

# A SURVEY OF MEXICAN LAWS AFFECTING FOREIGN BUSINESSMEN

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## I. INTRODUCTION

The practice of law on the border of two countries that are as dissimilar as the United States and Mexico can be not only frustrating, but also intriguing. Mexican lawyers who come in contact with problems of law in the United States, just as their North American colleagues that have cases involving law in Mexico, come out of their experiences more aware of the unique problems of their clients.

A United States attorney who is called upon by a client to advise, help and guide him with a matter in Mexico must understand that Mexican law and its structure has evolved from Aztec, Mayan and Spanish legal systems with strong roots in Roman Law and a clear influence of the Code of Napoleon. At the same time, Mexico is a republic with a Federal Constitution patterned after its United States counter-part, providing for division of power into executive, legislative and judicial branches. There are 30 states, one Federal Territory and one Federal District; and both the federal government and each state have their own civil, criminal, and tax laws. Mexico has both federal and state courts. The Mexican Federal Congress has a Senate and a Chamber of Deputies; the state legislatures only have one house. Also, Mexico has an army and numerous police, crime prevention and investigative bodies.

The purpose of this paper is to elucidate the principal points of commercial and other laws that are of interest to U.S. attorneys that represent clients with interests in Mexico.

## II. COMMERCIAL ACTS

Mexican Law considers any business transacted with intent to gain or profit as an act of commerce governed by the Commercial Code,<sup>1</sup> which is complemented in its deficiencies by the Civil Code of the Federal District (Mexico City).<sup>2</sup> The following acts are considered to be of commercial nature: all speculative sales, sales of stocks, shares and securities of corporations; all contracts pertaining to government loans, bonds and securities; all negotiable instruments; the operations of freight and passenger transportation companies, private or public works construction companies, tourism companies, editorial and publishing companies; all bank and insurance opera-

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1. Commercial Code, Diario Oficial, Jan. 1, 1890.

2. Civil Code of the Federal District.

tions, checks, bills of exchange or the transfer of monies from one city to another; sales of harvests by the grower and any other similar acts.<sup>3</sup>

The differentiation between commercial and civil acts is important in the field of contract law, since commercial contracts are more simple and less formal. The parties to a commercial contract are bound by the terms of the contract, without necessarily having to fulfill specific formalities and requisites, except where the Commercial Code so demands for their validity.<sup>4</sup>

While it is possible to enforce verbal agreements in Mexico, it is better, as a general principle, to have all points of agreement and understanding between the parties of contacts in writing. In the past, obligations set forth or defined in the statutes of either the Commercial or Civil Codes need not be repeated in the text of a contract, since it was assumed that their existence in the statutes was sufficient to make them binding upon the parties. However, experience has taught that this assumption is not correct, since any controversy requires the interpretation by a third person of the intent and meaning of the parties in relation to the contracted obligations. The results could be contrary to those originally desired or intended. Today, the other extreme is fast being reached in certain contracts such as leases, where certain particulars are specified such as who is to pay gas, water, electricity and telephone bills, the Stamp Tax and registration fees.

In the course of protecting the rights of his clients in Mexico, a United States attorney will become familiar with two institutions of great importance: the Keeper of the Public Records of Property and Commerce, and the Notary Public. The Public Records of Property and Commerce is a government institution, and the Keeper or Recorder is a government employee appointed by the governor of the State.<sup>5</sup>

The office of Notary Public is a quasi-governmental post. To be eligible for the post an individual must have a degree in law, at least 3 years practice (not a requisite in all 30 states) and practice in a notarial office for at least six months under the tutelage of a Notary. The Notary must notify the government of the date when such practice starts and the date when the training is completed. Upon request, the applicant is then granted the right to take a written and oral examination before a board of notaries and the government representative; if he passes, he will be granted a Certificate (Patente)

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3. Commercial Code, *supra* note 1, art. 75.

4. *Id.* art. 78.

