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HOW TO DO BUSINESS IN MEXICO

How to Do Business in México

**A POPULAR GUIDE FOR BUSINESSMEN,
PROFESSIONALS AND EMPLOYEES**

by Rafael Martínez de Escobar



AN EXPOSITION-BANNER BOOK

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My acknowledgments are due to Chester P. Brown, Esq., Miguel Alemán, Jr., Esq., and George J. Flateau, Jr., Esq., whose able collaboration greatly simplified my work.

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R. M. de E.

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Preface

This work has been written to serve as a manual of the most important Mexican laws applicable to foreigners in general and to the foreign businessman in particular.

By compiling insofar as possible these laws and by providing their proper interpretation so that they can be easily understood by the interested reader, I have endeavored to make him acquainted with that portion of the Mexican legal structure with which he will be confronted, although he should always take into account that this book is not a treatise on Mexican law. It contains the necessary information but does not replace the legal counsel.

Special attention has been given to the problems which, according to experience, are of interest to the private investor. In order to better understand the reason behind certain statutes referred to in this work, the reader must bear in mind that, from the Mexican viewpoint, foreign investment is considered desirable if it does not displace Mexican capital, if it creates employment opportunities for Mexicans, and if it serves to improve the economic conditions of the country. Such investment becomes even more desirable when the foreigner decides to assimilate himself and to reinvest his profits in Mexico.

Naturally, we Mexicans would like to see the development of our country rely primarily on our own resources, but we know that certain types of foreign investments can materially aid our economic progress, just as they have helped the economic growth of many other countries.

This book is dedicated to those foreigners who see in Mexico a young, energetic and friendly country in which they would like to live or in whose economic and technical development they wish to share.

*Mexico, D. F.
September, 1960*

R. M. de E.

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LIST OF ABBREVIATIONS

<i>CCom</i>	Code of Commerce
<i>FLSR</i>	Federal Law of Statistics Register
<i>GLCC</i>	General Law of Commercial Companies
<i>GLCIT</i>	General Law of Credit Instruments and Transactions
<i>GLCoopC</i>	General Law of Cooperative Companies
<i>GPL</i>	General Population Law
<i>GPLR</i>	General Population Law, Regulations
<i>ITR</i>	Income Tax Regulations
<i>LBSP</i>	Law of Bankruptcy and Suspension of Payments
<i>LCMA</i>	Law of Commercial and Manufacturers' Associations
<i>LDNNI</i>	Law of the Development of New and Necessary Industries

CHAPTER 1

Immigration

P A R T I

Introduction

For our purposes it is extremely important to become familiar with the Mexican statutes governing immigration, for, besides dealing with the admission of aliens, they determine also the extent of their activities in the Republic of Mexico.

Mexico's sparse population in relation to its vast territorial extension has made the increase in the number of inhabitants one of the main subjects that require the continued attention of public officials, and among the measures that have been taken to achieve the desired growth of the population, immigration is a very important one.

The Secretaría de Gobernación¹ used to control the admission of immigrants into Mexico by means of differential tables which it published from time to time in the *Diario Oficial*.² These tables stated the number of immigrants by nationality to be admitted during a given period of time, as well as the conditions for their admission. The Secretaría de Gobernación has abandoned this policy and since 1947, when the last differential table was published, it has not specifically determined the number of immigrants who may be admitted or the conditions for their admission, although under the General Population Law it may do so whenever it deems it advisable (GPL Art. 58).

The current policy of the Secretaría de Gobernación is to admit those immigrants whose settlement in the country, in the

¹ Department of Interior.

² Official Gazette.

light of the immigration laws, it considers beneficial or advantageous to the growth of a useful and productive immigrant population. In this regard, it should be mentioned that the Secretaría de Gobernación is empowered to deny admission even if the immigrant fulfills all of the requirements of the General Population Law (GPL Art. 60).

Governing Laws. The legal norms governing immigration are found in the General Population Law enacted on December 23, 1947, as amended by Decree of December 24, 1949, and in its Regulations enacted on May 4, 1950; and in the Immigration Fees Law of December 29, 1950, as amended by decrees published in the *Diario Oficial* during the years 1953 and 1954.

Immigrants and Non-Immigrants. Article 42 of the General Population Law provides that aliens may legally enter Mexico as immigrants or non-immigrants. Non-immigrants are defined as "aliens who, with the permission of the Secretaría de Gobernación, enter the country for a temporary stay" (GPL Art. 50, par. I); and immigrants, as "aliens who legally and conditionally enter the country with the intent of settling therein, and the conditions imposed upon them for their entry to prevail until they acquire the status of permanent residents" (GPL Art. 43). Permanent residents are free to engage in any lawful activity (GPL Art. 66; GPLR Art. 68., Sec. I).

From the foregoing it can be seen that the determinant element in the definition of non-immigrants is the lack of intent on the part of such aliens to remain indefinitely in the country, and that in the definition of immigrants, even though they intend to settle in Mexico, it is their legal inability to engage in activities other than those upon which their admission was conditioned, until such time when they acquire the status of permanent residents.

The legal norm which restricts immigrants from freely engaging in any activity until they become permanent residents is predicated on the concept that a certain period of time must necessarily transpire before they can be considered assimilated. The period which the General Population Law considers sufficient for this purpose is five years (GPL Art. 45). Control over

the activities of immigrants during this term is exercised by requiring them to establish yearly that they have been complying with the conditions under which they were admitted (GPLR Art. 52, par. I). These subjects will be more fully discussed under the headings "Duration of Immigrant Status" and "Obligations of Immigrants" (pages 18 and 29, respectively).

Administration. The Secretaría de Gobernación, an agency of the Executive Branch of the Federal Government, is in charge of the application, interpretation, and enforcement of the General Population Law and its Regulations, and consequently has jurisdiction over all immigration matters (GPL Arts. 1, 2, 3, 11, 28; GPLR Arts. 2, 101).

P A R T I I

Immigrants and Non-Immigrants

For immigration purposes, aliens are classified by the General Population Law as immigrants and non-immigrants (GPL Art. 42).

Non-Immigrants. Under Article 50 of the General Population Law, non-immigrants may enter Mexico for any one of the following purposes:

- (a) Recreation (tourists);
- (b) In transit to another country (transients);
- (c) To devote themselves, lawfully and honestly, to the pursuit of some artistic, scientific, athletic or business activity, which may be lucrative or remunerative, but is temporary in character (visitors); and
- (d) To protect their liberty or their life from political persecutions (political refugees).

Tourists. In addition to recreation purposes, tourists may be authorized to enter Mexico also for reasons of health—to visit medical institutions, clinics or curative spas (GPL Art. 51). Tourist permits are valid for six months and are not renewable; but if the tourist cannot leave the country before the expiration

of his permit due to illness or other unforeseen cause, he will be granted a term of grace to arrange his departure (GPLR Art. 70, Sec. II). During their stay in the country, tourists are forbidden to pursue any lucrative activity or to become gainfully employed; but they may engage in athletic, artistic, scientific or similar pursuits, provided they are neither lucrative nor remunerative (GPL Art. 70, Sec. III).

Transients. Aliens who enter Mexico in transit to another country may remain in Mexico, provided they can establish that they have been authorized to enter the country of their final destination, as well as the countries bordering Mexico, if such be the case. (GPL Art. 51; GPLR Art. 71, par. I, Sec. III.)

Visitors. Visitors are authorized to remain in Mexico for a period up to six months. Visitor permits are renewable only once for an equal length of time, except when their holders are pursuing artistic, scientific or athletic activities, in which case two additional renewals may be granted, but only if their activities are considered beneficial to the country (GPL Art. 51).

If a visitor is to be gainfully employed while in Mexico, application for his admission must be filed by the person, business enterprise or institution which will employ him (GPL Art. 72, Sec. IV). Intellectuals, artists and athletes who are to be gainfully employed while in the country will be admitted upon request of the person, business enterprise or institution which will retain their services, but only if their activities are not considered to affect adversely the interests of Mexican citizens in similar occupations (GPLR Art. 72, Sec. V). The Secretaría de Gobernación is empowered to fix the activities of visitors and, if it deems it pertinent, the place or places where they are to reside (GPLR Art. 72, Sec. III).

Political Refugees. The length of time which political refugees may remain in Mexico is in each case determined by the Secretaría de Gobernación, taking into account the political situation prevailing in their country of origin (GPL Art. 51). If a permit be valid for more than a year, its holder must annually apply for its renewal, which will be granted if it be established that the political situation by reason of which the permit was initially

issued still prevails, and that compliance has been made with the conditions imposed upon the alien by the Secretaría de Gobernación (GPLR Art. 73, Sec. VIII).

Political refugees from the American continent will be temporarily admitted by the immigration authorities at the point of entry, pending resolution of their status by the Secretaría de Gobernación; but political refugees from other continents will be admitted only upon prior authorization by the Secretary or Assistant Secretary of the Secretaría de Gobernación (GPLR Art. 73, Secs. I, II). Aliens residing as political refugees in other countries will not be admitted into Mexico as political refugees (GPLR Art. 73, Sec. V).

The Secretaría de Gobernación has the power to determine the activities in which political refugees may engage and to modify them as it deems pertinent, as well as to fix the place of their residence (GPLR Art. 73, Secs. III, VII).

In addition to the non-immigrants listed under Article 50 of the General Population Law, this law and its Regulations provide for the admission of the following aliens who, due to the temporary nature of their stay in Mexico, are regarded as non-immigrants:

(a) *Diplomats, Consular Officials and Other Representatives of Foreign Governments.* Because duly accredited agents of foreign governments are not subject to Mexican territorial jurisdiction, their stay in Mexico is considered temporary, irrespective of its duration (GPL Arts. 37, 69). The admission of these agents is governed by treaties, custom and reciprocity (GPL Arts. 37, 38; GPLR Arts. 20, 76).

(b) *Holders of Courtesy Permits.* The Secretaría de Gobernación is authorized to issue, in special cases and solely as an exception to the general rule, courtesy permits to alien journalists and prominent persons. These permits are valid for a period of six months and are renewable for a like term at the discretion of the Secretaría de Gobernación (GPL Art. 53; GPLR Art. 74, par. I, Sec. II). Holders of these permits cannot engage in any lucrative activity or become gainfully employed during their stay in Mexico, with the exception of journalists, who may practice their profession (GPLR Art. 74, Sec. I).

(c) *Holders of Local Permits and Identity Cards.* Immigration authorities at border points of entry are authorized to issue entry permits to the citizens of the countries adjacent to Mexico who desire to sojourn in maritime or border points of entry, or to visit Mexican border cities. The validity of these permits can never exceed three days (GPL Art. 54; GPLR Art. 17, Sec. II).

Identity cards authorizing their holders to enter Mexico daily may be issued to bona fide residents of foreign border or neighboring cities (GPL Art. 34; GPLR Art. 17, Sec. III). Local immigration authorities may issue these cards when the applicants are citizens of the countries adjacent to Mexico; otherwise, they will be issued only upon prior authorization by the main office in Mexico City [GPLR Art. 17, Sec. III, par. (c)]. Identity cards authorize their holders to visit only the place in Mexico stated in the permit, and are valid indefinitely [GPLR Art. 17, Sec. III, par. (b)].

Immigrants. Article 48 of the General Population Law defines as immigrants those aliens who, with the permission of the Secretaría de Gobernación, enter the country under any one of the following categories:

Persons of independent means

Investors

Investors in Government or in national credit institutions' securities

Professionals

Executives or employees for positions of high responsibility

Technicians and skilled workers

Students

Family members

Duration of Status. Immigrant permits are issued for one year, but their validity may be renewed yearly for a period of five years, after which time the immigrant becomes a permanent resident.

Persons of Independent Means. Under this classification of the law are persons who have a continuous and lawful source

of income from rents, pensions, deposits, bank accounts, etc. (GPLR Art. 48, Sec. I).

To obtain his immigration permit as a person of independent means the immigrant must establish (GPLR Art. 53, Sec. I):

- ¶1. That he receives rents, pensions, or income from deposits or bank accounts, or has other permanent and legitimate sources of income of not less than four thousand pesos ³ per month.

If the immigrant applies for the admission of members of his family, the minimum income required will increase by two thousand pesos ⁴ per month for each family member over fifteen years of age (GPLR Art. 55, Sec. II).

These minimum amounts may be increased or decreased at the discretion of the Secretaría de Gobernación whenever the circumstances justify such action (GPLR Art. 55, Sec. II).

The receipt of income required of a person of independent means may be established by any of the following methods [GPLR Art. 55, Sec. III, par's. (a)-(c)]:

- (a) By cash deposited for five years with the Nacional Financiera, S.A.,⁵ or with any other banking institution designated by the Secretaría de Gobernación, in an amount equivalent to the required total monthly minimum. The deposit, naming the Secretaría de Gobernación as beneficiary, must be made after the immigrant's application has been approved but prior to the issuance of the entry permit. The Secretaría de Gobernación will authorize the immigrant to withdraw monthly from the amount on deposit the sum specified in the entry permit.
- (b) By presentation of a certificate issued by an authorized

³ U.S. \$320.

⁴ U.S. \$160.

⁵ An official Government institution auxiliary to financial institutions entrusted, among other things, with promoting and channeling the investment of capital in new business enterprises and enlarging existing ones, and authorized to deal in securities transactions and in the development of a national market for securities.

official of the Mexican Foreign Service to the effect that the alien meets the minimum monthly income requirements mentioned in paragraph 1 above. This certificate must specify the evidence submitted to the official in support of the alien's allegations, after first making the investigations which the situation requires and obtaining the data or adjudged documents necessary to assure himself that the alien, while in Mexico, will, in fact, receive periodically and continuously the alleged annuities, rents or other income.

- (c) By the presentation of documents or title deeds sufficient to satisfy the Secretaría de Gobernación that the alien will receive in Mexico the minimum income referred to in paragraph 1 above.

Persons of independent means cannot engage in any lucrative activity or be gainfully employed; but they may be authorized to make lawful investments in Mexico, such activities remaining always subordinate to their status as persons of independent means (GPLR Art. 55, Sec. V).

Investors. Investors are aliens who enter the country for the purpose of investing permanently their capital in any branch of manufacture or agriculture or the export business (GPL Art. 48, Sec. II; GPLR Art. 56, Sec. I). The mere purchase of shares of stock of a Mexican corporation or of a limited partnership with shares of stock is not considered an investment for immigration purposes, because the ease with which such shares can be transferred would open the door to circumvention of the law.

To qualify as investors, the Regulations to the General Population Law fix the following requirements for aliens (GPLR Art. 56, Secs. II-VII):

1. The minimum investment must be 400,000 pesos ⁶ if the immigrant desires to establish himself in the Federal District or any of the adjacent states; and 200,000 pesos ⁷ if the investment is to be made in any other state of the Republic. The type of investment and the place in which the applicant wishes to

⁶ U.S. \$32,000.

⁷ U.S. \$16,000.

establish himself must be indicated in the petition. If the alien is to invest in an agricultural enterprise located in a new or insufficiently exploited region, or in an industry declared to be new or essential, the Secretaría de Gobernación may authorize a smaller capital investment than the one indicated above.

2. In order to guarantee that his investment will be carried out, the applicant must deposit a sum equal to 10 per cent of the minimum investment required by law. This deposit will be forfeited to the Government if the applicant fails to make the investment in the manner specified in the entry permit and within the time fixed therein, which will always be computed from the date of his entry in Mexico.

3. At the time the alien is authorized to enter Mexico the Secretaría de Gobernación will fix the amount of the minimum investment, the type and place where the investment should be made and other conditions related thereto; and the time within which the investment is to be concluded.

4. The immigrant must establish to the satisfaction of the Secretaría de Gobernación that the investment has been concluded and, to that end, he must present evidence in support thereof within thirty days after the expiration of the term granted him for that purpose.

At the applicant's expense the Secretaría de Gobernación may, if it deems advisable, commission a certified public accountant to make an inspection and to report on the correctness of the data submitted by the immigrant and as to whether or not the investment was actually made.

Upon verification of the investment transaction within the required term, half of the deposit will be returned to the investor and the balance retained for five years to guarantee continuance of the investment. At the end of this time, the balance of the deposit will be returned to the investor, provided he has complied with all the conditions under which his entry permit was granted.

If at any time during the first five years the immigrant, without the permission of the Secretaría de Gobernación, transfers or withdraws his investment, he will forfeit the amount which remained on deposit to guarantee continuance of the investment.

If the investment represents the acquisition of an interest in a business association of the type which does not issue shares of stock, the immigrant's interest cannot be transferred until he becomes a permanent resident, a condition which must be set forth in the Articles of Organization of the respective business association.

Investors are forbidden to be gainfully employed or to engage in a lucrative activity other than in the enterprise or business in which they have invested.

Investors in Government or in National Credit Institutions' Securities. Aliens will be admitted under this classification when they are to invest in Government securities or in securities of national credit institutions, provided that in the case of the latter the securities are of the class approved for investment by banks, life insurance and surety companies (GPLR Art. 57, Sec. I). The amount of the investment must be sufficient to produce a minimum income equal to that required for persons of independent means (GPLR Art. 57, Sec. II).

To guarantee that the investment will be made, the applicant for admission must deposit the sum of 10,000 pesos⁸ with the Nacional Financiera, S.A., to remain at the disposal of the Secretaría de Gobernación. The deposit will be forfeited to the Government if the approved investment has not been made within a period of sixty days from the date of the entry permit (GPLR Art. 57, Sec. III). The deposit will be returned to the immigrant as soon as the investment is made; but the securities of which the investment consists must be deposited with the Nacional Financiera, S.A., at the disposal of the Secretaría de Gobernación. Dividends or interest earned may be freely withdrawn by the immigrant; but the securities must remain on deposit as long as the investor stays in the country as an immigrant (GPLR Art. 57, Sec. IV).

The sale or exchange of the securities on deposit will be authorized if the income obtained from the new securities meets the minimum legal requirements (GPLR Art. 57, Sec. V). The

⁸ U.S. \$800.

securities on deposit will be returned to the immigrant if he waives such status and leaves Mexico or when he becomes a permanent resident (GPLR Art. 57, Sec. VI).

Professionals. Sec. I of Article 57 of the Regulations to the General Population Law provides that no professional alien will be admitted to practice his profession unless he complies with the applicable laws.

The applicable law in this instance is the Law regulating Articles 4 and 5 of the Constitution of Mexico relative to practice of professions in the Federal District and Territories, known as the Law of Professions, published in the *Diario Oficial* on May 26, 1945. It prohibits aliens in the Federal District and Territories from engaging in professions for which a proper degree from an approved government educational institution is required⁹ unless:

(a) They prove to be victims of political persecution in their own country, in which event a temporary permit will be granted. The temporary nature of this permit will continue even if they become naturalized Mexicans.

(b) During the five years immediately preceding the enactment of the Law of Professions they had practiced their profession and had registered their degree with the proper authority.

Teachers, who are regarded as professionals under the Regulations to the General Population Law, may be admitted to practice their profession if their specialties are not yet being taught in the nation's schools and they are acknowledged as specialists of distinguished merit and ability; if they are recognized as eminent professionals; or if, due to exceptional circumstances, the Secretaría de Gobernación considers their entry to be beneficial to the country (GPLR Art. 58, Sec. II). Entry permits will be granted to teaching personnel specialized in certain fields if the Secretaría

⁹ Article 15 of the Law of Professions considers the following activities as requiring such a degree: actuaries, architects, bacteriologists, geologists, dentists, accountants, brokers, nurses, midwives, engineers in any field, lawyers, seamen, physicians, veterinaries, metallurgists, notaries, airplane pilots, kindergarten, primary and secondary school teachers, chemists of any kind, and social workers.

de Gobernación, guided by the opinion of the Secretaría de Educación Pública,¹⁰ deems it advisable. However, in such a case the entry must always be requested by a Government educational institution or by an institution officially approved (GPLR Art. 58, Sec. IV).

Executives or Employees for Positions of High Responsibility. The law permits the entry into Mexico of aliens to assume executive or other positions of high responsibility in business enterprises or institutions established within the Republic, provided that, in the judgment of the Secretaría de Gobernación, no duplication of jobs exists within the applicant's personnel and that the positions which they are to hold justify their entry (GPL Art. 48, Sec. V).

To qualify for admission under this classification the following requirements must be met (GPLR Art. 59, Secs. I-III):

(a) The entry must be requested by an individual, business enterprise or institution established in Mexico.

(b) The applicant must substantiate the fact of the enterprise's or institution's legal existence and its possession of capital in an amount not less than the minimum required for investors.

(c) The application for entry must be accompanied by a list of the personnel in the sponsor's employ, duly signed by one of the applicant's representatives, giving the name, nationality, position held and salary received by each employee. If the applicant has more than 100 employees, the list may be omitted; but the application must state the number of aliens and Mexican citizens employed, and, in any event, the names, positions and nationalities of all executives.

The personnel list is important because the larger the number of Mexican employees the greater will be the probability of obtaining the entry permit for the alien employee. For the Secretaría de Gobernación this list and the applicant's capital are the indices of its importance, and entry permits requested are granted in direct proportion to the value of these factors.

Under any circumstances, the applicant must notify the Secre-

¹⁰ Department of Public Education.

taría de Gobernación, within fifteen days thereafter, if the conditions under which the immigrant's entry permit was granted have been altered, modified, or violated (GPLR Art. 59, Sec. IV).

If the immigrant violates the immigration law and is deported, the applicant is liable for the deportation expenses and must tender payment thereof upon demand (GPLR Art. 59, Sec. V).

Technicians and Skilled Workers. The law allows the admission of alien technicians and skilled workers into Mexico if their services cannot, in the judgment of the Secretaría de Gobernación, be rendered by residents of the country (GPL Art. 48, Sec. VI).

To qualify for admission under this classification compliance must be given to the following requirements (GPLR Art. 60, Secs. I-V):

(a) The entry of the technician or skilled worker must be requested by an individual, firm or institution having his or its domicile in the Republic.

(b) Whoever solicits the entry must justify, to the satisfaction of the Secretaría de Gobernación, the necessity of utilizing the services of the foreign technician or skilled worker. At its discretion, the Secretaría de Gobernación may request the opinion of the Secretaría de Industria y Comercio¹¹ as to whether or not the technician or skilled worker can be replaced by a resident of the country.

(c) The technician or skilled worker will be required to teach his special abilities to at least one Mexican.

(d) Within a period of thirty days from the date of the alien's entry, whoever requested his admission must report to the Secretaría de Gobernación the name or names of the Mexicans who are to be trained in compliance with the foregoing requirement.

(e) It is not necessary that the technician or skilled worker present a college or university degree if the nature of his work does not require it. However, at the request of the Secretaría de Gobernación, evidence must be submitted to establish that the alien possesses the required ability and knowledge in the special field in which he is engaged.

¹¹ Department of Industry and Commerce.

Students. Aliens desirous to begin, complete or perfect their studies in Government educational institutions or in those officially approved may be admitted into Mexico as immigrants (GPL Art. 48, Sec. VII).

To obtain such entry permit the alien must state in his application for admission the type of instruction he will receive and the educational institution he will attend (GPLR Art. 61, Sec. III). Also, he must establish, to the satisfaction of the Secretaría de Gobernación, that he has a continuous and periodic source of income sufficient for his support without being gainfully employed or engaged in a lucrative activity (GPLR Art. 61, Sec. I).

Sixty days after his entry to Mexico the alien student must show to the Secretaría de Gobernación that he has enrolled in an approved educational institution. Extensions may be granted under special circumstances (GPLR Art. 61, Sec. IV). The immigrant permit may be canceled if the student fails in his studies or abandons them (GPLR Art. 61, Sec. V).

Family Members. The financially dependent alien spouse or blood relatives up to the third degree of an immigrant, permanent resident, or Mexican citizen may be admitted to Mexico under this classification. The sons, brothers and nephews who fall within said degree of consanguinity will be granted entry permits only if they are minors, except when, in the judgment of the Secretaría de Gobernación, they are manifestly unable to work (GPL Art. 48, Sec. VII).

To obtain an entry permit under this classification the following requirements must be fulfilled (GPLR Art. 62, Secs. I-III):

(a) Application for admission must be filed by the person who is to support the alien family member.

(b) Applicant must establish his immigrant or permanent-resident status or Mexican citizenship, as the case may be, as well as his financial ability to a degree sufficient to satisfy the Secretaría de Gobernación that he is able to support the immigrant family member.

Alien family members are forbidden to engage in any gainful activity. However, if the person upon whom the family members

economically depend dies, or if due to unforeseen circumstances he becomes physically incapacitated and unable to take care of the needs of his family, the Secretaría de Gobernación may authorize the immigrant relatives to secure employment or engage in a lucrative activity to support, or contribute to the support of, the family (GPLR Art. 62, Sec. IV).

P A R T I I I

Acquisition of Immigrant Status by Non-Immigrants

Tourists and Visitors. Non-immigrants admitted under these classifications of the immigration law may acquire immigrant status during their stay in Mexico, provided they comply with the requirements of the General Population Law and its Regulations for the immigrant status they seek to acquire and pay the fees fixed by the Immigration Fees Law (GPL Art. 52; GPLR Art. 79, Sec's. II, III). The filing of application with the Secretaría de Gobernación for change in immigration status does not of itself authorize the non-immigrant to remain in Mexico for a term longer than the one initially granted to him (GPLR Art. 79, Sec. I). If the application for change in status is denied, the non-immigrant may remain in the country only for the unexpired term of his entry permit or the extensions thereof (GPLR Art. 79, Sec. IV).

Marriage to a Mexican Citizen by Birth. The non-immigrant who, during his residence as such in Mexico, marries a Mexican citizen by birth, may, with the authorization of the Secretaría de Gobernación, acquire the status of an immigrant. The alien will lose his immigrant status if the marriage is dissolved before he becomes a permanent resident (GPL Art. 49).

To obtain change in immigration status, the non-immigrant must observe these rules (GPLR Art. 63, Sec's. I-III):

- (a) He must be physically present in Mexico at the time the application for immigrant status is filed.

(b) He must submit documentary proof of his marriage.

(c) He must establish, to the satisfaction of the Secretaría de Gobernación, that he has means of livelihood similar to one of the several types of immigrants listed on page 18.

The alien husband's immigrant permit will be subject to the conditions which the Secretaría de Gobernación deems pertinent to impose upon him.

When the non-immigrant who seeks to acquire immigrant status is the wife, she must, besides fulfilling the requirements mentioned under paragraphs (a) and (b) above, establish her husband's financial ability to support her. The wife's immigrant permit will be an alien family member permit and the statements made under this heading (pages 26-27) are applicable.

Non-Immigrant's Children Born in Mexico. The non-immigrant who has children born in the country during the period of his non-immigrant status may acquire the status of an immigrant. However, if he does not comply with the parental obligations imposed upon him by the civil laws, he will lose said status, unless he has in the meantime acquire the status of a permanent resident (GPL Art. 49).

To obtain change in immigration status by reason of having children born in Mexico, the non-immigrant must observe the same rules as non-immigrants married to Mexican citizens by birth (GPLR Art. 63, Sec's. I-III). It should be noted that the Secretaría de Gobernación has the power to deny application for change of immigration status even if the non-immigrant complies with all of the requirements of the General Population Law and its Regulations (GPL Art. 60).

P A R T I V

Collective Immigration

Under special circumstances, the Secretaría de Gobernación is empowered to authorize collective immigration. Such authorization must take into account whether the collective immigra-

tion is beneficial to Mexico as a whole and to the area where the immigrants will settle, and can be issued only after hearing the opinion of those Government departments and agencies which must intervene due to the nature of the collective immigration.

P A R T V

Obligations of Immigrants

The main obligations of immigrants are:

(a) To adhere strictly to the conditions under which their entry permits were granted and to the provisions of the General Population Law and its Regulations as well as the requirements of the Immigration Fees Law. The mere entry of an alien to Mexico as an immigrant implies the acceptance of the conditions under which the immigrant permit was issued (GPL Art. 44; GPLR Art. 48).

(b) To notify the Secretaría de Gobernación of any change in the conditions under which the entry permit was granted, within fifteen days after the occurrence of such event; and to leave the country permanently within thirty days thereafter (GPL Art. 45, par. 2).

(c) To establish to the satisfaction of the Secretaría de Gobernación that he has been complying with the conditions under which his entry permit was granted (GPL Art. 45, par. 1). To this end, the immigrant has the obligation to request annually the renewal of his entry permit within thirty days before the expiration date of each yearly renewal. The application for renewal must be accompanied by the immigrant's entry permit, the official receipt of payment of the renewal fee, and the documents which the Regulations to the General Population Law require of each class of immigrant so as to establish that he has adhered to the conditions imposed upon him (GPLR Art. 52, Sec's. I-III). For example, an immigrant admitted as an executive must file a statement issued by the person, firm or institution which requested his admission to the effect that the alien continues in his or its employ (GPLR Art. 59, Sec. VI); an

alien family member must submit a statement to the effect that the family relationship continues to exist, and if the Secretaría de Gobernación deems it pertinent, a statement from the person upon whom he depends financially that he has sufficient means for the alien's support (GPLR Art. 62, Sec. V), etc.

If the immigrant be absent from Mexico when his renewal is due, he may request the renewal within fifteen days after his return to the country (GPLR Art. 52, par. 3).

Applications for the renewal of minors' entry permits must be filed by the person upon whom they are dependent (GPLR Art. 52, par. 4).

If the renewal application is denied, the immigrant will be granted a reasonable time within which to leave the country, and if he does not do so, he shall then be deported (GPLR Art. 52, par. 7).

(d) To register with the National Registry of Aliens within thirty days after their entry into Mexico (GPL Art. 24). The immigrant must register with the central office of said Registry, located in the capital of the Republic, if he settles therein; or in one of the local offices of the Registry if he settles elsewhere (GPLR Art. 90).

Penalties for Violation of Obligations. Immigrants who do not comply with the conditions under which their entry permit was granted or with the provisions of the General Population Law and its Regulations, as well as those persons who directly or indirectly aid them in doing so, are subject to the penalties provided by said law. These penalties range from the imposition of fines to imprisonment and/or deportation, depending upon the seriousness of the offense (GPL Art's. 93, 94, 104, 107, 109, 110).

P A R T V I

Loss of Immigrant Status

Immigrants who remain outside Mexico for a total of eighteen months, either consecutively or intermittently, lose their immigrant status. During the first two years immigrants may be absent from the country for ninety days per year, without these terms being cumulative. For the remaining three years, absences will be computed cumulatively, including those of the first two years (GPL Art. 46; GPLR Art. 50).

P A R T V I I

Aliens Barred From Admission

Foreigners falling under any one of the categories listed below are legally barred from entering the Republic of Mexico either as immigrants or non-immigrants:

1. Persons who have no occupation, profession or other honest means of livelihood.

2. Persons who have committed a crime, either abroad or within the Republic of Mexico during a previous stay, for which they were sentenced to more than two years of imprisonment.

3. Drug addicts, habitual alcoholics and persons who encourage or promote the use of habit-forming drugs or traffic or deal in them in any manner.

4. Persons who engage in prostitution, exploit it, promote the entry of prostitutes into Mexico or attempt to do so, consort with prostitutes or are supported by them, or engage in white slavery or trade in children.

5. Persons who belong to anarchistic societies or who propagate or promote doctrines contrary to the Mexican system of government.

6. Persons more than fifteen years old who can neither read nor write in their own or any other language.

7. Persons who have made false declarations to immigration authorities.

8. Persons who have been deported by the authorities on some other occasion, except by express ruling to the contrary issued by the Secretary or the Assistant to the Secretary of the Secretaría de Gobernación.

It should be noted at this point that the General Population Law empowers the Secretaría de Gobernación to deny aliens admission to Mexico, even though they comply with all of the requirements of said law and its regulations. The issuance of permits to enter the country is, therefore, left entirely to the discretion of that Department (GPL Art. 60).

P A R T V I I I

Permanent Residents

The General Population Law defines the *inmigrado*, or permanent resident, as he is called in this book, as "the alien who acquires the right to settle permanently in the country" (GPL Art. 64).

Permanent residents may engage in any lawful endeavor, but the Secretaría de Gobernación has the power to limit the scope of their activities, although this power is seldom exercised. The permanent resident's freedom to engage in any activity may be limited either at the time his permanent resident's status is granted or subsequently. (GPL Art. 66; GPLR Art. 67, Sec. IX; Art. 68, Sec's I, II.)

Acquisition of Status. The status of permanent resident may be acquired by (GPL Art. 65):

(a) immigrants who have lawfully resided in Mexico for the preceding five years;

(b) aliens who have illegally resided in Mexico without interruption for the preceding ten years.

