, in the hopes of granting it greater independence from the federal government. This advance puts Mexico City on par with the other Mexican states, resulting in better representation and more freedom on the local level. At the same time, Mexico City remains the preeminent public entity in Mexico, and while achieving self-determination on the local level, has not lost its place of importance in the Union.

1 Profesora de la Facultad de Derecho, Universidad Panamericana

7 Comisiones Unidas de Puntos Constitucionales; del Distrito Federal y de Estudios Legislativos, primera, con opinión de la Comisión Especial para el Desarrollo Metropolitano, en relación con la iniciativa con proyecto de decreto por el que se reforman y adicionan diversos artículos de la Constitución de los Estados Unidos Mexicanos en materia de la Reforma Política de la Ciudad de México. DICTAMEN. Senado de la República. LXII Legislatura. México.p.2 y 3.
8 Diario Oficial de la Federación. Decreto por el que se declaran reformadas y derogadas diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de la reforma política de la Ciudad de México. Secretaría de Gobernación. Edición Vespertina. 29 de enero de 2016.
Advancements towards equal footing for the recipient of widow(er) pensions in Mexico

By Fernanda Ambrosio Agraz

Since the constitutional reform of 2011 in Mexico in the field of human rights, the country took a huge step towards protecting and guaranteeing fundamental rights for people in our country. The reform expanded the content of our political constitution by adding a series of implications for Mexican authorities, with special care taken for respecting and protecting constitutional precepts that seek to ensure the broadest protection of individual rights.

In this regard, the Second Chamber of the Supreme Court of Justice of the Nation (SCJN) decided on August 24, 2016, that both men and women have an equal right to receive widow(er) pensions. Through appeal number 371/2016, our court held for a man by determining that Section 152 of the Social Security Law (published in the Official Gazette of the Federation on March 12, 1973) was contrary to the Constitution in that it violated the principles of equality and non-discrimination.

The complainant mainly alleged a violation of his fundamental rights to equality, non-discrimination and social security [...] Thus, work on protecting and guaranteeing human rights in Mexico is growing and transforming so as to safeguard the rights of the governed and grant them the broadest possible protection of the law. The plan of responsibility to guarantee (both domestically and abroad) human rights protection to our citizens makes the Mexican government work more and more, both in terms of reforms and the adaptation of law in our country, so that the efforts of jurists in interpreting the law will help to bring about national objectives and materialize them day by day in society.

5 CPEUM, arts. 1, 4 y 123.
Mr. González Schmal Receives the “Award to the Legal Trajectory 2016” Given by Jalisco’s Section of the Mexican Bar Association

By Jorge Alejandro Torres González

Every other year, the Jalisco’s region of the Mexican Bar Association gives an award to recognize the professional career of a lawyer who has been distinguished for providing his or her services to Jalisco’s community in various areas (creation, application, practice, investigation, academics, and scientific disclosure) of law.

This time, the award was given to the lawyer Héctor González Schmal in a fruitful ceremony, which took place on September the 8th in the Patio Los Naranjos of the Instituto Cultural Cabañas. In this same place, the ceremony to commemorate the 20th anniversary of the Jalisco’s Section of the Mexican Bar Association was celebrated.

Mr. González Schmal was acknowledged for his contribution to the different areas of the legal profession in which he stands out. Nevertheless, above all aforementioned, he was recognized for having a five decades’ legal trajectory characterized by one element in common: having a personal and professional coherence, which has not been indifferent for those persons who have been near him.

While he was Dean of the postgraduate program at Universidad Panamericana, Campus Guadalajara, Mr. González Schmal organized and started the Master in Corporative and Economic Law, Master in Obligations and Contractual Law, Master in Corporate Law and Master in Constitutional and Amparo Law, which are still taught to date and are now considered as reference at national level. He focused on hiring well reputed professors. Since the beginning of the first generations he gathered the best and most competent lawyers as students. Such postgraduate programs and the networking that until today professors and students keep were designed by Mr. González Schmal.

