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SOME CASE STUDIES OF JOINT VENTURES WITH MEXICAN EJIDOS

DAVID D. SPENCER,* FERNANDO RIVADENEYRA**

I. INTRODUCTION

This article proposes to acquaint readers with an innovative project handled jointly by the authors. The project centered on a group of timber-owning communities in southern Mexico, and may have been the first attempt ever to establish a joint venture between Mexican ejidos and a U.S. company.¹ The arrangement has been successful in many ways. The U.S. party benefitted by gaining access to high grade softwood lumber. In turn, the ejidos involved gained access to an international market for the first time in their history.

The authors believe strongly that this type of relationship offers a promising model for future foreign investment in Mexico. The recent liberalization of the country's land use and foreign investment laws has provided ejidos with increased autonomy and the capacity to negotiate business relationships freely.² In addition, nearly half of Mexico's territory is organized within the ejido land tenure regime. Clearly, those who conduct business in Mexico need to become familiar with the ejido, and those who avoid doing so may miss a rewarding opportunity.

The ejido is a unique institution with a complex history. Business transactions involving ejidos require lawyers to get out of the office and become directly involved in genuine cultural, socio-economic, and even anthropological issues. This can be a rewarding experience. At the same time, of course, it involves serious cross-cultural and legal challenges and can hold unanticipated surprises. This is especially true for the unprepared. Consequently, the following discussion begins with some essential background information about ejidos and their significance in Mexico. It then elaborates on the potential for ejido-based joint ventures as a foreign investment option, and offers insights based on the authors' personal experience.

II. DEMOGRAPHIC OVERVIEW

To appreciate the importance of the ejido in Mexico, it is useful to know something about the country's territorial composition. As of 1990, ejidos and communal lands comprised about 48% of the national territory. Small landholdings accounted for 38%; national lands, 7%; and federal and urban areas, 6%. Thus, nearly half of Mexico's land base is held communally.

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1. The ejido is a land tenure regime permitting designated populations to hold land in common and designate areas for residential use, individual cultivation and collective cultivation. See discussion *infra* Part IV. Ejido members are called *ejidatarios*. Mexican agrarian law also recognizes agrarian communes, or *comunidades agrarias*, whose members are known as *comuneros*. See generally LEY AGRARIA [AGRARIAN LAW] [L.A.], Diario Oficial [D.O.] 26 de febrero de 1992, as amended, arts. 9-42, 98-107.

2. See discussion *infra* Part VI.

It follows that ejidos are a significant factor in the land distribution within each state as well. The largest number of ejidos is found in the State of Veracruz, followed by Chiapas, Michoacán and Oaxaca.³ The Federal District contains only forty-three ejidos,⁴ which may represent the only fragments of Mexico City that have not been developed or urbanized. Clearly such ejidos represent extremely valuable property.

Another way of measuring the ejido presence in each state is by the number of ejidatarios. Large populations of ejidatarios are found in the States of Oaxaca, México, Veracruz, Chiapas, Guerrero and Michoacán.⁵ This has political implications, as ejidatarios can definitely be found within the guerilla movements of Chiapas and Guerrero.⁶

Actual land use on ejido property varies. For example, much of the ejido land in Oaxaca, Durango, Chihuahua, Campeche, Chiapas, and Quintana Roo is forested and therefore a potentially major source of lumber.⁷ There are also a number of forest plantations in the States of Michoacán, Veracruz, and México.⁸ Some ejido land supports the grazing of cattle.⁹ Other ejidos possess valuable mineral resources.¹⁰ Clearly, any U.S. company considering a joint venture in Mexico will benefit by becoming acquainted with the ejido.

III. HISTORICAL OVERVIEW

Historically, ejidos arose from indigenous forms of agrarian land tenancy, which were closely related to the social organization of the Indians.¹¹ When the Spaniards came to Mexico, they found that the Indian tribes were already organized into kinship groups called *calpulli*. At the time of the arrival of Hernán Cortés, Aztec property was divided among the king, the gods, the nobility, and the warriors. A designated amount of property also belonged to the villages and the communities.

During the colonial period, land was taken from the Indians and given to those of Spanish descent. This gave rise to the hacienda system. The haciendas belonged to landlords with vast holdings, who used Indian laborers to develop their land. This gradually evolved into an outright sharecropping arrangement.

By the seventeenth century the Jesuits were already suggesting that half of the land should be returned to the Indians. Some of the haciendas did so, but only in the

3. INSTITUTO NACIONAL DE ESTADÍSTICA, GEOGRAFÍA E INFORMÁTICA, RESUMEN NACIONAL: RESULTADOS DEFINITIVOS: VII CENSO EJIDAL, table 1A (1994) [hereinafter 1991 EJIDO CENSUS]. As of 1991, Veracruz had 3620 ejidos and agrarian communes, Chiapas 2072, and Michoacán 1845.