To acquire the status of permanent resident, express resolu-

tion to that effect from the Secretaría de Gobernación is necessary (GPL Art. 67, par. 1; GPLR Art. 66, par. 1). To obtain this resolution the immigrant must file an application therefor within ninety days following the expiration of the fourth annual renewal of his entry permit. To this application the immigrant must attach his immigration permit (GPLR Art. 66, Sec's. I, II). Aliens who have been illegally in the country must apply for permanent-resident status within six months following the date on which the ten-years' stay in the country is completed, counted from the date of their entry (GPLR Art. 66, Sec. I). This application must state the date and place of the alien's entry into Mexico, and the type of immigration permit under which he did so (GPLR Art. 66, Sec. IV). Also, documentary proof sufficient to establish, to the satisfaction of the Secretaría de Gobernación, that the alien has resided in Mexico without interruption for the required number of years must be submitted (GPLR Art. 66, Sec. II; GPLR Art. 67, Sec. II).

Both immigrant and alien who have been illegally residing in Mexico must state in their application to obtain permanent-resident status the activity in which he has been engaging and that in which he intends to engage (GPLR Art. 66, Sec. III). Likewise, they must pay the immigration fees required by the Immigration Fees Law (GPLR Art. 68, Sec. V).

The application to obtain permanent-resident status for minors must be filed by whoever exercises parental authority over them or by their legal guardian; or by the person with whom the minor lives or upon whom he depends financially.

Failure to Apply for Status. If an immigrant does not request permanent-resident status during the term when he should have done so, he will be granted a reasonable term within which to leave Mexico; and if he does not do so, he shall then be deported. Such an alien may file application for immigrant status under another classification, if he meets the requirements of the General Population Law and its Regulations (GPL Art. 67, par. 2).

Political refugees who have remained in Mexico for more than five years may acquire the status of a permanent resident,

if there be no legal impediments thereto, without need of express resolution from the Secretaría de Gobernación (GPLR Art. 67, Sec. III).

Holders of courtesy permits cannot acquire the status of a permanent resident, regardless of the length of stay in the country (GPL Art. 53).

This rule also applies to diplomats, consular officials and any other officers of a foreign government who reside in Mexico without being subject to its jurisdiction. If at the expiration of the term of their official representation they wish to reside permanently in Mexico, they must comply with the regular requirements of the General Population Law and its Regulations; but the Secretaría de Gobernación is empowered to grant to these aliens, by way of reciprocity, the same facilities as granted to former Mexican representatives in the respective foreign countries (GPL Art. 69).

Loss of Status. Permanent residents may leave and re-enter the country at will, but will lose their status if they remain outside the country for two consecutive years, or if during a period of ten years they are absent more than five years (GPL Art. 68).

Any alien, whether immigrant or permanent resident, may leave the country at any time if he complies with certain simple formalities. However, if he wishes to leave the country permanently, he must so declare before the immigration authorities. Only in the case of his being subject to legal proceedings, a fugitive from justice, or out on bail will he not be permitted to leave the country.

P A R T I X

*Schedule of Immigration Fees**Admission*

NON-IMMIGRANTS

	<i>Pesos</i>	<i>U.S. \$</i>
(a) Tourists		
1. When they enter the country for one time only, with the right to remain for up to six months	37.50	3.00
2. When they have the right to enter the country an unlimited number of times during a term of not more than six months	62.50	5.00
(b) Transmigrants	37.50	3.00
(c) Visitors authorized to engage in remunerated employment or to work within the country	518.75	41.50
Visitors on a business trip, with the right to enter and leave the country within a period of no more than six months, and who do not engage in a remunerated employment or labor	62.50	5.00
Visitors not included in the foregoing categories	37.50	3.00
(d) Political refugees authorized to work	360.00	20.81

IMMIGRANTS

(e) Persons of independent means, investors, securities investors, professionals, executives or employees in positions of high responsibility, technicians and specialists	1,286.00	103.00
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	Pesos	U.S. \$
(Students are exempt from the payment of entry fees.)		
(f) Members of the family (When they are under 15 years of age they are exempt from the payment of these duties.)	1,286.00	103.00

Extension of Stay

Visitors will pay the same fee as upon their first entry

Refugees	50.00	4.00
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Change of Migratory Status

In addition to the applicable entry fees, the following duties must be paid:

(a) From tourist to visitor	1,000.00	80.00
(b) From tourist to immigrant: person of independent means, investor, securities investor, professional employee in position of high responsibility, technician, specialist or student, or members of the family	2,000.00	160.00
(c) From visitor to immigrant in any of the classifications listed under (b) above	1,000.00	80.00
In any other case not specifically mentioned above	2,000.00	160.00

Renewals

Immigrants will pay annually for the renewal of their immigrant status	50.00	4.00
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Declaration of Permanent Resident

To obtain his status of permanent resident, the foreigner will pay (Foreigners who have resided in the country for 20 years or more are exempt.)	200.00	16.00
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Aliens married to Mexicans are exempt from the payment of entry duties or fees to change their immigrant status, by express provision of the Law of Immigration Fees.

Payment of the entry fee is made at the office where the alien's documents are issued if this takes place outside the country. Within the country, payment may be made at any collector's office of the Secretaría de Gobernación.

If payment is made outside the country, it may be effected in pesos or in the currency of the country where payment is made, at the rate of exchange fixed by the Secretaría de Gobernación.

CHAPTER 2

Legal Status of Aliens in México

Regulatory Laws

The acquisition of the status of an immigrant or permanent resident does not affect the nationality of the alien. The immigrant will find his activities restricted to the fields specified in his entry permit; but not so the permanent resident, who has and enjoys the same rights as Mexican nationals, with the exception of the rights which are incompatible with his being an alien.

It will suffice for our discussion on the status of aliens to consider those laws dealing with aliens which, in addition to the ones mentioned in the preceding chapter, prohibit the commission of certain acts on their part and those which permit them to perform certain acts under certain conditions. With the exception of the cases defined in these laws, aliens and Mexicans are regarded as equal before the Mexican law.

Restrictions to Ownership. The laws hereinafter cited provide that:

1. *Aliens cannot acquire title to lands, waters and their accessions, or obtain concessions for the exploitation of mines, waters or mineral fuels, UNLESS they agree in writing with the Secretaría de Relaciones Exteriores*¹ that they consider themselves as Mexicans with respect to said properties and that they will not invoke the protection of their Government with respect thereto, under the penalty (if they fail to comply with their agreement) of forfeiting to the Nation the properties they may have acquired by virtue of said agreement (Article 27, Section I, of the Constitution of the Republic of Mexico).

2. To be able to participate as co-owners or to own shares

¹ Department of Foreign Affairs.

of stock in a Mexican company² that has or acquires title to lands, waters and their accessions, or concessions for the exploitation of mines, waters or mineral fuels in the territory of the Republic, the aliens must satisfy the requirement set forth in Section I of Article 27 of the Constitution—that is, they must enter into an agreement with the Secretaría de Relaciones Exteriores whereby they agree to consider themselves as Mexican nationals with respect to that portion of such properties which they may own through the company, and that they will not invoke, with regard to such properties, the protection of their Government, under the penalty of forfeiting to the Mexican Nation the properties they have acquired or acquire as partners or shareholders in said company (Article 2 of the Organic Law of Section I of Article 27 of the Constitution).

According to the Constitution of the Republic of Mexico, the Nation is the owner of all minerals or substances which form deposits of a nature distinct from the earth itself, and also of almost all surface and subsurface waters. Individuals may obtain governmental concessions to exploit these deposits or to utilize said waters; but in order for aliens to obtain such concessions, they must enter into an agreement with the Secretaría de Relaciones Exteriores similar to that discussed in the preceding paragraph, so as to avoid diplomatic intervention in disputes arising out of such concessions.³

² The word "company," here and throughout the book, will be used as the translation of the term *sociedad*, for both civil and mercantile. For further explanation see Chapter 3.

³ In accordance with Regulations of Article 27 of the Constitution, pertaining to petroleum, published in the *Diario Oficial* of November 19, 1958, all deposits of hydrocarbons, regardless of their physical state, which are components of raw mineral oil or are derived from it, fall under the term "petroleum"; and only the Nation may explore for petroleum or exploit it. The Nation carries out these activities through *Petróleos Mexicanos*, a decentralized public institution. *Petróleos Mexicanos* may enter into contracts with individuals, institutions or companies for the work and furnishing of services required for the better realization of its activities. The remuneration established in such contracts shall always be for cash and in no event shall there be granted for the services furnished, or the work performed, percentages of products, nor participation in the results of the exploitation (Articles 1, 6 & 10).

3. They may *never acquire direct title to lands or waters within a belt of 100 kilometers in width along the borders, or 50 kilometers in width along the coastline* (Article 27, Sec. I, of the Constitution).

Before 1954 the rights to use and enjoy lands in these restricted zones could be obtained by resident-aliens for limited periods under trust deeds whereby a Mexican financial institution acquired the title to the land, but since then permits to enter into such transactions have been refused by the Secretaría de Relaciones Exteriores.

4. They may not be partners or shareholders in Mexican companies which acquire title to lands within the areas described in the preceding paragraph (Article 1 of the Organic Law of Section I of Article 27 of the Constitution).

5. Notaries, Mexican consuls abroad, and other officials upon whom it may be incumbent, are required to see that the articles of organization of every Mexican company, whether civil or mercantile, wishing to have foreign partners or shareholders and to acquire in whatever form direct title to lands, waters and their accessions outside the prohibited zone, or concessions for the exploitation of mines, waters and mineral fuels in the Republic, expressly stipulate that: any foreigner who, at the time of incorporation or later, acquires an interest or participation in such a company will be considered *ipso facto* a Mexican with respect to said interest or participation, and will be understood to agree not to invoke the protection of his Government, under the penalty of forfeiting such interest or participation to the Mexican Nation.

To execute the articles of organization of every company and to acquire land of the type described above, prior application must be made to the Secretaría de Relaciones Exteriores for issuance of the permit required by Section I of Article 27 of the Constitution. The permit must be used within ninety working days from the date of issuance.

Those in charge of the public registries throughout the Republic must abstain, under penalty of loss of employment, from recording those articles of organization that fail to comply with

this requirement (Article 2 to the Regulations of the Organic Law of Section I of Article 27 of the Constitution).

6. With respect to Mexican companies which own *rural properties for agricultural purposes*, the foregoing *permit cannot be granted if*, as a consequence, 50 per cent or more of the total capital of the company would remain in the hands of aliens (Article 3 of the Organic Law of Section I of Article 27 of the Constitution).⁴

7. In every case where the permits according to Section I of Article 27 of the Constitution, its Organic Law and the Regulations thereto, are issued to aliens or Mexican companies, the notaries and other officials upon whom it may be incumbent will, under penalty of forfeiture of office, incorporate said permits in the company's articles of organization executed before and approved by them. Officials in charge of the public registries must, under the same penalty, deny registration of articles of organization in which the permit has not been incorporated.

After the document in which the permit is incorporated is recorded at the public registry, the employee in charge will notify the Secretaría de Relaciones Exteriores of the registration within the following ten days (Article 3 of the Regulations to the Organic Law of Section I of Article 27 of the Constitution).

8. When a company is of the type that issues share certificates, these certificates must have printed or engraved thereon the express clause to which Article 2 of the Regulations to the Organic Law of Section I of Article 27 of the Constitution refers, as explained in paragraph 5 above, so that whoever acquires the shares will be on notice that by purchasing these shares he agrees to be bound by the terms of said clause (Article 4 of the Regulations to the Organic Law of Section I of Article 27 of the Constitution).

9. In like circumstances, Mexicans have preference in all kinds of concessions, employment, positions or commissions granted by the Government (Article 32 of the Constitution).

⁴ This article refers only to companies which do not issue shares, as Section IV of Article 27 of the Constitution forbids stock companies to acquire rural properties for agricultural purposes.

10. In time of peace, aliens cannot serve in the Army or in the public-security or police forces (Article 32 of the Constitution).

11. Aliens may never belong to the Mexican Navy, Army or Air Force, or hold any position or commission whatever in these organizations. Neither may they be captains, mates, masters, engineers, mechanics or other members of the crew of any vessel or airship which sails or flies under the Mexican flag or the Mexican merchant insignia; nor may they be port captains, or perform the services of a pilot or a commandant of an airport (Article 32 of the Constitution).

12. Aliens may never be customs agents (Article 32 of the Constitution).

13. Aliens cannot in any manner interfere in the political affairs of the country (Article 33 of the Constitution).

14. They cannot act as ministers of any religious denomination (Article 130 of the Constitution).

15. If residing in the country, aliens are obligated to lend their services to safeguard property and maintain order in the town where they live (Article 31 of the Law of Nationality and Naturalization).

16. They cannot obtain concessions from or enter into agreements with city councils, local governments or federal authorities without prior permission from the Secretaría de Relaciones Exteriores. Such permit may be granted if the aliens agree to consider themselves as Mexicans with respect to said concessions or contracts, and not to invoke the protection of their Government, under penalties fixed in each case by the Secretaría de Relaciones Exteriores. This rule also applies to Mexican companies that have or might have foreign partners or shareholders (Article 33 of the Law of Nationality and Naturalization).

17. They may not apply for concessions to exploit national forests (Article 8 of the Forestry Law).

Decree of June 29, 1944. During the year 1944, among the decrees that were enacted as a result of the war in which Mexico found itself engaged, there was one that directs *aliens to obtain permit from the Secretaría de Relaciones Exteriores if they wish to acquire properties in Mexico; it also stipulates that permit must be granted by said Secretaría to organize or amend articles*

of organization of existing Mexican companies that have or might have foreign partners or shareholders. This decree was intended to be temporary in nature, i.e., for the duration of the war. It was fundamentally an economic measure motivated by the heavy investment of foreign capital and the danger that it would later be withdrawn to the detriment of the country.

However, by decree of October 1, 1945, the temporary nature of the decree of June 29, 1944, became permanent and, as a result, it has been in effect to the present day.

Under Article I of the decree of June 29, 1944, published in the *Diario Oficial* on July 7 of the same year, only by virtue of a permit granted previously and in each instance by the Secretaría de Relaciones Exteriores, may aliens and Mexican companies that have or might have alien partners or shareholders:

(a) Acquire existing business concerns or firms, or control of same, which are engaged in any industrial, agricultural, stock-raising, forestry or trading activity, or exploitation for whatever purpose of rural or urban real estate, or subdivision or improvement of such real estate;

(b) Acquire real estate for the purpose of engaging in any of the activities listed above;

(c) Acquire real estate, whether it be urban or rural, regardless of the purpose for which it is intended;

(d) Acquire title to lands, waters and their accessions as set forth in Section I of Article 27 of the Constitution;

(e) Acquire concessions on mines, waters or mineral fuels permitted by ordinary legislation.

This decree considers leases for more than ten years and trust deeds wherein the beneficiary is one of the persons covered by that decree as similar to the transactions to which above sections (a), (b), (c) and (d) refer.

Article 2 of the same decree provides that the Secretaría de Relaciones Exteriores must issue permits to carry out the following:

I. To organize Mexican companies which are to have or may have foreign partners or shareholders and which are en-

gaged in any one of the activities or acquisitions covered by Article I.

II. To modify the articles of organization of Mexican companies now in existence or to be organized in the future and to transform them, and which have the characteristics described in paragraph I, especially when by so doing:

(a) Alien partners or shareholders are substituted for Mexican shareholders or partners;

(b) The company's objects are changed in any manner whatsoever.

III. To buy and sell stocks or other forms of business shares by virtue of which the control of any one of the companies referred to in this Article passes to aliens.

This decree left it to the discretion of the Secretaría de Relaciones Exteriores to grant, deny or condition the issuance of permits for the purposes discussed above; but in order for aliens to obtain permits to make any of the acquisitions to which Article 1 of the decree refers, he must show that he is a resident of Mexico and that he has in Mexico a business or an investment.

With respect to Mexican companies that have or might have foreign partners or shareholders, the decree provides that the Secretaría de Relaciones Exteriores may condition the issuance of a permit for the purposes enumerated in Articles 1 and 2 to the following requirements:

(a) That Mexican nationals participate at least to the extent of 51 per cent of the capital stock and that said participation can be verified at any given moment;

(b) That at least the majority of the administrators be Mexicans.

The Secretaría de Relaciones Exteriores is authorized to forego compliance with the requirements of sections (a) and (b) above when a company is organized to operate a new industry in the country.

The Secretaría de Relaciones Exteriores, in accordance with the discretionary powers conferred upon it by these provisions, to date has ruled that only in companies engaged in any of the

following activities must Mexicans own at least 51 per cent of the capital:

Radio broadcasting; production, distribution and exhibition of motion pictures; television production; maritime, air and surface urban and interurban transportation; fish hatcheries and fishing; publishing and advertising; production, sale and distribution of carbonated or uncarbonated beverages, as well as of the essences, concentrated substances and syrups which are used in same, including the bottling of fruit juices, the rubber industry and the manufacture and distribution of fertilizers, insecticides, and other basic chemical products.⁵

Naturalization

If indeed, as we have said, the fact of his being an immigrant or a permanent resident does not affect the alien's nationality, his residence in the country nevertheless gives him the right to become a naturalized Mexican citizen if he so desires, provided that he renounces: his original nationality; submission, obedience and loyalty to any foreign government, especially to the one to which the alien has been subject; all protection from sources other than the laws and authorities of Mexico and the rights which treaties or international law grant to aliens. He must profess, furthermore, adherence, obedience and submission to the laws and authorities of the Mexican Republic and renounce whatever right he may have to use titles of nobility.

The procedure for acquiring Mexican nationality is governed by the Law of Nationality and Naturalization of January 20, 1934. To understand the naturalization procedure, we must keep in mind that under this law all persons who, by its definition of the term, are not Mexicans, are considered aliens, and that the law distinguishes between Mexicans by birth and Mexicans by naturalization. Mexicans by birth are:

- (a) All persons born within the territory of the Republic, regardless of the nationality of their parents.

⁵ See footnote 3 in this chapter.

(b) Those born abroad of Mexican parents, or a Mexican father and an alien mother, or a Mexican mother and an unknown father;

(c) Those born aboard Mexican war or merchant ships or airplanes.

Mexicans by naturalization are considered:

(a) Aliens who, in compliance with the law, obtain their naturalization papers from the Secretaría de Relaciones Exteriores; and

(b) Every alien woman who marries a Mexican and is domiciled or settles within the national territory. The interested party must file a petition with the Secretaría de Relaciones Exteriores in which she makes the renouncements and protestations referred to above.

In the case where the husband acquires Mexican nationality prior to the wedding, the woman has the right to obtain her certificate of nationality in the foregoing manner.

To acquire Mexican nationality under section (a) above, the law establishes two different procedures, depending upon the alien's condition, and defines these procedures as Regular Naturalization and Privileged Naturalization.

Regular Naturalization. To become naturalized by this method, the interested party must submit application to the Secretaría de Relaciones Exteriores in which he expresses his desire to acquire Mexican nationality. The applicant must prove a minimum of two years' residence in the country before being able to file the naturalization petition. Three years after filing of the application he must appear before the district judge who has jurisdiction over his domicile to request that his naturalization papers be granted and submitting proof of the date on which he filed the application with the Secretaría de Relaciones Exteriores. If at the time of filing the application the interested party presents proof of having resided in the country for five years or more, he may appear before the district judge one year later.

Absence from the country does not interrupt the period of required residence referred to above, provided that it does not

exceed six months during the periods of three years and one year, respectively, as explained in the preceding paragraph, or that, if the absence is for a longer period, the Secretaría de Relaciones Exteriores gives its permission.

Privileged Naturalization. This procedure is less complicated than the foregoing, and, under the law, the following persons may take advantage of it:

1. Aliens who establish within the national territory an industry, enterprise or business that is advantageous to the country or implies manifest social benefit to it. Aliens falling in this category may apply directly to the Secretaría de Relaciones Exteriores, requesting issuance of their naturalization papers. They must submit any proofs which that Department may require to convince itself that they come within this category, in addition to the proof that they are domiciled in the country.

2. Aliens who have legitimate children born in Mexico.

Aliens of the second category may become naturalized by applying directly to the Secretaría de Relaciones Exteriores, submitting proof that they have legitimate children born within the national territory; that they are domiciled in Mexico; and that they have resided in the country without interruption for a minimum term of two years immediately preceding the date of the application. Where legitimated children are concerned, the two years' residence must be subsequent to the date of the legitimation of the children.

3. Aliens who are descendants, in the first or second degree, of persons who are Mexicans by birth.

Such individuals may become naturalized by submitting proof of their Mexican ancestry to the Secretaría de Relaciones Exteriores, provided they speak Spanish and have established their residence in the national territory.

4. Aliens married to Mexican women by birth may become naturalized by presenting directly to the Secretaría de Relaciones Exteriores proof of the marriage, together with evidence that the marriage still exists and that after the marriage they have

resided in the country, without interruption, for at least two years prior to the date of application.

5. Colonists who settle in the country, in accordance with the Colonization Laws.

To obtain their naturalization papers, they must submit proof of their status as colonists, and that they have resided as such within the national territory for at least two years prior to date of application for naturalization.

6. Naturalized Mexicans who have lost their Mexican nationality because of having resided in the country of their origin.

They may become renaturalized by proving that they have their domicile in the Republic, and that their residence in their native country was involuntary.

7. Latin-Americans and native-born Spaniards who establish their residence in the Republic of Mexico.

Naturalization will be granted upon direct application to the Secretaría de Relaciones Exteriores if they submit proof that they are nationals of Spain or of a Latin-American country and children of parents who were Latin-Americans or Spaniards by birth, and that they have established residence in Mexico and have their domicile therein.

Loss of Nationality

Because of the close relationship of this subject to the preceding one, we mention here the circumstances under which Mexican nationality may be lost:

1. By voluntary acquisition of a foreign nationality. The acquisition is not considered voluntary if, in the judgment of the Secretaría de Relaciones Exteriores, it was occasioned by operation of law, by mere residence, or it was an indispensable condition to secure employment or to safeguard employment previously secured.

2. By the acceptance or use of titles of nobility which imply submission to the laws of a foreign state.

3. By residing continuously for five years in the country of origin after having become a naturalized Mexican.

4. By presenting himself as an alien in any public deed or instrument after having become a naturalized Mexican; and by obtaining and using a foreign passport.

Certificates of Nationality

To avoid conflicts in nationality, the law authorizes the Secretaría de Relaciones Exteriores to issue certificates of Mexican nationality in the following cases:

1. Children subject to the parental care of a naturalized Mexican will be considered naturalized, if so requested and if they are domiciled in Mexico. However, they have the right to reacquire their nationality of origin within one year after they come of age.

2. Native-born Mexicans who lose or have lost their nationality may reacquire it, provided they reside and have their domicile in Mexico, by declaring their desire to reacquire their Mexican nationality before the Secretaría de Relaciones Exteriores. In the event of recovery of Mexican nationality by the parents, the minor children will assume the nationality of the father if he has parental control over them, and that of the mother if she exercises that control.

Mexican nationality may be renounced before the Secretaría de Relaciones Exteriores in the following circumstances:

1. Persons who, according to Mexican law, are Mexican nationals and at the same time another nationality is attributed to them by some other state, may renounce their Mexican nationality directly or through a Mexican diplomatic or consular representative, provided the renunciation is in writing and meets exactly the following requirements:

- (a) They have reached legal majority;
- (b) A foreign state claims them as its nationals;
- (c) They have their domicile abroad;
- (d) If they own real estate in Mexico, they declare the waiver required by Section I of Article 27 of the Constitution. (This right may not be exercised when Mexico is in a state of war.)

2. Children born in the Republic to career consuls or other

foreign officials who do not enjoy diplomatic immunity, or to heads of official missions for foreign governments, may renounce their Mexican nationality before the Secretaría de Relaciones Exteriores upon reaching their majority, provided that, under the law of their parents' country, they acquire the nationality of the latter.

In its Transitory Articles, this law establishes that:

1. All persons born in Mexico of foreign parents who were minors when the law was promulgated are Mexicans by birth, but they have the right to follow the nationality of their parents if proper application is made before the Secretaría de Relaciones Exteriores within three months following the date on which they reach their majority in accordance with Mexican law.

2. All persons born in Mexico of foreign parents may acquire Mexican nationality by birth, provided they declare their desire to acquire it before the Secretaría de Relaciones Exteriores and submit proof of their birth in Mexico and that they attained their majority prior to January 5, 1934, and after May 1, 1917.

3. Mexico-born women who lost their nationality through marriage before the law was enacted may recover it if, within the year following the date of publication of the law, they have established their residence within the national territory and declare before the Secretaría de Relaciones Exteriores their desire to reacquire the Mexican citizenship.

CHAPTER 3

Business Associations

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P A R T I

General Provisions

In Mexico, as in all other free-enterprise countries, business may be pursued by an individual merchant or by a group of persons organized in a business association. As it is not always feasible or desirable to carry on an enterprise through an individual proprietorship, especially so because of the unlimited liability of the owner for business debts, anyone who contemplates doing business in Mexico should be familiar with the several forms of business associations available to him as legal vehicles to engage in commerce. He should, of course, consult with experts in the organization and financing of such associations, for their advice in selecting the most suitable type will be of inestimable value by avoiding serious financial and organizational difficulties at a later date.

Business associations are organized under the General Law of Commercial Companies of July 28, 1934, which is federal in scope.

Terminology. Unless otherwise noted, in the General Part and in Parts III, IV, and V of this chapter the words "company," "commercial company" and "mercantile company" will be used interchangeably to refer to the several types of business associations which may be organized under the General Law of Commercial Companies, and as synonyms of "business association." In treating each of the several forms of business associations at length, the same words will be used to refer to the type of busi-

ness association under discussion, except for the study of business corporations, where the term used will be "corporation."

The constituent contract of all of the different forms of business associations which may be organized under the General Law of Commercial Companies will be referred to in the General Part and in Parts III, IV, and V of this chapter as "Articles of Organization" or "Articles"; and the same terms will be used when each one of them is separately discussed, except in the case of business corporations, for which the terms employed will be "Articles of Incorporation" and "Articles."

Also, in the General Part and in Parts III, IV, and V of this chapter, the term "members" refers to the owners of participations and to the stockholders of the different types of companies; but in discussing general partnerships, limited partnerships, and limited-liability companies, we shall refer to them as "partners"; for business corporations and limited partnerships with shares, the terms used are "shareholders" or "stockholders"; and for co-operatives, "members."

The person or persons entrusted with the management of all of the different forms of companies will be referred to as "administrator" or "administrators" in the General Part and in Parts III, IV, and V of this chapter. In the separate discussion of each of the several forms of companies the same terms will be used, except when considering private corporations, where the terms employed will be "director" or "directors."

Definition. A business association is an association of natural or legal persons united to pursue a common purpose for pecuniary gain, which is regarded in law as a legal entity having a personality and existence distinct from that of its members.

It is of great importance to keep in mind that, under the General Law of Commercial Companies, not only business corporations but also all other forms of business associations which may be organized thereunder are considered legal persons or entities.

It should also be noted that to organize a business association it is not a prerequisite that it engage in commerce, the only re-

quirement being that the organizers adopt one of the forms of business associations recognized by the General Law of Commercial Companies in order to qualify as a business association, regardless of its purpose (GLCC Art. 4).

Juridical Classification. Commercial companies are usually classified as companies of persons and companies of capital. Companies of persons are those in which the individual qualities of the members constitute the dominant factor; and companies of capital are those in which the dominant element is the capital, the personal attributes of the members being of secondary importance. Under this classification, the general partnership, the limited partnership and the cooperative are regarded as companies of persons; and the limited partnership with shares and the business corporation as companies of capital. The limited-liability company is difficult to fit into this classification, as it has features of both types of companies discussed above.

A second classification of mercantile companies groups them into stock companies and companies with portions of interest. The general partnership, the limited partnership, the limited-liability company and the cooperative fall under the classification of companies with portions of interest; and the limited partnership with shares and the business corporation come under the group of stock companies. It must be kept in mind that the rights of a member of a stock company are incorporated in a document—the stock certificate—whereas in companies with portions of interest his rights constitute a portion or part of the company. Therefore, for the purpose of this classification of companies, the distinguishing feature between a portion of interest and a share of stock is that the former cannot be transferred by a member without the consent of the other members, while the latter may, usually, be transferred freely.

A third classification of commercial companies is based upon the extent of liability of their members. Such classification would roughly group these companies into three kinds: the company with unlimited liability, with limited liability, and with both limited and unlimited liability.

Statutory Classification. Article I of the General Law of Commercial Companies recognizes the following types of commercial companies:

1. General Partnership, or *Sociedad en Nombre Colectivo*.
2. Limited Partnership, or *Sociedad en Comandita Simple*.
3. Limited-Liability Company, or *Sociedad de Responsabilidad Limitada*.
4. Business Corporation, or *Sociedad Anónima*.
5. Limited Partnership with Shares, or *Sociedad en Comandita por Acciones*.
6. Cooperative, or *Sociedad Cooperativa*.

Any one of the companies listed above, with the exception of the cooperative, may be organized as a variable-capital company. Cooperatives, by their very nature, are variable-capital companies.

Organization. The preliminary step to organize a company is the execution of the Articles of Organization by the number of organizers required by the law for the type of company being formed. Since the Articles of Organization are regarded as a contract between the company and its organizers and all subsequent members, as well as between the members themselves, its provisions should be as definite as possible to inform the members of their rights and obligations. Following the execution of the Articles of Organization, they must, as later explained, upon prior court order, be recorded with the Public Registry of Commerce in order to consummate the company's organization.

The Articles of Organization of every company must contain (GLCC Art. 6):

1. The name, nationality and domicile of each of the natural or legal persons who organize the company.
2. The company's objects.
3. The firm name or denomination.
4. The company's duration.
5. The amount of capital.
6. Statement showing the amount of money paid or the property contributed to the company by each member; and in

the latter case, also the value assigned to such property and the criteria followed to determine that value.

7. The company's domicile.

8. The manner in which the company is to be administered and the authority of the administrators.

9. The names of the administrators and statement indicating which of them are authorized to sign in the name of the company.

10. The method of distributing profits and losses among the members.

11. The amount of the reserve fund.

12. The causes for dissolution of the company before expiration of its duration.

13. The procedure for liquidating the company and electing the liquidators, if they be not named in the Articles of Organization.

To these provisions may be added others consistent with the General Law of Commercial Companies dealing with the organization and operation of the company's business and which the organizers deem advisable.

The Articles of Organization of commercial companies and any amendment thereto must be executed before a notary public (GLCC Art. 5).¹ If the Articles of Organization are not executed before a notary public but contain the data required by Sections 1 to 7 of Article 6 of the General Law of Commercial Companies, any member of the company may institute summary legal proceedings to require their execution before a notary public (GLCC Art. 7, par. 1). The Articles of Organization of a cooperative need not be so executed, the only requirement being that a notary public, licensed broker, or a public officer certify to the authenticity of the signatures of the persons who signed

¹ Notaries are members of the legal profession vested by the State with public authority and faith. They are charged with the duty to provide the proper form, authenticity and solemnity to the transactions and documents of all interested parties, and to assure them that what has been done by them fully complies with the law. Notaries must record in their official records the transaction or document authenticated by them, and a certified copy thereof is furnished to the interested parties.

the minutes of the general meeting held to organize it (GLCoopC Art. 14).

Registration. The first paragraph of Article 2 of the General Law of Commercial Companies provides that companies registered at the Public Registry of Commerce shall acquire legal personality separate and distinct from that of their members. In addition to acquiring legal personality, once a company is registered with the Public Registry of Commerce, it cannot be held to be invalid unless it pursues an unlawful object or continuously performs unlawful acts, in which case the public prosecutor or any person may at any time petition its liquidation without affecting possible prosecution for any crimes that might have been committed. Liquidation is limited to the realization of the company's assets and payment of its debts, with the remaining assets to be used to pay damages, if any, or turned over to a private charity of the company's domicile (GLCC Art. 2, par. 2; Art. 3).

To register the company, a petition must be filed in the Federal District court or in the court of original jurisdiction of the domicile of the company, requesting issuance of an order to the Public Registry of Commerce to register the company. Before the court order is issued, a representative of the public prosecutor's office must pass upon the Articles of Organization to see if they are consistent with the law (GLCC Art's. 260-264).

In the event that the Articles of Organization are not filed with the Public Registry of Commerce within fifteen days after the date of their execution, any member of the company may bring a summary action at law to compel their registration (GLCC Art. 7, par. 2). As a practical matter, this fifteen-day term is insufficient, as it usually takes much longer for the court to issue the order to the Public Registry of Commerce, without which the Articles cannot be registered.

No judicial order is required to register cooperative companies with the National Cooperatives Registry (GLCoopC Art. 19).