5. Registry of the Public Records of Commerce, art. 1, Diario Oficial, Dec. 20, 1885.

which permits Notaries to appoint him to temporarily act for them in their authorized absences. The certificate is also qualification to take another examination to fill any notarial vacancy that may occur. The appointment of Notary Public is for life. A Notary is not a government employee, but he is in a manner of speaking, an officer of the government who must in many states give up the practice of other phases of law. What a Notary attests is held to be true until proven otherwise, in which case he is stripped of his appointment and penalized.<sup>6</sup> Notarial fees are set by law; he posts a heavy bond or mortgage guarantee to insure his acts, and he can only be removed for specific cause as determined by the law.

All mortgages, sales and transfers of real property, trust contracts and incorporation proceedings must be affected before a Notary Public.<sup>7</sup> Since there is no title insurance in Mexico, in lieu thereof the Notary Public checks back in the public records for at least ten years, obtains proper attestations as to freedom from liens or encumbrances and even picks up all former titles to protect the buyer.<sup>8</sup> With very few exceptions, all powers of attorney have to be granted before a Notary Public. The Notary keeps permanent records of all his acts in government authorized bound books (Protocolos) that are sent to the state archives for permanent safekeeping.<sup>9</sup>

Few commercial operations and civil contracts of any magnitude are free from Notarial intervention.

A bill of exchange that is not accepted or paid and a promissory note that is not paid must be protested by a Notary Public.<sup>10</sup> Contracts made in a foreign country in a foreign language that must be recorded or which are to produce their effects in Mexico must be officially translated and then "protocolized" by a Notary Public.<sup>11</sup>

The minutes of Special Shareholders Meetings of a corporation must also be protocolized by a Notary Public.<sup>12</sup>

### III. CORPORATIONS

In order to organize any stock-issuing or public corporation in Mexico, it is necessary to first obtain a permit from the Department

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6. Amendments to the Administrative Code, State of Chihuahua, Book on Notaries Public, July 14, 1972.

7. Civil Code of the Federal District, arts. 2317, 2320.

8. *Id.* art. 2393.

9. Law of Notaries Public of the Federal District, Diario Oficial, Feb. 23, 1946. (All states have similar laws.)

10. General Law of Negotiable Instruments, arts. 139-49, Diario Oficial, Aug. 27, 1932.

11. Federal Code of Civil Procedure, arts. 131-32, Diario Oficial, March 13, 1943.

12. General Law of Business Corporations, art. 194, Diario Oficial, Aug. 4, 1934.

of Foreign Relations,<sup>13</sup> as the incorporating shareholders must agree with the Mexican government through this department to one of two conditions:

(1) That the corporation will not admit any foreigners as owners of shares of stock; or,

(2) That any foreigner that in the act of incorporation, or at any time thereafter, acquires any shares of stock or equity interest therein, [s]he will consider him [her] self as a Mexican national in regards to same and agrees not to invoke the protection of his government in relation to same.

The penalty for violating the agreement in (1) above is that the acquisition of the stock shall be held as null and void and the corporation's capital will be considered as reduced in relation to the value of the annulled operation. In (2), a violation results in the forfeiture of the stock to the government.<sup>14</sup>

Five persons are required to form a corporation, and the stockholders must never number less than five persons.<sup>15</sup>

Mexican corporations may be managed by a Board of Directors or by a Sole Administrator,<sup>16</sup> both of whom are elected by and must report to the shareholders at their annual meetings.<sup>17</sup> Supervision and certain control is exercised by one or more examiners (Comisarios) appointed by the stockholders. The examiner may or may not be a stockholder, but he may not be an employee of the corporation.<sup>18</sup>

Board meetings are held at least once a year, or as often as necessary.<sup>19</sup> Regular Shareholders' Meetings (Asambleas) are held yearly to deal with ordinary business. Special Meetings are held to deal with special matters such as changes in the statutes and by-laws and others prescribed by law.

Shareholders' Meetings must be held at the corporate domicile<sup>20</sup> after publication of a notice to that effect which must be made 15 days prior to date of the meeting. The publication must be made in a newspaper with large circulation in the city where the corporation is domiciled, and/or the Official Gazette of the state or federal gov-

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13. Regulations of the Organic Law of Subsection I of Article 27 of the General Constitution, Decree of June 29, 1944, art. 2.

