



DOING BUSINESS IN MEXICO

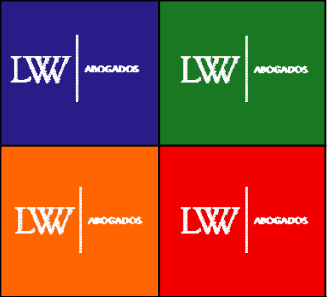
JOHN M. WILSON
Partner
LÓPEZ VELARDE, WILSON,
ABOGADOS, S.C.

Offshore Technology Conference
Houston, TX – May 7, 2008



ABOGADOS





Doing Business in Mexico

- **Business Entities**
- **Permanent Establishment**
- **Business Agents**
- **Foreign Investment Considerations**
- **Finance and Securities**
- **Real Estate**
- **Taxes**
- **Labor**
- **Immigration**

Types of Business Entities

Common Corporate Types

- **Stock Company:** Sociedad Anonima ▪ Capital Variable
- **Limited Liability Company:** Sociedad de Responsabilidad Limitada
- **General Partnership:** Sociedad en Nombre Colectivo
- **Limited Partnership:** Sociedad en Comandita Simple

Business Entities Process

Creating an Entity

- **Formalities:** filing ▪ statute ▪ bylaws ▪ powers of attorneys ▪ notary
- **Partnership:** capital structure ▪ fiscal year ▪ admin ▪ board of directors ▪ auditor ▪ general manager
- **Administration:** administrator - foreigner ▪ meetings can take place abroad ▪
- **Auditor/Examiner:** accountant ▪ regular audits ▪ alternate
- **Time frame:** three days to several weeks

Permanent Establishment

- **Branch Offices:** foreign inc recognized ▪ approved by national commission of foreign investment ▪ SRE
- **Asociacion en Participacion:** not legal entity ▪ agreement b/w partner entities ▪ participate in profits
- **Tax Rate:** income generated in Mexico ▪ corporate rate 35 % ▪ force of attraction income abroad
- **Joint Venture:** JVA ▪ association of persons ▪ limited period ▪ specific business enterprise ▪ more than A.P. ▪ type of business determines tax

Business Agents

Doing Business with Mexico

- **Sales Agent:** Mexican person ▪ agent for foreign inc ▪
- **Commercial Intermediary:** commission agent ▪ agency power ▪ promotes ▪ solicits ▪ negotiates ▪
- **Distributor:** distributorship agreement ▪ not attorney in fact ▪ purchaser wholesaler/retailer
- **Licensing:** technology licensing ▪ authorization or assignment ▪ trademarks/patents/copyrights

Foreign Investment Law

Investment Framework

- **Foreign Investment Law**
- **NAFTA**
- **Commercial Framework**
- **Local Legislation**
- **Investment Restrictions**

Security and Finance

Modern Legal Framework

- **Credit Shortage:** Increase Capital Availability
- **Uniformity:** Non-Possessory Pledge – Guarantee Trust
- **Legal Reforms:** Modern Mechanisms
- **Asset Based Lending:** Non-real estate system
- **Characteristics:** Future Property – Proceeds
- **Notice:** Commercial Registry System
- **Enforcement:** Expedited – Extrajudicial

Real Estate

Non-Residential Property

- **Interior:** Fee Simple Ownership
- **Restricted Zone:** Restrictions on Foreign Ownership
- **Ownership:** non-residential purposes” if foreigner investors adhere to Calvo Clause
- **Purposes:** commercial, industrial, agricultural, livestock, fishing, forestry, and rendering of services
- **Calvo Clause:** treating foreigners as Mexican nationals
- **Reporting Requirement:** reported to the Ministry of Foreign Affairs but does not require express approval.

Taxes

- **Federal Taxes:** Income tax ▪ assets tax ▪ value-added tax ▪ import/export taxes ▪ payroll tax ▪ social security premiums ▪ retirement savings system ▪ infonavit
- **Local Taxes:** real property sale ▪ ownership ▪ salaries
- **Corporate Tax:** max-rate 35% ▪ taxable profits ▪ accruable income ▪ deductions = expenses necessary to carry out business ▪ monthly partial payments
- **Asset Tax:** 2% rate ▪ current & fixed assets ▪ refunded to income tax ▪ not payable 3 three years
- **Value Added Tax:** sales / service tax ▪ 10 - 15% rate ▪ Export Incentive Program VAT of 0%.