De facto Companies. It is very important to note that companies not registered with the Public Registry of Commerce which present themselves to third parties as duly organized com-

panies are considered legal entities, whether or not their Articles of Organization were executed before a notary public. The fact that *de facto* companies are considered legal entities does not mean that they are subject to the same regulations as are *de jure* companies, that is, those that have complied with the mandatory requirements of the law conditioning their legal existence. For example, the agents and representatives of a *de jure* company are not personally responsible for acts which they perform in the name of their principal, whereas the representatives and agents of a *de facto* company are liable jointly and severally and without limitation, though secondarily, to third parties for the transactions they perform in the name of the *de facto* company, in addition to being subject to criminal prosecution for any crime committed against such third parties. The members of a *de facto* company not responsible for its irregular status may demand damages of those who were responsible therefor, as well as of those who acted as its representatives or agents. The internal affairs of a *de facto* company are governed by its Articles of Organization, and, if there be none, by the general provisions of the law and of the special provisions applicable to the type of company involved (GLCC Art. 2, par's. 3, 4, 5, 6).

Firm Name—Denomination. Certain companies have to do business under a firm name and others under a denomination; and some may choose between a firm name or a denomination. A firm name is the name given to a company which contains the name of one or more of its members; and denomination is the name given to a company which does not contain any of the members' names. Lately, however, it has become common practice to use the names of members of a company as a denomination, though technically this is improper.

Administration. Inasmuch as companies are not natural persons, they can only act through representatives who perform whatever acts are necessary for the fulfillment of the company's objects in accordance with its Articles of Organization. Article 10 of the General Law of Commercial Companies stipulates that the representation of every mercantile company shall be vested in its administrator or administrators, who shall have the power to

perform all of the transactions inherent in the company's objects, except as otherwise provided by the law and the Articles of Organization.

Contributions to the Company. The members of the company have to supply the means necessary to carry out its objects, and they do so through their contributions. The contributions may be in form of money or other values. These contributions are known as capital contributions and constitute the capital of the company. Also, a person may contribute his knowledge, skill or services to a company. In such case the contribution is known as a labor contribution and the contributor as a labor member. It should be noted that a labor contribution is not a contribution in the material sense of the word, but actually an agreement between the company and the labor member whereby the latter agrees to render his services to the former as his contribution towards the fulfillment of the company's objects. Therefore, being only a promise to render future services, contributions of labor cannot have an objective monetary value and cannot form part of the company's capital.

Contributions of money are made in accordance with the provisions of the Articles of Organization.

Insofar as contributions of property other than money are concerned, Article 11 of the General Law of Commercial Companies provides that, unless otherwise stipulated, title to such property passes to the company upon the making of the contribution. Therefore, if so stipulated in the Articles of Organization, it is possible to contribute to a company only the use of property. The same article of the law states that the risk of loss of property contributed to a company shall be for the account of the transferor until its delivery.

The property other than money that may be contributed is real and personal property, both tangible and intangible. Notwithstanding any agreement to the contrary, if one or more credits are contributed to a company, the contributing member is answerable for their genuineness and existence as well as for the financial solvency of the debtor at the time the contribution is made (GLCC Art. 12).

Liability of the Members for Company Debts. The members of a mercantile company are liable for the debts of the company, sometimes without limitation and at other times up to the limit of the amount which they agreed to contribute to the company at the time of its organization, in which case, once they have paid to the company the agreed amount, they are exempt from any other liability.

As will be seen later, when each type of company is considered, in the case of general partnerships all of the partners are secondarily, unlimitedly, and jointly and severally liable for the company's debts, the same degree of liability being applicable to the active partners of the limited partnership and those of the limited partnership with shares. By "secondarily, unlimitedly, and jointly and severally liable" is meant, respectively: (a) That no member can be forced to satisfy the company's debts unless the company's assets are insufficient for that purpose. When the company and its members are sued jointly for a company debt and judgment is rendered against the company, the suit is considered as adjudged to the members joined. In such case, the company's assets are first attached, and if they be insufficient or nonexistent, the members' assets are attached (GLCC Art. 24). If the members be not joined, then separate suit will have to be instituted against each one of them if judgment is rendered against the company. (b) That all of the assets of the members are subject to the debt. And (c) that each and every one of the members is liable for the debt. If one of the members satisfies the debt, he can demand contributions from the other members.

The liability for company debts of the dormant partners of limited partnerships, of limited partnerships with shares, and of limited-liability companies is confined to their contributions, except in special cases which will be explained when dealing with these companies at length. The members of a business corporation are also responsible for the corporate debts, but only to the limit of the contributions which they agreed to make to the company.

When a member joins a company already in existence, he is answerable for all of the company's obligations incurred before

his admission, even though the firm name or denomination of the company has been changed (GLCC Art. 13). In the event that a member withdraws or is expelled from a company, he will be responsible to third parties for all of the transactions pending as of the moment of his withdrawal or expulsion (GLCC Art. 14). The liability to third parties of new members and of the members who withdraw or are expelled from a company cannot be restricted by agreement (GLCC Art. 13, par. 2; Art. 14, par. 2). The degree of liability of new members and of those who sever their relations with the company, whether voluntarily or not, is in each case determined by the legal characteristics of the given company.

Profits and Losses. Article 17 of the General Law of Commercial Companies states that those provisions in the Articles of Organization which exclude one or more members from participating in the profits of the company have no force or legal effect. This law makes no provision for the exclusion of members in the allocation of losses.

The general rule for the distribution of profits and losses is contained in Article 16 of the General Law of Commercial Companies, which provides that, except as otherwise stipulated in the Articles of Organization, the profits or losses of a company shall be distributed as follows:

(a) The losses or profits shall be distributed among the members who contributed capital to the company in proportion to their contributions;

(b) One-half of the profits shall belong to the labor member and, if there be several, this one-half shall be divided among them equally; and

(c) The labor member or members shall not be responsible for any losses.

Profits can be distributed only when the balance sheet positively shows them to have been earned by the company, and the moneys distributed as profits can never exceed the amount of profits actually earned, notwithstanding any agreement to the contrary (GLCC Art. 19, par. 1). If profits are distributed or

payments made on account thereof in violation of the law, both the company and its creditors can demand their reimbursement to the company from the persons who received them or from the administrator or administrators who paid them, both the recipients and the administrator or administrators being jointly and severally liable for their restitution (GLCC Art. 19, par. 2).

Article 19 of the General Law of Commercial Companies, referred to above, does not state when the balance sheet should be prepared, but Article 38 of the Code of Commerce expressly provides that it should be prepared once a year. With reference to business corporations and limited partnerships with shares, Article 181 of the same law provides that the stockholders should meet at least once a year, at which meeting, among other things, they must discuss, approve or modify the balance sheet, thus, in effect, requiring an annual financial statement from these companies.

Reserve Fund. From the net profits obtained by the company there must be set aside annually a minimum of 5% to constitute the reserve fund, until said fund reaches one-fifth of the capital of the company. In case the reserve fund diminishes for any reason, it must be reconstituted (GLCC Art. 20). Any resolution adopted by the administrator or administrators or by company members which contravenes the provisions of Article 20 of the law shall have no legal effect; and if, nevertheless, it should at any time appear that the minimum of 5% has not been separated from the profits to constitute or reconstitute the reserve fund, the administrator or administrators responsible therefor shall be unlimitedly and jointly and severally liable to pay to the company a sum equal to the amount which should have been set aside. When the administrators distribute the reserve fund among the members, they have the right to demand reimbursement from them (GLCC Art. 21). The obligation imposed upon the administrators by Article 22 of the General Law of Commercial Companies can be enforced by any member of the company or its creditors by summary legal proceedings.

If the capital of the company diminishes due to losses, it must be reconstituted or decreased by amending its Articles of Organi-

zation before any profits can be distributed (GLCC Art. 18).

Increase or Decrease of Capital. Every company may increase or decrease its capital upon compliance with the requirements of the law for the specific type of company. When the capital is decreased by reimbursement of their contributions to the members or by relieving them from the obligation to pay the balance due on their contributions, notice of the decrease in capital must be published at ten-day intervals in the official gazette of the State wherein the company has its domicile. The creditors of the company, either jointly or severally, may oppose the decrease by instigating summary legal proceedings at any time from the day the resolution to decrease the capital was adopted and until five days after the last publication of the notice of the capital decrease was made. In such case, the decrease of the capital is suspended until the company has paid its debts; or guarantees their payment to the satisfaction of the court; or final judgment is rendered in favor of the company (GLCC Art. 9).

Members and Their Personal Creditors. The private creditors of members of companies other than business corporations or limited partnerships with shares, can attach only the members' rights to the profits to which they are entitled according to the balance sheet, and when the company is dissolved, only the liquidation portion. The members' rights in the company cannot be attached. When business corporations or limited partnerships with shares are involved, the private creditor can attach and sell at forced sale the shares of the debtor-stockholder (GLCC Art. 23).

Effects of Withdrawal or Exclusion of Members. When a member of a company other than one of variable capital is expelled or withdraws, the company may withhold the portion of the capital and the profits of such member until the transactions pending at the time of the expulsion or withdrawal are completed, after which time they may be delivered to him (GLCC Art. 15).

Rights and Duties of the Members. We will only deal here in general with the rights and duties of the members. What these rights and duties are will be seen when each type of company is

considered. However, in general, it can be said that the rights of a member are to participate in the profits of the company and, upon dissolution, in its assets; and also to participate, directly or indirectly, in the administration and supervision of the company's affairs. The members' duties are, in general, to make their contributions to the company, either in money or other property, so that it be able to carry out its purposes; and insofar as the labor members are concerned, to render their services or make available to the company their knowledge or skill.

P A R T I I

Forms of Business Associations

GENERAL PARTNERSHIP

The general partnership is the classical example of a company of individuals; that is, a company in which the dominant element is the personal qualities of the members and not the amount of their contributions. For example, a partner cannot transfer his interest without the consent of his fellow partners; the partnership must be administered by the partners, otherwise the dissident partners may withdraw; and the death of a partner is cause for dissolution.

Definition. Article 25 of the General Law of Commercial Companies defines the *Sociedad en Nombre Colectivo*, or general partnership, as “. . . one which exists under a firm name and in which the partners are secondarily, unlimitedly, and jointly and severally liable for the partnership debts.”

Firm Name. The firm name is the name under which the partnership carries on its activities, and must include the name of one or more partners; and when the names of all partners do not appear therein, the words *y Compañía*² or some equivalent must be added (GLCC Art. 27).

² “and Company.”

The fact that a new partner joins the partnership, or an old one withdraws from it, will not prevent the continued use of the firm name theretofore employed. However, if the name of the partner who withdraws appeared in the firm name, the word *Sucesores*³ must be added to it (GLCC Art. 29). When the firm name is one which was previously used by another partnership whose rights and obligations were transferred to the present partnership, the word *Sucesores* must also be added to the firm name (GLCC Art. 30). When a stranger to the company includes his name or allows it to be included in the firm name, he shall be subject to the same degree of liability as the partners (GLCC Art. 28).

Limitation of Liability. In the Articles of Organization of the partnership the partners may stipulate provisions most beneficial to their interests, subject to the limitations imposed by the law. For example, any provision in the Articles of Organization restricting the unlimited and joint and several liability of the partners will be null and void as to third parties, but it will be binding upon the partners (GLCC Art. 26).

Partners' Obligation Not to Compete. The partners cannot engage, either for their own account or for the account of a third party, in any business that competes with the partnership purposes; or associate themselves with companies engaged in such competitive activities, except with the consent of the other partners. Within three months after the partnership has obtained knowledge of the violation of this precept, it may expel the guilty partner from the partnership and deprive him of his benefits therein, and he also will be liable to the partnership for any damage caused to it (GLCC Art. 35).

Transfer of Interest in Partnership. A partner cannot transfer his partnership interest without the consent of the other partners, unless the Articles of Organization provide that consent of the majority shall be sufficient therefor. If the transfer is made to persons outside the partnership, the other partners have the preferential right to acquire the partnership interest in propor-

³ "Successors."

tion to their contributions, said right to be exercised within fifteen days after consent for the transfer was given (GLCC Arts. 31, 33).

Incoming Partners. The admission of new partners is subject to the approval of the existing partners, except in cases where the Articles of Organization provide that consent of the majority shall be sufficient (GLCC Art. 31).

Partners' Meetings. The law does not specifically provide for partners' meetings, but there are certain instances stipulated in the law which can only be resolved by all of the members meeting together. Specifically, the partners must meet for the following purposes: to approve the transfer of a partner's interest in the partnership and the admission of new members (GLCC Art. 31); to amend the Articles of Organization (GLCC Art. 34); to allow a partner to engage in a competitive business (GLCC Art. 35, par. 1); to appoint and remove administrators (GLCC Art. 37); to authorize the administrators to sell and encumber the partnership's real property (GLCC Art. 41); to consent to the delegation of the administrator's duties; to demand accountings (GLCC Art. 43); and to determine the amounts to be paid to labor or administrative partners (GLCC Art. 49).

Methods of Computing Votes. At partners' meetings each partner has one vote, and resolutions must be adopted by a majority vote; but if the Articles of Organization so provide, the vote may be computed according to the amount of the capital contributions of the partners; and if in such a case one partner represents the largest financial interest, the individual vote of another partner will be required to adopt resolutions (GLCC Art. 46, par. 1).

Labor Partner's Right to Vote. As far as the voting rights of labor partners are concerned, the law is not clear, for it seems to say that when the Articles of Organization allow the votes to be computed according to the capital contributions of the partners, the labor partner shall have a vote equal to the vote of the partner having the largest financial interest; and that if there be several labor partners, this single vote shall be the one to be adopted by the majority of labor partners. It could thus be said that in case the Articles of Organization do not provide for the computation

of votes on the basis of capital contributions, each labor partner shall have one vote (GLCC Art. 46, par. 2).

Administration. The administration of the partnership may be entrusted to one or more persons who may or may not be partners (GLCC Art. 36). The administrator or administrators must be named and removed by majority vote of the partners, unless otherwise stipulated in the Articles of Organization (GLCC Art. 37). In case an outsider is named administrator, the partner who voted against his appointment may withdraw from the partnership (GLCC Art. 38). Non-administrative partners may name a supervisor to supervise the actions of the administrators and to inspect the condition of the partnership's administration and its books and records, with the authority to make the claims he deems pertinent (GLCC Art. 47). When no administrators are appointed, all the partners shall participate in the administration of the partnership (GLCC Art. 40).

When the administrator is a partner, it may be stipulated in the Articles of Organization that he cannot be removed, and in such a case he may be removed only for deceit, fraud or incompetence in the discharge of his duties and upon prior court order (GLCC Art. 39).

Although the law does not specifically provide for administrators' meetings, nevertheless such meetings must be held when there are several administrators. In this case resolutions are to be taken by majority vote; in the event of a tie in the voting, the partners make the decision. In the case of an emergency, one of the administrators may take action, provided the other administrators be absent, even if momentarily, and grave losses would be suffered by the partnership if no action were taken (GLCC Art. 45).

Rights and Duties of the Administrators. The general partnership, being a legal entity, can act in company matters only through its administrator or administrators, who are charged with the duty of performing such transactions as are inherent in the partnership's purposes, subject to the limitations imposed upon them by the Articles of Organization and the law (GLCC Art. 10).

The administrators may sell or mortgage the real property of the company without the consent of the majority of the partners only when such transactions are performed to carry out the company's purposes or are a natural consequence thereof (GLCC Art. 41).

An administrator may, under his own responsibility, grant powers of attorney for the performance of certain specific transactions of the company, but resolution adopted by majority vote of the partners is required in order for him to delegate his duties, and in this case the minority will have the right to withdraw when the duties are delegated to a person strange to the company (GLCC Art. 42).

If there be no provision in the Articles of Organization as to when the administrators should account to the partners, they must do so at least every six months and whenever so requested by the partners (GLCC Art. 43).

All of the administrators have the right to sign in the name of the partnership, except when the Articles of Organization restrict this right to one or more of them (GLCC Art. 44).

Payments to Labor Partners. Notwithstanding the general rule that profits cannot be distributed unless the balance sheet actually shows them to have been earned, labor partners must receive, unless there be an agreement to the contrary, the amounts they periodically need for living expenses. These amounts may be determined by the partners or by a court of law, and they must be shown in the annual balance sheet as payments on account of profits (GLCC Art. 49, par. 1). Labor partners do not have the obligation to repay the amounts received by them on account of future profits, even if the annual balance sheet does not show a profit or if the profit shown is less than the amounts paid to them.

The administrative partners may receive a salary to be determined by majority vote of the partners and charged to general expenses (GLCC Art. 49, par. 2).

Distribution of Assets. The assets of the partnership cannot be distributed unless it be dissolved and liquidated, except when

the Articles of Organization provide otherwise and no third parties are damaged thereby (GLCC Art. 48).

Amendment of Articles of Organization. The Articles of Organization cannot be amended except by the unanimous vote of the partners, unless the partnership agreement provides that majority vote shall be sufficient, in which case the partners in the minority may withdraw from the partnership (GLCC Art. 34).

Rescission of Articles of Organization. Article 50 of the General Law of Commercial Companies stipulates that the Articles of Organization may be rescinded with respect to a partner for the following reasons:

1. Using the firm name or the company's capital for his personal business;
2. Violating the provisions of the Articles of Organization;
3. Violating the law which governs the Articles of Organization;
4. Committing deceitful or fraudulent acts against the company;
5. Bankruptcy, interdiction or lack of legal capacity to engage in commerce.

Dissolution and Liquidation. The general partnership, as any other type of company, may cease to exist for the reasons to which we will refer in discussing the dissolution and liquidation of companies.

Advantages and Disadvantages. The principal advantage of this type of company over the sole proprietorship is that, due to the credit standing and reputation which each partner may have in the business community, the credit of the partnership will be superior. Also, this type of company is less expensive and easier to organize and to handle than any of the others.

Among its disadvantages we may mention the unlimited and joint and several liability, though secondary, of the partners; and also that the duration of the company is uncertain, since it depends on the life span of each of the partners, unless the partnership agreement provides that the partnership may continue with the heirs of a deceased partner. To some extent, this fact ad-

versely affects the development of the company's operations because of the uncertainty it creates in the minds of third parties.

This type of company is suitable only for small business ventures in which a close group of persons wishes to participate.

Similar Companies Under the Common Law Legal System. Considering that the partners of a Mexican partnership are liable for partnership debts to an unlimited degree, though jointly and severally and secondarily, its nearest equivalent in common law jurisdictions is the general partnership. The main distinguishing feature of Mexican partnerships is that they are regarded as legal entities, with personalities distinct and separate from those of their members.

LIMITED PARTNERSHIP

This type of company is also an example of a company of persons, even though the liability of the partners to third parties for company debts varies between the dormant and the active partners. The examples given under "General Partnership" to show the dominance of the personal over the capital element are also applicable in this instance.

Definition. The limited partnership, or *Sociedad en Comandita Simple*, is defined by Article 51 of the General Law of Commercial Companies as ". . . one which exists under a firm name and is composed of one or more active partners who are secondarily, unlimitedly and jointly and severally liable for the company's obligations, and one or more dormant partners who are liable only to the limit of their contributions."

Firm Name. The firm name is to include the name of one or more active partners, and when the names of all of the partners are not included in the firm name, the words *y Compañía*⁴ or some other equivalent must be added thereto. To the firm name there must be added the words *Sociedad en Comandita* or their abbreviation *S. en C.* (GLCC Art. 52). When a person, whether he be a silent partner or a stranger to the company, includes his

⁴ "and Company."

name or allows it to be included in the firm name, he shall be subject to the same liability as the active partners. The silent partners shall likewise be liable when the statement *Sociedad en Comandita* or its abbreviation is omitted from the firm name (GLCC Art. 53). The admission or withdrawal of an active partner does not prevent the continued use of the firm name, but if the name of the retiring partner forms part of the firm name, the word *Sucesores*⁵ must be added thereto (GLCC Art. 57, citing Art. 29). In case the firm name of a company has been used by another company whose rights and obligations were transferred to the new company, the word *Sucesores* must also be added to the firm name (GLCC Art. 57, citing Art. 30).

Labor Partners as Silent Partners. Because the silent partners' liability is limited to their contributions, the latter must be made in cash or other property. This excludes the possibility of labor partners being silent partners in a limited partnership, even though the services to be rendered by them are not of an administrative nature. They can, however, be active partners, and as such they are not responsible for the company's debts.

Administration. The rules for the administration of the limited partnership and the general partnership are the same, except that the silent partner or partners cannot perform any administrative acts whatsoever, not even as agents of the administrators; but the authorizations conferred upon, and the supervision exercised by, the silent partners in accordance with the Articles of Organization are not considered administrative acts (GLCC Art 54). If a silent partner violates the foregoing general rule, he will be jointly and severally liable with the company to third parties for all of the obligations incurred by him in the name of the company; and he will likewise be liable even for those transactions in which he did not participate if he regularly manages the affairs of the company (GLCC Art. 55). An exception to the rule which prevents silent partners from managing the affairs of the limited partnership is made when the active administrative partner dies or becomes incapacitated, in which case a silent

⁵ "Successors."

partner may only perform urgent transactions and routine administrative matters for a term of one month from the date of such death or incapacity, provided, however, that the company is not dissolved thereby and the Articles of Organization do not provide for the manner of naming the successor of the deceased or incapacitated partner, and there are no other active partners. In this case the silent partner is responsible only for the proper performance of his duties (GLCC Art. 56).

Concerning the limitation of the active partners' degree of liability; transfer of partners' interests; partners' meetings; methods of computing votes; labor partner's right to vote; duty of the active partners not to compete; appointment of the administrators and their removal; rights and duties of the administrators; rights of partners to withdraw from the partnership; rights of administrative partners to name a supervisor; authority to sign in the name of the company; dissolution and liquidation, later discussed; amendments to the Articles of Organization; distribution of assets; and rescission, the rules are the same as those for general partnerships (GLCC Art. 57, citing Art's. 26, 31, 32, 33, 34, 35, 41, 42, 43, 44, 46, 47, 48, 49, 50).

Advantages and Disadvantages. The chief advantage of this type of company over the general partnership is that it permits investors to participate with their capital in a business venture without risking the loss of their entire assets, for as silent partners their liability for company debts is limited to the amount of their capital contributions.

The chief disadvantage is with the active partners, for their liability is the same as that of the partners of a general partnership.

The limited partnership, due to the personal element involved and its consequent lack of permanence, is still not suitable for substantial business enterprises.

Similar Companies Under the Common Law Legal System. Because the Mexican limited partnership has two groups of partners, each with a different degree of liability, it may be said that the equivalent of this form of business association in the United States is the limited partnership.

LIMITED-LIABILITY COMPANY

This type of company partakes of the features of both capital and personal companies. It can be said that it is a company of persons because the partners cannot transfer their interest without the consent of the other partners; and that it is a company of capital because it may function under a denomination and the partners' votes are strictly according to the amount of their capital contributions.

Definition. The limited-liability company, or *Sociedad de Responsabilidad Limitada*, is defined by Article 58 of the General Law of Commercial Companies as a company ". . . whose members are responsible only for the payment of their contributions, without the members' portions of interest in the company being evidenced by registered or bearer stock certificates, these portions of interest being transferable only in cases, and in accordance with the requirements, set forth in the law."

The essential elements in this definition are: (a) that the partners are liable to the company only to the limit of their contributions; and (b) that the rights of the partners in the company are considered a portion of interest and are not incorporated in a share of stock.

Firm Name or Denomination. The limited-liability company may function under a denomination or a firm name which shall be formed with the name of one or more partners. The denomination or firm name shall be followed by the words *Sociedad de Responsabilidad Limitada*, or their abbreviation *S. de R. L.*, and in the event of non-compliance with this requirement the partners shall be liable secondarily, unlimitedly and jointly and severally for the company's obligations (GLCC Art. 59). In case a person foreign to the company includes his name or allows it to be included in its firm name, he shall be responsible for the company's obligations up to the amount of the largest contribution (GLCC Art. 60).

When the names of all the partners do not form part of the firm name, the words *y Compañía* or some other equivalent

must be added thereto (GLCC Art. 86, citing Art. 27). The fact that a new partner joins the company or an old one withdraws from it will not prevent the continued use of the firm name as previously adopted. However, if the name of the withdrawing partner formed part of the firm name, the word *Sucesores* must be added to it (GLCC Art. 86, citing Art. 29). Where the firm name is one which was previously used by another company whose rights and obligations were transferred to the present company, the word *Sucesores* must also be added to the firm name (GLCC Art. 86, citing Art. 30).

Assessments. Although in the definition of the limited-liability company it is stated that the partners shall be solely responsible to the limit of their contributions, nevertheless, if the Articles of Organization indicate that supplementary contributions may be demanded from the partners, and in accordance therewith the partners' meeting resolves to make an assessment, the partners are liable for its payment. Assessments consisting of personal services to be rendered by the partners are forbidden (GLCC Art. 70).

Requirements to Organize. The minimum capital required is 5,000 pesos,⁶ to be divided in portions of interest which may have different values and be of different classes. Each portion must have a value of not less than 100 pesos⁷ or multiples thereof (GLCC Art. 62). The company cannot be organized by public subscription, and its capital cannot be increased in that manner (GLCC Art. 63). At the time of organization the capital must be fully subscribed and at least 50% of each portion of interest must be paid at that time (GLCC Art. 64).

Number of Partners. Limited-liability companies can never have more than twenty-five partners (GLCC Art. 61).

Portions of Interest. Portions of interest are indivisible, but if the Articles of Organization provide otherwise, they may be divided and partially assigned, so long as the requirements relative to maximum number of partners, minimum capital, consent

⁶ U.S. \$400.

⁷ U.S. \$8.

of the other partners for the transfer of part of the portion, and the preferential right of the other partners to acquire said portion are observed (GLCC Art. 69, citing Art's. 61, 62, 65, 66).

Since no partner can own more than one portion of interest, whenever he makes an additional capital contribution or acquires all or part of a portion of interest from a fellow partner, the value of his portion will increase thereby, but he will continue to own a single portion unless the portions of interest acquired were of a class different from his own, in which case the individuality of the portions of interest will be maintained (GLCC Art. 68).

Transfer of Portions of Interest—Incoming Partners. In order for the partners to transfer their portions of interest, as well as for the admission of new members, affirmative resolution must be adopted by the unanimous vote of the partners, unless the Articles of Organization provide that the resolution may be adopted by the vote of a majority representing at least three-fourths of the capital of the company (GLCC Art. 65). When the transfer to a person strange to the company is approved, the partners have the preferential right to acquire the portion of interest within fifteen days following the date of the partners' meeting which approved the transfer; and if there be several partners who wish to exercise this right, it shall be exercised in proportion to their contributions (GLCC Art. 66). However, the transfer of a portion of interest by inheritance need not be approved by the partners to be effective; that is, if the Articles of Organization do not provide that in the event of death of one of the partners the company is to be dissolved or that portion of interest of the deceased member is to be liquidated (GLCC Art. 67).

Transfer Book. The company must keep a register in which the name and address of each member, the amount of his contribution, and the transfer of portions of interest shall be recorded. Transfers of portions of interest shall not be effective as to third parties until they have been recorded in this register. Any person with a lawful interest may examine this register, which shall remain in the custody of the administrators, who are responsible,

jointly and severally, for its safekeeping and the exactness of the data it contains (GLCC Art. 73).

Partners' Meetings. The partners' meeting is the supreme governing body of the company; and its jurisdiction extends over the following matters (GLCC Arts. 77, 78):

1. To discuss, approve, modify or reject the balance sheet for the past fiscal year, and to adopt the resolutions which they deem advisable with respect thereto.
2. To distribute profits.
3. To name and remove managers.
4. To appoint, if necessary, the board of supervisors.
5. To adopt resolutions concerning the division and redemption of portions of interest.
6. To make assessments.
7. To sue the representative bodies of the company or the partners for damages.
8. To amend the Articles of Organization.
9. To approve assignment of portions of interest and to admit new members.
10. To increase and decrease the company's capital.
11. To dissolve the company.
12. Those other matters provided for by the law or the Articles of Organization.

Time and Place of Meeting. The partners' meetings shall be held at the domicile of the company at least once a year, at the time fixed in the Articles of Organization (GLCC Art. 80).

Calling Meetings—Notice of Meetings. Partners' meetings shall be called by the administrators and, if the administrators do not do so, by the board of supervisors; if none exists or if it does not call the meeting, then the meeting shall be called by the partners who represent more than one-third of the company's capital, except as otherwise provided in the Articles of Organization. The notice of the meeting shall contain the agenda and shall be sent by registered letter, return receipt requested, to each member at least eight days in advance of the date the meeting is to be held (GLCC Art. 81).

Right to Attend Meetings and to Vote. Every partner has the right to attend partners' meetings and to have one vote for each 100 pesos' contribution, except for additional votes for privileged portions of interest if the Articles of Organization make such provision (GLCC Art. 79).

Quorum: Votes Necessary to Adopt Resolutions. To adopt valid resolutions, a quorum composed of those partners who represent at least one-half of the company's capital is required and, unless the Articles of Organization require a higher percentage, resolutions shall be adopted by majority vote. Except when otherwise stipulated in the Articles of Organization, if the required quorum is not present at the first partners' meeting, a second meeting shall be called and resolutions shall then be adopted by majority vote of those present regardless of the percentage of the capital they represent (GLCC Art. 77).

However, when the partners' meeting is to consider the assignment of portions of interest and the admission of new members, then to constitute a quorum the presence of all the members is required and resolutions have to be adopted by unanimous vote, unless the Articles of Organization provide that the resolutions may be adopted by the affirmative vote of those partners who represent three-fourths of the capital, in which case the quorum required may be reduced to the same percentage (GLCC Art. 65).

Also, and unless the Articles of Organization provide otherwise, when the partners' meeting is to consider amending the Articles of Organization, the attendance of those partners who represent at least three-fourths of the company's capital is required to constitute a quorum, and the resolutions have to be adopted by the affirmative vote of those partners who represent the same percentage of capital, unless the meeting is to consider changing the company's purposes or increasing the partners' obligations, in which case the quorum must be constituted by all of the partners and the vote must be adopted unanimously (GLCC Art. 83).

Voting by Mail. The Articles of Organization may provide that in certain instances the partners of the company need not meet

at a formal meeting to adopt resolutions. In such a case the text of the resolutions or decisions to be adopted will be sent to the partners by registered mail, return receipt requested, and the partners' votes will be returned also by mail. However, if partners who represent more than one-third of the company's capital so request, a formal partners' meeting will be called even though the Articles of Organization require only vote by mail (GLCC Art. 82).

Administration. The administration may be entrusted to one or more administrators who may or may not be partners. The administrators may be appointed for a fixed or an indefinite term, and unless the Articles of Organization provide otherwise, their appointments may be revoked at any time (GLCC Art. 74, par. 1). In case a non-partner is named administrator, the partner who voted against his appointment may withdraw from the company (GLCC Art. 86, citing Art. 38). When no administrators are appointed, all of the partners may share in the management of the company (GLCC Art. 74, par. 2). The resolutions of the administrators shall be taken by a majority vote, but if the Articles of Organization provide that they shall act jointly, unanimous vote shall be required, unless the majority believes that a delay will cause harm to the company, in which case resolution adopted by the majority will be sufficient (GLCC Art. 75).

Rights and Duties of the Administrators. All of the administrators have the right to sign in the name of the company except when in the Articles of Organization it is provided that one or more of them may do so (GLCC Art. 86, citing Art. 44).

If there be no provision in the Articles of Organization as to when the administrators should account to the partners, they must do so at least every six months or whenever so requested by the partners (GLCC Art. 86, citing Art. 43).

An administrator may, under his own responsibility, grant power of attorney for the performance of certain specific transactions of the company, but resolution adopted by majority vote of the partners is required in order for him to delegate his duties, and in this case the minority will have the right to with-

draw when the duties are delegated to a person strange to the company (GLCC Art. 86, citing Art. 42).

The administrators are responsible for the damages which the company might suffer due to their negligence in the discharge of their duties. The administrators who voted against a resolution which caused damage to the company are not responsible, and neither are those who had no knowledge of the decision. The partners' meeting may resolve to sue the administrators for the return of company property, and the partners individually may also do so, except when the partners' meeting absolves the managers from responsibility by the affirmative vote of the partners representing at least three-fourths of the capital of the company. The creditors of the company may also sue the managers for damages, but only through a receiver in bankruptcy (GLCC Art. 76).

Payment of Interest to Partners. In spite of the general rule that profits cannot be distributed unless the balance sheet actually shows them to have been earned, it may be provided in the Articles of Organization that the partners receive interest at the maximum rate of 9% per annum on their contributions even though there be no profits. These payments are to be made for a maximum term of three years and are to be charged to general expenses (GLCC Art. 85).

