

TERRUM

Briefing, analysis, opinion and insight of legal affairs in Mexico
Digital publication by ABOGADOS SIERRA

November 15, 2015 year 03 | No. 12

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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

sierra sierra

Announcement of New Partners and Corporate Image.

Dear clients and friends,

As this very intense and busy year draws to a close. To maintain and continually improve our standard of service and to cope with the growth and increased amount of work with which you have favored our firm throughout the year. We are extremely pleased to present the following changes to all our esteemed clients, constituents and friends:

Firstly, effective November 1, 2015 we are proud to share the news of the appointment of the following members of our firm as partners in the respective practice areas named below:



VIRIDIANA BAROUIN. Aircraft Finance and Leasing.

Viridiana has been made partner after 8 years successful years of practice first as attorney and subsequently as associate of our firm. Her experience in this area of practice is unmatched having worked in numerous transactions and restructures throughout these years. Viridiana's role as partner will undoubtedly strengthen our team in this substantial practice of our work.



MISAEEL ARELLANO. Aviation Regulatory.

Having worked as in-house counsel at AeroMexico, Misael has contributed for nearly 8 years to the substantial development of our practice in regulatory law. Misael's appointment as partner will consolidate our practice in this area and will position the regulatory team for further growth.



JULIO VARGAS. Civil and Commercial Litigation.

With vast prior experience in banking and securities of more than 20 years having worked as head of litigation at Banamex and other financial institutions. Julio has joined our team to strengthen and to diversify our litigation practice.



FERMIN ARAMBURU. Corporate Law.

Already a partner of our firm. Fermin will be leading the corporate law practice which will now take a more formal structure to benefit the increasing activity that we have in this area.

Secondly, but of no less importance, we are modernizing the corporate image of our firm and consolidating our name, which will from now on will only be addressed as:

ABOGADOS SIERRA

sierra

With this more modern image we intend to reflect our contemporary view of cross border legal services as well as our continuing motivation and improvement. Our new simple and direct image will carry the spirit of simplicity, straightforwardness and professionalism that characterizes our service.

Between now and the end of this year, our new corporate image will be gradually reflected in a new modern and refreshed website, in our newsletters Coelum and Terrum as well as in our sponsorships and other corporate branding. Please note that our e-mail addresses: @asyv.com; the address of our website: www.asyv.com, which will be updated in the coming weeks and the business address of our offices will remain the same.

With the changes described above, we expect to continue meeting the high standards that are continually expected by our clients. We would be very encouraged by receiving any feedback with any questions or comments you may have.

Kindest Regards

Carlos Sierra

Federal Law of Special Economic Zones, a wager NOT guaranteed.

by Viridiana Barquín

Mexican President Enrique Peña Nieto, announced on September 29, the initiative of the “Federal Law of Special Economic Zones” (“Ley Federal de Zonas Económicas Especiales” “LFZEE” for its acronym in Spanish), which aims to promote the development of certain geographical zones of the United Mexican States (initially south and southeast of the Country)¹ by attracting investments in highly productive sectors.

In the act of presentation, the President signed the initiative that will be turned over to the Congress where will be discussed, enriched and most likely approved. The official project of the initiative² defines the Special Economic Zones (“SEZ”), as “a localized geographical area, located on a site with natural and logistical advantages to become a highly productive region”. Some of the most important benefits of the creation of the SEZ’s will include tax allowances, preferential customs regime and modern infrastructure projects in order to promote the development of the states with more level of poverty and the President’s Office reported that it is expected an investment of nearly \$115,000 million pesos, which include pipelines, railways, roads, airports, ports and logistics infrastructure³. We know that this is not a new concept, the first free trade zones were in ancient Phoenicia and millions of free trade zones have been created since then with names such as “charter cities”, “enterprise cities” or “special rule areas”. Although the first constituted under the modern concept was established at Shannon Airport in Ireland in 1959⁴; the biggest success of this kind of zones is China, whose decision in 1980 to create a zone in Shenzhen city transformed such country into an output power of exports and as of today, China has the world’s largest economy measured by purchasing power parity. Different from what the President said in the act of presentation and through the official website⁵, this is not a new concept in Mexico either, provided that; there are certain “SEZ” already ongoing within the automotive and aeronautical sector⁶. But Mexico is not China, and despite this project in its wording and description⁷ reflects significantly the Chinese model, we cannot lose sight of important circumstances known to all; such as, the social tension in some of these areas, the insecurity and continuing protests, and, as for the political and administrative sphere, the bureaucracy and corruption that unfortunately exist. Would it be a valid concern that potential investors could consider the SEZs as vehicles for corruption and reception of bribes and irregular payments to the authorities, or the use of the SEZs to launder money by inflating the value of exports? It is a fact of the reality in some cases that nowadays along with the global increase of SEZs there has come also a wide range of criminal actors taking advantage of relaxed oversight, softened Customs controls and the lack of transparency in these zones. The 2010 OECD report on Money Laundering Vulnerabilities of Free Trade Zones, for example, delineates these abuses to include “participation in an organized criminal group and racketeering.”⁸

