

**LEGAL NOTE**

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June, 2014

To: Clients and Friends

Re: Amendments to the General Law of Commercial Companies

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On June 13, 2014, amendments to the General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*; "LGSM") were published in the Official Gazette of the Federation. These amendments implemented substantial revisions to the regulations of stock corporations (*sociedades anónimas*; the "Corporations") and endowed commercial brokers (*corredores públicos*) with broader authorities.

1. *New Confidentiality Obligation of the Directors.* Members of the Board of Directors or the Sole Administrator of Corporations now have the obligation to maintain confidentiality with respect to the information and matters of which they become aware by means of their position in the corporation, except when such information or matters are public or requested by authorities. Such confidentiality obligation shall remain in force during their tenure and for one year thereafter.

2. *Minority Rights.* Shareholders' minority rights to carry out the following actions are reduced from 33% to 25%:

- a) Initiate civil actions against Directors;
- b) Defer by 3 days and without need of a new call the voting of any matter for which they consider not having been sufficiently informed; and
- c) Judicially oppose the resolutions of the General Shareholders Meetings.

However, the 33% required to request a call for a Shareholders Meeting is maintained.

3. *Conflicts of Interest of Statutory Auditors.* In case an Statutory Auditor has a conflicting interest to that of a Corporation in any transaction, besides having to refrain from any intervention in such transaction (and if not doing so, being liable for any damages and lost profits caused to the corporation), now it has to additionally notify in writing the Board of Directors or Sole Administrator -within the 15 days following the date on which it becomes aware of the such transaction- its terms and conditions, as well as any information related with the nature and benefit that the parties thereto would obtain.

4. *Changes in the Publishing Means of Calls, Notices, etc.* Calls or notices that were required to be published in the official gazette or newspapers with wide distribution in the domicile of a commercial company, now shall be published in the "electronic system" that the Ministry of Economy is in process of implementing<sup>1</sup>.

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<sup>1</sup> The Ministry of Economy has a term that will expire on July 13, 2015 to implement such electronic system; provided, that until such system is implemented, Corporations shall continue

Among the publications that shall be made in the new electronic system, the following are the most relevant:

- a) Calls for Shareholders Meetings;
- b) Notice of payment resolutions whose term or amount is not evidenced in share certificates;
- c) Notice for the exercise of preemptive rights for capital increases;
- d) Publication of financial statements of the Corporation, when requested by the shareholders;
- e) Merger Agreement;
- f) Spin-Off Resolutions;
- g) Dissolution agreement and the Final Liquidation Balance; and
- h) General balance of the business concern of commercial companies that are directly carrying out commercial activities in Mexico.

5. Shareholders Agreements. The prohibition for shareholders Corporations to agree on mechanisms that restrict or compromise the voting right is eliminated, and consequently they are expressly allowed to reach agreements that were previously reserved exclusively to shareholders of a *Sociedad Anónima Promotora de Inversión* or SAPI under the Securities Market Law (*Ley del Mercado de Valores*). Shareholders of a Corporation may agree on:

- a) Rights and obligations that provide purchase or sell options of shares representing the capital stock of the corporation, such as:
  - (i) Tag-along provisions,
  - (ii) Drag-along provisions,
  - (iii) Call and Put Options, and
  - (iv) Mandatory subscription and payment obligations.
- b) Dispositions and other acts related to the ownership, transfer and exercise of the preemptive right for capital increases.
- c) Agreements for the exercise of the voting right in Shareholders Meetings.
- d) Registration rights' provisions.
- e) Other rights and obligations of analogous nature.

These agreements shall not be enforceable against a Corporation, except in the case of a judicial resolution.

6. New Provisions in By-laws. Aligned with what the Securities Market Law allows to SAPIs, the By-laws of Corporations may include provisions in order to:

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carrying out the publications in the official gazette and newspapers with wide distribution, as applicable.

- a) Impose restrictions to the transfer of ownership or rights derived from the shares of the same series or class, other than the one already permitted relating to the prior authorization of the Board of Directors;
- b) Establish shareholders' exclusion causes or exercise separation rights, withdrawal or redemption of shares;
- c) Issue shares that (i) do not grant voting rights or restrict such rights to certain matters, (ii) grant corporate rights different from the voting right or exclusively the voting right, or (iii) grant veto right or require the affirmative vote of one or more shareholders with respect to resolutions of the Shareholders Meeting;
- d) Implement mechanisms in the event shareholders do not reach specific agreements;
- e) Extend, limit or deny the preemptive right for the subscription of capital increases; and
- f) Limit the liability for damages and lost profits caused by the Directors and officers, arising from the acts they carry out or the decisions they adopt, provided, they were not malicious, in bad faith or unlawful.

7. Enabling Commercial Brokers (Corredores Públicos) to attest additional corporate acts. Although the Federal Law for Commercial Brokers (*Ley Federal de Correduría Pública*; "LFCP") already allows commercial brokers to act as "certifying public officials" in the incorporation of commercial companies and in those acts expressly provided for in the LGSM, this latter statute only provided that commercial brokers were allowed to participate in the notarization of Extraordinary Shareholders Meetings of Corporations.

The June 2014 amendment substitutes almost all references made to "public notary" in the LGSM for "certifying public official", and therefore, based on the LFCP, several additional acts may now be carried out before a commercial broker. The only acts still reserved for Public Notaries are those related with the granting of powers of attorney for the representation of commercial companies, given that powers of attorney are acts of a civil nature and commercial brokers may only carry out acts of a commercial nature. Notwithstanding the foregoing, the amendments to the LGSM effectively broaden the options available for commercial companies and promote competition in the rendering of public certification services in Mexico.

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