Redemption of Portions of Interest. If the Articles of Organization so allow, the portions of interest may be redeemed, with surplus profits available to the company for distribution; and if this occurs, the partner's status as such will cease to exist. However, if the Articles of Organization so stipulate, the company may issue participating certificates to those members whose portions of interest were redeemed. These certificates are subject to the same rules governing participating retired shares issued by business corporations and limited partnerships with shares of stock, which will be discussed when these new types of companies are considered (GLCC Art. 71).

Increase of Capital. To increase the capital of the company, the same rules as those on organizing the company are to be

followed. The partners always have the preferential right to subscribe the portions of interest issued in proportion to the portions of interest which they own, unless the Articles of Organization or the partners' meeting at which the increase in capital was authorized provide to the contrary (GLCC Art. 72).

Distribution of Assets. The assets of the company cannot be distributed unless it is first dissolved and liquidated, except when the Articles of Organization provide otherwise and no third parties are damaged thereby (GLCC Art. 86, citing Art. 48).

Board of Supervisors. In the Articles of Organization it may be provided that there be a board of supervisors to be formed by partners or persons who are not partners of the company. It should also be stated therein which representative body of the company is to appoint the members of the board and what their duties are, the duration of term of office, the remuneration, etc. (GLCC Art. 84).

Rescission of Articles of Organization. The grounds on which the Articles of Organization may be rescinded as to a partner of a general partnership are also applicable to the limited-liability company, except that bankruptcy, interdiction or lack of legal capacity of a partner to engage in commerce are not grounds for rescission in this instance.

Similar Companies Under the Common Law Legal System. No organization exists in the United States comparable to this type of legal entity.

BUSINESS CORPORATIONS

The business corporation is the typical company of capital; that is, one where the dominant element is the company's capital and not the personal participation of its stockholders. As such, it may do business under a denomination, as opposed to a firm name, and the stockholders may usually transfer their shares without restrictions.

Definition. Article 87 of the General Law of Commercial Companies defines the *Sociedad Anónima*, or business corporation, as

a company "which exists under a denomination and is composed exclusively of stockholders whose liability is limited to the nominal value of their shares" (GLCC Art. 87).

In this definition the three most important and distinguishing characteristics of business corporations are implicit, which are: (a) it does business under a denomination; (b) the liability of the shareholders is limited to the payment to the corporation of the nominal value of their shares; and (c) the stockholders' rights are incorporated into shares.

Denomination. The denomination may be freely chosen but it must be different from that of any other business association, and it shall always be followed by the words *Sociedad Anónima*, or the initials S.A. (GLCC Art. 88).

Requirements. To organize a corporation it is necessary (GLCC Art. 89):

1. That there be at least five stockholders, and that not less than one share is subscribed by each of them.
2. That the capital be not less than 25,000⁸ pesos and that it be fully subscribed.
3. That at least 20% of the price of each share be paid in cash.
4. That the full price of each share payable in whole or in part in property other than money be paid.

Articles of Incorporation. The Articles of Incorporation must contain the data required for all mercantile companies by Article 6 of the General Law of Commercial Companies and, in addition, the following (GLCC Art. 91):

1. The amount of the paid-in capital.
2. The number, par value and class of the shares of stock into which the capital stock is divided. If no par-value shares are issued, the amount of the capital stock and the par value of the shares may be omitted.
3. The terms and conditions for payment of the unpaid balance of the price of the shares.
4. The participation in the profits granted to the founders.

⁸ U.S. \$2,000.

5. The appointment of one or more examiners.

6. The powers of the general stockholders' meeting and the requirements for the validity of their resolutions; the requirements for the exercise of the right to vote, insofar as the applicable legal provisions may be modified by the stockholders.

Neither the stockholders nor the directors have the power to issue by-laws after the corporation has been organized. The rules and regulations for handling corporate affairs are embodied in the Articles of Incorporation and should form part of same at the time of their execution.

Organization. Corporations may be organized in two different ways: by private or by public subscription (GLCC Art. 90).

To organize a corporation by private subscription the founders appear and execute before a notary public the Articles of Incorporation.

To organize a corporation by public subscription the founders must draft and deposit at the Public Registry of Commerce a prospectus which must contain the draft of the Articles of Incorporation. The subscriptions must be made in duplicate on copies of the prospectus, one copy to be kept by the founders and the other by the subscriber (GLCC Art's. 92, 93).

When the shares are payable in money, the subscribers must deposit their price with the credit institution designated for that purpose by the founders, and the money is to be delivered to the corporation's representative upon its organization (GLCC Art. 94). If the shares are payable in property other than cash, the transfer of the property to the corporation must be formalized at the time the minutes of the constituent meeting are recorded before a notary public (GLCC Art. 95). Subscribers who fail to pay for their shares may be sued by the corporation for the amount due or the corporation may consider their shares as unsubscribed (GLCC Art. 96).

All of the shares must be subscribed within one year from the date of the prospectus unless a shorter term is fixed (GLCC Art. 97). If the term expires before the capital stock has been fully subscribed, or if for any other reason the corporation is not organized, the subscribers are released of their obligations and

they may withdraw the amounts deposited by them (GLCC Art. 98). Within fifteen days after the capital stock has been fully subscribed and the subscribers have paid the agreed price of their shares, the founders must publish notice of the call for the constituent meeting in the manner provided in the prospectus (GLCC Art. 99).

The constituent meeting must (GLCC Art. 100):

1. Verify that the subscribers made the first payment on account of the price of the shares they subscribed as provided in the draft of the Articles of Incorporation.

2. Examine and approve, as the case may be, the appraisal of the property other than money which one or more subscribers may have agreed to transfer to the corporation in exchange for shares. Such subscribers cannot vote on the approval of the appraisal of such property.

3. Adopt resolution concerning the participation in the profits which the founders might have reserved to themselves.

4. Name the directors and examiners who are to hold office for the term fixed in the Articles of Incorporation and designate the directors who are to sign in the name of the corporation.

All of the transactions entered into by the founders of a corporation, except those necessary to its organization, will not bind the corporation unless approved by the constituent meeting (GLCC Art. 102).

After the constituent meeting has approved the organization of the corporation, the minutes of said meeting and the proposed Articles of Incorporation must be executed before a notary public and thereafter registered with the Public Registry of Commerce (GLCC Art. 101).

It is worth while noting that under the law of December 30, 1939, published in the *Diario Oficial* of February 1, 1940, as well as under the law which created the National Securities Commission, published in the *Diario Oficial* of April 16, 1946, certain requirements must be first fulfilled before any shares of stock may be offered for sale to the public.

Founders. The General Law of Commercial Companies considers the founders of a corporation to be those persons who draft

and deposit with the Public Registry of Commerce the prospectus for the organization of a corporation by public subscription; as well as those persons who actually execute the Articles of Incorporation. It follows, then, that corporations organized by public subscription may have founders who are not stockholders; and that the contrary is true in the case of corporations organized by private subscription (GLCC Art. 103).

The law supervises the actions of the founders to protect the public against the possibility of their obtaining undue gain. For example, founders cannot stipulate in the Articles of Incorporation, either at the time of organization or thereafter, any benefit in their favor which impairs the corporation's capital, and any such stipulation shall be null and void (GLCC Art. 104).

Founder Bonds. But the rights of the founders are also protected by the law, for they may participate in the corporation's annual profits in an amount not to exceed 10% for a term of not more than ten years from the date the corporation was organized. Bondholders cannot receive their participation unless the stockholders first receive a dividend of 5% on the paid portion of their shares of stock. The rights of the founders to so participate in the corporate profits are evidenced by "founder bonds." Founder bonds cannot be computed as part of the corporation's capital stock; and neither do they entitle their holders to share in the corporation's assets upon liquidation, nor to participate in its management (GLCC Art. 105).

Founder bonds may be either registered or bearer bonds, and the words "Founder Bond" must be clearly visible on the face of the bond, which must also state: the name, domicile, duration, date of organization and capital of the corporation; number of the bond and the total number of founder bonds issued; the rate of participation in the corporation's profits to which the bond is entitled, and the period over which it is to be paid; the statement which the applicable laws require stock certificates to contain as to the nationality of any transferee; and the signature of the administrator or directors authorized to sign the bond (GLCC Art. 108).

Bondholders may exchange their bonds for others which call

for different participation rates in the corporation's profits, so long as the total rate of participation under the new bonds is the same as that of the bonds which were exchanged (GLCC Art. 109). The provisions of the General Law of Commercial Companies relative to provisional and final stock certificates and their issuance, and the number of shares which each certificate may represent are applicable also to founder bonds, insofar as compatible with their nature (GLCC Art. 110, citing Art's. 111, 124, 126, 127).

Capital Stock. Article 111 of the General Law of Commercial Companies provides that: "The shares into which the capital stock of a stock company is divided shall be evidenced by certificates which shall serve to establish and to transfer the rights and status of a shareholder, said certificates to be governed by the legal provisions applicable to literal instruments⁹ insofar as compatible with their nature and not otherwise modified by this law."

Characteristics Common to All Classes of Shares of Stock.

(a) All of the shares of stock shall have the same value and shall confer the same rights. Nevertheless, the Articles of Incorporation may provide that the capital stock be divided into several classes of shares, each one with special rights, provided that no stockholder is excluded from participating in the company's profits (GLCC Art. 112).

(b) Each share of stock is indivisible, and if there be several persons who own the same share, they must designate a common representative, and should they not be able to designate him by agreement between themselves, the representative shall then be named by a court of law. The common representative cannot sell or encumber the share of stock unless he does so in

⁹ "Literal instruments" incorporate the literal import of rights stated in the body of the instrument, and which must be tendered by their holder to exercise these rights. Literal instruments are regulated by the General Law of Credit Instruments and Transactions. This law specifically provides that shares of stock shall be governed by the General Law of Commercial Companies insofar as they do not contradict its provisions.

accordance with the legal provisions relative to common ownership (GLCC Art. 122).

(c) Each share of stock shall have the right to one vote. However, the Articles of Organization may provide for the issuance of shares with restricted voting rights. This type of shares will be discussed under "Classes of Shares of Stock" (GLCC Art. 113, par. 1).

Issuance of Stock Certificates. Stock certificates must be issued within one year from the date of the Articles of Incorporation or from the date they are amended to increase the capital stock of the corporation. Meanwhile, provisional stock certificates should be issued to the stockholders. Provisional stock certificates are always registered and are exchangeable for the final stock certificates. When the company is organized by public subscription, the duplicate copies of the prospectus on which the stock subscriptions were made must be exchanged for provisional or final stock certificates within two months from the date of the Articles of Incorporation (GLCC Art. 124).

Provisional and final stock certificates must state (GLCC Art. 125):

(a) The name, nationality and address of the stockholder, when the shares are registered.

(b) The name, domicile and duration of the corporation.

(c) The date the corporation was organized and the filing data of the Public Registry of Commerce.

(d) The authorized capital stock and the total number of shares and their par value.

If the capital stock is constituted by different or successive series of shares, the statement as to the amount of the authorized capital stock and the number of shares shall refer only to the total amount and number of each series.

When the Articles of Incorporation so provide, the par value of the shares may be omitted, in which case the amount of the capital stock shall likewise be omitted.

(e) The amounts paid by the stockholders on account of the price of the shares of stock, or statement that they are fully paid.

(f) The series and number of the final or provisional stock certificate, with statement as to the total number of shares of each series.

(g) The rights granted and the obligations imposed upon the stockholder; and the limitations upon his right to vote, if any.

(h) The signature of the administrator or directors authorized to sign the certificate as determined by the Articles of Incorporation, or the printed facsimiles of their signatures, in which case the original signatures must be filed with the same Public Registry of Commerce with which the Articles of Incorporation have been filed.

When for any reason the text of the stock certificates is modified, the original certificates must be canceled, unless the modification is inserted on the original certificates upon prior certification by a notary public or licensed broker, except in the case contemplated by the paragraph following section (d) above (GLCC Art. 140).

Provisional and final stock certificates may represent one or more shares of stock (GLCC Art. 126).

Coupons. Provisional and final stock certificates must have attached to them coupons to be delivered against the payment of dividends or interest. Coupons may be made out to the bearer even though the stock certificate be registered (GLCC Art. 127).

Amount to Be Paid at the Time of Subscription. The subscriber of shares payable in money must pay 20% of their price at the time of subscription, the balance being payable in the manner provided by the Articles of Incorporation (GLCC Art. 89, Sec. III). Either the Articles may specifically set forth the terms of payment of the unpaid subscription, with respect to the time and the amount of the payment or payments, in which case such terms must be reproduced on the stock certificate; or they may authorize the board of directors or the shareholders to make calls for payment of the balance due on the subscription, which calls will then determine the amount to be paid and the time of payment (GLCC Art's. 118, 119).

Enforcement of Unpaid Subscriptions. Calls made by the stockholders or the board of directors must be published in the

official gazette of the corporation's domicile at least 30 days before the call is due and payable. No call is necessary when the terms of payment of the subscription are stated on the stock certificate. In either case, if the subscriber is in default, the corporation may bring a summary action at law for the amount due; or it may sell the shares of stock (GLCC Art's 118, 119).

The sale of the shares of stock must be made through a licensed broker, and new provisional or final stock certificates, as the case may be, will be issued to the purchaser and the original ones will be canceled. The proceeds from the sale are to be first applied to satisfy the payment due, and any excess must be used to cover the expenses of the sale and legal interest on the delinquent payment. Should there be a balance, it is to be refunded to the original subscriber, provided he claims it within one year from the date of the sale (GLCC Art. 120).

Stockholder's Liability for Unpaid Subscription After Transfer of Shares. The original subscribers and subsequent stockholders who transfer not fully paid shares are liable to the corporation for the unpaid portion of the price of the shares of stock for a term of five years from the date the transfer is recorded in the stock transfer book, but the corporation cannot demand payment from a transferor until all remedies against the transferee have been exhausted (GLCC Art. 117, par. 3).

Failure to Enforce Payment of Unpaid Subscription. If the corporation does not bring legal action for the amount of the delinquent payment within a month after it became due and payable, or if during that time it cannot sell the shares of stock for an amount sufficient to satisfy said payment, the shares will be extinguished and the stockholders shall proceed to decrease the capital stock of the corporation (GLCC Art. 121).

Unpaid Shares. Shares of stock which have not been fully paid must always be registered, but once their price has been paid in full they may be exchanged for bearer shares if the Articles of Incorporation provide for their issuance (GLCC Art. 117, par's. 1, 4).

It is of importance to note that dividends will be paid and, upon dissolution, the assets of the corporation distributed to

the holders of not fully paid shares in proportion to the amount paid on account of the price of the shares of stock (GLCC Art. 17, par. 2).

Payment in Property for Shares of Stock. The subscriber of shares payable in whole or in part in property other than money must pay the full amount of their price at the time of subscription (GLCC Art. 89, Sec. IV). The shares of stock so paid must remain on deposit with the corporation for a period of two years, and if during that time it appears that the property transferred to the corporation is worth less than 25% of its transfer value, the stockholder is liable to the corporation for the difference. The corporation has preference over any creditor for the shares on deposit (GLCC Art. 141).

Restrictions on Issuance of Shares. Corporations are forbidden to issue shares of stock for an amount less than their nominal or par value (GLCC Art. 115). Also, corporations cannot issue new shares of stock unless the ones previously issued have been fully paid (GLCC Art. 133).

Limitations on Corporations to Deal in Their Shares. Corporations are forbidden to acquire their shares of stock except in the case of judicial adjudication for payment of corporate debts. In such a case, the corporation must sell the adjudicated shares within three months from the date it may legally dispose of them, and if they are not sold within that term, they will be considered extinguished and the stockholders shall proceed to decrease the corporation's share capital. While the corporation owns the shares of stock, they cannot be represented at stockholders' meetings (GLCC Art. 134).

The directors who authorize the purchase of shares in violation of the statutory provisions shall be jointly and severally liable for the damages which the corporation or its creditors may suffer by reason thereof (GLCC Art. 138).

Corporations cannot under any circumstances lend or advance money on their own shares as collateral (GLCC Art. 139).

Redemption of Shares. As has been pointed out, corporations cannot purchase their shares except upon adjudication in

payment of corporate debts, and in such case the corporation must sell the shares so acquired within three months from the date it may dispose of them or it must reduce its capital stock.

However, if authorized by the Articles of Incorporation, corporations may redeem or purchase their shares of stock from surplus profits, subject to the following rules (GLCC Art. 136).

(a) The redemption must be approved by a special meeting of the stockholders.

(b) Only fully paid shares may be redeemed.

(c) The shares to be redeemed must be purchased on the market, unless the price at which the shares are to be purchased is fixed by the Articles of Incorporation or by a resolution adopted by a special stockholders' meeting, in which case the shares to be redeemed are drawn by lot before a notary public or a licensed broker. The results of the drawing must be published once in the official gazette of the corporation's domicile.

(d) The redeemed shares shall be canceled and in their place retired participating shares may be issued, if expressly authorized by the Articles of Incorporation.

(e) The stockholders who do not claim the proceeds of the redeemed shares, or the retired participating shares, if issued, within a year from the date of publication of the drawing, shall forfeit such proceeds to the corporation and the retired participating shares, if issued, shall be canceled.

It should be noted that when a corporation purchases its shares of stock from surplus profits, its capital stock remains unimpaired.

Transfer of Shares. Bearer shares are transferred by mere delivery, and their possession is sufficient to consider the holder as their owner. Registered shares of stock are transferred by endorsement, and if transferred otherwise, the reasons therefor must be stated in the stock certificate (GLCC Art. 131). The corporation will consider as owner of registered shares the person who is registered as such in the stock transfer book. The corporation has to record in its stock transfer book the transfer of shares whenever their holders so request (GLCC Art. 129).

Stock Transfer Book. Corporations are required to keep a stock transfer book which shall contain (GLCC Art. 128):

(a) The name, nationality and address of the stockholder, and a list of the shares which he owns, setting forth their number, series, classes and other data.

(b) The payments made on account of the price of the shares.

(c) The transfers effected.

(d) The exchanges of registered for bearer shares.

Restrictions on Transferability of Shares. The Articles of Incorporation may provide that registered shares be transferred only upon prior authorization by the board of directors. If the board denies the authorization to transfer the shares, it must designate a buyer for the shares at their current market value (GLCC Art. 130).

Increase of Capital Stock. As the capital stock of corporations is fixed in the Articles of Incorporation, except in the case of variable-capital corporations, which we shall discuss later, the Articles must be first amended to reflect any change in the capital stock. In general, the procedure to amend the Articles of Incorporation requires, first, passage of a resolution by a special meeting of the stockholders, in this instance, a resolution referring to the amount by which the capital stock is to be increased. The minutes of the special stockholders' meeting then have to be recorded by a notary public in his register and a certified notarial copy of the minutes has to be filed with the Public Registry of Commerce upon prior issuance of a court order to that effect (GLCC Art. 182, Sec's. III, XI; Art. 260).

Corporations are free to increase their capital stock as their needs may require, with the limitation that they cannot issue new shares unless the ones previously issued have been paid in full (GLCC Art. 9, par. 1; Art. 133). When the capital stock is to be increased by issuing additional shares, the shareholders have the right to subscribe for the new shares in proportion of their respective shares. This pre-emptive right must be exercised within 15 days following publication of notice of the capital

stock increase in the official gazette of the corporation's domicile (GLCC Art. 132). The rules for the subscription and payment of shares mentioned before and their issuance are also applicable to shares issued as a consequence of a capital stock increase.

Although the General Law of Commercial Companies refers only to the issuance of new shares of stock as a means of increasing the capital stock, in practice there are various other ways of increasing a corporation's capital stock, such as capitalizing undistributed profits and certain reserves, and increasing the par value of the outstanding shares of stock.

Decrease of Capital Stock. The method to be followed in decreasing the capital stock of a corporation is the same, and for the same reasons, as the one required to increase the capital stock.

When the capital stock is decreased by repayment of shares to the stockholders or by relieving them from the obligation to pay the balance due on their subscriptions, publication of the reduction must be made three times, at intervals of 10 days, in the official gazette of the corporation's domicile in order to afford creditors the opportunity to oppose judicially the contemplated decrease in capital stock (GLCC Art. 9, par's. 2, 3, 4).

The General Law of Commercial Companies stipulates that when the capital stock is to be decreased by repayment of shares to the stockholders, the shares to be retired must be drawn by lot before a notary public or a licensed broker (GLCC Art. 135).

The law allows corporations to decrease their capital stock when it has been impaired (GLCC Art. 18). It is also possible to decrease the capital stock by reducing the par value of the shares, even though the law does not contain any provision in this respect.

Corporations must decrease their capital stock when they do not sell their own shares adjudicated to them in payment of corporate debts within three months from the date they may legally sell them (GLCC Art. 134); when the corporation's shares cannot be sold for an amount sufficient to satisfy the balance due on their price (GLCC Art. 121); and when a shareholder with-

draws from the corporation (GLCC Art. 206). In these cases no resolution of the special stockholders' meeting to decrease the capital stock is required.

CLASSES OF SHARES

Bearer Shares are shares which are not issued in the name of a given person, whether or not they contain a statement that they are bearer shares.

Registered Shares are shares issued in favor of a certain person.

Par Value Shares are shares which show a fixed value obtained by dividing the total amount of the capital stock by the total number of shares into which the capital stock is divided. The par value of the share must be stated in the text of the stock certificate (GLCC Art. 125, Sec. IV).

No-Par Shares of stock are shares without par value. If the Articles of Incorporation authorize the creation of this class of shares, the stock certificates may omit the amount of the capital stock of the corporation and the par value of the shares (GLCC Art. 125, Sec. IV, par. 3).

Common Shares are shares which have no preference or privilege over another class of stock.

Preferred Shares are shares which are accorded a preference over common shares. This preference may be related to the right to receive a fixed percentage of the corporation's profits before any dividend is paid for the common shares, the right to participate in the assets of the corporation upon its liquidation before the common shares, or any other preference. The nature and extent of the preferences of preferred shares are determined by the Articles of Incorporation, subject to the provisions of the General Law of Commercial Companies.

As the General Law of Commercial Companies requires each share to have one vote, non-voting preferred shares cannot be issued. However, this law authorizes the creation of preferred shares with limited voting rights, provided that their holders are granted the following minimal rights (GLCC Art. 113):

(a) To vote at special stockholders' meetings held to consider any of the following matters: extension of the corporation's duration; dissolution before expiration of the corporation's stated duration; change of objects; change of nationality; transformation; and merger and consolidation.

(b) To receive a minimum cumulative dividend of 5% before any dividends are paid to the holders of common shares.

(c) To participate in the corporation's assets before the holders of the common shares upon its liquidation.

The Articles of Incorporation may provide that preferred shares with limited voting rights shall receive a higher dividend than common shares.

The minority stockholders' rights to oppose certain stockholders' resolutions and to examine the corporation's annual balance sheet and books are available to the holders of preferred shares with limited voting rights.

Because the General Law of Commercial Companies does not expressly regulate the creation of preferred "participating" and "non-participating" shares, it is the consensus of opinion of writers on the subject that after the holders of preferred shares have received their fixed dividends, they are entitled to participate in the balance of the profits with the common shareholders, thus making all preferred shares "participating."

It is also the opinion of these writers that when the Articles of Incorporation create "non-participating" preferred shares by providing that the holders of the preferred shares shall receive only a fixed dividend, such provisions are unlawful because they violate that precept of the General Law of Commercial Companies which forbids the exclusion of one or more shareholders from participating in the corporate profits. Nevertheless, the Articles of Incorporation of many corporations provide for the issuance of preferred "non-participating" shares.

Although the General Law of Commercial Companies regulates only the creation of preferred shares with limited voting rights, it is possible to create, within the framework of the law, several classes of preferred shares, each with different preferences.

Fixed "Interest" Shares. The General Law of Commercial Companies authorizes the Articles of Incorporation to provide that shares of stock shall have the right to receive "interest" at the maximum rate of 9% for a period of three years beginning as of the date of issuance, such payments to be charged to general expenses. As "interest" may be paid to the stockholders even though there be no profits, such a provision of the law is, in effect, an exception to the rule which forbids the making of any payments to the stockholders unless the balance sheet actually shows a profit (GLCC Art. 123). This statutory provision is intended to make the investment in shares of stock more attractive, for stockholders will receive "interest" payments for the time during which, normally, most corporations are in a state of development and do not earn sufficient profits to pay dividends.

Participating Retired Shares. Whenever a corporation redeems its shares from surplus profits, the redeemed shares must be canceled and retired; but, if the Articles of Incorporation so provide, the corporation may issue participating retired shares to the holders of the redeemed shares (GLCC Art. 136, Sec. IV).

Participating retired shares are entitled to share in the corporation's profits, but only after the unredeemed shares are paid the dividend fixed in the Articles of Incorporation. The unredeemed shares have preference over participating retired shares in the distribution of the assets of the corporation upon its liquidation, unless otherwise stipulated in the corporation's Articles. The Articles may accord to retired participating shares the right to vote (GLCC Art. 137).

There is a conflict of opinion among the treatise writers as to whether or not retired participating shares are shares of stock in the true sense of the word; that is, that they represent an *aliquot* portion of the corporation's capital stock.

Shares Issued to Employees. The Articles of Incorporation may authorize the issuance of special shares to the persons who render their services to the corporation. The terms and conditions for the issuance of these shares, as well as their value, in-

alienability, and other characteristics must be prescribed in the Articles of Incorporation (GLCC Art. 114).

The classes of shares enumerated before are the only ones covered by the General Law of Commercial Companies, but since the provisions of this law with respect to shares of stock are of a general nature, various classes of shares may be issued within its framework to suit the financial needs of the corporation.

Bonds. Bonds are mentioned only because stock companies are the only legal entities which may issue them. Bonds are regulated by the General Law of Credit Transactions and Instruments, which defines them as "credit instruments issued by corporations which represent the individual participation of the bondholders in a collective credit against the issuing corporation." Bonds may be secured by the general assets of the issuer or by specific security, such as a mortgage or a pledge of certain of its assets (GLCTI Art. 208; Art. 213, Sec. III).

GENERAL STOCKHOLDERS' MEETINGS

The General Law of Commercial Companies provides that the general stockholders' meeting shall be the supreme governing body of the corporation; and that it may resolve, pass upon and ratify all corporate acts and transactions (GLCC Art. 178).

General stockholders' meetings are divided into (GLCC Art. 179):

- (a) General regular stockholders' meetings, hereafter referred to as regular stockholders' meetings; and
- (b) General extraordinary stockholders' meetings, hereafter described as extraordinary stockholders' meetings.

Regular Meetings—Jurisdiction and Time. Regular stockholders' meetings are meetings held to transact any corporate matter not reserved to extraordinary stockholders' meetings (GLCC Art. 180). Regular stockholders' meetings may meet at any time, but one such meeting must be held every year during the four months following the close of the fiscal year (GLCC Art. 181) to:

(a) Discuss, approve or modify the balance sheet, after the examiner has rendered his report in connection therewith, and to adopt the resolutions deemed pertinent.

(b) Appoint the administrator or the board of directors and the examiners, if need be.

(c) Fix the emoluments of the administrator, the directors and the examiner if they have not been fixed in the Articles of Incorporation.

Extraordinary Meetings—Jurisdiction and Time. Extraordinary shareholders' meetings are meetings held to consider any one of the following matters (GLCC Art. 182):

(a) Extension of the corporate duration.

(b) Dissolution of the corporation before the term fixed in the Articles of Incorporation.

(c) Increase or decrease of the capital stock.

(d) Change of objects.

(e) Change of nationality.

(f) Transformation of the corporation.

(g) Merger or consolidation with another corporation or other type of business association.

(h) Issue of preferred stock.

(i) Redemption of capital stock and issue of retired participating shares.

(j) Issue of bonds.

(k) Any other amendment to the Articles of Incorporation.

(l) All those matters for which the law or the Articles of Incorporation require a special quorum.

Extraordinary stockholders' meetings may be held at any time.

Place of Meetings. Regular and extraordinary stockholders' meetings must be held at the corporation's domicile. Stockholders' meetings held elsewhere will be void, except when due to fortuitous circumstances or acts of *force majeure* (GLCC Art. 179).

Called Meetings. Except for the rights granted to individual and minority stockholders to call stockholders' meetings, herein-after discussed, stockholders' meetings must be called by the

administrator or by the board of directors or by the examiners (GLCC Art. 183).

Minority Stockholders' Right to Call Meetings. Stockholders who represent at least 33% of the capital stock may at any time file written request with the administrator or the board of directors or the examiners to call a regular or an extraordinary stockholders' meeting to consider the business therein stated. If the board of directors or the administrator or the examiners refuse to call the meeting, or if they do not do so within 15 days from the date they receive such request, the call may be made by a competent court upon application of the stockholders who represent such a percentage of the capital stock (GLCC Art. 184).

Any stockholder may request the administrator, board of directors or examiners to call a stockholders' meeting in either one of the following instances (GLCC Art. 185):

(a) When a stockholders' meeting has not been held for two consecutive fiscal years; or

(b) When the stockholders' meetings held during that time have not passed upon the corporate balance sheets, or have not named the administrator, the board of directors or the examiners, or have not fixed the remuneration of the administrator, the board of directors or the examiners. If the administrator or board of directors or examiners fail to call the meeting, or if they do not do so within 15 days after the date they are requested to do so, the call may be made by a competent court upon application of the stockholder and after first hearing the administrator, or the board of directors and the examiners.

Also, if, for whatever reason, there is a total absence of examiners, and the administrator or the board of directors does not call a stockholders' meeting within three days from the occurrence of said event to elect examiners, the call may be made by a competent court upon petition of any stockholder (GLCC Art. 168).

Notice of the Meeting. Notice of stockholders' meetings must be published in the official gazette of the state where the corporation has its domicile, or in one of the newspapers with

greater circulation in the corporation's domicile, as many days in advance of the meeting as determined by the Articles of Incorporation or, if they contain no provision in this respect, at least 15 days before the date the meeting is to be held (GLCC Art. 186). The notice of the meeting must contain the order of business and shall be signed by whoever made the call (GLCC Art. 187).

From the time the notice is published until the date the meeting is held, the books, documents, etc., related to the business to be transacted by the meeting must remain at the offices of the corporation for the stockholders' perusal (GLCC Art. 186).

If the notice is not published in due time, as provided in the Articles of Incorporation or, in lieu thereof, in accordance with the General Law of Commercial Companies, or if the notice does not contain the order of business for the meeting, or if it is not properly signed, the resolutions adopted at the meeting will be null and void, except if at the time the votes are cast all of the corporation's outstanding capital stock are represented (GLCC Art. 188).

The Right to Attend Meetings. Generally, the right of stockholders to attend meetings depends upon whether the meeting is regular or extraordinary, and whether the shares of stock he owns have the right to vote at the particular meeting. Stockholders may be represented at meetings by proxies who need not be stockholders. Proxies shall be granted in the manner prescribed in the Articles of Incorporation, and if there be no provision with respect thereto, they must be in writing (GLCC Art. 192, par. 1). The administrator, the directors and the examiners of the corporation cannot act as proxies (GLCC Art. 192, par. 2).

Quorum—Votes Necessary to Adopt Resolutions. A quorum at regular stockholders' meetings shall consist of stockholders representing one-half of the outstanding capital stock of the corporation; and resolutions shall be adopted by the vote of the holders of the majority of the stock represented at such meeting (GLCC Art. 189). To constitute a quorum at extraordinary stock-

holders' meetings three-fourths of the outstanding capital stock of the corporation must be represented; and resolutions must be adopted by the vote of the holders of one-half of the corporation's outstanding capital stock (GLCC Art. 190).

If a stockholders' meeting cannot be held upon first call, a second call shall be made. The second notice of the meeting must comply with the same requirements as the first notice and, in addition, must state that the meeting is being called for the second time. Regular stockholders' meetings held on second call will be organized and resolutions will be adopted regardless of the number of shares represented at the meeting (GLCC Art. 191, par. 1). In the case of extraordinary stockholders' meetings held on second call, a quorum shall be considered present if at least 50% of the outstanding capital stock is represented; and resolutions shall be adopted by the vote of the stockholders representing this same percentage of the capital stock (GLCC Art. 191, par. 2).

It should always be kept in mind that stockholders who are entitled to vote at a given stockholders' meeting shall have one vote for each share of stock they own.

Self-Interest as It Affects the Right to Vote. If a stockholder has a personal interest in a transaction that is opposed to that of the corporation, or represents a third party with such an interest, he is disqualified from voting upon that matter. If, notwithstanding the foregoing, the stockholder casts his vote, he will be liable for the damages suffered by the corporation if his vote was determinant in the adoption of resolutions contrary to the corporation's interest (GLCC Art. 196).