14. *Id.*

15. General Law of Business Corporations, *supra* note 12, art. 89, 239 subsec. IV.

16. *Id.*, art. 142.

17. *Id.*, arts. 142-63.

18. *Id.*, arts. 164-71.

19. The statutes and by-laws may stipulate that board meetings be held monthly, as is mandatory for financial institutions, or as often as is deemed necessary.

20. General Law of Business Corporations, *supra* note 12, art. 179.

ernment, and such notice must contain the agenda of the meeting.<sup>21</sup> At least 50 percent of the stock must be represented in order to constitute a quorum, and a vote of the majority of those present is needed for validity of the resolutions passed.<sup>22</sup> In Special Stockholders' Meetings 75 percent of the stock must be represented to constitute a quorum, and a majority vote thereof is required for valid resolutions.<sup>23</sup> If the necessary quorum is not present as a result of the first notice of a Regular Shareholders' Meeting, then a second notice shall be published and a quorum is deemed to exist regardless of what percentage of stock is represented.<sup>24</sup> A common practice has been established that when all shares of stock are represented, the requirement of publication of prior notice is dispensed with, and the resolutions passed are held as legal.

The scope of activities of a corporation depends on its charter or permit. Thus, care should be exercised in filing the petition in proper form so that the permit granted will allow a full range of activities within the desired field, as every change of by-laws to add new purposes or objects in corporate activities requires a resolution from a Special Stockholders' Meeting, another permit from the government, plus notarial protocolization and recording.<sup>25</sup>

Stock issuing corporations must have a stated capital no less than 25,000 Pesos (\$2,000 U.S.).<sup>26</sup> Upon incorporation, the capital must be totally subscribed, but not necessarily paid in, as payment of 20 percent of the subscribed capital is sufficient. The unsubscribed portion of the capital must be subscribed within a year's time.<sup>27</sup>

A corporation may also have a variable capital, where it has a stated minimum capital, but stipulates that it will have an unlimited amount as maximum capital. These corporations add the words "Capital Variable" to their names, or the full abbreviation "S.A. de C.V."<sup>28</sup> The shares of stock are nominative shares.<sup>29</sup> The increase or decrease in capital (which can never be below the stipulated minimum) is effected by resolutions passed either by the Board of Directors or the Shareholders' Meeting depending on the provisions of the statutes and by-laws of the corporation.<sup>30</sup> This is a highly

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21. *Id.* art. 187.

22. *Id.* art. 189.

23. *Id.* art. 190.

24. *Id.* art. 191.

25. *Id.* art. 182.

26. *Id.* art. 90.

27. *Id.* art. 97.

28. *Id.* arts. 213-21.

29. *Id.* arts. 9, 218.

30. *Id.* arts. 213, 221.

recommended form of incorporation due to the flexibility given in adjusting financial needs.

All stock issuing corporations may issue either common or preferred stock, or various series of stock. Preferred stockholders have limited voting rights, but are assured a 5 percent or larger dividend, depending on the corporate by-laws.<sup>31</sup> Dividends may be paid on unpaid portions of stock that have been subscribed but only partially paid.<sup>32</sup> Corporations may not trade in or buy their own stock.<sup>33</sup> The limits and benefits granted to each kind or series must be specified as well as how they are to be amortized or withdrawn upon changes in the capital structure.<sup>34</sup>

Partnerships (*Sociedad en Nombre Colectivo* and *Sociedad en Comandita*) and Companies of Limited Responsibility (*Sociedad de Responsabilidad Limitada*) also exist in Mexico. Partnerships do not issue stock, they require at least two partners and at least 5,000 Pesos capital. Partnerships must be constituted procedurally in the same manner as a corporation: a permit must be obtained from the Department of Foreign Relations, and a contract of partnership must be made and signed before a Notary Public and recorded in the Public Records of Commerce.<sup>35</sup> The restrictive nature of the applicable statutes as to manner of management and responsibilities between the partners and toward third parties make partnerships less attractive for use in international operations.