4. *Id.*

5. Each of these states has an ejidatario and comunero population of close to or well over 200,000. *Id.* at table 1B.

6. One of the reasons cited for the 1994 Chiapas uprising by the Zapatista Army of National Liberation (EZLN) is reaction to constitutional reforms, initiated by President Carlos Salinas de Gortari in 1992, designed to modernize the ejido. See generally Charles R. Simpson and Anita Rapone, *Why Did Chiapas Revolt? The Making of an Explosion*, COMMONWEAL, June 3, 1994 at 16, 16-19. The amendments to Article 27 of the Mexican Constitution brought land expropriation and redistribution to an end. See *infra*, text accompanying note 19.

7. 1991 EJIDO CENSUS, *supra* note 3, at table 3B.

8. Each of these states has between 17 and 42 ejidos dedicated to forestry. *Id.* at table 4.

9. See *id.* at tables 3B, 4.

10. See *id.* at table 21A.

11. For a more detailed review of the evolution of Mexican land tenure through various historical stages, see JESUS G. SOTOMAYOR GARZA, COMPENDIO DE DERECHO AGRARIO 27-96 (1989).

interest of making sure that the Indians would continue working for them and cultivating their lands. The most desirable pieces of land remained in the hands of the large landholders.¹²

The ejido established by the laws of New Spain represented common lands pertaining to a determined population, and bordering its village. Cultivation was prohibited, but the ejido land supplied pastures for the community, as well as opportunities for recreation, gardening, and other activities. The territorial extension of these colonial-era ejidos varied greatly over time. Real property holdings were highly concentrated by the time Mexico achieved independence, due to royal favors granted by the crown.

Upon independence, the new nation assumed the property rights previously held by the Spanish crown in New Spain. The tendency to concentrate landholdings in a few private hands continued. Those who led the fight for independence, mostly Mexicans of Spanish descent, were rewarded with large pieces of land. The Mexican peasant remained marginalized. In the face of growing social unrest, the government of the Republic took some land distribution measures, but avoided infringing upon the interests of large estateholders. Only small parcels were distributed to Indian peasant communities, and these were considered the worst pieces of land. By the end of the nineteenth century, landlessness and the concentration of wealth had become powerful socio-economic factors that would influence the formation of the modern Mexican state.

Agrarian reform eventually became one of the key objectives of the Mexican Revolution. On November 28, 1911, revolutionary leader Emiliano Zapata drew up the *Plan de Ayala*, in which he proposed to recover land for the original Indian communities. In the *Plan de Ayala*, Zapata sought first of all the restitution of the ejidos. Lands which had been taken from the Indian communities would be returned to them. The next step would be to divide up the lands of the large landholders, expropriating a third of their estates in order to address the poverty of the vast majority of villages and citizens. Zapata also proposed to confiscate the lands of anyone who opposed this plan.

The ejido acquired its own legal status after the Mexican Revolution, based on the Law of January 6, 1915 and on Article 27 of the Constitution of 1917. The *Plan de Ayala* was the most prominent precursor to the 1915 legislation, which provided for the restitution and donation of expropriated lands to peasant communities.¹³ This was Mexico's first formal agrarian law. Since then, land redistribution has remained a constant subject of heated discussion and evolving legislation.¹⁴ However, the basic premises of land redistribution and inalienability of ejido property remained unchanged until 1992.¹⁵

12. In a sense, things are now reversed. For example, forests in Mexico were largely disregarded until perhaps this century. Mexicans build with concrete, bricks, and similar materials; forest products have not been considered important. During periods of land distribution, Indian peasants acquired a great deal of forest land because it was perceived at the time to have little value. As a result, ejidos now hold the key for U.S. companies seeking access to Mexican forests.

13. *Ley del 6 de enero de 1915* [Law of Jan. 6, 1915] (repealed); see SOTOMAYOR, *supra* note 11, at 88-94.

14. See, e.g., MARIO RUIZ MASSIEU, *NUEVO SISTEMA JURÍDICO AGRARIO* 3, 7, 13, 15 (1993) (review of secondary agricultural legislation from 1917 through the 1980s).