When the administrator, the directors and the examiners are also stockholders, they cannot vote to approve the corporation's annual balance sheet or to relieve themselves of liability to the corporation, and any resolution adopted in contravention of this prohibition will be null and void if the vote of the administrator, directors or examiners, as the case may be, was decisive in the adoption of resolutions relative to those matters (GLCC Art. 197).

Agreements Restricting Stockholders' Right to Vote. Any

agreement which restricts the stockholders' freedom to vote is null and void (GLCC Art. 198).

Conduct of Meetings. Unless otherwise stipulated in the Articles of Incorporation, stockholders' meetings are presided over by the administrator or by the board of directors, and in the absence of one or the other, by the person appointed by the stockholders (GLCC Art. 193).

Whenever the stockholders who represent 33% of the shares of stock request that the voting be postponed to obtain additional information to guide their decisions, the meeting will be adjourned for three days, to be held at the adjourned hour without further notice. This right, however, can be exercised but once for the same business (GLCC Art. 199).

The Articles of Incorporation usually contain detailed provisions relative to the conduct of a stockholders' meetings, such as appointment of election inspectors, method of voting, preparing list of attendance, etc.

Minutes. Minutes of regular and extraordinary stockholders' meetings must be transcribed in a minute book and must be signed by the presiding officer and by the secretary of the meeting, as well as by the examiners who were present. To the minutes must be attached the necessary documents to establish that the meeting was called as required by the law (GLCC Art. 194, par. 1).

If for any reason the minutes of a stockholders' meeting cannot be transcribed in the minute book, they must be recorded by a notary public in his register (GLCC Art. 194, par. 2).

The minutes of extraordinary stockholders' meetings must always be recorded by a notary public in his register and a certified notarial copy of the minutes must be filed with the Public Registry of Commerce (GLCC Art. 194, par. 3).

Legal Effect of Resolutions Adopted at Stockholders' Meetings. Resolutions legally adopted at stockholders' meetings are binding upon absent or dissident stockholders, although, as explained in the next paragraph, the General Law of Commercial Companies grants them a certain measure of relief (GLCC Art. 200).

Remedies of Dissenting Stockholders. Stockholders who represent at least 33% of the capital stock of a corporation may judicially oppose resolutions adopted at stockholders' meetings, provided the following requirements are complied with (GLCC Art. 201):

(a) Their petition is filed in court within 15 days following the adjournment date of the meeting.

(b) The petitioners either did not attend the meeting or voted against the resolution being impugned.

(c) The provision of the Articles of Incorporation or of the legal precept which was infringed, as well as the grounds of the infringement, are set forth in the petition.

Resolutions relative to the liability of the administrator or the board of directors or the examiners cannot be opposed by judicial proceedings.

Execution of the impugned resolution may be suspended by the court if the petitioners post bond sufficient to answer for the damages which the corporation may suffer for its failure to perform such resolution, in the event judgment is rendered against the petitioners (GLCC Art. 202).

When several actions are instituted to oppose the same resolution, they will be joined (GLCC Art. 204).

Judgments on actions to oppose stockholders' resolutions are binding upon all of the corporation's stockholders (GLCC Art. 203).

Rights of Stockholders to Withdraw From the Corporation. The General Law of Commercial Companies allows stockholders to withdraw from a corporation whenever they vote against resolutions adopted at extraordinary meetings to (a) change the corporate objects, (b) change the nationality, or (c) transform the corporation. The stockholders who withdraw receive the book value of their shares of stock as shown by the last approved balance sheet of the corporation. The right of the stockholders to withdraw must be exercised within 15 days following the adjournment of the stockholders' meeting (GLCC Art. 206).

Class Meetings of Stockholders. If the Articles of Incorporation

tion provide for several classes of stock, each with certain rights, any proposal which may prejudice the rights of one of them must be first approved at a meeting of the stockholders of the affected class. At these meetings, the rules of extraordinary stockholders' meetings relative to quorum and number of votes required to adopt resolutions must be followed, with the exception that the number of shares to be taken into account to determine the required percentages is that which constitutes the class (GLCC Art. 195, par. 1).

Resolutions adopted at class meetings of stockholders do not bind the corporation except when the general stockholders' meeting later adopts similar resolutions. However, the general stockholders' meeting cannot pass upon a matter which may be prejudicial to a given class of stockholders unless the stockholders of the class have first approved the matter at a class meeting.

The provisions of the General Law of Commercial Companies as to the place where stockholders' meetings are to be held, the first and second calls, and the right to attend stockholders' meetings by proxy and minutes are applicable to class meetings of stockholders, except that they must be presided over by the stockholder designated at the meeting (GLCC Art. 195, par. 2, citing Art's. 179, 183, 190-194).

Execution of Stockholders' Meetings' Resolutions. Resolutions adopted by the stockholders' must be executed by the person designated by them, or, if none is designated, by the administrator or the board of directors.

ADMINISTRATION

The General Law of Commercial Companies provides that the management of the business of a corporation may be placed in the hands of a single or several administrators (GLCC Art. 142). In case the management is entrusted to two or more administrators, they shall constitute the board of directors (GLCC Art. 143, par. 1). We will hereafter refer to the members of

the board of directors not as administrators but as directors, and to the single administrator as the administrator.

Election. The administrator or board of directors is elected by the regular stockholders' meeting (GLCC Art. 181, Sec. II). The Articles of Incorporation may provide that the stockholders elect either an administrator or a board of directors, and also fix the number of directors who are to constitute the board. Whether a corporation is to be managed by an administrator or by a board of directors should be determined by taking into consideration such factors as financial importance of the enterprise, complexity of the decisions to be made, number of stockholders and, in general, whether it is advisable to have one person decide how the business affairs of the corporation are to be conducted or have several persons who are conversant with the business affairs and needs of the corporation pass upon such matters.

Rights of Minority Stockholders to Appoint Directors. If the board of directors consists of three or more directors, the Articles of Incorporation must determine the rights of the minority stockholders to designate directors; but in every case any minority which represents 25% of the outstanding capital stock may appoint at least one director (GLCC Art. 144, par. 1).

Qualifications of the Administrator and the Directors. Such persons who, by law, are legally unable to engage in commerce cannot hold office as administrators or directors (GLCC Art. 151).

The duties of the administrator and of the directors are personal in nature, and they cannot be discharged by an agent (GLCC Art. 147). Hence, directors cannot vote by proxy at board meetings.

The administrator and the directors may or may not be stockholders (GLCC Art. 142).

The Articles of Incorporation may require other qualifications for directors and the administrator.

Bond to Guarantee Faithful Performance of Duties. The General Law of Commercial Companies requires the adminis-

trator and the directors to post bond with the corporation conditioned for the faithful performance of their duties as determined by the Articles of Incorporation or by the stockholders.

Registration of Appointment of Administrator and Directors. The appointment of the administrator and the directors cannot be recorded at the Public Registry of Commerce unless it be established that they gave the bond required of them (GLCC Art. 153).

Removal. The administrator and the directors may be removed at any time, with or without cause, by the stockholders (GLCC Art. 142). If there are several directors and some of them are removed, the directors still in office may conduct the corporation's affairs if their number is sufficient to constitute a quorum (GLCC Art. 155, Sec. I).

Whenever the administrator or all of the directors are removed, or such a number of directors is removed that the remaining directors do not constitute the quorum required by the Articles of Incorporation, the examiners may appoint a provisional administrator or the required number of provisional directors (GLCC Art. 155, Sec. II).

The foregoing rules also apply when the absence of the administrator or the directors is caused by death, incapacity or otherwise (GLCC Art. 155, par. 1 of Sec. II).

The administrator or director whose term of office has expired continues in office until his successor is elected and qualifies for the position (GLCC Art. 153).

Whenever the stockholders resolve to exact responsibility from the administrator or a director, his tenure of office shall immediately cease (GLCC Art. 162, par. 2). The administrator or director who is removed for cause may be re-elected only if judicially absolved of the charges brought against him (GLCC Art. 162, par. 1).

The directors named by the minority stockholders cannot be removed from office unless all of the other directors are also removed (GLCC Art. 144, par. 2).

Meetings of the Board of Directors. The board of directors

acting as a body manages the corporation within the scope of its powers. Generally, the Articles of Incorporation state when board meetings are to be held; the place where they shall meet; who has authority to call the meetings; and how notice of the meetings is to be given to the directors.

Quorum—Votes Necessary to Adopt Resolutions. In order for the board of directors to function as such, the presence of at least one-half of its members is required to constitute a quorum; and its resolutions shall be adopted by the majority vote of the directors present. Each director has one vote, but in case of a tie in the voting, the chairman of the board shall cast the deciding vote (GLCC Art. 143, par. 3).

Self-Interest as It Affects the Right to Vote. If in a given transaction a director has an interest contrary to that of the corporation, he has the obligation to make it known to the other directors and to abstain from discussing and voting upon the matter. The director who violates this provision of the law is answerable to the corporation for the damages it might suffer (GLCC Art. 156).

Duties and Powers of the Administrator and the Board of Directors. The main duty of the administrator and of the board of directors is to render to the corporation a conscientious consideration of every question involving its interests, within the scope of the powers granted to one or the other by the corporation's Articles.

Article 10 of the General Law of Commercial Companies provides that the administrator or the board of directors may perform all of those transactions inherent in the corporation's purposes, subject to the limitations imposed by the law and the Articles of Incorporation. In keeping with the foregoing, the Articles may grant to the board of directors unlimited or restricted powers. If the powers are restricted, the excluded powers must be exercised by the general stockholders' meetings.

Liability of the Administrator and of the Directors to the Corporation. Article 157 of the General Law of Commercial Companies provides that the administrator and the directors

shall be answerable for the obligations inherent in their office and for those which the law and the Articles of Incorporation impose upon them.

The administrator is individually liable, and the directors jointly and severally, to the corporation for (GLCC Art. 150):

- (a) The execution of the stockholders' contributions.
- (b) The lawfulness of the dividends paid to the stockholders.
- (c) The existence and regular maintenance of the books required by law.
- (d) The strict performance of the stockholders' resolutions.

Directors who are not at fault are not liable with their co-directors if they object to a wrongful transaction at the time it is being acted upon by the board (GLCC Art. 159).

The administrator and the directors are jointly and severally answerable with their predecessors for the latter's liabilities if, learning of them, they fail to disclose them in writing to the examiners (GLCC Art. 160).

The liabilities of the administrator and the directors to the corporation for wrongful acts can be enforced only if authorized by the stockholders, who must designate the person to bring suit in the name of the corporation (GLCC Art. 161). Notwithstanding the foregoing, the stockholder or stockholders who represent at least 33% of the outstanding capital stock of the corporation may directly bring suit against the directors, subject to the following conditions (GLCC Art. 163):

- (a) That the complaint states the total amount of damages payable to the corporation, and not just the personal interest of the complainant in the action; and
- (b) That the complainant voted against the stockholders' resolution to the effect that there were no liabilities to enforce against the directors being sued.

Any recovery of damages belongs to the corporation.

Execution of the Board of Directors' Resolutions. The board may designate one of its members to execute specific acts in the name of the corporation; and if no one be specifically designated,

the chairman of the board shall then execute them (GLCC Art. 148).

Delegation of Authority by the Administrator and the Board of Directors. Within the scope of their authority, the administrator and the board of directors may, without restricting their powers, delegate authority and confer power of attorney in the name of the corporation. The authority delegated and the power of attorney conferred may be revoked at any time; but the expiration of the term of office of the administrator or the board of directors does not constitute a revocation (GLCC Art's. 149, 150). Thus, the Articles of Incorporation usually permit the administrator or the board of directors to delegate to special or general managers or to other officers and agents authority to transact the ordinary affairs of the corporation.

OFFICERS

Because the board of directors directs or controls the corporate affairs only when it meets as a body, the ordinary business of a corporation is transacted by the officers designated in the Articles of Incorporation. The only officers to which the General Law of Commercial Companies makes reference are the chairman of the board and the general and special managers. The Articles, however, frequently provide that the board of directors or the stockholders may elect a president of the company, one or more vice presidents, treasurers, secretaries and such other officers as are considered necessary.

Chairman of the Board—Election and Powers. The General Law of Commercial Companies provides that, unless otherwise directed by the Articles of Incorporation, the director first elected by the stockholders shall be the chairman of the board, and that in his absence, the director second in the order of election shall so act (GLCC Art. 143, par. 2). Thus, the Articles frequently provide that the stockholders may elect the chairman from among the directors, regardless of the order of their election, or permit the directors to elect the chairman from among themselves.

With reference to the chairman's powers, the law is to the effect that he may cast the deciding vote in case there is a tie in the voting at board of directors' meetings (GLCC Art. 143, par. 3). Also, the law provides that if the board does not designate one of its members to execute a specific act in the name of the corporation, the chairman shall do so (GLCC Art. 148). The Articles of Incorporation often enlarge the powers of the chairman of the board, it not being uncommon for them to provide that he shall have the power to bind the corporation by authorizing him to sign in its behalf.

General and Special Managers—Election and Powers. The day-to-day management of the corporation's business and the performance of the transactions necessary for the fulfillment of its purposes are, as a general rule, entrusted to a general manager. Article 145 of the General Law of Commercial Companies directs that the stockholders or the board of directors or the administrator may appoint one or more general or special managers, who may or may not be stockholders, whose appointment may be revoked at any time by the stockholders, the board of directors or the administrator. Under Article 146 of the law, managers have the powers expressly conferred upon them; and they do not need special authority from the administrator or from the board of directors to perform any act within the scope of their authority. The distinction between general and special managers lies in the extent of their duties. Usually, a general manager conducts the general business of a corporation and the special manager only the affairs of a department or branch.

It is important to note that, under the General Law of Credit Instruments and Transactions, managers are presumed to have sufficient power to issue negotiable instruments in the name of the corporation by mere virtue of their appointment as such (GLCIT Art's. 85, 174, 196). If the general manager is not to have the power to issue bills of exchange or promissory notes in the name of the corporation, this limitation must be set forth in the Articles or in the instrument conferring power of attorney upon the manager.

Qualifications of the Managers. The qualifications which the General Law of Commercial Companies requires of managers are the same as those it demands for the administrator and directors (GLCC Art. 152). Hence, the statements made before in connection therewith are applicable; as are those relative to bond posting to guarantee faithful performance of their duties and the registration of their appointments (GLCC Art. 153).

Agents. Within the scope of their authority, the managers may, without restricting their powers, delegate authority and confer powers of attorney in the name of the corporation. The authority delegated and the power of attorney conferred may be revoked at any time; but the expiration of the term of office of the manager who delegated the authority or conferred the power of attorney does not constitute a revocation (GLCC Art's. 149, 150).

Other Officers. As previously stated, the Articles of Incorporation may provide that the stockholders or the directors may elect a president of the corporation, vice presidents, treasurers, secretaries and other officers. In such a case the Articles will also state their qualifications, and fix their duties and powers or permit the appointing body to do so.

BALANCE SHEET

The General Law of Commercial Companies provides that corporations must prepare an annual balance sheet which must state the amount of the capital stock and whether it is fully paid and, if not, the amount which is still outstanding; the cash on hand; the accounts which reflect the assets and liabilities; the profits or losses; and other data necessary to show clearly the financial condition of the corporation (GLCC Art. 172).

The balance sheet must be prepared within three months following the close of each fiscal year, and the administrator or the board of directors have to deliver it to the examiners at least one month before the regular stockholders' meetings is to be

held, together with the vouchers and a general report as to the business conditions of the company (GLCC Art. 173).

Within 15 days following the date on which the examiners receive the balance sheet with its exhibits, they shall prepare a report which shall include their observations and recommendations which they deem pertinent (GLCC Art. 174).

The balance sheet, with its exhibits and the examiner's report, must be in the possession of the administrator or the board of directors 15 days before the date on which the regular shareholders' meeting is to be held so that the shareholders may examine these documents at the offices of the company (GLCC Art. 175).

If the administrator or the board of directors do not deliver the balance sheet on time, or if the examiners do not prepare the report when due, the regular stockholders' meeting may remove the administrator or the board of directors or the examiners, without prejudice as to any liabilities they might have incurred (GLCC Art. 176).

Within 15 days from the date on which the regular stockholders' meeting approves the balance sheet, it shall be published in the official gazette of the state where the corporation has its domicile, and a copy of the balance sheet shall be filed with the Public Registry of Commerce. If the approval of the balance sheet by the regular stockholders' meeting is challenged on time, the grounds therefor, together with the names of the dissatisfied stockholders and the number of shares they represent, must be given in the balance sheet to be published and filed as stated above (GLCC Art. 177).

SUPERVISION OF THE COMPANY

The supervision of the regular conduct of business of the corporation is vested in one or more examiners (GLCC Art. 164).

Election of Examiners. Examiners are elected by the stockholders for a specified term (GLCC Art. 164). If the examiners' term of office expires without their successors being yet elected,

they continue in office until their successors are named and take over their duties (GLCC Art. 171, citing GLCC Art. 154).

Rights of Minority Shareholders to Appoint Examiners. The stockholder or stockholders who represent 25% of the outstanding capital stock of a corporation have the right to appoint at least one examiner if there are three or more examiners (GLCC Art. 171, citing Art. 144). The Articles of Incorporation often enlarge this right of the minority and prescribe that it may designate an examiner irrespective of the number of examiners named by the majority.

Qualifications of Examiners. Unlike administrators and directors, the duties of the examiner are not personal in nature and he is allowed to discharge his duties through a representative. It is for this reason that credit institutions with authority to act as trustees may act as examiners.

None of the following persons may be examiners (GLCC Art. 165): (a) employees of the corporation; and (b) relatives of the administrator and the directors by lineal consanguinity without limitation as to the degree, the collateral relatives by consanguinity within the fourth degree, and the relatives by affinity within the second degree.

With the foregoing exceptions, all of the statements made under the heading "Qualifications of the Administrators and of the Directors" apply also to examiners.

Removal. Examiners may be removed from office by the stockholders at any time (GLCC Art. 164).

If the stockholders resolve to exact responsibility from an examiner, he shall immediately be suspended from office (GLCC Art. 171, citing GLCC Art. 162, par. 2). The examiner who is removed for cause may be re-elected to office only if absolved by judicial authority of the charges brought against him (GLCC Art. 171, citing GLCC Art. 162, par. 1).

The examiner designated by the minority shareholders cannot be removed from office unless all of the other examiners are also removed (GLCC Art. 171, citing GLCC Art. 144, par. 2).

Absence of Examiners. When for any reason there is a total

absence of examiners, the board of directors or the administrator must call a stockholders' meeting within three days after the occurrence of the event so that examiners can be elected. If the administrator or the directors do not call the meeting within that term, a competent court will make the call upon application of any stockholder. If the stockholders' meeting does not meet or if it meets and the examiners are not elected, the examiners will be appointed by competent court upon petition of any stockholder and will remain in office until the stockholders' meeting makes a definite election (GLCC Art. 168).

Duties and Powers of the Examiners. Examiners have the following powers and duties (GLCC Art. 166):

(a) To ascertain whether the administrator, the directors and the general manager have posted the bond required of them to secure any liabilities they might incur in the discharge of their duties, and to see that said bond is kept in force; and to notify the stockholders' meeting without delay if there be any irregularities in this connection.

(b) To demand from the administrator or the directors a monthly trial balance of all transactions performed.

(c) To audit at least once a month the corporate books and records as well as the cash on hand.

(d) To participate in the preparation and revision of the annual balance sheet.

(e) To include in the agenda of the meetings of the board of directors and of the stockholders the items they consider pertinent.

(f) To call regular and extraordinary stockholders' meetings in the event the administrator or directors fail to do so, and in any other case when they deem it advisable.

(g) To attend, without the right to vote but with the right to participate in the discussions, all of the meetings of the board of directors and of the stockholders.

(h) In general, to supervise without limitation and at any time the conduct of business of the corporation.

Liability of Examiners. In general, examiners are severally liable to the corporation for fulfillment of the duties which the

General Law of Commercial Companies and the Articles of Incorporation impose upon them (GLCC Art. 169).

Examiners are liable to the corporation for any losses suffered by it if they participate in any transaction in which their interests and those of the corporation are contrary to each other (GLCC Art. 170).

Examiners are jointly and severally liable with their predecessors for the wrongful acts of the latter if, having knowledge of them, they do not disclose them in writing to the stockholders' meeting (GLCC Art. 171, citing GLCC Art. 160).

The liability of the examiners may be enforced by the corporation or by the stockholders who represent 33% of the outstanding capital stock in the same manner as liability may be enforced against the administrator or directors (GLCC Art. 171, citing GLCC Art's. 161, 163).

Rights of the Stockholders as to Supervision of the Corporation. When a stockholder considers that the administration of the corporation is being wrongfully conducted, he may so notify the examiners in writing; and the examiners must refer to these notices in their reports to the stockholders, and must make those recommendations with respect to them which they consider pertinent (GLCC Art. 167).

Advantages and Disadvantages. Because the liability of the stockholders is limited to the price of the shares of stock subscribed by them, and also due to the ease with which shares of stock are transferred, this type of business association is suitable practically to any kind of commercial venture.

Similar Companies Under the Common Law Legal System. The equivalent of this type of business association is the corporation which is formed for transacting business in the widest sense, including not only trade, but every form of industrial and commercial activity where the main purpose of the corporation is financial profit.

LIMITED PARTNERSHIP WITH SHARES

This type of company is defined as a company of capital. However, the personal element is not totally lacking as it is in the corporation, which is a typical company of capital. It is for this reason that the limited partnership with shares is occasionally called a mixed company.

Definition. The limited partnership with shares, or *Sociedad en Comandita por Acciones*, is defined by Article 207 of the General Law of Commercial Companies as a company "composed of one or more active partners who are secondarily, unlimitedly and jointly and severally liable for the company's obligations, and of one or more silent partners who are liable only to the limit of their shares."

This type of company is governed by the rules applicable to corporations, except as otherwise stated herein (GLCC Art. 208).

Firm Name or Denomination. The limited partnership with shares may function under a firm name which must contain the names of one or more of the active partners, followed by the words *y Compañía* or some other equivalent if the names of all of the partners are not included in the firm name (GLCC Art. 210). This company may also operate under a denomination. To the firm name or the denomination must be added the words *Sociedad en Comandita por Acciones* or their abbreviation, *S. en C. por A.* (GLCC Art. 210).

If the limited partnership with shares operates under a firm name, all of the rules governing the use of the firm name discussed under the general rule and limited partnership are also applicable here (GLCC Art. 211, citing GLCC Art's. 28, 29, 54).

Capital Stock. The capital of the company is divided into shares of stock. The shares of stock of the active partners shall always be registered and they cannot be transferred without the consent of all of the other active partners and of two-thirds of the silent partners (GLCC Art. 209).

Administration. Rules for the participation of silent partners in the administration of a limited partnership with shares are the same as for the silent partners of a limited partnership, and the statements made in connection with the latter are applicable also in this instance (GLCC Art. 211, citing GLCC Art's. 54, 55).

When the administrator is an active partner of the company it may be provided in the Articles of Organization that he cannot be removed. In such a case, the partner may be removed only for fraud, deceit or incompetence and only upon prior court order (GLCC Art. 211, citing GLCC Art. 39).

Limitation of Liability. Active partners of a limited partnership with shares cannot limit their unlimited and joint and several liability by stipulation in the Articles of Organization, and any such stipulation will be invalid as to third parties, although the partners may, among themselves, restrict their liability to a given amount (GLCC Art. 211, citing GLCC Art. 26).

Partners' Obligation Not to Compete. The active partners are also forbidden to engage in any business that competes with the partnership, either for their own account or for the account of others, as well as to associate themselves with companies engaged in such activities, except with the consent of the other partners. Within three months after the company has knowledge of the violation of this precept it may expel the offending partner and deprive him of his benefits therein, and he will also be liable for losses suffered by the company (GLCC Art. 211, citing GLCC Art. 35).

Death of an Active Partner. The Articles of Organization of the limited partnership with shares may provide that in the event of the death of any of the active partners, the company may continue with his heirs (GLCC Art. 211, citing GLCC Art. 32).

Rescission of Articles of Organization. Articles of Organization of this form of company may be rescinded as to any active partner for the same reasons that they may be rescinded in the case of an active partner of a limited partnership (GLCC Art. 211, citing GLCC Art. 50).

Advantages and Disadvantages. The comments made on the limited partnership are also applicable to the type of company under discussion, although it should be noted that there are no restrictions on the negotiability of the shares of stock of the silent partners.

Similar Companies Under the Common Law Legal System. In the sense that a limited partnership with shares is a company which partakes of the characteristics of the general partnership and of the stock company, as defined by the General Law of Commercial Companies, it can be said that its nearest equivalent is the joint stock company, which also has many of the features of the general partnership and of the private business corporation.

COOPERATIVE COMPANIES

Article 212 of the General Law of Commercial Companies provides that cooperative companies shall be governed by special legislation. Accordingly, these companies are governed by the General Law of Cooperative Companies of January 11, 1938, and by its regulations of June 16, 1938.

There is no doubt that, under Mexican law, cooperatives are commercial companies, for, as we have already seen, if the founders of a company adopt one of the structures provided by the General Law of Commercial Companies, that company is a commercial company, even though financial gain is not its main purpose.

We will deal very briefly with cooperatives because by their nature they are not suitable for those enterprises whose chief aim is profit.

Article 1 of the General Law of Cooperative Companies provides that cooperatives must meet the following requirements:

- (a) They must be composed of persons who are members of the working classes and who, in the case of producers' cooperatives, contribute their personal labor; or who, in the case

of consumers' cooperatives, use the services supplied by the cooperatives or make their purchases through them.

(b) All of their members have the same rights and duties.

(c) The number of their members must be variable but is never less than ten.

(d) Their capital is variable and their duration indefinite.

(e) Each member has one vote.

(f) The enterprise does not pursue any financial gains.

(g) They seek the social and financial improvement of their members through their joint action in a collective pursuit.

(h) Their profits are distributed *pro rata* among the members in proportion to the length of time worked by each one of them in the case of producers' cooperatives or, when dealing with consumers' cooperatives, in proportion to the amount of the transactions performed by each member.

P A R T I I I

Variable-Capital Companies

Definition. The definition of variable-capital companies is found in Article 213 of the General law of Commercial Companies, which provides that variable-capital companies may increase their capital by the additional contributions of existing members or by the contributions of incoming members; and that they may decrease their capital by the partial or total withdrawal of the members' contributions.

Article 1 of the General Law of Commercial Companies provides that any of the commercial companies organized thereunder may be formed as a variable-capital company. Hence, a variable-capital company is not a commercial company different from the ones that have been discussed; but, on the contrary, it is a company having all of the characteristics of one of those that have been considered, with the sole exception that its capital is variable instead of fixed.

Governing Provisions. With the exceptions mentioned here-

after, variable-capital companies are governed by the provisions of the General Law of Commercial Companies applicable to the form of company under consideration, and by the provisions of the law applicable to corporations concerning the balance sheet and the liability of the administrators (GLCC Art. 214).

Firm Name or Denomination. To the firm name or denomination of a variable-capital company the following words should be added: *de Capital Variable* (GLCC Art. 215).

Corporations and Limited Partnerships With Shares—Issuance of Stock. Corporations and limited partnerships with shares with variable-capital stock are required to issue only registered stock certificates (GLCC Art. 218).

Advertisement of Capital Stock. Corporations and limited partnerships with shares with variable-capital stock are forbidden to advertise their authorized capital stock unless they disclose their minimum capital stock at the same time. The administrator or the board of directors, or any other officers of the company who violate this precept, are liable for the damages they may cause thereby (GLCC Art. 217, par. 2).

Minimum and Authorized Capital. Corporations and limited partnerships with shares with variable-capital stock must be organized with a minimum capital stock of 25,000 pesos, and limited-responsibility companies with a minimum capital of 5,000 pesos. The minimum capital of general and limited partnerships with variable capital cannot be less than one-fifth of their initial capital (GLCC Art. 217, par. 1).

Because the law does not specify with certainty how the authorized capital of a variable-capital company is to be stated in its Articles of Organization, a certain degree of confusion exists in this respect. Thus, the Articles of some corporations fix both the minimum and authorized capital stock at definite amounts in Mexican currency; while others often fix the minimum capital stock and provide that the authorized capital stock shall be unlimited; and there are those which omit all references to an authorized capital.

Organization. The Articles of Organization of all variable-capital companies must state, in addition to the legal provisions

applicable to the nature of the company under consideration, the terms and conditions to increase or decrease their capital (GLCC Art. 216, par. 1).

Increase in Capital. As previously stated, the capital of a variable-capital company may be increased by additional contributions of existing members or by contributions of incoming members.

In the case of corporations and limited partnerships with shares with variable-capital stock, the Articles or the extraordinary stockholders' meeting fix the capital stock increases and determine the conditions and manner under which the shares representing the capital stock increase are to be issued. The unissued shares of stock or their provisional stock certificates, as the case may be, have to be kept by the corporation or limited partnership with shares to be delivered as they are subscribed (GLCC Art. 216, par. 2). All other companies with variable capital increase their capital solely in the manner provided in the Articles of Organization.

When general partnerships, limited partnerships and limited-responsibility companies with variable capital increase their capital through the contributions of incoming partners, compliance must also be made with the rules previously mentioned for the admission of new partners to these companies. When the capital stock of corporations and of limited partnerships with shares is increased, the rights granted by the law to the stockholders to subscribe the shares to be issued in proportion to the number of shares which they own must also be observed.

Decrease in Capital. The General Law of Commercial Companies grants to the members of variable-capital companies the right to withdraw all or part of their contributions upon prior positive notice given to the company. If the notice is given before the last quarter of the company's fiscal year, the notice will not be effective until the end of that fiscal year; and if the notice is given after the last quarter of the company's fiscal year, then it will not be effective until the end of the following fiscal year (GLCC Art. 220). No reasons need be given by the member for his withdrawal. The law is silent as to how contributions to be

returned to the withdrawing members are to be computed.

The law expressly forbids a member to withdraw from a variable-capital company if, as a consequence thereof, the capital of the company would decrease below its minimum (GLCC Art. 221).

The right of withdrawal discussed above is peculiar to variable-capital companies and should not be confused with the right of members to withdraw for cause in instances provided for by the General Law of Commercial Companies, which applies also to the members of variable-capital companies.

Variable-capital companies may also decrease their capital just as companies with fixed capital, subject to the provisions of the General Law of Commercial Companies for the type of company under consideration and to its Articles of Organization.

Publication and Registration. Article 213 of the General Law of Commercial Companies provides that variable-capital companies may increase or decrease their capital without any other formalities than those stated in Chapter VIII of said law, which deals with variable-capital companies. Hence, the consensus of opinion is that when the capital of such a company is decreased, no publication thereof need be made; and also that the minutes of the extraordinary stockholders' meeting increasing or decreasing the capital of a corporation or of a limited partnership with shares do not have to be recorded by a notary public in his register or filed with the Public Registry of Commerce.

Variations of Capital Register. The law requires all variable-capital companies to keep a register wherein all increases or decreases in the capital of the company shall be recorded (GLCC Art. 219).

Advantages and Disadvantages. The chief advantage offered by adopting a variable-capital structure is that the companies thus organized may increase or decrease their capital within the minimum and authorized maximum without need of amending their Articles of Organization, thus avoiding time-consuming procedures and expenses involved in such proceedings. The main disadvantage of variable-capital companies is that by their nature any member may demand reimbursement of his

contribution at any time and without any reason therefor, and thus the possibility exists that the financial standing of the company may be endangered at a given time by a retiring member.

P A R T I V

Merger, Consolidation and Transformation

MERGER AND CONSOLIDATION

Definition. Chapter IX of the General Law of Commercial Companies uses the term "fusion" indistinctly to refer to consolidation and merger. The context of the Articles of this Chapter clearly shows that consolidation takes place when two or more companies transfer their assets to a single new company which assumes their liabilities and, by the same process, the consolidating companies cease to exist; and that merger occurs when one or more companies transfer their assets to an existing company and, by the same process, the merged companies cease to exist separately.

Procedure. The process of merger or consolidation begins with the adopting of resolutions approving such action, such resolutions to be taken in the manner prescribed by law for the type of companies involved (GLCC Art. 222). These resolutions must be filed with the appropriate Public Registry of Commerce and must also be published in the official gazette of the state wherein the companies have their domiciles. Also, each of the companies involved must publish its last balance sheet, and those which are to cease to exist must, in addition, publish the system to be followed to satisfy their debts (GLCC Art. 223).

Time of Consolidation or Merger—Rights of Creditors. The merger or consolidation does not become effective until three months after the resolutions to merge or consolidate are filed with the Public Registry of Commerce (GLCC Art. 224, par. 1).