U.S. – Mexico Tax Treaty

- **Purpose:** prevent double taxation / reduce each country's tax rates on income earned by non-residents
- **Residence / Permanent Establishment:** clarifies each country's rules for the taxation of non-residents
- **Royalties:** lowers withholding tax on royalties to 10%
- **Dividend:** lowers withholding tax on dividends to 5-10%
- **Transfer Pricing:** tax entity profits as if conducted b/w non-related parties – arm's length transaction
- **Mutual Agreement Procedure:** consultation b/w competent authorities to resolve disputes / binding arbitration upon the consent

Labor

- **Unions:** groups 20 or more may form a labor union
- **Strikes:** recognized / protected tool for obtaining improved benefits
- **General Labor Regulations:** Wages / Working hours / Working hours / Rest days
- **Benefits:** Paid vacations / Christmas bonus / infonavit / Retirement savings fund / Profit sharing
- **Social security:** employers/employees register w/ IMSS / SS quotas paid by both 25 x minimum wage cap
- **Termination:** employer may only justifiably dismiss an employee without liability for causes foreseen in the Law

Immigration

- **Investors:** foreigners that invest capital in industry, commerce or services.
- **Professionals / Scientist:** foreigners exercising a profession / scientific, training or educational activities
- **Confidential employees:** foreigners performing activities as sole administrators or any other managerial position
- **Relatives:** spouses/children/blood relatives dependants
- **NAFTA:** Business Persons / Business visitors / Traders-investors / Intra-company transferee / Professionals



Additional Issues

- **Intellectual Property**
- **Direct Sales**
- **Arbitration**
- **Dispute Resolution**
- **Insolvency**
- **Antitrust / Competition**
- **Maquiladora / Pitex Systems**

LW

ABOGADOS

Oil and Gas Industry

The Oil and Gas Industry

Pemex Monopoly

- Exploration
- Production
- Refining
- Transportation
- Distribution
- Storage
- First-hand sale
- Basic Petrochemical Industry

Upstream Activities

Exploration and Production

- Constitutional Restrictions (Arts. 27 and 28).
- Prohibition to execute international energy agreements (Concessions, risk contracts, participation agreements, etc.).
- Private participation through the Procurement Laws.

Drilling service agreements / Turn-key facility construction project / Exploration agreements, among others.



GENERAL RULE: THE BIDDING PROCESS

Through a Bidding Process, Public Calls may be domestic and/or international.

- Public Agencies will publish the corresponding Bidding Guidelines for potential suppliers.
- Bidding Process is integrated by:
 - (i) Q&A Meetings. Modifications made during said meetings will be considered part of the Bidding Guidelines.
 - (ii) Deliver of the technical and economic proposals.
 - (iii) Proposals are reviewed and disqualified the ones which do not meet the requirements of the Bidding Guidelines and the Procurement Laws.
 - (iv) The admitted proposals are reviewed; and
 - (v) Award of the administrative contract.

BIDDING PROCESS MODIFICATIONS

(i) Attendance.- Any individual or corporation will be able to attend any bidding process without having to purchase the bidding guidelines.

(ii) Time Reduction.- Bidding process in two stages instead of three: (i) deliver and opening of the technical and economic proposal; and (ii) notification of the award.

Public servants with a position of General Manager will be able to solve problems which were previously reserved to the General Director of the public entity.

The bidding process is ended with the execution of the contract instead of the notification of the award.

(iii) Pre-bidding guidelines.- Public entities shall publish pre-bidding guidelines on the Internet.

BIDDING PROCESS MODIFICATIONS

(iv) **Q&A Meetings (Questions)**.- The officials of the public entities must answer in a clear and straight manner the questions posted by the suppliers during the questions and answers meeting.

(v) **Prohibition to guide the process**.- The prohibition against establishing requirements with the purpose of directing the award to a specific participant or with the purpose of limiting the participation of other participants.

(vi) **Technical & Economic Proposals (Envelop)**.- Participants will now only present one envelope that contains both the technical and the economic proposals instead of two envelopes.

EXCEPTIONS TO THE BIDDING PROCESS RULE

Restricted Invitations.

- (a) Works of art, patent ownership, copyrights and other exclusive rights;
- (b) Endangers or alters public order, the economy, public services, health, safety or the environment of an area or region of México;
- (c) Acts of force majeure occur or other circumstances exist which may cause losses or significant additional costs;
- (d) The public contract previously awarded was canceled due to causes attributable to the contractor;
- (e) National security;
- (f) Two public calls are issued and no reliable proposal has been received in response to either of them, among others.

Natural Gas Industry

Modifications and Reforms to the Petroleum Law (May 11, 1995).

Publication of the Natural Gas Regulations (Nov. 8, 1995).

Private participation in the transportation, distribution and storage of natural gas.

Pemex monopoly:

- (a) The ownership of the existing transportation pipeline.
- (b) Exploration and production.
- (c) First-hand sale.

Business Opportunities

Permits granted 112

Pipeline Kms. 39,761.84

Investment amount US\$ 2'325,000,000.70



Mexico National Pipeline System



Why Baja California?

- Baja is not connected to Mexico's pipeline system or its electricity grid; all interconnections are with California
- Region is experiencing sizeable natural gas demand growth (Baja: **15.9%**; California: **3.9%**)
- California only produces **16.3%** of natural gas needs and imports the rest.
- *Perceived* less stringent permitting and construction requirements compared to California.



Liquefied Petroleum Gas (“LPG”)

Refining

Petrochemical Industry

Modifications to The Oil and Gas Industry

Pemex’s tax regime

Allow private participation in the dry gas exploration and production sectors

Allow private participation in the refining and the basic petrochemical industries

Flexibility in the application of the Procurement Laws

Additional investment to increase Mexico’s hydrocarbon reserves

López Velarde, Wilson

ABOGADOS

www.lvwa.com.mx