All corporations and partnerships in Mexico are governed by the "Ley General de Sociedades Mercantiles" (General Law of Mercantile Companies), which is a Federal Law. Companies organized under the terms of this Law are considered to be of Mexican nationality and may open branches and agencies in any part of the country and abroad.

A corporation organized under the laws of any country other than Mexico desiring to operate in Mexico under its foreign charter, may open a branch or agency by obtaining a prior permit from the Department of Industry and Commerce and by registering with the Public Records of Property and Commerce.<sup>36</sup> In order to obtain such permit and registration, the foreign corporation must prove that it was incorporated in accordance with the laws of its home country. Then it must file a copy of its statutes, by-laws and articles of incorporation

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31. *Id.* art. 113.

32. *Id.* art. 117.

33. *Id.* art. 134.

34. *Id.* arts. 111, 141.

35. *Id.* arts. 2, 5.

36. *Id.* arts. 250, 251.

(which may not be contrary to Mexican public policy) and other related documents together with a certification of a Mexican diplomatic or consular official to the effect that the company was properly incorporated under the law of its home state, in the Public Records of Commerce.<sup>37</sup>

The foreign corporation may do business in Mexico either through an agent or representative, or by establishing a branch of the corporation within Mexico. The cost of establishing a branch is approximately the same or slightly higher as that of organizing a Mexican corporation. There are certain advantages to doing business in Mexico through an established branch: merchandise and goods may be directly owned by the company through its branch, capital investment in the branch may be increased as the need arises and expenses of the branch may be placed on the home office books as an operational expense.

There are also disadvantages of such a branch operation. The branch may not own real estate in Mexico, tax exemptions and other benefits may not be claimed by the branch and difficulty in obtaining immigration permits for its foreign personnel exists. Finally, all obligations arising from labor disputes would affect all mother company assets in Mexico, not just those of the branch.<sup>38</sup> Furthermore, any change in Mexican operations not covered by the home company charter would require that said charter be reformed and the changes protocolized and recorded. The major obstacle, however, is obtaining the permit to operate and to register the corporation in Mexico in the first place.

#### IV. INVESTMENTS—MEXICAN AND FOREIGN

Mexico has always proclaimed that foreigners and nationals are entitled to equal treatment under the law. The Federal Constitution so stipulates in its Article 1, the Civil Code for the Federal District so provides in Article 12, and the Law of Nationality and Naturalization provides in Articles 30 and 32 that the Laws of Mexico shall be equally applied to Mexican nationals and to foreigners without distinction. Furthermore, the last-named law provides that foreigners have the right to seek diplomatic protection in cases of denial of justice or willful and notoriously malicious delay in the administration thereof.<sup>39</sup>

This guarantee of equality must not be confused with a surrender or waiver of rights or protection of the national interests. The rule of equal treatment has been interpreted to mean that in Mexico the

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37. *Id.*

38. Federal Labor Law, arts. 13-15, 41, *Diario Oficial*, April 11, 1970.

39. Law of Nationality and Naturalization, art. 32, *Diario Oficial*, Jan. 20, 1934.

government will not give preferential treatment to foreign investment over Mexican investment. Mexico has just enacted a law to this effect—the Law for Promoting Mexican Investment and Controlling Foreign Investment.<sup>40</sup>

Foreign investment as defined by this law is investment made by (1) foreign corporations; (2) foreign individuals who are not bona fide permanent residents of Mexico, or those who due to their activities are tied in with or bound to entities or groups making their economic decisions abroad; (3) foreign legal entities without legal personality; and (4) Mexican enterprises in which a majority of their capital is owned by foreigners, or in which foreigners control management in any way.<sup>41</sup>