During that time, any creditor of the consolidating or merging companies may object to the consolidation or merger through summary legal proceedings. If such proceedings be instituted the consolidation or merger will be suspended until judgment is rendered against the objecting creditors. When the consolidation or merger becomes effective, the new company, or the one which will continue in existence, will assume the obligations of the consolidated or merged companies (GLCC Art. 224).

Consolidation or merger may become effective upon recording the resolutions to merge or consolidate in the Public Registry of Commerce if the new company or the one which is to continue to exist expressly agrees to pay the debts of the consolidated or merged companies; or if the total amount of the companies' debts is deposited with a credit institution; or if the creditors of said companies give their consent to the consolidation or merger. In this case all debts will be payable when due. If the amount of the debts of the consolidated or merged companies is deposited in a credit institution, the certificate of deposit must be published just as the resolutions to merge or consolidate are (GLCC Art. 225).

TRANSFORMATION

Any company may change or transform its legal structure into another of the types recognized by the General Law of Commercial Companies. The procedure to transform one type of company into another type is the same, insofar as possible, as the one required to merge or consolidate companies (GLCC Art. 228).

P A R T V

Dissolution and Liquidation

Dissolution in General. Under Article 229 of the General Law of Commercial Companies, commercial companies are dissolved when:

(a) The duration specified in their Articles of Organization expires.

(b) They are unable to continue performing their principal object, or when this object has been accomplished.

(c) Their members authorize the dissolution in the manner prescribed by the law and the Articles of Organization.

(d) The number of stockholders of corporations or limited partnerships with shares falls below the minimum permitted by law; or when the portions of interest of the members of other forms of companies merge in a single person.

(e) They lose two-thirds of their capital.

General Partnerships. General partnerships are to be dissolved also upon the death, incapacity, exclusion or withdrawal of a partner, unless the Articles of Organization provide otherwise; or because the Articles of Organization are rescinded as to a partner (GLCC Art. 230, par. 1).

In the case of the death of a partner of a general partnership, the company may continue with the decedent's heirs, but only if they give their consent. If the contrary be the case, the company must deliver to the heirs within two months the deceased partner's portion in the company, as per the last approved balance sheet (GLCC Art. 230, par. 2).

Active Partners of Limited Partnerships and of Limited Partnerships With Shares. The foregoing rules are also applicable to active partners of the limited partnerships and to the active partners of limited partnerships with shares (GLCC Art. 231).

Continuance of Existence After Dissolution. Dissolved companies continue to have legal capacity, but only for the purpose of their liquidation (GLCC Art. 244).

Dissolution Procedure. Inasmuch as a company becomes dissolved at the end of the number of years fixed in its Articles of Organization as its duration, no dissolution proceedings are required to dissolve a company whose duration has expired (GLCC Art. 232, par. 1).

When grounds for dissolution do not exist and yet the members of a company voluntarily resolve to dissolve it, the resolution authorizing the dissolution has to be filed with the Public Registry of Commerce (GLCC Art. 232, par. 2).

When grounds for dissolution do exist and their existence has been established, the authorized body of the company must vote its dissolution and the resolution approving such action must be filed with the Public Registry of Commerce (GLCC Art. 232, par. 2). If grounds for dissolution exist, yet the resolution on dissolving the company is not filed with the Public Registry of Commerce, a competent court will summarily order the company's dissolution upon application of any interested party (GLCC Art. 232, par. 3). On the other hand, any interested party who believes there was no legal basis for dissolving a company may, within 30 days from the date on which the resolution to dissolve the company was filed with the Public Registry of Commerce, institute summary legal proceedings to cancel the filing of said resolution (GLCC Art. 232, par. 4).

Effect of Dissolution. Under Article 233 of the General Law of Commercial Companies, administrators are forbidden to transact any new company business after:

- (a) Its duration has expired; or
- (b) The members have resolved to dissolve it; or
- (c) It has been established that grounds for dissolution exist.

In case of violation of this precept, the administrators are jointly and severally liable for the transactions they perform.

Liquidation. Once a company is dissolved it has to be liquidated (GLCC Art. 234).

Liquidators. Liquidation is performed by one or more liquidators who are the legal representatives of the company (GLCC Art. 235). When there are two or more liquidators, they must act jointly (GLCC Art. 239).

Election and Appointment of Liquidators. If the Articles of Organization do not provide for the appointment of the liquidators, they must be elected by the members of the company. The resolution electing the liquidators has to be adopted in the proportion and manner specified by the General Law of Commercial Companies for the adoption of resolution to dissolve the type of company in question. Liquidators must be appointed at the same time the members resolve to dissolve the company or recognize the existence of legal grounds therefor. When a company is dissolved by the expiration of its duration or by court decree, the liquidators must be elected immediately after the occurrence of either one of such events (GLCC Art. 236, par. 1). When for any reason the liquidators are not elected in the manner stipulated by the statute, a court of law will summarily appoint them upon application of any member (GLCC Art. 236, par. 2).

Until the appointment of the liquidators is recorded at the Public Registry of Commerce and they have taken office, the administrators shall continue in office (GLCC Art. 237).

Removal. Liquidators may be removed by resolution of the members adopted in the same proportion and manner as the resolution electing them to office; or by a competent court upon summary suit brought by any member (GLCC Art. 238, par. 1).

Liquidators who are removed shall remain in office until their successors are elected and take office (GLCC Art. 238, par. 2).

Liquidation Procedure—Powers of the Liquidators. Companies are liquidated in accordance with the method of procedure fixed in their Articles of Organization or in the resolution adopted by the members at the time they vote to dissolve the

company or acknowledge the existence of legal grounds for its dissolution. If the liquidation procedure is not so determined, companies are liquidated in accordance with the provisions of Chapter XI of the General Law of Commercial Companies, which treats of liquidation (GLCC Art. 240).

After the liquidators have been elected the administrators must deliver to them all of the company's assets, books and documents. An inventory of the company's assets and liabilities must always be made (GLCC Art. 241).

Unless otherwise provided by the Articles of Organization or by the resolution of the members, the liquidators shall (GLCC Art. 242):

(a) Conclude all of the company's transactions pending at the time of dissolution.

(b) Collect the debts due the company and pay its debts.

(c) Sell the company's assets.

(d) Distribute to each member his share in the remaining assets.

(e) Prepare a final balance sheet of the liquidation proceedings, to be approved by the members in the manner required for the type of company in question.

The approved balance sheet must be filed with the Public Registry of Commerce.

(f) Cancel the registration of the Articles of Organization at the Public Registry of Commerce after the liquidation has been terminated.

Distribution of the Assets of General Partnerships, Limited Partnerships and Limited-Liability Companies. After payment of their debts, the remaining assets of these companies shall, unless otherwise provided in the Articles of Organization, be distributed among the partners in accordance with the following rules (GLCC Art. 246):

(a) If they can be easily divided, they shall be distributed to the partners in proportion to each one's interest in the common fund.

(b) If they be of diverse nature, they shall be divided into the respective number of proportionate lots, with the partners

to compensate each other for any difference that might exist in their portions.

(c) Once the lots have been formed, the liquidators shall call a meeting of the partners to consider the proposed distribution. If the partners believe the proposed distribution to be detrimental to their interests, they shall have a period of eight working days, commencing with the day following the date of the meeting, to request that it be modified.

(d) If the partners give their consent to the proposed distribution, or if during the term mentioned in the preceding paragraph they do not request that it be modified, it shall be assumed that the proposed distribution has been approved and the liquidators shall make the distribution and issue whatever documents may be required in each case.

(e) If during the term mentioned in paragraph (c) the partners request that the proposed division of the assets be modified, the liquidators shall, within eight days, call another meeting of the partners so that the necessary modifications can be made by mutual consent. If it is not possible to obtain the consent of the partners, the liquidators shall distribute to the partners in common the lot or lots on which no agreement was reached, the rights of such partners to be governed by the rules of co-ownership.

(f) If the liquidation of the company is caused by the death of one of the partners, the partition or sale of the company's realty shall be made in accordance with the rules of the General Law of Commercial Companies even though there be minors among the deceased partner's heirs.

Distribution of the Assets of Corporations and of Limited Partnerships With Shares. The liquidators of these companies must distribute the balance of their assets among the stockholders in accordance with the following rules (GLCC Art. 247):

(a) In the final balance sheet there shall be stated the portion which belongs to each stockholder in the remaining assets.

(b) The final balance sheet must be published three times, at intervals of ten days, in the official gazette of the state wherein the company has its domicile.

The balance sheet, as well as the books and records of the company, must remain for a like term at the disposal of the stockholders, who shall have a term of fifteen days from the date of the last publication of the balance sheet to file their claims with the liquidators.

(c) Once the fifteen-day term mentioned in the preceding paragraph has expired, the liquidators must call a stockholders' meeting to approve the final balance sheet. This meeting must be presided over by one of the liquidators.

After the final balance sheet has been approved the liquidators must pay to the stockholders, against delivery of their stock certificates, the sums to which they are entitled (GLCC Art. 248).

Any sums of money belonging to the stockholders and not collected by them within two months from the date of approval of the final balance sheet shall be deposited with a banking institution for their payment. If the stockholders hold registered stock, their names shall be given to the bank; but if they own bearer stock only, the number of the stock certificates need be given (GLCC Art. 249).

Partial Distribution of Assets. Should it become difficult to pay the company's debts, no member may demand from the liquidators full distribution of his portion of the assets before these debts have been paid or their amount has been deposited; but he may demand from the liquidators partial distribution of such portion in an amount compatible with the interests of the company's creditors (GLCC Art. 243, par. 1).

The liquidators' decision to make partial distribution of the assets must be published in the official gazette of the state of the company's domicile; and the company's creditors shall have the right to object to such distribution in the same manner as they may object to a reduction of the company's capital (GLCC Art. 243, par. 2).

Books and Records. The liquidators have to keep on deposit the books and records of the company for a term of ten years from the date the liquidation has been concluded (GLCC Art. 245).

Liability of the Liquidators. Liquidators are liable for acts which they perform beyond the scope of their authority (GLCC Art. 235).

P A R T V I

Association in Participation

This form of association does not constitute a legal entity or company, but is included in the General Law of Commercial Companies to regulate the relationship between two or more persons who associate themselves to pursue a business or one or more business transactions.

Definition. Article 252 of the General Law of Commercial Companies defines the association in participation, or *Asociación en Participación*, as “a contract whereby one person (active associate) reserves to others (contributing associates) a participation in the profits or losses of a business enterprise or of one or more individual business transactions in exchange for property or services contributed.”

Firm Name or Denomination. The association in participation is not a legal entity and cannot do business under either a firm name or a denomination (GLCC Art. 253).

Association Contract. The contract which creates the association in participation must be in writing but it need not be recorded at the Public Registry of Commerce (GLCC Art. 254). It must contain the object of the association, the extent of the interest of the associates, and other terms and conditions relative thereto (GLCC Art. 255).

Profits or Losses. Except as otherwise provided in the association contract, profits and losses are distributed in the manner stipulated by Article 16 of the General Law of Commercial Companies. However, the contributing associates' share in the losses cannot be higher than the value of their contributions (GLCC Art. 258).

Third Parties and the Association. The active associate acts

in his own name for the account of the association, and there is no legal relationship between the contributing associates and third parties (GLCC Art. 256).

Insofar as third parties are concerned, the active associate acquires title to the property contributed by the contributing associates, unless the property is of such a nature that certain formalities must be observed to effectively transfer its title, e.g., realty. The contributing associates may reserve title to the property they contribute to the association; and this reservation will be effective as to third parties if the association contract so provides, and if it is recorded at the Public Registry of Commerce. If the association contract is not recorded, nevertheless it will be effective as to a third party if it can be established that he had knowledge of the reservation-of-property provision (GLCC Art. 257).

Dissolution and Liquidation. In the absence of specific provisions, associations in participation function and are dissolved and liquidated in accordance with the rules which govern general partnerships, insofar as they do not contravene the provisions of the General Law of Commercial Companies relative to associations in participation (GLCC Art. 259).

Similar Enterprises in the United States. The joint venture or joint enterprise in the United States is the nearest equivalent to this form of association.

P A R T V I I

Foreign Companies

Foreign companies may do business in Mexico through an agency or branch only after they register with the Public Registry of Commerce (GLCC Art. 251, par. 1). The registration will be made after authorization is given by the Secretaría de Industria y Comercio,⁹ which will do so upon compliance

⁹ Department of Industry and Commerce.

with the following requirements (GLCC Art. 251, par. 2):

(a) The organization of the company in accordance with the laws of its country or state of origin must be established with a certified copy of its Articles of Organization and other documents relative thereto, as well as with a certificate issued by the diplomatic or consular representative of Mexico in the country or state where the company was organized and is authorized to do business.

(b) The Articles of Organization of the company do not violate the public policy precepts of Mexican law.

(c) The company establishes, or has established, a branch or agency in Mexico.

Foreign companies are required to publish annually a balance sheet which must be certified by a certified public accountant.

The current trend is for foreign companies to do business in Mexico not by qualifying a branch or agency but by organizing a Mexican subsidiary company. In this manner, a savings in the tax on distributable profits under Schedule VI of the Federal Income Tax Law, and in the tax on excess profits, is effected; and also, the assets of the foreign parent company will not be subject to attachment by a Mexican creditor of the subsidiary company.

Since under Article 250 of the General Law of Commercial Companies foreign companies are recognized to have legal capacity, a foreign company may establish its rights before Mexican judicial and administrative authorities solely by proving that it was organized in accordance with the laws of its country or state or origin, registration with the Public Registry of Commerce being required only when the foreign company is doing business in Mexico.

P A R T V I I I

*Legislation Applicable to
Business Associations*

Mexico, like most other civil law countries, divides its private legislation into two distinct branches; namely, civil and mercantile laws. In general, civil laws define, regulate and enforce the rights and obligations of persons and are applicable to private individuals. Civil laws are embodied in the Civilian Codes which each state of the Republic has enacted.

Mercantile laws, in general, also define, regulate and enforce rights and duties, but they are only applicable to those private individuals whom the Code of Commerce considers merchants, and to business associations. Mercantile laws, by provision of the Constitution, are federal in their application and, being such, are enacted by the Federal Congress.

The Civil Code is also applicable to merchants and associations in cases where there is no mercantile law to cover a given situation. Because mercantile laws are federal, there is a conflict of authority as to whether the Civil Code for the Federal District and Territories or the Civil Code of the state where the merchant or business association is domiciled should apply in these cases.

It can be said that the mercantile law of Mexico is embodied in the Code of Commerce, enacted in 1889, and in the special laws which complement or supersede its provisions. The most important of these laws are: General Law of Credit Institutions and Auxiliary Organizations; the Law of Bankruptcy and Suspension of Payments; the Law of Industrial Property; the General Law of Credit Instruments and Transactions; the General Law of Commercial Companies; the Law of Commercial and Manufacturers' Associations; the General Law of Insurance Institutions; the General Law of Surety Companies.

The Code of Commerce and some other statutes impose certain obligations upon business associations, to be fulfilled re-

gardless of their activities. Other statutes govern the activities of companies engaged in specific fields, such as banking, insurance, etc.

Under the Code of Commerce companies have the following obligations:

1. To send a circular to the merchants and other companies of the locality, informing them of the company's opening, giving its name, objects, name of the managers or manager, names of persons who may sign for the company, and the location of branches or agencies, if any. If any changes occur in the foregoing data, they should also be made known through circulars (CCom Art. 17, Sec's. I and II).

This provision of the law is seldom complied with; and there is no penalty for its non-observance.

2. To register with the Public Registry of Commerce the appointment and general powers of attorney granted to managers and any other agents, as well as their revocation (CCom Art. 17, Sec. VII).

3. To follow a uniform accounting system and to keep the following books of account: (a) inventory and balance sheet book, (b) general journal, and (c) general ledger. These books must be bound, paged, and stamped as required by law. Also, the books must be kept in the Spanish language and all transactions therein entered must be in chronological order. No blank spaces may be left in the books, and they cannot contain any alterations. Books of account must be kept for ten years after the company's liquidation. Subsidiary books of account may also be kept (CCom Art. 16, Sec. III; and Art's. 33, 34, 36, 46).

The manner of using the books of account required by the Code of Commerce is prescribed by the same Code (CCom Art's. 38, 39, 40).

Failure to keep the books of account or to maintain them properly will raise the presumption of fraud or culpability in the case of bankruptcy (LBSP Art's. 94, 96).

4. To maintain minute books and to record therein the resolutions adopted at shareholders' and directors' meetings.

5. To keep on file the correspondence and telegrams related to the company's business (CCom Art. 47).

Business associations must also comply with the following obligations:

1. To keep the books and records, in addition to the ones required by the Code of Commerce, prescribed by the Income Tax Regulations and which are determined by the taxpayer's activities and its annual gross income (ITR Art's. 58, 67, 68, 69, 70).

2. To have the books of account of the company authenticated by the federal tax office of the taxpayer's district within ten days after its organization (ITR Art. 17, par. 1; Art. 57, Sec. I).

3. To notify the federal tax office of the taxpayer's district within ten days after the occurrence of the following events: commencement of business; partial or total sale of the business; change of domicile, company objects, designation or firm name, and of the type of business association; increase or decrease of capital; suspension of operations; closing of business; and the opening, change of domicile, suspension and closing of business of branches or agencies (ITR Art. 16).

The Income Tax Law and its Regulations impose other obligations on taxpayers which are not within the scope of this chapter.

4. To register with the Chamber of Commerce or the manufacturers' association which groups other companies engaged in similar activities; and to notify them of any change of objects or suspension of business (LCMA Art's. 6 and 7).

5. To notify the Bureau of Statistics of the Department of Commerce and Industry within fifteen days after the occurrence of the following events: commencement of business; change of address or domicile; name; objects; and closing of business (FLSR Art. 29).

The foregoing is not an exhaustive list of the general obligations imposed upon business associations by the Code of Commerce and other laws. As previously stated, if a business association is engaged in a field regulated by special law, such as banking and insurance, the special obligations imposed by said laws, as well as the ones of a general nature, must be observed.

CHAPTER 4

Taxes

The right to levy and collect taxes in Mexico is vested in the federal, state and municipal governments. Federal taxes are imposed and regulated by laws enacted by the National Congress, while state and municipal taxes are imposed by the state legislatures. The municipalities, as such, have no authority to enact tax laws.

Under the Mexican legal system, each federal tax is embodied in a separate law. These laws are regulated by legislative pronouncements of the President, known as Decrees, and administrative pronouncements of the President, known as Regulations. Likewise, interpretations of the laws may be issued by the enforcing agencies in the form of rulings or circulars. It should be noted that the obligations arising from the tax laws are restrictive and may not be extended to include persons or acts not expressly referred to in the law.

Classification. Mexican taxes may be classified, therefore, as federal, state and municipal taxes.

State and municipal taxes are generally of little importance, since the Constitution severely restricts the scope of these taxes. This is not true in the case of the federal government, which has wide taxation powers. For our purposes, we may group the federal taxes as follows:

(a) Import and export duties, assessed on merchandise entering and leaving national territory.

(b) Special production taxes, such as those on cement, petroleum products, tires, minerals, alcoholic beverages, matches, tobacco, etc.

(c) Mercantile income tax, which is a fixed rate of taxation imposed upon gross receipts from commercial sales and services. This tax is generally incurred in each transaction in which

merchandise is transferred to another party, whether from the manufacturer, wholesaler or retailer. The production tax and the mercantile income tax are mutually exclusive; that is, the application of one determines the exclusion of the other.

(d) Income and excess-profit taxes, which are levied against income received from any of the sources covered by the Income Tax Law.

(e) Inheritance and gift taxes.

(f) Stamp taxes on noncommercial transactions and documents.

(g) Miscellaneous taxes and other governmental fees for particular services.

INCOME TAX

Since the Income Tax Law is by far the most important to the average person, it will be taken up first. Instead of being a general tax on the income of those affected by it, the various types of income are divided into schedules which are taxed separately.

Taxpayers. The Income Tax Law imposes the obligation to pay this tax upon the following:

(a) All Mexicans having taxable income, regardless of the country in which they reside or from which the source of their wealth is derived.

(b) Foreigners residing in the country, no matter what country is the source from which their taxable income is derived, and foreigners residing abroad if their income is derived from sources located in Mexico.

(c) Mexican civil and mercantile companies, regardless of the place in which they are established and the place from which is derived the source of their taxable income.

(d) Foreign companies established in Mexico, but without regard to the country from which their taxable income may be derived. Foreign companies having an agency or branch in this country are subject to taxation on the total income of the agency or branch, independent of its source. Foreign companies estab-

lished abroad are subject to taxation when their income is derived from sources located within the Republic.

(e) Associations, foundations, joint and common properties, estates, corporations and any other group constituting an economic unit, even if they are a legal entity, domiciled in this country, on income derived from sources located within the Republic or abroad. Those groups which are domiciled abroad are subject to taxation on income derived from sources located within the Republic.

Those subject to paying Mexican income tax upon income derived from sources located abroad may deduct from Mexican income taxes the income tax paid by them to the country where the source of income is located, but only up to the limit to which said foreign taxable income would be taxed by Mexican income tax laws. For this purpose, any tax exemption granted by the country of the source of income will be considered as income tax paid to said country, except for exemptions on taxes on capital investment.

In the case of the association in participation, where one or more persons associate with another person who acts in his own name, the principal associate is obliged to pay the tax as an individual on the total amount of taxable income derived from the association contract, thereby liberating the other associates from the responsibility of filing tax returns on the portions of the income corresponding to their share.

In those cases in which an individual or a company domiciled within the national territory contracts with companies or individuals residing abroad and becomes obligated to pay any contribution or render a service, the business will be considered as being carried on within the Republic.

Since Mexico has not entered into treaties as to taxation, the prospective investor should consult his attorneys and accountants as to the effect of his national tax laws on income from Mexican sources.

It should be noted that, aside from the application of a withholding tax upon distributable profits of a corporate entity, no

great difference is made between the effect of income taxes upon the earnings of physical persons and companies. Therefore, for our purposes, we may refer to taxpayers in general when discussing the Income Tax Law.

As mentioned before, with the exception of schedules I and II, each type of income has its own tax rate, and the income of a taxpayer cannot be massed together for assessment purposes. The federal Income Tax Law divides taxable income into seven schedules, as follows:

- Schedule I: Commercial activities.
- Schedule II: Industrial activities.
- Schedule III: Agricultural, livestock-raising and fishing activities.
- Schedule IV: Wages, salaries and other personal income.
- Schedule V: Professional services, arts and crafts.
- Schedule VI: Income from capital investments. Distributable-profit tax is also considered under this schedule.
- Schedule VII: Royalties, rentals, or other income derived from the transfer of rights under concessions granted by Mexican governmental agencies.

As can be seen from the titles of these schedules, companies are subject to all but schedules IV and V.

Schedules I and II. The tax under these schedules is assessed at progressive rates, ranging from 5% on very small amounts to 39% on a year's taxable income in excess of two million pesos, according to the calculation table included here.

For example, on a taxable income of 983,794.67 pesos (78,-703.57 U.S. dollars) the tax would be calculated as follows:

	<i>Pesos</i>	<i>Pesos</i>
Tax on	750,000.01	191,858.00
Tax on	233,794.66 at 31.7%	74,112.91
Total tax on	983,794.67	265,970.91

This table does not apply when the taxpayer's gross income is less than 300,000.00 pesos. Instead, he pays a fixed tax which varies according to the classification of his activities under a

SCHEDULES I AND II
(Mexican pesos)

<i>Annual Net Income</i>		<i>Tax Calculation</i>	
<i>More than</i>	<i>But not more than</i>	<i>Fixed rate</i>	<i>Percentage on excess over lower limit</i>
0.01	2,000.00	Exempt	%
2,000.01	3,500.00		5.0
3,500.01	5,000.00	75.00 <i>plus</i>	6.0
5,000.01	8,000.00	165.00	7.0
8,000.01	11,000.00	375.00	8.0
11,000.01	14,000.00	615.00	9.0
14,000.01	20,000.00	885.00	10.0
20,000.01	26,000.00	1,485.00	11.0
26,000.01	32,000.00	2,145.00	12.0
32,000.01	38,000.00	2,865.00	13.0
38,000.01	50,000.00	3,645.00	14.0
50,000.01	62,000.00	5,325.00	15.1
62,000.01	74,000.00	7,137.00	16.2
74,000.01	86,000.00	9,081.00	17.3
86,000.01	100,000.00	11,157.00	18.4
100,000.01	125,000.00	13,733.00	19.5
125,000.01	150,000.00	18,608.00	20.6
150,000.01	175,000.00	23,758.00	21.7
175,000.01	200,000.00	29,183.00	22.9
200,000.01	250,000.00	34,908.00	24.1
250,000.01	300,000.00	46,958.00	25.3
300,000.01	350,000.00	59,608.00	26.5
350,000.01	400,000.00	72,858.00	27.8
400,000.01	500,000.00	86,758.00	29.1
500,000.01	750,000.00	115,858.00	30.4
750,000.01	1,000,000.00	191,858.00	31.7
1,000,000.01	1,250,000.00	271,108.00	33.1
1,250,000.01	1,500,000.00	353,858.00	34.5
1,500,000.01	1,750,000.00	440,108.00	36.0
1,750,000.01	2,000,000.00	530,108.00	37.5
2,000,000.01	and over	623,858.00	39.0

special table. Those who only occasionally transact business pay a fixed 20% on the profits realized.

Those who directly exploit concessions granted by the federal, state or municipal governments are required to add to the percentages given in the table 1% more, except when they grant a share in their profits to the Government. Mining operations are the most common type of business affected by this rule.

These taxes apply to net taxable income and not to gross income. To arrive at the net taxable income, the following deductions may be made from gross income:

1. Cost of products sold, computed in accordance with detailed rules contained in the Regulations.

2. Up to 5% per annum for amortization of the value of investments in intangible fixed assets and of deferred expenses and charges. Charges connected with the issuance of bonds shall be amortized over the period of the life of the issue.

In cases where the taxpayers erect permanent structures or make permanent improvements on tangible fixed assets not owned by them, and which, according to the lease contract or concession, will remain to the benefit of the owner, they may amortize this investment during the effective duration of such contract.

3. Up to 5% per annum for depreciation of investments in buildings and construction.

4. Up to 10% per annum for depreciation of equipment, machinery and personal property, and up to 20% per annum for depreciation of investments in transportation equipment, rolling stock, vessels and aircraft, machinery for the construction industry and casks used for the production or aging of liquors in wine industry and distilling plants.

In exceptional cases the Secretaría de Hacienda may authorize larger percentages for amortization and depreciation than those referred to in points 2, 3 and 4, except with respect to the issuance of bonds.

5. Wages, salaries, fees, etc., provided that the appropriate Schedule IV or V and Social Security taxes have been withheld and paid.

Occasional commissions will also be deductible, provided the corresponding tax is withheld.

6. The cost of employee fringe benefits and Social Security coverages.

7. Donations authorized by the Secretaría de Hacienda for charitable or cultural purposes.

8. Rentals paid for real estate used directly for specific purposes of the business.

9. Premiums paid to companies organized in Mexico for insuring business properties, whether real or personal.

10. Premiums paid to companies organized in Mexico for the bonding of agents, employees or workmen, and premiums paid for life insurance, retirement or personal accident insurance for said agents, employees or workmen, whenever the taxpayer is the beneficiary and all of its personnel is so insured that the insurance is to cover the indemnization required by law or a collective labor contract, and the policy does not involve a single premium.

11. Proven property losses of the taxpayer on account of crimes against his property or caused by fortuitous circumstances or *force majeure*.

12. Freight and haulage charges.

13. Advertising expenses.

14. Other normal and appropriate expenses.

The Regulation defines "normal and appropriate expenses" as those necessary for the operation of the business, such as books, printed material, correspondence, telegrams, office expenses, light, heat, telephone, etc.

Actual losses from currency exchange may also be deducted.

15. All duties and taxes, other than those under the Federal Income Tax Law, paid by the taxpayer to the Mexican Government or any of its subdivisions. Mexican firms with branches or agencies abroad may deduct the amount of foreign taxes levied against such branches or agencies.

16. Bad debts up to one-tenth of 1% of the gross income when the taxpayer makes sales on credit.

17. 1% on gross income received on loans to farmers in case of failure to collect these credits, provided proof of loss is submitted and the deduction referred to in the preceding point is not made.

18. Payments of any sums subject to taxation under schedules VI and VII.

19. Necessary business expenses incurred abroad which are not pro-rated with enterprises not subject to taxation under schedules I, II or III.

20. Costs of repairs, maintenance and other expenses incurred to keep business property in good condition but without adding new value to it.

The Law sets forth the requirements that deductions must meet in order to be valid, and specifies in particular that they must be indispensable, customary expenses and a normal consequence of the business; that they must be in proportion to the operations of the company, and must have affected the profit and loss account. Also they must be deducted for the fiscal year in which they occurred.

The Law provides that all those who habitually or occasionally are engaged in commercial transactions are subject to tax under schedule I. Mercantile companies or merchants are taxed under this schedule on the income received by them on their commercial transactions from the leasing of real estate.

Foreign companies, or foreigners domiciled abroad deriving their income from Mexico, in compensation for their technical services, rental of railway cars, or distribution of foreign publications, are subject to a tax of 10% of the total Mexican income obtained in Mexico.

Schedule II applies to those engaged in industrial activities, extraction, preservation or manufacture of raw materials; finishing of products; manufacture of consumer goods; rendering of public services of communication or transportation; and supplying of water, gas and electricity.

Included in this schedule are national motion-picture pro-

ducers, producers who at the same time are distributors of the films they produce, and companies formed exclusively by producers for the distribution of such films. Taxpayers who engage in the construction of buildings or in the subdivision and improvement of land for sale also come under this schedule.

If a taxpayer has an income under both schedules I and II, he will add this income and pay under the predominant schedule.

Excess-Profit Tax. The Income Tax Law also includes an excess-profit tax for those subject to schedules I, II and III whose annual income is in excess of 300,000.00 pesos and whose annual profits exceed 15% of their working capital. The rate is progressive and runs from 5% on profits in excess of 15% of the working capital to 25% when these profits exceed 50% of the working capital.

The working capital is defined as the difference between the assets and the liabilities of a business, computed at the beginning of the period covered by the tax return for a given fiscal year. In the case of companies, it is the capital-stock investment plus the accumulated profits at the beginning of each year or fiscal period; and with respect to representatives, agencies and branches of foreign companies, the Law provides that the working capital shall consist of 40% of the total value of assets at the close of the preceding fiscal period.

This tax may not exceed 10% of the taxable excess profits and is computed upon annual taxable profits after deducting the corresponding income tax, as follows:

<i>Profits up to 15% of the invested capital</i>	<i>Exempt</i>
From profits exceeding 15% up to 20%	5%
From profits exceeding 20% up to 30%	10%
From profits exceeding 30% up to 40%	15%
From profits exceeding 40% up to 50%	20%
From profits exceeding 50%	25%

Based on the example used to illustrate the payment of tax under schedule I, and assuming that the business has a working capital of 3,000,000.00 pesos (240,000.00 U.S. dollars), the excess-profit tax would be:

	<i>Pesos</i>
Profits declared under schedules I and II	983,794.67
Less income tax	265,970.91
Profits subject to the tax	<u>717,823.76</u>

	<i>Pesos</i>	<i>Rate</i>	<i>Tax Pesos</i>
Profits up to 15% of the working capital	450,000.00		—
Profits from 15% to 20% of the working capital	150,000.00	5%	7,500.00
Profits from 20% to 30% of the working capital	117,823.76	10%	11,782.38
Tax on	<u>717,823.76</u>		<u>19,282.38</u>

The total taxes that would be paid by this concern, therefore, amount to 285,253.29 pesos (22,820.27 U.S. dollars), or 29.05% of its profits.

Distributable-Profit Tax. In reality, this tax applies not to the company itself but to the partners or shareholders thereof. It is a fixed tax of 15%, which must be withheld and paid by the company, on distributable profits, i.e., the balance remaining after deduction of the company's income tax, the excess-profit tax and permissible reserves.

In order to promote the consolidation and development of companies, the Law authorizes the deduction from distributable profits of funds designed to form certain capital reserves, such as 5% of the profits to build up the legal reserve until it reaches 20% of the capital investment, and 10% for a general reinvestment reserve. Stressing this policy in its industrial and economic aspects, taxpayers under schedules II and III may also form an additional reinvestment reserve of up to 20% of profits and, with the approval of the Secretaría de Hacienda, transfer to this reserve the total amount of the profits, or 100%. In this case, the distributable-profit tax will not be paid, inasmuch as all profits have been reinvested.