When I initiated my career as a lawyer in 1994, along with his son Alonso, I had the fortune to meet Mr. González Schmal. He and his wife, Elvira Villalobos, were very beloved professors in the career.

Mr. González Schmal organized and started the Master in Corporative and Economic Law, Master in Obligations and Contractual Law, Master in Corporate Law and Master in Constitutional and Amparo Law.
throughout many generations of lawyers such as mine. At the end of my career, Mr. González Schmal accepted to be my thesis director. The day I received my commentaries, he invited me to work with him at Barrera, González Luna y González Schmal firm. For eight years he was my boss at the firm. Then, we were associates for seven years. He is will always be my mentor, the most representative figure in my professional formation. I consider a privilege having litigated with him. I learned from him to avoid corruption through study and arguments supported by law. As a humanist, he taught us to understand the human problem which is collateral to the juridical conflict and to comprehend the role it takes in the legal profession: “You have to merit the confidence of your clients, they deserve your loyalty.” Likewise, I learned to appreciate the respect of my equals, and of the Tribunals before I present my claims, being conscious that my person is representing a truth known by me.

In the words of Mr. Isaías Rivera Rodríguez, head of the Faculty of Law of the Universidad Panamericana Campus Guadalajara said: “Hector has demonstrated an upright integrity and character which have served him for the construction of ideals related with his personal, professional, academic and political life; he is a person who leaves a permanent mark wherever he goes; he fulfills the status of a real jurist.”

Personally, I am sure that Mr. González Schmal does not thinks he deserves an award because fulfilling your duty, being consistent with your personal values and convictions, and affront adversities should not be object of admiration. Nonetheless, I agree and rejoice that Jalisco’s section of the Mexican Bar Association has given him this award, since it shows to the legal community and to the younger generations of lawyers a model of conduct which should be followed by the legal profession: integrity, coherence and fortitude.
Improving Mexico’s Reputation in the Global Financial Markets Through the Implementation of New Valuation Standards

By Bruce D. Greenburg

In May 2015, the Instituto de Administración y Avaluos de Bienes Nacionales (INDAABIN), Mexico’s federal government organization that administers nearly 100,000 federal assets in the Republic of Mexico, similar to the United States Government Services Administration (GSA), sought assistance in the forming Mexico’s Valuation Standards and Code of Ethics to conform to International Valuation Standards (IVS). The President of Mexico recognized the country’s weak reputation with respect to its appraisals, which are commonly rejected by many global financial institutions.

The federal government of Mexico recognized that the Valuation and Review Standards and Code of Ethics must change in order to attract global investors. INDAABIN wanted to promote and maintain a higher level of public confidence in the valuation profession by standardizing such requirements for both external hired appraisers and internal reviewers within the Institute. By adopting a set of standards and code of ethics which conform to IVS and place personal responsibility on the valuation professionals in the sector, the federal government is making strides in pursuing the global public interest and increased foreign investment. The success of the new standards and code of ethics will require valuation professionals and reviewers in Mexico to develop conclusions which clearly communicate their analysis and opinions that are not misleading, and are performed with objectivity, integrity, independence and professionalism.

According to the World Bank’s recent report on “Corruption”, non-ethical behavior in Latin American countries produce:

- Higher interest, risk and discount rates;
- Lower global foreign investment, resulting in reduced economic growth;
- Global financial organization take a “harder look” at transactions in those respective countries;
- Corruption distorts public expenditure – increases economic waste, losses of government revenues & instills excessive spending;
- Eliminates or reduces free competition;
- Increases inequality between the wealthy and the poor;

The federal government of Mexico recognized that the Valuation and Review Standards and Code of Ethics must change in order to attract global investors. The World Bank report continues to denote to reduce corruption governments must:

- Adopt preventive measures;
- Ensure transparency;
- Increase access to accurate public information;
- Require internal control mechanisms;
- Punish / sanction the wrong doers; and
- Ensure the “rule of law”, promoting ethical standards

INDAABIN has taken the first steps towards adopting IVS and has become a model for other governments in Latin America.