It is also provided that unless so determined by special laws or regulations or unless specifically authorized by the Foreign Investment Commission, investment by foreigners shall not exceed 49 percent of the corporate capital of any corporation, and that foreign participation in corporate management shall not exceed the percentage of its investment.<sup>42</sup> The Foreign Investment Commission is empowered to modify this general rule and to grant authorization for higher percentage of alien participation when such an investment "is convenient for the economy of the country."<sup>43</sup> Leasing the essential assets of a corporation is considered to be equivalent to their purchase.<sup>44</sup> This law also provides that, in order for a foreigner to acquire more than 25 percent of the stock, or more than 49 percent of the corporate assets, a prior permit must be obtained.<sup>45</sup> Such authorization is also required for execution of acts through which management of a corporation passes into foreign control. Shares owned by foreigners must be nominative shares, and the name, address and nationality of the owner must be shown on the stock certificates, as foreigners may only acquire bearer shares when they obtain a special permit to do so.<sup>46</sup> Capital investment by bona-fide permanent residents of Mexico is considered to be a Mexican investment, unless due to his activities, the resident alien is tied in with or bound to groups or entities making their economic decisions abroad.<sup>47</sup>

The Foreign Investment Commission has the authority to determine the percentage and conditions of a proposed foreign investment

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40. Diario Oficial, March 9, 1973.

41. *Id.* art. 2.

42. *Id.* art. 5.

43. *Id.*

44. *Id.* art. 8.

45. *Id.*

46. *Id.* arts. 2, 25.

47. *Id.* art. 6.

in existing businesses or in new business establishments,<sup>48</sup> participation of existing foreign investment in new areas of economic activities or in new fields of production<sup>49</sup> and to establish the government's policy on foreign investment in general. The Commission must consider whether the proposed investment constitutes a complement to Mexican capital or whether it will displace existing Mexican investment, effects of the proposed foreign investment on the balance of payments and whether it will increase Mexican exports, the effect of the investment on employment and the extent employment and training opportunities for Mexican technicians and administrative personnel will be created.<sup>50</sup> The utilization of Mexican materials and components and the new investment's aid in the development of needy or backward zones and areas of Mexico, in view of the technology that it will provide and the extent of its identification with the government's aims and programs for the overall development of the country must also be considered by the Commission.

The Law for Promoting Mexican Investment and Controlling Foreign Investment also creates the Registry of Foreign Investment.<sup>51</sup> It is mandatory that the following register therein:

- a. Aliens or foreign corporations making investments regulated by this law, and resident aliens of Mexico who are connected with or subject to foreign economic financial groups;
- b. Mexican corporations in which foreigners have an equity interest;
- c. Trust contracts in which foreigners are the designated beneficiaries, or those trusts, the purposes of which are the execution of acts regulated by the law; and,
- d. All shares of corporate stocks owned by, pledged to or given as collateral to foreigners and any transfer or assignment thereof.<sup>52</sup>

The law further contains innovative measures stipulating penalties for non-compliance or violations of its provision. It orders corporations who are bound to register with the Foreign Investment Registry, and who fail to do so, not to pay dividends until they comply with the law; and it further orders them not to pay dividends on the shares of shareholders who must register therein and fail to do so, until they comply with the law.<sup>53</sup> It further stipulates that any person who makes false representations or who commits any act which aids for-

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48. *Id.* art 12.

49. *Id.*

50. *Id.* art. 13.

51. *Id.* art. 23.

52. *Id.*

53. *Id.* art 27.

eigners to circumvent any provision of the law may be punished with a prison sentence of up to nine (9) years and a fine of up to 50,000 Pesos (\$4,000 U.S.).<sup>54</sup> Any and all acts consummated in violation of the Law shall be null and void and may not be invoked or used in any court action, or before any official or government authority. The violator shall be penalized with a fine in an amount equal to the value of the operation,<sup>55</sup> and the managers, directors, inspectors, examiners or members of the Board shall be jointly liable with the corporation for the fulfillment of and compliance with all obligations under this Law.<sup>56</sup>

In addition, the law reserves exclusively unto the state all investment in matters pertaining to petroleum and hydrocarbons, basic petrochemical industry, exploitation of radioactive minerals and the production of nuclear energy.<sup>57</sup>

Investment is reserved exclusively to Mexican nationals or to Mexican corporations which specifically exclude foreigners as shareholders in the fields of banking, finance, insurance, radio and television, air and maritime transportation, urban and interurban transportation and all freight and passenger transportation on federal highways, distribution of gas and all other activities determined by specific laws or regulations covered by executive degrees.