SCHEDULE III
(Mexican pesos)

<i>Annual Net Income</i>		<i>Tax Calculation</i>	
<i>More than</i>	<i>Not more than</i>	<i>Fixed rate</i>	<i>Percentage on excess over lower limit</i>
0.01	2,000.00		%
2,000.01	3,500.00		3.2
3,500.01	5,000.00	48.00 <i>plus</i>	3.6
5,000.01	8,000.00	102.00	4.0
8,000.01	11,000.00	222.00	4.6
11,000.01	14,000.00	360.00	5.2
14,000.01	20,000.00	516.00	5.8
20,000.01	26,000.00	864.00	6.5
26,000.01	32,000.00	1,254.00	7.2
32,000.01	38,000.00	1,686.00	7.9
38,000.01	50,000.00	2,160.00	8.6
50,000.01	62,000.00	3,192.00	9.4
62,000.01	74,000.00	4,320.00	10.2
74,000.01	86,000.00	5,544.00	11.0
86,000.01	100,000.00	6,864.00	11.8
100,000.01	125,000.00	8,516.00	12.6
125,000.01	150,000.00	11,666.00	13.5
150,000.01	175,000.00	15,041.00	14.4
175,000.01	200,000.00	18,641.00	15.3
200,000.01	250,000.00	22,466.00	16.2
250,000.01	300,000.00	30,566.00	17.1
300,000.01	350,000.00	39,116.00	18.0
350,000.01	400,000.00	48,116.00	19.0
400,000.01	500,000.00	57,616.00	20.0
500,000.01	750,000.00	77,616.00	21.0
750,000.01	1,000,000.00	130,116.00	22.0
1,000,000.01	1,250,000.00	185,116.00	23.0
1,250,000.01	1,500,000.00	242,616.00	24.0
1,500,000.01	and over	302,616.00	25.0

The legal reserve, the reinvestment reserve and the additional reinvestment reserve may be capitalized without the payment of the distributable-profit tax. However, upon liquidation of the company or reduction of capital, this tax will be paid on these reserves.

Earnings of representatives, agencies or branches of foreign companies are considered distributable and, as a result, are subject to the tax regardless of the amount of profits realized; for representatives, agencies and branches are not permitted to establish the reserves mentioned above because the capital stock of the companies involved is held outside the country.

Schedule III Tax. Those having an annual gross income of less than 300,000.00 pesos are taxed under the same rules as taxpayers under schedules I and II who also have an income of less than 300,000.00 pesos.

As we have mentioned before, taxpayers under schedule III are those who engage in agriculture, stock-raising or fishing.

The deductions under this schedule are the same as those discussed under Nos. 2 through 20 of schedules I and II, but, in addition, farmers may deduct the cost of crops or natural products sold, computed in accordance with detailed rules contained in the Regulations. Fishermen may deduct the cost of the substances used for temporary preservation of the fish. Stock-raisers may add the value of their year-end inventory and income received during the year, and deduct from that sum the value of inventory at the beginning of the tax year, stock purchases and the cost of feed during the year.

Schedule IV Tax. Income derived in any of the following ways as payment for personal labor, rendered either habitually or occasionally, under the direction of and dependence upon a third person, is taxed under this schedule:

1. Wages, salaries and emoluments.
2. Commissions paid on sales made in the carrying out of the employment.
3. Extra salaries paid *per diem*, representation allowances, premiums and gratuities.
4. Ordinary and extraordinary remunerations, as well as any

SCHEDULE IV
(Mexican pesos)

<i>Monthly Compensation</i>		<i>Tax</i>		
<i>More than</i>	<i>Not more than</i>	<i>Amount</i>	<i>Plus %</i>	<i>On excess over</i>
500.01	600.00	4.50	1.7	500.01
600.01	700.00	6.20	1.8	600.01
700.01	800.00	8.00	1.9	700.01
800.01	900.00	9.90	2.0	800.01
900.01	1,000.00	11.90	2.1	900.01
1,000.01	1,500.00	14.00	2.6	1,000.01
1,500.01	2,000.00	27.00	3.1	1,500.01
2,000.01	2,500.00	42.50	3.6	2,000.01
2,500.01	3,000.00	60.50	4.1	2,500.01
3,000.01	4,000.00	81.00	5.1	3,000.01
4,000.01	5,000.00	132.00	6.1	4,000.01
5,000.01	6,000.00	193.00	7.1	5,000.01
6,000.01	7,000.00	264.00	8.1	6,000.01
7,000.01	8,000.00	345.00	9.1	7,000.01
8,000.01	9,000.00	436.00	10.1	8,000.01
9,000.01	10,000.00	537.00	12.0	9,000.01
10,000.01	12,000.00	657.00	16.0	10,000.01
12,000.01	14,000.00	977.00	18.0	12,000.01
14,000.01	18,000.00	1,337.00	22.0	14,000.01
18,000.01	22,000.00	2,217.00	26.0	18,000.01
22,000.01	28,000.00	3,257.00	30.0	22,000.01
28,000.01	34,000.00	5,057.00	34.0	28,000.01
34,000.01	40,000.00	7,097.00	40.0	34,000.01
40,000.01	70,000.00	9,497.00	48.0	40,000.01
70,000.01	and over	23,897.00	50.0	70,000.01

other kind of compensation received, whether in the form of money, kind, shares, founder bonds or interest in the business.

5. Participations in profits granted to employees and laborers pursuant to the labor contract.

6. Severance pay, pensions, retirement pay, annuities, and allowances which arise as a result of a contract of employment.

7. Income of members of the board of directors from companies or associations.

8. Income from the Government of members of Army, Navy or Air Force.

No deductions are allowed.

Schedule V Tax. Income from the following sources is taxed under this schedule:

1. The free exercise of a profession or an art.
2. A technical activity or one requiring special skill.
3. The free exercise of a craft.
4. Participation in sports activities.
5. A cultural, technical, artistic or other activity exercised before the public, or an any kind of show.
6. The activities carried on by home savings and loan associations or insurance and bonding agents, provided they hold authorization from the state, except those of foreigners who reside abroad and are in the employ of Mexican companies.
7. The exploitation of customs licenses.
8. Any other activity of a nature similar to the foregoing.

Net income of stage and motion-picture actors and entertainers is calculated by taking standard deductions from gross income. All others may take the following deductions from gross income (ITL Art. 118):

(a) Up to 5% per annum for amortization of the value of investments in intangible fixed assets and of deferred expenses and charges.

(b) Up to 5% annually for depreciation of investments in buildings and construction.

(c) Up to 10% annually for depreciation on furniture, fixtures and equipment and other personal property.

(d) Payments for wages, salaries, fees, etc., provided the appropriate schedule IV or V has been withheld and paid.

(e) Rental of premises used to derive income.

(f) Donations authorized by the Secretaría de Hacienda for charitable or cultural purposes.

(g) Other normal and appropriate expenses incident to the profession, art or craft engaged in.

SCHEDULE V
(Mexican pesos)

Annual Net Income		Tax Calculation	
More than	Not more than	Fixed rate	Percentage on excess over lower limit
			%
0.01	2,000.00		3.0
2,000.01	3,500.00	60.00 <i>plus</i>	3.4
3,500.01	5,000.00	111.00	4.0
5,000.01	8,000.00	171.00	4.6
8,000.01	11,000.00	309.00	5.4
11,000.01	14,000.00	471.00	6.2
14,000.01	20,000.00	657.00	7.0
20,000.01	26,000.00	1,077.00	8.0
26,000.01	32,000.00	1,557.00	9.0
32,000.01	38,000.00	2,097.00	10.0
38,000.01	50,000.00	2,697.00	11.0
50,000.01	62,000.00	4,017.00	12.2
62,000.01	74,000.00	5,481.00	13.4
74,000.01	86,000.00	7,089.00	14.6
86,000.01	100,000.00	8,841.00	15.8
100,000.01	125,000.00	11,053.00	17.0
125,000.01	150,000.00	15,303.00	18.3
150,000.01	175,000.00	19,878.00	19.6
175,000.01	200,000.00	24,778.00	20.9
200,000.01	250,000.00	30,003.00	22.2
250,000.01	300,000.00	41,103.00	23.6
300,000.01	350,000.00	52,903.00	25.0
350,000.01	400,000.00	65,403.00	26.5
400,000.01	500,000.00	78,653.00	28.0
500,000.01	750,000.00	106,653.00	29.5
750,000.01	1,000,000.00	180,403.00	31.0
1,000,000.01	and over	257,903.00	33.0

Schedule VI Tax. The most important types of income taxable under this schedule, whether received regularly or occasionally, are:

1. Simple or compound interest derived from all kinds of loans, acts, agreements, or contracts. In the case of certain types of interest, such as interest on loans between individuals or between private enterprises (other than banking institutions) where no interest is stipulated or where it is assessed at a rate less than 6% per annum, interest at this latter rate is presumed to accrue for the purpose of assessment of tax under this schedule.

2. Income received by investors domiciled in Mexico from all kinds of investments in *foreign companies* which do not operate in the country.

3. Income from the leasing of commercial, industrial, agricultural, stock-raising, or fishing enterprises.

4. Premiums, bonuses, royalties, and remunerations of all kinds derived from the exploitation, by persons other than the owner, of patents, trademarks, trade names, and copyrights.

5. All sums received by owners or possessors of personal property or rolling stock from persons to whom they have granted use or exploitation rights without transferring ownership.

6. Income from the distribution of Mexican motion-picture films, provided the distributor has legal personality distinct from that of the producer, and income from the distribution in Mexico of *foreign motion-picture films*, irrespective of the place where the contracts were executed or the domicile of the contracting parties.

7. Income from any machines for games, for reproducing music, or for weighing, or by means of which some object is sold or service rendered, provided the income is obtained by the individual owning the machines.

8. Income from any other operation or capital investment, provided such income is not included in some other schedule of the Income Tax Law or expressly excepted thereby.

9. Distributable profits of Mexican or foreign companies operating in the country.

The latter is taxed at a flat 15% rate and has been more extensively explained under the title "Distributable-Profits Tax."

Lessors of commercial, industrial, agricultural, raising of stock or fishing enterprises may make deductions 2 to 4 listed

under schedules I and II. Such lessors may also deduct the amount of applicable real estate taxes and expenses that must be paid by the lessor under the contract to preserve the real property. Lessors or sublessors of rolling stock may take the same deductions from gross income as those mentioned under Nos. 2 through 20 in the discussion of deductions according to schedules I and II. Taxpayers receiving income of the kind described under

SCHEDULE VI (Mexican pesos)

<i>Annual Net Income</i>		<i>Tax Calculation</i>	
<i>More than</i>	<i>Not more than</i>	<i>Fixed rate</i>	<i>Percentage on excess over lower limit</i>
			%
0.01	2,000.00		10.0
2,000.01	5,000.00	200.00 <i>plus</i>	11.3
5,000.01	8,000.00	539.00	12.6
8,000.01	14,000.00	917.00	13.9
14,000.01	20,000.00	1,751.00	15.2
20,000.01	26,000.00	2,663.00	16.5
26,000.01	38,000.00	3,653.00	17.9
38,000.01	50,000.00	5,801.00	19.3
50,000.01	62,000.00	8,117.00	20.7
62,000.01	75,000.00	10,601.00	22.1
75,000.01	100,000.00	13,474.00	23.5
100,000.01	125,000.00	19,349.00	24.9
125,000.01	150,000.00	25,574.00	26.4
150,000.01	200,000.00	32,174.00	27.9
200,000.01	250,000.00	46,124.00	29.4
250,000.01	350,000.00	60,824.00	30.9
350,000.01	408,000.00	91,724.00	32.4
408,000.01	480,000.00	110,516.00	36.0
480,000.01	720,000.00	136,436.00	40.0
720,000.01	840,000.00	227,036.00	45.0
840,000.01	and over	281,436.00	50.0

5 or 7 above may deduct up to 10% of the original cost of the equipment for depreciation.

Interest income from transactions described under the heading "Schedule VI Tax," paragraphs 1-5, is subject to schedule VI income taxes when the agreed interest rate is up to 15% per annum. If the agreed rate of interest is higher than 15% and up to 18% per annum, then 50% of the difference between said percentages of interest should be paid as additional income tax; and when the agreed interest rate is higher than 18% per annum, 90% of the excess over said interest rate must be paid as additional tax.

Schedule VII Tax. The following income will be taxed under this schedule when received regularly or occasionally in cash or products:

1. Income arising out of any contract or act whereby the recipient, without transferring his ownership of any kind of concession permit, authorization or contract granted by the Federal Government or its political subdivisions, permits the exploitation of his rights by another person or company.

2. Income arising from the partial or total alienation or contribution of ownership or rights in similar concessions, permits, authorizations or contracts.

3. Income from the operations mentioned under the preceding point carried out with the right to exploit the subsoil.

4. Income from any other act or contract entered into with the landowner for the exploitation of the subsoil.

5. Income derived from participation in the products obtained from the subsoil by persons other than the concessionaire, operator or landowner.

The income under 1, 4 and 5 is not taxable under this schedule if it consists of a participation in the profits of the exploiting firm.

No deductions are allowed for taxpayers receiving income classified under 1, 4 and 5 above. Any part of their income which is obtained from the leasing of machinery, furniture, and equipment along with the concession is not taxable under this schedule but is taxed under schedule VI.

Taxpayers receiving income classified under 2 and 3 above may deduct the cost of obtaining the ownership or rights which they have alienated. They may also deduct the value of machinery, installations, furniture and equipment which were included in the transfer.

SCHEDULE VII
(Mexican pesos)

<i>Annual Net Income</i>		<i>Tax Calculation</i>	
<i>More than</i>	<i>Not more than</i>	<i>Fixed rate</i>	<i>Percentage on excess over lower limit</i>
			%
0.01	2,000.00		20.0
2,000.01	5,000.00	400.00 <i>plus</i>	21.3
5,000.01	8,000.00	1,039.00	22.6
8,000.01	14,000.00	1,717.00	23.9
14,000.01	20,000.00	3,151.00	25.2
20,000.01	26,000.00	4,663.00	26.5
26,000.01	38,000.00	6,253.00	27.9
38,000.01	50,000.00	9,601.00	29.3
50,000.01	62,000.00	13,117.00	30.7
62,000.01	75,000.00	16,801.00	32.1
75,000.01	100,000.00	20,974.00	33.5
100,000.01	125,000.00	29,349.00	34.9
125,000.01	150,000.00	38,074.00	36.4
150,000.01	200,000.00	47,174.00	37.9
200,000.01	250,000.00	66,124.00	39.4
250,000.01	350,000.00	85,824.00	40.9
350,000.01	500,000.00	126,724.00	42.4
500,000.01	750,000.00	190,324.00	44.0
750,000.01	1,000,000.00	300,324.00	45.6
1,000,000.01	1,250,000.00	414,324.00	47.2
1,250,000.01	1,500,000.00	532,324.00	49.1
1,500,000.01	1,750,000.00	655,074.00	51.0
1,750,000.01	2,000,000.00	782,574.00	53.0
2,000,000.01	and over	915,074.00	55.0

MERCANTILE INCOME OR GROSS RECEIPTS TAX

This tax, as we have mentioned before, is 3% on sales or income from commercial transactions and services. It is a combined tax of 1.8% assessed by the Federal Government and 1.2% by the State or Federal District or Territory. This tax is deductible when calculating income subject to income tax.

Those businesses whose principal object is to serve the health of the populace, a cultural purpose, or to satisfy some vital need of the people, industry or agriculture are either exempt from this tax or pay only 50% thereof. These businesses include sales of foods or food products, medicines or drugs, chemical products, disinfectants, the publication and sale of newspapers, magazines and books, first-hand sales of the products of farmers and ranchers, transportation of persons or goods, etc.

MISCELLANEOUS TAXES

Companies are also subject to a certain number of miscellaneous taxes, which, however, in general, are negligible in amount. Of these taxes, the only one of interest to our study, because it applies to any company within the Federal District and in some states of the Republic, is that of compulsory Social Insurance, established for the protection and medical care of workers and employees.

Two-thirds of this tax is paid by the employer and one-third is deductible from the salary of the employee. The cost of this tax to the employer varies from approximately 8% to 13% of the payroll, depending upon the salary paid and the element of risk involved.

WITHHOLDING TAXES

The principal taxes which must be withheld or their payment substantiated are:

(a) The 15% tax on distributable profits of companies. The shareholders or partners are subject to no other tax on income from dividends. This tax must be withheld by the company earning the profits.

(b) The tax under schedule IV and the workers' tax quota on social insurance, which the employer must withhold upon the payment of wages and remit to the fiscal authorities.

(c) When professional fees are paid, a receipt bearing schedule V stamps must be obtained, which represent a provisional payment of the tax that must be paid by the professional man. This provisional payment consists of 2% of the total amount of his fees.

(d) If the business enterprise pays for any of the operations under schedule VI, it must either withhold 10% of the payment or obtain a receipt with tax stamps for 10% of the payment.

(e) In the case of the payment of occasional commissions, 20% of the commission must be substantiated or withheld and paid, unless the agent is a taxpayer under schedule I and can prove that fact.

(f) If the business enterprise pays for any operations under schedule VII, it must withhold or obtain receipts bearing stamp taxes for 10.2% of the gross amount paid.

(g) The business enterprise must substantiate the payment or withhold and pay to the proper revenue offices the tax corresponding to the income received within the country by foreign companies, or foreigners or Mexicans residing abroad when dealing with the business.

CHAPTER 5

Tax Exemptions or Reductions

New and Necessary Industries

The Mexican Government has enacted a law to promote Mexican industry through the granting of tax exemptions to stimulate the establishment of new industrial enterprises and the growth of those already in existence. Companies may benefit from these exemptions only when they are organized in conformity with Mexican law and provided they continue to function in accordance therewith.

Under this Federal law, published in the *Diario Oficial* of December 2, 1955, industries are divided into new and necessary industries, and these two classifications are further subdivided into basic, semi-basic and secondary industries.

New Industries. These are defined as enterprises manufacturing articles not already being produced within the country, so long as these goods are not mere substitutes for existing products, and provided that these new industries contribute materially to the economic development of the country.

Products are considered to be mere substitutes, even though they have an entirely different aspect, when they are used for the same purpose or render a service similar to that of articles already in production, unless the new products represent a technical improvement which results in a saving to the consumer or user of at least 20% in price, duration or service.

In order for new industries to obtain tax exemptions, it must be proved that their products will satisfy certain needs of the country and that the merchandise to be manufactured will not be sold at prices higher than those of similar items already on the market and, furthermore, that prices will not rise if

import duties are increased or if import restrictions are imposed.

Necessary Industries. These industries are defined as enterprises engaged in the manufacture of goods already being produced in the country, but in quantities insufficient to meet the needs of the nation, provided the deficit is substantial and not due to temporary causes.

A substantial deficit exists when national production falls short by at least 20% of the total goods necessary to cover the apparent needs of the country and when the capacity of factories in existence is insufficient to cover such needs. "Apparent need" is determined by subtracting the total amount of exports from the total amount of goods produced and imported during the preceding two years. In order for an industry to be considered necessary and thus to obtain tax exemption, it must show that it has the capacity to satisfy at least one-fifth of the deficit.

The law also regards as necessary industries enterprises which export finished or semi-finished goods manufactured by them in Mexico, provided the national share in manufacture is not less than 60% of the direct cost of production.

Companies manufacturing goods in a quantity that is small in relation to the direct cost of production will not be classified as new or necessary, the degree of manufacture being considered small when it is less than 10% of the direct cost of production.

The regulation of the law defines as direct cost of production the total of the following:

1. Cost of raw materials and of the finished and semi-finished goods which form part of the product being manufactured and have been delivered at the factory of the company enjoying the tax benefits.

2. Cost of fuel and other materials necessary for the process of manufacture and delivered at the factory.

3. Cost of power used directly for manufacturing.

4. Total salaries and benefits granted under employment contracts of employees engaged directly in the manufacture of goods.

5. Depreciation of machinery and equipment and amor-

tization of buildings and installations, which in no case shall exceed 10% of the total of the preceding items.

The volume of manufacture or transformation requirements for the qualification as a necessary industry are determined by the percentage of the direct cost represented by the items mentioned in paragraphs 2, 3 and 4, that is, fuel, power and wages.

New and Necessary Industries Which May Obtain Fiscal Franchises. These industries are the following:

1. Those engaged in manufacturing operations which entail a substantial modification of the physical or chemical properties of the raw materials or semi-finished articles used, adding to them a significant economic value. They must not be, in the judgment of the Secretaría de Industria y Comercio, mere substitutes for merchandise already being produced in the country.

2. Those engaged in mining nonmetallic minerals destined for use by national industry and which, by means of their own installations and equipment, treat them so that they can be used as raw materials by national industry.

3. Those which assemble merchandise with parts that, in their entirety, are manufactured in the country, and those which, with their own equipment, manufacture no less than 35% of the direct cost of all of the parts used in the assembly of their products, but which in no event utilize parts of *foreign origin* representing more than 40% of the direct cost.

4. Those providing services in activities of economic importance.

The Secretaría de Industria y Comercio, at its discretion, will determine which businesses belong under this category and whether they are qualified and possess the equipment necessary to render one of the following services:

- I. Complete repair of sea-going vessels with a displacement of 500 tons or more.

- II. Complete repair of locomotives or railway cars.

- III. Complete repair of airplanes.

- IV. Eradication of plagues that affect national agriculture or livestock-raising.

The first three services listed require a minimum initial investment of 1,000,000 pesos¹ and the fourth, 500,000 pesos.²

5. Those which export goods, as hereinbefore mentioned.

No concessions of any type will be granted: to industries that import more than 40% of the direct cost of production of the merchandise manufactured; to those engaged in the processing of tobacco or the manufacture of alcoholic beverages; to those producing articles which may have anti-social effects; to those whose products may be harmful to the national security, to the national economy, or to industries already established in the country whose production completely satisfies the needs of the country, even when they manufacture different items.

In order to fix the terms of the concessions, the law has divided the new or necessary industries into basic, semi-basic and secondary industries.

Basic, Semi-Basic and Secondary Industries

Basic Industries. Basic industries are considered enterprises which produce raw materials, machines, machinery, equipment or vehicles that are essential to one or more activities of fundamental importance to the industrial or agricultural development of the country.

By "essential" is meant a product without which the development of agriculture or the production of goods by another industry would not be possible.

"Activities of fundamental importance" are those which solve important problems in the agricultural or industrial integration of the country.

Basic industries are granted a franchise for up to ten years, and to receive this franchise, they must have a potential production capacity sufficient to satisfy at least 20% of the apparent consumption of the country. The capacity is calculated on the

¹ U.S. \$80,000.

² U.S. \$40,000.

basis of the company's working with the highest possible efficiency, for the longest possible number of hours on the largest number of days during which the equipment can be in operation.

Semi-Basic Industries. These are enterprises manufacturing goods destined to satisfy directly the vital needs of the country, and those producing tools, scientific equipment or articles which may be utilized in other subsequent important industrial activities (LDNNI Art. 9).

"Vital needs of the country" are needs indispensable to the nourishing, clothing and housing of the population.

"Important industrial activities" are considered those that contribute to the industrial integration of the country.

Semi-basic industries are granted a franchise for up to seven years, and in order to obtain it, they must prove a potential production capacity sufficient to satisfy at least 15% of the apparent consumption of the country, this capacity being calculated in the same manner as that of basic industries.

Secondary Industries. These are industries which produce items not included in the basic or semi-basic categories. They are granted a franchise for up to five years.

Business enterprises manufacturing basic goods which do not, however, meet all the requirements of the law, may obtain tax exemption or reduction for the term granted to semi-basic industries if they satisfy the requirements for these; or, if they do not meet the latter requirements either, a tax exemption or reduction as a secondary industry.

Enterprises manufacturing goods classified as semi-basic, but not fulfilling the requirements to obtain tax benefits under such classification, may nevertheless enjoy tax benefits for the length of time granted to secondary industries.

In the foregoing cases, special rulings will fix the conditions under which business enterprises may be granted tax benefits for longer periods, or with different tax benefits, provided they satisfy the requirements imposed.

Exemptions or Reductions of Taxes

New or necessary industries may obtain exemptions from or reductions in one or more of the following taxes:

1. Import duties and their surtaxes payable on merchandise needed for the manufacture of products covered by the franchise which are not produced in the country, or which, in the judgment of the Secretaría de Industria y Comercio, are not produced by national manufacturers in sufficient quantity, or with the required specifications, or for which national products cannot properly be substituted.

2. Export duties and their surtaxes for enterprises considered by this law to be export industries needing this franchise.

3. Stamp taxes.

4. That part of the gross-receipts tax which is imposed by the Federal Government.

5. Schedule II Income Taxes, provided the exemption never exceeds 40% of the taxes due under this schedule.

These exemptions or reductions affect, in each case, only the industrial activity covered by the franchise, and they may be increased, in accordance with the principles set forth in the ruling, in proportion to the increased use of manual labor, raw materials and national finished and semi-finished articles.

As already mentioned, basic industries are granted franchises for up to ten years; semi-basic industries, for up to seven years; and secondary industries, for up to five years. Industries providing services of economic importance shall enjoy franchises for a term of not less than five and not more than ten years; and enterprises engaged in the export of goods may enjoy them for a period of up to ten years, subject to annual confirmation.

In cases where the applicant requesting a tax franchise manufactures goods that are basic, semi-basic and secondary, or any two of the foregoing, exemptions or reductions will be granted only for the term covering the predominant industrial activity, i.e., that activity which is reflected in the value of

the annual production under the manufacturing schedule filed by the applicant.

In the case of basic and semi-basic industries whose activities are of essential importance to the economic development of the country, a requested extension of tax benefits may be granted at the sole discretion of both the Secretaría de Industria y Comercio and the Secretaría de Hacienda. Such extension may be granted for a period deemed advisable by these Departments, but not exceeding five years, and only if the extension is requested at the beginning of the last year of operation under the franchise.

An enterprise requesting an extension of tax benefits must prove that it has contributed notably to both national production and consumption and that during the period it has enjoyed the tax benefit it has recovered less than 80% of its entire investment.

The law provides that during the period of the first franchise granted to a given industry, this same franchise shall be granted to all other enterprises manufacturing the same goods or rendering the same services, but only for the balance of the term of the first franchise, and provided that these additional enterprises at the beginning of their operations have sufficient capacity to turn out a production involving at least 60% of the direct cost of the goods to be produced.

It is important to note that a franchise can be canceled whenever the profits of the enterprise not reinvested in the business are greater than the value of its fixed assets on the date when its operations began. The purpose of this is to encourage reinvestment in order to promote the growth of industry.

Enterprises enjoying tax benefits under the law must pay, as a fee for supervision services, 2% of the taxes, duties and additional charges which they would pay if no tax exemptions or reductions were granted them.

Merchandise That May Be Imported Under Franchise. The following goods may be imported under franchises:

1. Construction materials needed for the erection of the buildings, shops, warehouses, offices and other installations required to establish the industrial unit.

2. Machinery, machines, equipment, molds, models, accessories, devices, spare parts and tools needed to manufacture the products.

3. Safety equipment, equipment to secure water supply, air conditioning units, lighting equipment, hauling and transportation equipment, and all other equipment designed to improve the operation or the safety of the factory, as well as the related spare parts, provided such equipment is part of the fixed assets.

4. Raw materials, semi-finished goods and auxiliary goods indispensable to the manufacturing operations.

5. Finished parts, pieces and units indispensable to the article or articles to be manufactured or assembled.

6. Equipment or machinery necessary to produce power chiefly for the benefit of the company enjoying tax benefits.

Other Tax Exemptions and Benefits. In addition to these franchises some states grant exemptions or reductions in local taxes. Generally speaking, these taxes are not substantial, but they may be important in some cases depending upon the activities of the company. Local franchises may include miscellaneous taxes, such as real estate taxes, transfer taxes, registration fees, the state's portion of the gross-receipts tax, and others.

Based on other laws and decrees, there also exists a series of franchise benefits or subsidies in other branches of industrial or agricultural activity, such as Regulation 14 for the application of the General Import Tax rate with respect to the importation of machinery, or the Mining Tax Law, which sets forth principles for granting subsidies or reductions in production and export taxes. However, the subject is so extensive that in this study it is not possible for us to refer to each and every one of these laws and decrees.

To protect local industry and to assure it of an adequate supply of raw materials from local sources, the Government has control over imports and exports, in addition to the supervision it exercises over the franchises mentioned above.

CHAPTER 6

Labor Law

Regulating Principles

Because we consider it of importance to the potential investor, or the businessman interested in commercial or industrial activities in Mexico, this chapter is being devoted to labor legislation, inasmuch as the relations between capital and labor are determining factors in the success of any enterprise.

Basically, Mexican labor legislation is contained in Article 123 of our Constitution of 1917 and in the Labor Law of August 18, 1931, and its amendments.

Article 123 of the Constitution was inspired by the laws of various countries, including France, Italy, the United States, Belgium, etc.; nevertheless, the idea of considering labor legislation as a minimum guaranteed for the welfare of the working class, and of incorporating those guarantees in the Constitution as protection against laws enacted by legislative bodies, was originated in the Mexican Constitution.

For the sake of greater clarity in our discussion, we will enumerate the main principles contain in this Article, making reference to the basic regulations that have been adopted with respect thereto. We will comment briefly on Articles 4 and 5 of the Constitution, in which regulatory principles are also established for labor in general.

Freedom of Work

The Constitution contains a chapter referring to individual liberties, in which is included the freedom to work. Articles 4 and 5 of the Constitution provide with respect thereto:

(a) That no person may be prevented from engaging in the profession, industry, business or labor of his choice, so long as it is licit.

(b) That the exercise of this freedom may be prohibited only by judicial determination if it is detrimental to the rights of a third party, or by governmental resolution if it is detrimental to the rights of the society.

(c) That no one may be deprived of the fruits of his labor, except by judicial resolution.

(d) That the law determines in each case the professions that require a degree for their exercise, the conditions that must be met to obtain it, and the authorities empowered to issue it.

(e) That no one may be required to perform personal labor without just compensation and without his full consent, except when imposed as punishment by authorities relative to certain public services.

(f) That the state does not recognize any contract, pact or agreement involving a person's labor which has as its object the damage, loss or irrevocable sacrifice of his liberty.

(g) That the state does not allow agreements in which a man temporarily or permanently renounces his right to engage in a specific profession, industry or business.

(h) That the labor contract can obligate a worker to render only the services agreed upon for the length of time permitted by the law, which term may not exceed one year.

(i) That the rendering of a service will in no case imply the renunciation, loss or impairment of any political or civil rights.

(j) That the responsibility of the worker to comply with the contract may not be extended beyond the legal civil liability. No coercion may be exercised on his person.

Individual Labor Contract

Article 123 does not define the individual labor contract, but establishes that the labor laws which the National Congress enacts will govern workers, journeymen, employees, domestics and skilled workmen. However, the labor law does establish a definition of what must be considered an individual labor con-

tract: "An individual labor contract is an agreement by virtue of which a person is obligated to render to another, under his direction and dependency, a personal service in return for an agreed remuneration."

In this contract, then, we find three elements:

1. A person is obliged to render services to another;
2. The latter, in turn, is obligated to pay a fee for these services;
3. The person who renders the services must depend upon and function under the direction of the other.

The Supreme Court of Justice has held that a labor contract does not exist when a person sells something in his own name and as a part of his own business, receiving in return a commission from another person, since the element of dependence exists only accidentally, that is, solely because of the operation itself. On the other hand, the Supreme Court has held that a labor contract does exist when a person, under the continuous supervision and direction of another, sells something even though it may be in his own name and the remuneration takes the form of a commission.

In general, the labor contract must be in written form, and its existence is presumed between the person who performs a personal service and him who receives it.

The labor contract may be executed for an indefinite time, a fixed time or for a specific job; but if, at the termination of the contract, the reasons for which it was concluded and the subject matter of the work continue to exist, the contract shall be extended for the length of time these circumstances endure.

Inasmuch as the matter is not regulated in any manner whatever, the trial period of these contracts, following the criteria sustained in various decisions handed down by the Supreme Court, may be covenanted one time only and for the logical period sufficient to judge the capacity of the worker.

Because of its special characteristics, the labor contract for domestics, farm workers, railroad workers, seamen, flight crews and workers in small industries is governed by special provisions,

in addition to the general provisions applicable to all labor contracts.

Hours of Labor

Sections I, IV and XI and paragraph (a) of Section XXVII of Article 123 of the Constitution contain the following rules:

- (a) The maximum working day shall consist of eight hours.
- (b) The maximum hours of night work shall be seven.
- (c) If because of extraordinary circumstances the daily hours of work must be increased, double time shall be paid for all hours worked in excess of the normal working day.
- (d) In no case may overtime work exceed three hours daily, nor three consecutive days. (The law speaks of "three times in one week.")
- (e) For each six days of work, the workman shall enjoy at least one day of rest. The law adds that this day or these days of rest shall be with regular pay. The law provides in addition for five holidays with regular pay: March 21, May 1, September 16, November 20, and December 25.