1.- The first three would be in Oaxaca, an area of great interest for energy multinationals; a second in Chiapas, on the border with Guatemala; and the third that would involve the states of Michoacán and Guerrero. <http://www.forbes.com.mx/elefantos-blancos-el-riesgo-de-las-zonas-economicas-especiales-mexicanas/> consulted on October 7, 2015.

2.- http://sil.gobernacion.gob.mx/Archivos/Documentos/2015/03/asun_3217291_20150319_1426690639.pdf consulted on October 2, 2015.

3.- <http://eleconomista.com.mx/industrias/2015/09/29/pena-nieto-presenta-iniciativa-zonas-economicas-especiales> consulted on October 2, 2015.

4.- <http://vocesdelperiodista.mx/reportaje-de-fondo/zonas-economicas-especiales-una-apuesta-no-garantizada/> consulted on October 7, 2015.

5.- <http://www.presidencia.gob.mx/zonaseconomicasespeciales/> consulted on October 7, 2015.

6.- E.g.: “Aerotech Industrial Park” (Querétaro), “Logistik Free Trade Zone” (San Luis Potosí), “Zona Franca” (Baja California) and “REFIESON” (Recinto Fiscalizado Sonora). <https://promexico.gob.mx/documentos/mapas-de-ruta/MRT-Aeroespacial-2014.pdf> consulted on October 7, 2015.

7.- http://sil.gobernacion.gob.mx/Archivos/Documentos/2015/03/asun_3217291_20150319_1426690639.pdf consulted on October 2, 2015.

8.- Money laundering vulnerabilities of Free Trade Zones (OECD, Paris, 2010).

It is intended that the SEZs will be established in federal zones, thus; they will be owned by the Federal Government as explained by the Director of the National Bank of Infrastructure Projects⁹, who also indicated that there are certain areas already identified, notwithstanding, there will be necessary to expropriate some others¹⁰ and with such expropriation there would be a latent risk of a new social protest as if they were not be enough already and moreover, will certainly become such facilities into a long-term or perpetual “concession”. Furthermore, the SEZs will operate as an economic system with the confluence of two authorities: a) the existing Integral Port Administration (“*Administración Portuaria Integral*” or “API” by its acronym in Spanish) and b), the figure of an Administrator that could be public or private, and in the event of being private, will be appointed by public bidding. This Administrator will be responsible for making the specific master plan of the industrial area, and, in parallel, to capture investors and companies to be established in those areas, although, it is not intended to be an individual, but a Company, in a similar scheme as for the Airport Groups (“*Grupos Aeroportuarios*”)¹¹ A common misconception is that SEZs are “extraterritorial”, outside of the Nation and are not subject to national Customs laws, and how this misconception can be corrected? Is it intended before the SEZs coming into operation, to have applicable rules that delineates a number of guidelines that address the evolving drawback, including explicit Customs jurisdiction over SEZs, rules on origin of goods, Customs transit and transshipment procedures? Certainly, Federal and local authorities would have to be very careful to ensure that the economic incentives (i.e. tax-free status) offered do not interfere with or eliminate critical non-tariff control functions performed by Customs, while requiring Customs authorities to act in a transparent manner to facilitate legitimate businesses.

“This Administrator will be responsible for making the specific master plan of the industrial area, and, in parallel, to capture investors and companies to be established in those areas, although, it is not intended to be an individual, but a Company, in a similar scheme as for the Airport Groups (“*Grupos Aeroportuarios*”)”.

Although the project of law is supported by the previous advice of the Worlds Bank on the design, review and preparation of the same, and to include the best international practices, the experience of other countries and delineation of “locks” to prevent crime and corruption; it is clear that simply passing laws, issuing regulations and draft applicable penalties, of course, is an incomplete process until such measures are applied in practice. Unfortunately, there are instances in Mexico where, the regulations are already in place but are not adequately applied.

9.- A state owned development bank in Mexico. Its core business is to provide loans to finance or re-finance projects of public or private investment in infrastructure and public services. Official website <http://www.banobras.gob.mx/quienessomos/Paginas/LaInstituci%C3%B3n.aspx>

10.- <http://eleconomista.com.mx/estados/2015/10/01/zee-tienen-blindaje-contra-fracaso> Consulted on October 19, 2015.