The provisions which stop payment of dividends and distribution of profits due to non-compliance of registration by the corporation are harsh and drastic in the sense that they may affect innocent shareholders who may not reside in Mexico or have any information on such requirements. The prohibition of free transfer and assignment of shares of stock affecting shareholders who reside abroad deprives them of the right of first refusal to subscribe and acquire additional shares of stock on increases of capital not subscribed and paid for by other stockholders;<sup>58</sup> this right which was their's prior to the existence of the law makes the application of these measures retroactive and seemingly contrary to constitutional provisions.

However, the government has repeatedly stated that these are not "new rules of the game," that they always existed but went unnoticed, and that now for the sake of discipline they have been enacted into one law.

#### V. BANKS & BANKING OPERATIONS

One of the main means for obtaining foreign capital has been

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54. *Id.* art 31.

55. *Id.* art 28.

56. *Id.* art. 29.

57. *Id.* art. 4.

58. General Law of Business Corporations, *supra* note 12, art. 132.

through the sale of bank securities issued by various Mexican banks. These securities have been very attractive to foreigners due to the high rates of interest paid, and the stability of the peso.

Mexico has one federal law regulating all banking institutions and their operations. The federal government is the only entity that can issue bank charters;<sup>59</sup> consequently, all banks in Mexico are national banks and as such they can open branch banks throughout the country. There are no state banks.

There are three categories of banks in Mexico:

- a. Commercial Banks, which can accept deposits for checking accounts and savings accounts, extend short-term and certain long-term loans, discount negotiable instruments, issue letters of credit, buy and sell foreign currencies, pignoratons, escrows and trusts;
- b. Mortgage Banks which extend long-term loans guaranteed by mortgages in real-estate and issue and offer long-term securities; and,
- c. Investment Banks who extend term loans and issue and offer to the public certificates and bonds bearing a high interest rate.<sup>60</sup>

Most bank securities have set maturity dates although some can be cashed in at any time with little or no penalty.

Supervision and control of all bank operations are effected through the National Banking and Insurance Commission,<sup>61</sup> which has been so efficient that no Mexican Bank has closed or been declared bankrupt in the last 40 years. The present Banking Law also regulates credit unions and bonded warehouses. Under our present day system of banks and auxiliary institutions, any conceivable banking operation that may legally be effected in other parts of the world can be effected in Mexico with the same, and at times greater, degree of safety.

## VI. SOCIAL SECURITY AND LABOR LAWS

No one who operates a business based in Mexico can avoid coming in contact with the Labor and the Social Security Laws. Both are federal laws applied throughout the country.<sup>62</sup>

Social Security covers all employees and workers, their spouses, and children under 18, that are unemployed. It grants them medical attention, medicines, hospitalization, surgery, maternity care, old age pensions and compensation for permanent or temporary disability.<sup>63</sup> The corresponding fees vary in relation to salaries and are paid

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59. New General Laws of Credit and Auxiliary Institutions, art. 2, Diario Oficial, May 31, 1941, amended by Decree, Dec. 31, 1947.

60. *Id.* art. 3.

61. *Id.* arts. 160-76.

62. Federal Labor Law, Diario Oficial, April 1, 1970; Social Security Law, Diario Oficial, March 12, 1973.

63. Social Security Law, *supra* note 62, arts. 11, 62, 63, 65, 92.

in part by the employee, and by the employer. An employee that earns only the minimum salary pays nothing.<sup>64</sup>

The scope of this Law is now being amplified so that Social Security may provide nurseries and child-care centers for working mothers, and it is intended that its benefits be granted to domestics and to farm labor in the near future. Its clinics are far-flung in every city in the country, with major hospitals in the state capitals, and huge medical centers in Mexico City, and certain regional centers with a high density or industrial development.