According to this law, workers are also entitled to a minimum of six working days' vacation with regular pay when they have worked for more than a year and to two extra days for each additional year of work until they reach a vacation period of twelve working days.

Workers under 16 years of age are always entitled to twelve days of vacation.

(f) Inhuman hours of work, manifestly excessive, may not be stipulated.

Owing to this stipulation, the labor authorities have been empowered to fix a shorter work day if, because of the nature of the work, the energy expended during eight hours exceeds the capacity of a man of average constitution.

The Labor Law complements these rules with the following:

(g) The maximum duration of the mixed working day shall be seven and one-half hours.

A "mixed working day" is defined as the working time which

covers portions of both the day and night shifts, provided that less than three and one-half hours of work fall within the regular night hours, since, if it embraces more, it will be regarded as a night shift.

Day working hours are the hours from 6 A.M. to 8 P.M., while night work includes the hours from 8 P.M. to 6 A.M.

Wages

Article 123 refers to a minimum wage, to wages in general, and to protective measures for wages and provides regulations relative to these matters.

Minimum Wage. Sections II and III of Article 123 contain the following rules:

(a) The minimum wage which the worker must receive is, taking into consideration the conditions in each region, the amount of money sufficient to satisfy the workman's normal necessities of life, his education and his honest pleasures as well as his needs as the head of a family.

The minimum wage is fixed by special commissions established in each municipality and composed of an equal number of representatives of workers and employers plus one Government representative. These special commissions are subordinate to the Central Conciliation and Arbitration Boards of their region.

(b) The minimum wage is not susceptible to attachment, nor subject to any deduction.

Wages in General. The regulations governing wages in general are found in Sections VII, X and XXVII of Article 123, which establish:

(a) That wages must be paid in legal currency, and not in any other means designed to substitute the money.

(b) No period longer than one week may be stipulated for the receipt of wages.

Because this rule applies to journeymen, the law specifies

that the term of one week refers to persons who perform manual labor and establishes a period of fifteen days for other workers, including domestics:

(c) The place in which the payment of wages is to be made may not be a place of recreation, restaurant, café, tavern, bar or store, except for employees of these establishments.

The law directs that payment must be made in the place where the workers render their services, except when there is express agreement to the contrary.

(d) Equal wages must be paid for equal work.

The law says that equal wages apply to work rendered under similar positions, equal amount of working hours and equal efficiency. This provision covers the payment of daily wages as well as bonuses, participations, compensation in form of housing or any other means of remuneration paid to a worker in exchange for his regular labor. No differences may be made on account of age, sex or nationality.

Wage Protection. Sections XXIII, XXIV and XXVII of Article 123 contain the following protective measures for wages:

(a) Conditions that require the workman, directly or indirectly, to buy consumer goods in specified stores or places will be considered null and void. (The system known as "company stores" is therefore prohibited.)

(b) Conditions that permit the withholding of wages because of a fine will also be considered null and void.

The law establishes that in case the worker incurs debts with the employer through wage advances, excessive payments made to the worker, errors, losses, damages, purchase of articles produced by the company, or rents of any kind, the employer may deduct that part of his wages which has been agreed upon with the worker for that purpose. Such deductions are limited to 30% of the earnings exceeding the minimum wage.

Aside from the exceptions stated above and union dues for the organization of cooperatives and savings banks to which the

workers expressly consented, wages must not be retained, deducted or reduced, in whatever form or manner.

(c) For debts contracted to his employer, or his employer's associates, relatives or subordinates only the worker himself will be responsible. Payment may not be demanded from members of his family, nor will such debts be recoverable for an amount in excess of the worker's wages for one month.

(d) In case of insolvency or bankruptcy, credits due workers on account of wages or salaries or compensations earned in the last year will have preference over any other liabilities.

Furthermore, the law establishes that workers need not enter into insolvency, bankruptcy or estate proceedings in order to collect these credits, but that their claims will be presented to the proper labor authorities and, in compliance with the resolutions adopted by them, the necessary properties will be sold immediately to pay these claims in preference to any others.

Protection for Women and Minors

Sections II, III, V and VII of Article 123 establish:

(a) For minors over 12 years of age, but under 16, the maximum working day is six hours. The labor of minors under 12 years of age may not be contracted.

(b) Minors under 16 years of age and women of any age are not permitted to engage in overtime work.

(c) Minors under 16 years of age and women are not allowed to engage in industrial night work, to work in commercial establishments after 10:00 P.M., and to do unhealthy or dangerous work.

(d) During the three months preceding childbirth, women shall not perform physical labor that demands considerable effort. They will not work during the first month following childbirth, yet receive their full normal wage and maintain their employment and the rights acquired under the contract. During the period of lactation, they must be given two extra rest periods per day of one-half hour each, in which to nurse their children.

(e) Equal wages must be paid for equal work, regardless of sex.

According to the law, age may not be taken into consideration either.

Dismissal or Severance of Workers

Section XXII of Article 123 contains a provision not found in most legislation which guarantees the stability of workers in their employment. This section establishes:

(a) That the employer who discharges a worker without justifiable cause, or for having joined an association or labor union, or for having taken part in a lawful strike, will be obligated, at the worker's choice, either to fulfill the contract or to compensate him in the amount of three months' wages.

The law states the following causes among those for which the employer may rescind the labor contract without liability:

1. He has been deceived by the worker, or by the labor union which had proposed or recommended him with false references in which capacity, aptitudes or faculties the worker does not possess were attributed to him, except when the worker has rendered services for more than 30 days.

2. The worker proves to be dishonest or commits acts of violence, threats, injuries or bad treatment against his employer, his employer's relatives, or the heads of the office, the shop or the business.

3. The worker commits, outside working hours, any one of these acts and they are of so serious a nature that they render impossible the fulfillment of the labor contract.

4. The worker commits against any of his fellow workmen any one of these acts and as a consequence thereof the discipline of the place in which he performs his work is disturbed.

5. The worker intentionally causes, during the performance of his work or because of it, material damage to the buildings or objects related to the work.

6. The worker causes the foregoing damages innocently but through negligence, provided they are serious.

7. The worker commits immoral acts in the shop, establishment or place of work.

8. The worker reveals the manufacturing secrets or makes known matters of a confidential nature to the detriment of the enterprise.

9. The worker jeopardizes, through his imprudence or inexcusable neglect, the security of the shop, office or business or of the persons therein.

10. The worker disobeys the employer or his representatives without just cause, provided that his disobedience is related to the work contracted.

11. The worker refuses to adopt the safety measures or to follow the indicated procedure to avoid accidents or diseases.

12. The worker reports for work in a state of inebriation or under the influence of some narcotic or enervating drug.

13. The worker fails to comply with the labor contract as a result of imprisonment for an executed sentence.

14. The worker's discharge has been declared necessary by the Conciliation and Arbitration Board because of the worker's arrest.

15. For reasons analogous to those established in the foregoing paragraphs, equally serious and having similar consequences with respect to the work.

However, the law provides that if the reason for discharge is not substantiated by the employer, the worker will have the right to compensation in the amount of three months' salary as well as to the payment of wages from the date of the dismissal until the day the final decision pronounced by the Conciliation and Arbitration Board is executed.

Section XXII also establishes:

(b) That the employer will be equally liable in case the worker resigns because of dishonesty on the part of the employer or for having received bad treatment from him, whether personally or on the part of his wife, parents, children, brothers or sisters. Neither can the employer be exempt from this liability if

the bad treatment is administered by subordinates or relatives who act with his consent or permission.

The law regulates this principle by stating that the worker, on the other hand, may rescind the contract and will have the right to compensation by the employer in the amount of three months' wages, in the following cases:

1. For failure to receive the corresponding wages on the date and in the place agreed upon or customary.

2. For having been deceived by the employer or by the employers' associates who offered him the work, with respect to the conditions thereof, except after the employee has worked for a period of 30 days.

3. For dishonesty or lack of integrity, acts of violence, threats, injuries, bad treatment, or similar acts against the worker, his wife, parents, children, brothers or sisters during the working hours by the employer, his relatives or subordinates who act with his knowledge and consent.

4. For any of these acts committed outside of working hours if they render compliance with the labor contract impossible.

5. For suffering damages caused maliciously by the employer to the worker's tools or implements of work.

6. For the existence of grave danger to the security or health of the worker or his family, whether it be through lack of hygienic conditions in the place of work, or through failure to comply with the preventive and safety measures established by law.

7. For the employer's endangering, with his imprudence or inexcusable carelessness, the safety of the office, shop or business, or of the persons employed therein.

8. For the employer's reduction of the worker's wages without his consent, unless it is by order of the Conciliation and Arbitration Board concerned.

9. For causes analagous to the foregoing, equally serious and of similar consequences with respect to the work.

International Law

There are three principal rules embodied in the Mexican Constitution and the Labor Law with respect to workers and employers of different nationalities. Sections VII and XXVI of Article 123 of the Constitution contain the first two and the Labor Law contains the third. These three principles are:

I. Equal wages must be paid for equal work, and differences on account of nationality may not be established.

In accordance with this principle, the law declares as null and void conditions under which on the basis of nationality a lower wage is fixed than that paid to another worker for the same kind of work and for the same number of working hours.

II. Every labor contract entered into between a Mexican and a foreign employer for work abroad must be legalized by the municipal authority concerned and visaed by the consul of the country where the services are to be rendered. In this contract, it will be clearly specified that the expenses of repatriation will be borne by the contracting employer.

As requirements for the validity of these contracts, the labor law also imposes the following conditions:

(a) The cost of food and transportation for the worker, and for members of his family, if such are included, and all expenses arising from crossing the border and complying with immigration provisions as well as any other expense of similar nature will be paid exclusively by the employer or contractor.

(b) The worker will receive the agreed-upon wage in full, without deductions of any amount whatsoever because of any of the reasons set forth in the preceding paragraph.

(c) The employer or contractor must deposit a bond or make a cash deposit with the Banco del Trabajo ¹ or in default thereof, with the Banco de Mexico,² to the complete satisfaction

¹ Labor Bank.

² Bank of Mexico.

of the respective labor authority, for an amount equal to the cost of repatriation of the worker and his family to the point of origin.

When the employer proves that he has covered all these expenses or that the worker has refused to return to his country, and that he does not owe the worker any amount whatever for wages or other compensation to which the worker was entitled, the labor authority concerned will order the return of the deposit or the cancellation of the bond.

III. Ninety percent of all workers in any business located in Mexico, employed in both the unskilled and technical categories, must be Mexicans unless the respective Conciliation and Arbitration Board authorizes a temporary reduction in this percentage.

If the number of employees is fewer than five, the percentage will be 80%.

This principle does not apply to the executive personnel, such as directors, managers, administrators, superintendents, etc.

Collective Labor Law

Article 123, in its Sections XVI, XVII, XVIII and XIX, recognizes syndicates, collective labor contracts, the right to strike, work stoppages or, in other words, the principal collective rights.

Syndicates. Workers as well as employers have the right to organize in defense of their respective interests by forming syndicates, trade associations, etc.

The syndicate is defined by the law as "the association of workers or employers of one single trade, vocation or craft, or of similar and related trades, vocations or crafts, organized for the study, improvement and defense of their common interests." The following types of labor unions are recognized:

(a) "Trade Unions," formed by individuals of one single trade, vocation or craft.

(b) "Company Unions," formed by individuals of various trades, vocations or crafts who render their services to one single company.

(c) "Industrial Unions," formed by individuals of various trades, vocations or crafts who render their services in two or more industrial enterprises.

(d) "Unions of Various Crafts," formed by workers in different trades. These unions may be organized only when in the municipality concerned the number of workers in one single local union is less than twenty.

(e) "National Industrial Unions," formed by the same type of workers as the "Industrial" and "Company" unions, who render their services to one company, or to various companies engaged in the same industrial line, which in either case are established in two or more states or Federal Territories.

The law regulates labor unions in considerable detail, and among its fundamental ideas establishes the following:

Labor unions have the right to request and obtain from the employer the dismissal from employment of their members who resign from or are ousted by the union if such "exclusion clause" appears in the contract.

Labor unions must not be organized with less than twenty workers, and employers' associations with not less than three employers in the same industrial field.

Foreigners may be members of a union but may not hold office in the group.

Collective Labor Contract. Although this contract is not expressly defined by Article 123, it may be considered as recognized inasmuch as no reference is made to a particular type of labor agreement. The law does define it clearly as an agreement "entered into between one or several labor unions and one or several employers or one or more employers' associations for the purpose of establishing the conditions under which work is to be performed."

The law likewise establishes the obligation of the employer who employs workers belonging to a union to enter into a collective contract with them upon their request.

The provisions of the collective agreement extend to all persons employed in the enterprise, even though they do not belong to the union that negotiated it. Persons who hold man-

agerial or supervisory positions as well as confidential employees may be excepted.

Collective agreements may legally contain a clause by virtue of which the employer is obligated to hire as workers only members of the union; but this clause may not be applied detrimentally to workers already employed by the company at the time the contract is negotiated even though they do not belong to the contracting union.

The collective contract may be entered into:

1. For an indefinite period of time;
2. For a fixed period of time; or
3. For a specific unit of work.

All these collective contracts are subject to total or partial revision every two years, upon request of either of the parties. If the request is made by the labor union, the contract will be reviewed provided the number of the workers requesting the revision represents at least 51% of the total membership of the union; and if the request is made by employers, the contract will be revised provided the applicants have in their employ at least 51% of the total number of workers affected by the contract. The request must be made at least sixty days prior to the termination date of the contract and if during that period the parties do not reach an agreement, the matter must be submitted for a hearing and a decision to the Conciliation and Arbitration Board concerned. During the proceedings before the Board, the contract under review remains in effect.

In case the collective contract terminates by judicial liquidation, those in the employ of the concern must be compensated with a month's wages, in the event the business is suspended. The same provision applies in cases of termination of business because of depletion of the substance of a mining industry, or because of total shutdown of the enterprise, or because of physical or mental incapacity of the employer, rendering it impossible to comply with the contract or to continue the business.

If an employer, after a total shutdown of his enterprise, establishes within one year another similar enterprise, even though

indirectly or through an intermediary, he must employ the same workers he employed in his previous enterprise or pay them three months' wages, according to which the workers themselves may choose.

In the case of fortuitous circumstances or *force majeure*, if the business was insured, the workers must be compensated with three months' wages as soon as the insurance policy is collected.

Contract-Law and Regional Contract. As in the case of the collective labor contract, Article 123 does not refer specifically to this type of contract, but neither does it ignore it. The law does regulate it by pointing out that in the event the collective contract has been entered into by two-thirds of the employers and unionized workers of a specific branch of industry in a given region, it will be binding upon all employers and workers of the same branch of industry in that region if so established by decree promulgated to that effect by the Federal Executive Branch of the Government. If the contract affects work being carried on in only the Federal District, a state or Territory, the Federal Executive Branch jointly with the respective local executive authority will make such decision.

The Federal Executive Branch has the right to fix the term during which the contract shall be in effect, which, however, may not be in excess of two years. The term indicated will be renewable for equal periods of time if the majority of the workers or employers concerned do not express their desire to terminate the contract, or such desire is not expressed at a date prior to three months before the expiration date.

Strikes and Work Stoppages. Article 123 recognizes these rights in its Sections XVII, XVIII and XIX. It provides that:

- I. The exercise of the right to strike has as its purpose to secure the equilibrium between the various production factors and to harmonize the rights of the worker with those of capital.

The law, after defining a strike as "the legal and temporary suspension of work as a result of a coalition of workers," adds the following objects:

(a) To obtain from the employer execution of and compliance with the collective labor contract;

(b) To demand the revision of the collective contract at the termination of its effective period, in the terms and cases established by the law; or

(c) To support a strike having as its objective one of the objectives enumerated above, provided the strike itself has not been declared unlawful.

II. Strikes will be considered unlawful only if the majority of the strikers engage in acts of violence against persons or property, or, in case of war, the workers are engaged in establishments and services that are dependencies of the Government.

To call a strike, the law requires:

1. That it have as its exclusive object one or more of those mentioned before;

2. That it be declared by the majority of the workers of the respective concern or business; and

3. That the following preceding requirements be met:

(a) The workers address to the employer a written petition in which they outline their demands, announce their intention of going on strike, and state concretely the object of the strike.

(b) The notice must be given at least six days prior to the date set for the suspension of work; but at least ten days' notice must be given in case public services are affected. This period will be counted from the moment in which the employer has been notified. This notification, furthermore, will have as a consequence the placing of the employer, for the duration of this period, in the position of a trustee or receiver, as the case may be, of the work center, enterprise or business to be affected by the strike, with the attributes and responsibilities inherent in those offices.

(c) The brief of demands above referred to must be filed with the Conciliation and Arbitration Board, together with a copy thereof, the delivery of which to the employer the same day on which it has been received is the strict responsibility of the chairman of that Board. Within forty-eight hours thereafter, the employer, or his representative, also through the Conciliation and Arbitration Board, must reply in writing to the petitions of the workers.

If the Conciliation and Arbitration Board determines that a strike is unlawful, it will declare the labor contract terminated and the employer will be free to enter into new contracts. Furthermore, the strikers may be subject to civil writ for any damage they may have caused as a result of the unlawful strike, and to penal action for any crime they may have committed.

If the strike is declared by a lesser number of workers than that fixed by law, or if the requirements specified for a strike are not met, or if it is declared in violation of the provisions of the collective labor contract, or if it does not have as its objective one of those established by law, the Conciliation and Arbitration Board will, within forty-eight hours following suspension of work, declare officially that a state of strike does not exist in the work center, enterprise or business concerned; and

1. The Board will set a period of twenty-four hours for the workers to return to work;
2. It will warn them that if the order is not respected before the end of the twenty-four-hour period, the labor contracts will be terminated, except in case of *force majeure*;
3. It will declare that the employer has incurred no responsibility, that he is free to contract new workers, and that he is in a lawful position to institute action for civil liability against those who refuse to resume work; and
4. It will dictate the measures it deems pertinent to insure that the workers who did not abandon their work continue in it.

With reference to work stoppages, Article 123 provides that they will be legal only when excessive production makes it necessary to suspend work in order to maintain prices at a profitable level, and the previous approval of the Conciliation and Arbitration Board has been obtained.

The law defines a work stoppage as "the temporary suspension, partial or total, of work as a result of a coalition of employers," which ceases when the Conciliation and Arbitration Board concerned, after hearing the interested parties, resolves that the conditions which brought the work suspension about no longer exist.

Upon resumption of work, the employer must hire the same workers who were employed in the enterprise at the time the stoppage was declared.

In the case of a legal work stoppage the employer will not be obligated to pay wages or compensation to the workers.

Social Security

The Constitution of 1917 covers thoroughly the subject of Social Security. The Federal Labor Law defined the rights of the workers, and much later the Social Insurance Law was adopted to give the Government control over Social Security by way of insurance. The Social Insurance Law is the equivalent to the Social Security laws in other countries.

The Constitution and the Labor Law deal, fundamentally, with the following subjects: occupational hazards; accident prevention, hygiene and safety; and social insurance. All of the legal provisions are aimed at the protection of the worker against occupational or non-occupational accidents and illness and the establishment of safeguards for him and his family according to Sections XIV, XV and XXIX of Article 123 of the Constitution.

Occupational Hazards. Employers are liable for accidents and occupational illnesses of the workers suffered as a result or in performance of the labor they render; therefore, the employers must pay the proper indemnity, depending on whether death, or temporary or permanent disability to work, has resulted, in accordance with the provisions of the Labor Law. This liability exists even in cases where the employer contracts labor through an intermediary.

Our Constitution, then, accepts the theory of occupational hazards or professional risks.

The Labor Law defines occupational hazards as the accidents or illnesses to which workers are exposed by reason of their labor or the performance thereof.

The proper compensation is based on the daily wage received

by the worker at the time of the accident or illness, not exceeding, however, twenty-five pesos a day.³

Workers disabled because of occupational accidents or illnesses are entitled to:

- (a) Medical attention.
- (b) Medicines and curative supplies.
- (c) The proper compensation or indemnity.

If the accident or illness results in the death of the employee, the indemnity will include:

1. One month's wages for defraying funeral expenses; and
2. Payment of amounts referred to above to the persons who were economically dependent upon the deceased.

Those entitled to compensation in case of death are:

(a) The wife and legitimate or natural children under sixteen years of age, and the parents and/or grandparents, unless it is proved that they were not financially dependent upon the worker. The indemnity will be divided equally among these persons.

(b) When there are no children, wife or parents, the compensation will be divided among the persons who were partially or totally dependent upon the deceased worker, according to the degree of their dependence as decided by the Conciliation and Arbitration Board on the basis of evidence submitted.

If the occupational hazard results in the death of the employee, the compensation due the persons enumerated in the preceding paragraphs will consist of the equivalent of his wages for 730 days,⁴ without deduction of any compensation the worker may have received during the period of his disability.

If the hazard results in partial or total temporary or permanent disability, only the disabled worker himself will be entitled to receive the indemnity. If the worker remains partially or

³ \$2.00.

⁴ 18,250 pesos, or U.S. \$1,460, maximum.

totally incapacitated due to mental derangement, the indemnity will be paid only to the person who, according to the Labor Law, represents him.

When the worker suffers total permanent disability, the indemnity shall consist of an amount equal to his wages for 1,095 days.⁵

If this disability is partial and permanent, he will be compensated on a percentage basis fixed by the disability-valuation table, calculated on the amount he would have been paid had the disability been permanent and total. The percentage will be fixed between the established maximum and minimum rates, taking into account the worker's age, the importance of the disability and whether it is absolute with respect to the performance of his chosen occupation, even though he remains capable of engaging in another, or whether his fitness to perform his usual work has simply been diminished. It will also be taken into account whether or not the employer has concerned himself with the occupational retraining of the worker and has provided him with mobile artificial limbs.

If the worker's disability is temporary, his compensation will consist of full payment of wages during the period it is impossible for him to work.

Accident Prevention, Hygiene and Safety. Section XV of Article 123 of the Constitution ordains that the employer will be obligated to observe, in the installation of his plants, the legal precepts with respect to health and hygiene and to adopt adequate means for preventing accidents in the use of machinery, instruments and work materials, as well as to organize the work in such manner as to provide the greatest possible guarantees to the health and life of the workers, compatible with the nature of the business and under the conditions established by law in this regard.

Social Insurance. Section XXIX of Article 123 of the Constitution considered it of public benefit that a Social Insurance Law

⁵ 27,375 pesos, or U.S. \$2,190, maximum.

should be issued which would cover disability, life, involuntary layoff, illness, accident and other similar types of insurance.

As a result, the Social Insurance Law was put into effect as of December 30, 1942, compliance therewith being obligatory. This law covers the following types of insurance:

1. Work accidents and occupational illness.
2. Non-occupational illness and maternity benefits.
3. Invalidity, old age, unemployment and life.

This law makes compulsory the insurance of workers who render services to another person by virtue of a labor contract, whether in private or state enterprises, production cooperatives of workers or of mixed management, including those who render services under an apprentice contract, except the employer's spouse, parents and children under sixteen years of age, even though they are employed by him. To perform the services covered by this law, the Mexican Social Security Institute was created.

In case the collective labor contract provides benefits inferior to those granted by the law, the employer is required to pay to the Institute all the contributions necessary to satisfy the contractual benefits; to cover the difference between contractual benefits and those established by law, the parties must make the required contributions.

If benefits under the collective agreement are superior to those under the law, the employer must grant the excess benefits, and he may contract with the Institute for additional insurance.

The contributions to be paid as well as the benefits to which the worker is entitled are fixed by taking into account the total income received by the worker in exchange for his services, the workers being classified in groups according to their earnings. However, if in addition to his wages in money the worker receives food or housing, his income is estimated to be increased by 25%, and if he receives both food and housing, his income is considered to be increased by 50%. With regard to workers who

receive only the minimum wage, the employer is required to pay also the contribution of the worker.

The employer is responsible for the contributions required to be paid by him and by his workers. The employer, upon payment of wages to his employees, must withhold their contributions. If the deductions are not made on payday, the employer may withhold from the worker only four weekly contributions, the employer being responsible for the balance.

The delinquent employer must pay a penalty of 12% annually on unpaid amounts.

The obligation to pay past-due contributions expires five years from the date on which they were payable.

(a) *Work Accident and Occupational Illness Insurance.* The employer who has insured the workers in his employ against work accidents and occupational illness is relieved from complying with the obligations established by the Federal Labor Law with regard to liability for occupational hazards.

The benefits provided by Social Insurance to the persons insured consist of medical attention and subsidies, pensions or compensations, according to the occupational accident or illness and the tables established for that purpose. Contributions are fixed by determining the kinds and degrees of risk in the enterprise, and may be revised every three years by the Advisory Board of the Institute, or at any time upon authorization by the General Assembly and in accordance with the experience acquired through statistics on occupational hazards.

For the purpose of fixing these contributions, a regulation was issued, published in the *Diario Oficial* on September 2, 1950, on the payment of contributions, and another on the classification of enterprises and risk degrees, published December 15, 1953. These regulations establish five types of enterprises that must pay for this insurance a fixed premium of 5%, 15%, 40%, 75%, or 125%, respectively, of the worker-employer contributions for invalidity, old-age, unemployment and life insurance.

(b) *Non-Occupational Illness and Maternity Insurance.* Employers and workers must pay for non-occupational illness and maternity insurance weekly contributions which vary, for the

employer, from 2.20 pesos on employees who earn less than 8.00⁶ pesos per day to 28.36 pesos on those who earn more than 80.00⁷ pesos per day. The contribution paid by the employees for the same insurance varies from 1.10 pesos to 14.18 pesos per week, respectively.

With respect to medical attention, the following persons, in addition to the insured worker, are entitled to the services under the *non-occupational illness insurance*, provided they are economically dependent upon him:

1. His wife or, if he has no wife, the woman with whom he has lived as if he were her husband during the five years preceding his illness, or by whom he has children, provided both parties are unmarried. If he has several mistresses, none of them will be entitled to assistance.

2. His children under sixteen years of age.

3. His father and mother, when they live in his home.

4. Pensioners with total permanent disability or with at least 50% disability, and those pensioned on account of invalidity, old age or death and the relatives who are their beneficiaries, as mentioned in the preceding paragraphs, if they are economically dependent upon him.

Only the insured person himself is entitled to receive the cash subsidy payable for non-occupational illness.

Only the insured woman will have the right to receive *maternity insurance*. In addition to the necessary medical attention, she receives a cash subsidy for 42 days before childbirth and for 42 days thereafter.

(c) *Invalidity, Old-Age, Unemployment and Life Insurance.* Entitled to receive a pension for invalidity are insured persons who have been credited with the payment of a minimum of one hundred and fifty weekly assessments in the compulsory insurance system and who are declared to be invalids.

The insured person who, because of non-occupational illness or accident, is incapable of earning, through labor proportionate

⁶ U.S. \$0.64.

⁷ U.S. \$6.40.

to his strength, ability, occupational training and previous employment, a wage in excess of 50% of the customary remuneration which, in the same region, is received by a healthy worker of the same sex, similar ability, equal classification and analogous training, is considered an invalid.

Workers who have reached sixty-five years of age and have been credited with the payment of at least five hundred weekly insurance assessments will be entitled to receive the *old-age pension*, without having to prove their inability to work.

Insured persons who are sixty years of age or older and who are deprived of remunerative labor are entitled to receive an *unemployment pension*, which is calculated in the same manner as the old-age pension but at a reduced rate fixed by law. To enjoy this right, they must have received credit for the payment of five hundred weekly assessments.

Annuities for invalidity and old-age pensions are computed on the basis of the number of weekly assessments paid by the insured person subsequently to the first five hundred weekly assessments and in accordance with the tables established for that purpose.

In the case of *life insurance*, the widow's pension is payable to the wife of the deceased who was receiving a pension for invalidity, old age or unemployment, or who, at the time of his death, has paid a minimum of one hundred fifty weekly assessments. If he had no wife, the woman with whom the insured person lived as if he were her husband during the five years immediately preceding his death, or by whom he had children, will be entitled to receive the pension, provided neither of them was married during the time they lived together. If at the time of his death he had several mistresses, none of them will be entitled to receive the pension. The same pension is payable to a disabled widower who was economically dependent upon an insured woman.

The widow's pension is equal to 50% of the pension for invalidity, old age or unemployment enjoyed by her deceased husband, or that to which he would have been entitled had he become an invalid.

Children under sixteen years of age will have the right to receive an allowance upon the death of an insured mother or father, if the mother or father was receiving a pension for invalidity, old age or unemployment, or if at the time of death he or she had received credit for the payment of a minimum of one hundred fifty weekly assessments. Under special circumstances the Institute may extend this allowance over the age of sixteen years, the maximum extension being up to the age of twenty-five.

This allowance is equal to 20% of the invalidity, old-age or unemployment pension the insured mother or father was receiving at the time of death, or that to which he or she would have been entitled had an invalid state resulted. This percentage is increased to 30% for orphaned children.

In the event there is no widow, children or mistress, the parents or grandparents who were economically dependent upon the insured person will be entitled to a pension equal to 20% of the amount the insured person was receiving, or would have received had he become an invalid prior to his death.

The weekly premiums paid by the employers vary from 1.48 pesos for employees who earn less than 8.00 pesos per day, up to 18.90 pesos for those who earn more than 80.00 pesos per day. Premiums paid by the employees range from 0.74 pesos to 9.45 pesos.

The Government, for this same insurance, contributes a sum equal to half the total amount of premiums paid by the employers.

Social Insurance was originally established in the Federal District and now has been extended to the majority of the industrial centers in the Mexican Republic, such as Puebla, Monterrey, Guadalajara, etc.

Protection for the Worker's Family

In addition to recognizing the rights of the working class as a group, Article 123, Section XXVIII, of the Constitution contains some measures beneficial to workers' families. The most

important provision is that on the creation of the family estate. The Constitution stipulates that the laws will determine what goods may constitute the family estate. These goods are inalienable, may not be subjected to property liens and may not be embargoed, and will be transferable by title under simplified formalities of estate proceedings.

As we have already discussed, the Constitution, Section XXIV of Article 123, also provides that a worker's debts to his employer may in no manner be collected from the members of the worker's family, nor may such debts be collected for an amount in excess of the worker's wages for one month.

Conciliation and Arbitration Boards

Article 73 of the Constitution empowers the National Congress to legislate in the field of labor, thus making it a Federal matter; nevertheless, the application of the law in this field, as a general rule, devolves upon the state authorities in their respective jurisdictions, except when it treats of matters relative to the textile, electrical, motion-picture, rubber and sugar industries; mining, hydrocarbons, railroads and other transportation companies and all other industries protected by Federal concessions; works executed in Federal zones and in territorial waters; conflicts involving two or more Federal States or Territories; the application of law contracts when they must be effective in more than one Federal State or Territory; and, finally, the obligations of employers in the field of education in the terms fixed by regulatory provisions.

The Constitution, in Section XX of Article 123, clearly establishes that the differences or conflicts between capital and labor must be submitted to a Conciliation and Arbitration Board, made up of an equal number of representatives of workers and employers and one Government representative, who shall act as chairman.

These boards are completely independent of the courts and their makeup and procedure follow special rules.

There are Municipal Conciliation Boards with conciliatory

functions, whose governmental representative is named by the City Council or Municipal Government; one or more Central Conciliation and Arbitration Boards in each of the States and Federal Territories and in the Federal District, whose Government representative is named by the State or Territorial Government or by the head of the Department of the Federal District, as the case may be; a Federal Conciliation and Arbitration Board in the City of Mexico, Federal District, to take cognizance exclusively of disputes of a Federal nature, and whose chairman is named by the Secretary of Labor; and one or more Federal Conciliation Boards in the various states, to take cognizance of conflicts of a Federal nature, but whose functions are confined exclusively to conciliation.

Likewise, Section XX of Article 123 states that if the employer refuses to submit his disputes to arbitration or to accept the decision handed down by the Conciliation Board, the Board, in addition to declaring the labor contract terminated and ordering the employer to compensate the workers with the amount of three months' wages, will fix the liability incurred by the employer as a result of the conflict.

According to the Labor Law, this liability consists of an amount equal to the total wages for half of the period during which services were rendered, if the contract was for a definite period but not in excess of one year. If the period is in excess of one year, the amount of liability is equal to six months' wages for the first year and twenty days' wages for each subsequent year of work performed. If the contract was for an indefinite period, the employer is liable for the payment of twenty days' wages for each year of services rendered. Bonuses, participations and all other economic benefits contracted in his favor will be included in the computation of wages.

When it is the worker who refuses to accept the intervention of the Conciliation and Arbitration Board, the labor contract is simply terminated.

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