

JOINT VENTURES WITH *EJIDOS*

It is possible to enter into a joint venture with either an *ejido* or with any individual *ejido* member as the case may be. In either case, the joint venture usually consists of either common use or individual *ejido* property being used in conjunction with investment capital contributed by the other joint venture partner.

In the case of individual parcels, Article 45 of the Agrarian Law states *ejido* properties may be the object of contracts granting the use or enjoyment of such properties regardless if the contracts are entered into by the *ejido* itself, in the case of common properties, or any of its members' individual parcels. However, in either case, Article 45 limits the use of any *ejido* property to a period of time which is appropriate for the type of use, but, in any case, no more than 30 years maximum. Since the law allows for this thirty year term to be renewed it may seem that the term is indefinite; however, since the renewal of the contract would be granted by the *ejido* it leaves them a escape clause. Although the law is not clear on just what type of use would be acceptable, it does state that such contracts could be of "association" or "utilization"

As far as individual parcels are concerned, it seems unlikely that this limitation would present a problem since the parcels owners can transfer title readily, and, as such, it would be much more likely that title would be transferred into a Mexican corporation and the use of the property would no longer be an issue.

CORPORATE JOINT VENTURES WITH COMMON USE EJIDO PROPERTIES

Article 73 of the law defines common use properties (*tierras de uso comun*) as those which "...constitute the economic support of the *ejido* community..." and consist of the properties which have not been specifically reserved by the *Asamblea* (the governing body comprised of all the *ejido's* members) for urban development or individual parcels. In other words, common use properties are those which the *ejido* as a whole owns and which have not been set aside for some specific use.

The use and exploitation of common use properties is regulated by the *ejido's* internal regulations and cannot be assigned or attached except for the cases provided for in Article 75 of the law. The general regulations of the *ejido* are very similar to a corporation's articles of incorporation and bylaws, in that, they lay out the basic rules under which the *ejido* operates. The general regulations and the maps indicating the location of the *ejido's* properties are filed with the National Agrarian Registry and are available to the public. This is the natural place to start due diligence on any joint venture: nothing should be taken for granted. Too many times foreign investors are willing to rely on information provided by the *ejido* instead of doing the due diligence necessary to independently verify such information. Not doing the necessary due diligence is asking for disaster. This is because all transactions with *ejidos* are protected by law in that the *ejido* is basically not responsible to make sure its property is in order: that job is left to the buyer or joint venture partner.

Article 75 of the law states that in cases of manifest benefit to the *ejido*, it may transfer ownership of common use properties to partnerships or corporations in which the *ejido* or its members participate. In other words, *ejidos* may enter into joint venture corporations in which their capital contributions consist of property. This is an important change from the old law, which strictly prohibited such transactions.

Title to the property in these cases is assigned to the corporation, and the *ejido* no longer owns the property in question. However, the law does state that in the event that the corporation is liquidated, the *ejido* would have a preferential right to receive property as their share of the assets. Therefore, under the provisions of the law, investors can enter into a joint venture corporation to develop *ejido* properties. In many areas of Mexico where tourist development is booming, the possibilities are endless. Obviously this presents the perfect joint venture opportunity because the foreign investors do not have to purchase the property and can dedicate more funds to developing. On the other hand, most, if not all *ejidos* lack investment capital and therefore welcome the opportunity to develop property which otherwise may not have any value.

There are specific procedures which must be followed to legally contribute *ejido* property to a Mexican corporation. Although the law does not limit joint ventures in these case to only Mexican corporations, from a practical standpoint it is really the only viable alternative. Before an *ejido* property can be transferred as a capital contribution to a Mexican corporation, a Mexican corporation would have to be set up. There are ways that this could be done to coincide with the initial capital contributions of all the shareholders, including the *ejido* property. Additionally, the following requirements must be met:

1. The *ejido's* capital contribution of the property must be approved by the *ejido's Asamblea* at which a notary public and a representative of the *Procuraduría Agraria*. (Agrarian Official) are present. In order to do this the summons to call the meeting of the *ejido's Asamblea* must include the proper notification to the *Procuraduría Agraria* and the board of directors must make sure the arrangements are made with a public notary to attend the meeting. The Agrarian Official will verify if the meeting was called legally and that the *ejido* members were notified in accordance with the law and whether quorum was met to allow the meeting to take place. Quorum will either be 75% of *ejido* members on the first summons, or fifty percent plus one on the second summons. The resolution to make the capital contribution to a corporation must pass by a vote of two thirds of the members present. In resolutions made in violation to these rules would be null and void. Once the resolution to make a capital contribution to the joint venture corporation is legally adopted, it must then be recorded in minutes before the notary public present at the meeting and signed by the Agrarian Official and subsequently filed with the National Agrarian Registry.

2. The development plan and the corporation documents must be submitted to the opinion of the Agrarian Official. The Agrarian Official would then render an opinion, within 30 working days, as to viability of the investment proposed, the rational use of the property to contributed to the joint venture corporation, and the equality in the terms and conditions proposed. The *ejido* does not have to accept the opinion of the Agrarian Official and is free to seek out other advice.

3. Having received the opinion of the Agrarian Official, or in its absence after 30 days, the *ejido* would call another meeting to authorize the capital contribution of the property to the joint venture corporation and whether the stock certificates would be issued to the *ejido* or to its members as individuals.

4. The value of the shares acquired by the *ejido* or its members in relation to the contribution of property shall be equal to that established by the Appraisal Commission of National Property, "*Comisión de Avalúos de Bienes Nacionales*" or by any credit institution.

5. The law requires that the joint venture corporation must have at least one shareholders' auditors appointed to report to the *ejido's Asamblea* and oversee the activities of the joint venture corporation in accordance with the General Law of Mercantile Companies. If the auditor is not appointed by the *ejido* it must be appointed by the *Procuraduría Agraria*.

Although the Agrarian authorities are still involved in the procedures necessary to assign common use *ejido* property to a joint venture corporation, their participation is limited to simply issuing an opinion on the feasibility and soundness of the proposal in question. Unlike the provisions of the old law, the provisions of the new law no longer require that the Agrarian authorities intervene to sanction transactions between third parties and *ejidos*. Consequently, the procedures for assignment can be completed fairly quickly.