15. See discussion *infra* Part VI.

Between 1915 and 1992, ejidos were directly dependent on the government. They were not allowed to develop their lands or crop production through business or investment relationships with private sector parties. For example, ejidos could not use their land as collateral to obtain bank or investor financing.¹⁶ Most ejidos, as a result, never really developed.¹⁷ The ejido was far more effective as a political tool than as an economic institution.¹⁸ Relatively low production from ejido lands and the cost to subsidize the ejidos led the government to change the law. The 1992 amendments to Article 27 and the *Ley Agraria* authorized ejidos for the first time to negotiate with private parties regarding the use of their land. They also provided for the issuance of individual titles to parcel holders, and declared an end to the post-revolutionary land distribution scheme.¹⁹

IV. EJIDOS IN THE PRESENT DAY

As a concept, the ejido is a type of incorporated association made up of Mexican-born peasants, with an initial equity comprised of the lands, forests, and waters administered by the association. Pre-1992 agrarian legislation permitted qualifying population nuclei to petition the government for a grant of ejido lands at no cost. The state, in turn, was authorized to expropriate private lands for these purposes.²⁰ Under the present law, however, populations wishing to form new ejidos must supply their own land.²¹

Ejido property may be classified into three distinct types.²² The first type is subdivided into individual parcels.²³ Ejidos may adopt this system of individual exploitation either by presidential resolution or by an agreement approved by the assembly of ejidos.

The second type is commonly held property.²⁴ Ejidatarios may by tradition or agreement operate their entire ejido on a collective basis, distributing the fruits of their labor proportionally according to a pre-arranged formula.²⁵ One of the authors' U.S. clients once visited a well-run collective ejido in Oaxaca; walking around, he suddenly exclaimed, "My God, this is communism!"

Ejido property may also be designated for "human settlement." This would include land set aside for residential purposes, as well as for schools and other

16. See *infra* note 38.

17. See generally JOHN GLEDHILL, *CASI NADA: A STUDY OF AGRARIAN REFORM IN THE HOMETOWN OF CARDENISMO* 8-13 (1991); P. LAMARTINE YATES, *MEXICO'S AGRICULTURAL DILEMMA* 167-192 (1981).

18. Cf. GLEDHILL, *supra* note 17, at 9: "[T]he ejido . . . remains at the heart of the state's claims to legitimacy."

19. The amendments to Article 27 of the Mexican Constitution were published in the *Diario Oficial* on Jan. 6, 1992. On Feb. 26, 1992, a new agrarian law was promulgated to implement the amendments. The presidential initiative and congressional resolution relating to this constitutional reform, along with a review of the accompanying debates, are reproduced in RUIZ MASSIEU, *supra* note 14.

20. See *LEY FEDERAL DE REFORMA AGRARIA [FEDERAL AGRARIAN REFORM LAW]*, D.O. 16 de abril de 1971, as amended, arts. 195-199, 203-219 (1990) (repealed).

21. *LEY AGRARIA [L.A.]*, D.O. 26 de febrero de 1992, as amended, art. 90. This article also provides *inter alia* that the group of aspiring ejidatarios contain twenty members or more, and that it submit appropriate bylaws. Age, nationality and residence requirements for ejidatarios are specified in article 15.

22. *Id.* at art. 44.

23. See *id.* at arts. 76-86.

24. See *id.* at arts. 73-75.

25. *Id.* at art. 11.

community development needs.²⁶ Except for urban residential units, this property classification remains subject to inalienability provisions.²⁷

The assignation of water rights parallels the distribution of the ejido's land base. Water rights corresponding to parceled lands are exercised by individual ejidatarios. In turn, water rights corresponding to collectively held lands pertain to the ejido as a whole.²⁸

V. ORGANIZATIONAL STRUCTURE OF THE EJIDO

The supreme body of the ejido is the assembly of ejidatarios, comprised of the individual members.²⁹ The assembly of ejidatarios is required to meet at least once every six months, and maintain a registry of ejido membership.³⁰ The ejido's legal activities, such as land leases to a third party, must be recorded in the registry book as well. The assembly's jurisdiction includes the authority to create and amend its own bylaws, to admit and expel ejido members, to take reports from the ejido commission, to maintain accounts and balance sheets of the ejido, to identify and demarcate areas for human settlement, to terminate ejido status, and to divide the ejido or merge it with others.³¹

The ejido commission (*comisariado ejidal*) is the body responsible for carrying out the resolutions of the assembly. It also acts as the assembly's representative and undertakes the administrative management of the ejido. The commission is comprised of a president, a secretary and a treasurer, along with an alternate for each officer.³² The powers and duties of the ejido commission, as mentioned, include the representation of the ejido and the administration of its property.³³ A joint venture with an ejido would thus be administered by the ejido commission. However, the proposed joint venture must first receive the approval of the entire assembly.