First steps for “internal” administrative reform by INDAABIN included the:

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• Performance of a detailed analysis of the existing administrative and working documents of INDAABIN, which included processes, regulatory procedures, and the language of its documents to conform with IVS;

• Classification and scoring of University programs within Mexico that provide valuation curriculums;

• Classification and scoring of the professionals who work within INDAABIN as valuation reviewers, and develop review guidelines for their internal professionals which conform to IVS; and

• Classification and scoring of the professional appraisers, who are registered with the Federal Government to perform valuations for INDAABIN, and develop guidelines to perform external appraisals which conform to IVS.

Mexico asked Valuation Professional Organizations (VPOs) to review this framework to strengthen the new standards to conform to the highest level of IVS. The VPOs included the International Valuation Standards Council (IVSC), Royal Institute of Chartered Surveyors (RICS), the Appraisal Foundation, Appraisal Institute (AI), American Society of Appraisers (ASA), the International Right of Way Association (IRWA); and FECOVAL (Mexico based Valuation Professional Organization). The disciplines covered within the framework of the new Valuation Standards and Code of Ethics included appraisal review, real property, machinery and equipment, personal property, business and intangible asset valuations.

A meeting of the leadership of the seven VPOs occurred in Mexico City, and after many hours of discussion, agreement was reached to present the first round of norms to the federal government. The first round of norms, which included the Valuation Standards and Code of Ethics for all valuation disciplines, were adopted into Mexico Federal Law on December 3rd, 2015 in Mexico City by the Secretary of Public Administration (SFP), Minister Virgilio Andrade of Mexico. On July 25th, 2016, these Code of Ethics, and International Standards of Valuation were published in the Federal Registry of Mexico (Diario Oficial de la Federación). The leadership of Mexico’s government recognized that the responsibility of the valuation professional is to protect public confidence.

With the adoption of these Valuation Standards and Code of Ethics into law, Mexico has taken important steps to dramatically improve its reputation with global financial markets, and serve as model for other Latin American countries also interested in modernizing their appraisal standards.

Some of the key tenets of the Valuation Standards and Code of Ethics adopted into law by the Secretary of Public Administration (SFP) are:

Ethics: A valuation professional must promote and preserve the public trust inherent in the appraisal practice by observing the highest standards of professional ethics;

Record Keeping: A valuation professional must prepare a work file for each appraisal or appraisal review assignment. A work file must be in existence prior to the issuance of any report; and

Competency: A valuation professional must be competent to perform the assignment. If the valuation professional is not competent, they must decline or withdraw from the assignment before accepting the assignment, and further have the adequate education and tools to perform the assignment.

With the adoption of these Valuation Standards and Code of Ethics into law, Mexico has taken important steps to dramatically improve its reputation with global financial markets, and serves as a model for other Latin American countries also interested in modernizing their appraisal standards.
The Mexico Committee continuously seeks qualified professionals prepared to contribute their time and talents to continue developing a more active Committee. This is a prime opportunity to become involved with a community of lawyers that share an interest in Mexico and Mexican law, who are fellow American Bar Association members.

The Mexico Committee welcomes any suggestions, ideas or contributions to enhance this periodic publication. The current submittal deadline for contributions to the next issue is July 30, but please do not wait until the deadline. Rather, be in touch now with any member of our Editorial Committee with your offer of help, be it as an editor or a contributor. We can offer topic suggestions and provide translation and editing as needed.

If you are interested in participating actively with the Committee and in joining its steering group, please contact any member of the Committee leadership.

Mexico Committee WEBSITE: http://apps.americanbar.org/dch/committee.cfm?com=IC845000

Members of the MEXICO UPDATE editorial team at the commemoration of the 30th anniversary of the Mexican Bar Association. From left to right: Fernanda Ambrosio, Romina Guarneros, Héctor González Schamal and Rocío de Orta.