11.- Special Purpose Companies that as result of the process of privatization, obtained the concession to operate and manage the airports in Mexico. See “Mexican Airport Privatization”, *Coelum* year 02, No. 03, by Viridiana Barquin http://www.asyv.com/coelum/coelum07/PDF%202007/COELUM_JUL_07.pdf

Public Secretary of Education invest 2 Thousand Million Pesos for Education in Oaxaca.

The Public Secretary of Education (SEP) has announced that it will be investing 2 thousand million pesos in the state of Oaxaca in order to improve education. During the last few years Oaxaca, one of the poorest states in Mexico, has been the subject of many strikes by local teachers which has caused long periods of time with no classes for many children. These teachers go on strike in order to protest Enrique Peña Nieto's recent Education Reforms which make teachers have to take obligatory tests in order to be able to keep practicing their profession. The SEP hopes that this investments motivates the teachers to take return to their jobs as well as improving learning conditions for the state of Oaxaca. www.eluniversal.com 07/10/15.

IMSS to increase budget in order to improve health.

During a recent conference which centers around new regulations for one of Mexico's most important governmental health organization Mexican President announced that in order to increase health benefits for all the population it would be taking new measures such as an increase in the budget. The IMSS (Mexican Institute for Social Security) is one of the main organizations, which focuses on government-funded health services. Peña Nieto hopes that by increasing the budget to 545 thousand million pesos, a 45% increase from last year, all of the people living in Mexico will have an easier access to public health services as well as improving its quality. www.eluniversal.com 19/10/15.

Mexican Government acknowledges challenge in Human Rights.

During the most recent conference of the Inter-American Commission on Human Rights, Mexico was once again questioned on the approaches it would take in improving the enforcement of Human Rights and how it would continue the investigation of the 43 missing students. The Commission proposed several plans, which could help the investigation like the interrogation of the involved soldiers. However, Mexico did not agree and said that the only way that the interrogation would be allowed would be by them being performed by the Mexican public ministry and based on Mexican laws. Mexico also state however that they know they face a challenge in the proper enforcement of human rights but it will do the most they can in order to overcome the challenge. www.eluniversal.com 20/10/15.

Mexico, us to open jointly staffed border station.

Mexico and the United States said on Thursday they will open two jointly staffed border stations on Mexican soil in a bid to streamline trade and improve communication at the frontier, which has suffered due to tensions over migration. U.S. Homeland Security Secretary, Jeh Johnson and Mexican Finance Minister Luis Videgaray, announced that they will open two jointly staffed border stations on Mexican soil in a bid to streamline trade and improve communication at the frontier, which has suffered due to tensions over migration. A shared facility has been operating since last year on the U.S. side of the border in Texas, at Laredo airport, allowing companies to ship goods into eight airports in Mexico, Johnson said. Videgaray said a new facility to process agricultural goods from Mexico would be opened near the Otay Mesa crossing in Tijuana on the border with California. www.news.yahoo.com/mexico 20/10/2015.

Mexico and the U.K. to develop an environmental protection satellite.

The Mexican Space Agency (AEM) and the United Kingdom Space Agency (UKSA) will develop a satellite project of remote perception to protect the environment. The first mission will be to preserve the Bacalar's Ecological Corridor in Quintana Roo. Javier Mendieta, General Director of the AEM, explained that they will be supported by the State of Mexico's Autonomous University (UAEMEX), the College of the South Frontier (ECOSUR) Chetumal Unity and the participation of the National Institute of Statistics and Geography (INEGI). Additionally, they will have the cooperation of the Innovation Office of Satellite Applications (Catapult), the British Companies, Deimos and Surrey Satellite Technology LTD from the University of Surrey, as well as the Surrey Space Centre U.K. the project leader. Mexico will have access to the Platform of Environment and Weather Monitoring U.K. (CEMS U.K.), in order to process information to protect the Bacalar's Corridor. www.mexico-now.com 22/09/15.

CONTRIBUTORS

Viridiana Barquín

Attorney at Law: Admitted to practice law in 1999. Mrs. Barquin, of Mexican nationality obtained her law degree by Universidad La Salle, Mexico City and holds Master Degree in International Business by Universidad La Salle, Barcelona, with postgraduate studies in Airline Contract Law by the International Air Transport Association (IATA- Switzerland), International Air Law and Aviation Insurance Law (IATA- Mexico) and International Arbitration by Escuela Libre de Derecho.

Her practice focuses in cross-border transactions dealing with leasing, financing, sale and acquisitions, antitrust and corporate matters, having represented foreign companies in structuring and negotiation of a full range of commercial agreements and numerous disputes resulting in the successful repossession of assets through settlement and alternative methods of dispute resolution.

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