The Labor Law is a paternalistic law that tends to favor labor. It regulates the length of the daily and weekly shift,<sup>65</sup> determines payment of wages,<sup>66</sup> and, through a special commission, sets the standard for minimum wages every two years in accordance with the needs of the economic areas into which the country is divided.<sup>67</sup> It determines the grounds for discharging an employee, and sets the rules for payment of severance wages when dismissal is unjustified (three months wages plus salaries for duration of the trial).<sup>68</sup>

Strikes are a right guaranteed to labor by the Federal Constitution.<sup>69</sup> When a strike is called a plant is closed and elections are held. The strike is legal only if the majority of workers vote in its favor, otherwise the plant is reopened and the workers must return to work within 24 hours or lose their jobs.<sup>70</sup>

Labor unions in Mexico are not as big, powerful and aggressive as United States unions, and with the exception of a few, such as the National Miners Union, the Petroleum Workers Union, National Electrical Workers Union, are years behind the United States labor movement in their organization, power, wealth and sophistication. Since the Mexican Revolution received full backing of labor during its struggle it is only natural that the government today is strongly pro-labor and has been a great labor activist through the laws that it has enacted including the new Housing Law.<sup>71</sup> The Labor Law provides that Mexicans are to be preferred over non-Mexicans,<sup>72</sup> and union members over non-union workers in job vacancies.<sup>73</sup> However,

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64. *Id.* art. 42.

65. Federal Labor Law, *supra* note 62, art. 61.

66. *Id.* art. 90.

67. *Id.* arts. 551-63.

68. *Id.* art. 50.

69. MEXICAN FEDERAL CONSTITUTION, art. 122.

70. Federal Labor Law, *supra* note 62, art. 463.

71. Law of the National Authority for the Employee Housing Fund, *Diario Oficial*, April 24, 1972.

72. Federal Labor Law, *supra* note 62, art. 7, 154.

73. *Id.* art. 154.

most industries operate under open shops and they freely hire non-union workers without any trouble. A company may only employ 10 percent foreigners in relation to its total labor force.<sup>74</sup>

The principal objections that foreigners have against the Labor Law are that it limits their right to suspend work in the factories at will, and that they are not free to fire a worker unless they have a just cause as defined by Article 47 of the Law, without paying severance wages, and that it does not provide for a training period for apprentices.

The interpretation of the Labor Law lies in the hands of Labor Boards, made up of representatives of the government (the Presiding Officer) of labor and of management. There are both Federal and State Labor Boards, sitting in Mexico City, the state capitals and cities with high industrial density. The proceedings in labor disputes are designed for fast decision, but claims have multiplied to such an extent that it still takes months to obtain a judgment. Appeals in labor matters are heard by Federal Circuit Courts.<sup>75</sup> No State Appellate Courts hear appeals on labor matters. When constitutional matters are at stake, then an appeal may go up to the Federal Supreme Court, but this has generally been done away with.

Collective bargaining agreements may be signed by a company with a union only if a majority of the workers are members of the union.<sup>76</sup> The collective agreements are revised every two years<sup>77</sup> and it is extremely rare that once such an agreement has been signed that it can be cancelled. If the union loses its majority, another union may then become the bargaining agent for the workers.<sup>78</sup> Negotiations are neither as complicated, nor bound by as many rules as they are in the United States, but labor matters are of such delicate nature and so affect the life of an industry, that the practice of labor law is a highly specialized field.

Individual labor contracts must be signed with each worker where no union contract exists.<sup>79</sup> They should be as detailed as possible for they constitute the basic rules for the rendition of personal services and to determine the rights of both parties. Dedication to the drafting of these documents in keeping with the statutes of the Labor Law is highly advisable, even though the law specifies that no specific formality or solemnity is necessary for making a labor contract. It is

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74. *Id.* art. 7.

75. Law on Amparo, art. 158, Diario Oficial, April 30, 1968.

76. Federal Labor Law, *supra* note 62, art. 386.

77. *Id.* art. 399.

78. *Id.* art. 389.

79. *Id.* art. 20, 24.

specific in saying that the worker may not waive any of his rights for any reason, and any section that contains any waiver is null and void and cannot be enforced.<sup>80</sup> The state will not permit it since, in a sense, it considers itself the protector of the weak, the down trodden, the poor workingman.

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80. *Id.* art. 5.