A third body in the ejido is the monitoring council (*consejo de vigilancia*). It is responsible for ensuring that the commission complies with its duties. There are also tasks specific to the council itself. The powers of the monitoring council include: monitoring the ejido commission to ensure that its actions comply with the law and with the ejido's bylaws; reviewing the commission's accounts and operations; and informing the assembly of any irregularities that the commission may have committed. The council convokes assembly meetings as necessary for purposes of renewing the ejido commission and the council itself, in the event that such renewal has not occurred prior to the expiration of the corresponding terms of office.³⁴

26. *See id.* at arts. 63-72.

27. *Id.* at art. 64.

28. *Id.* at art. 52.

29. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [MEX. CONST.], 5 de febrero de 1917, as amended, art. 27 fr. VII; L.A. art. 22.

30. *Id.* at arts. 22-23.

31. *Id.* at art. 23.

32. *Id.* at art. 32.

33. *Id.* at art. 33.

34. *See id.* at art. 36.

VI. EFFECT OF THE POST-1992 *LEY AGRARIA*

Under the new agrarian law, the assembly is responsible for assigning a use classification to lands not formally parceled out.³⁵ Such classifications could include human settlement, communal use, or division into individual plots. The ejidos are free under the new law to enter into any type of contract or partnership for the use of their lands. The only limitation on this ability is that the duration of such contracts and partnerships must be set at thirty years or less. In accordance with the law, however, this time period may be extended.³⁶

Ejido members holding individual parcels have similar autonomy to make any contractual arrangement that they choose, including leasehold, sharecropping, joint use, commodatum or partnership with third parties. They can even sell their land,³⁷ but few ejidatarios are choosing to do so. It is unlikely that this trend will change. Most ejidatarios believe that land, in effect, is all that they have.³⁸ Although this has changed as of 1992, the new law requires all contracts involving ejidos to be duly notarized and recorded in the National Agrarian Registry (*Registro Nacional Agrario*).³⁹ This is intended to protect ejidos by ensuring the validity of their agreements; it also enables the national authorities to remain informed about the status of Mexico's agrarian lands at all times.

Under the new law, the population nucleus and individual ejido members are authorized to create their own security fund for the satisfaction of credit obligations. They may now use their land as collateral. Future products of the ejido may also be offered as collateral.⁴⁰

Individual title to plots means that an individual ejidatario is now entirely free either to exercise the rights of use and usufruct directly, or to transfer them to third parties. There is no need to obtain prior approval from the assembly or from any other authority.⁴¹ An ejidatario, then, might decide to grant usufructuary rights to a commercial corporation or third-party civil partnership, whether or not the third party is an ejido member.

The provisions of the new law permit *sociedades anónimas* (corporations), unlike before, to develop ejido land in Mexico. Thus, they are now allowed to form joint ventures with ejidos.⁴² The spirit of these changes is to help the ejidos grow and flourish. The ejidos of Mexico have generally represented the least developed part of the country. At this point, it is a reality that Mexico cannot effectively develop itself. Mexico needs ejidos to take advantage of the new laws, and it needs foreign companies to collaborate with them in the development and productive use of ejido land.

35. *Id.* at art. 22 fr. X.

36. *Id.* at art. 45.

37. See L.A. arts. 79, 80.

38. The repealed legislation was emphatic in this respect, stipulating that agrarian rights were inalienable. It thus prohibited any mortgage or encumbrance of ejido land, nullifying any and all contracts of such a nature. See LEY FEDERAL DE REFORMA AGRARIA, D.O. 16 de abril de 1971, as amended, art. 52 (1990) (repealed).

39. See L.A. arts. 148, 152, 155 fr. III.

40. See *id.* at art. 46.

41. *Id.* at arts. 76, 79.

42. Foreigners may also own up to a 49% share in corporations holding ejido and non-ejido rural property, that is, agricultural, ranching, or forest lands. *Id.* at art. 130; LEY DE INVERSIÓN EXTRANJERA [FOREIGN INVESTMENT LAW] [L.I.E.], D.O. 27 de diciembre de 1993, as amended, art. 7 fracc. III(R).

VII. EJIDOS FROM THE PERSPECTIVE OF FOREIGN INVESTMENT

Those considering investment in Mexico must take ejidos into account, given the long and continuing history of ejido ownership of real property in the modern era. Potential foreign investors should keep some of the following points in mind. First, Mexico's current financial system is almost entirely unable to provide capital to those interested in joint ventures, except for the very largest companies. Part and parcel of any joint venture from abroad will be the desire for financing from the foreign party. Second, it is very difficult to perfect and realize on security interests in Mexico. There is no clear analog under Mexican law to Article 9 of the Uniform Commercial Code, which permits the taking of security interests with relative ease. This is especially true for personal property.

At the same time, some stunning changes have occurred in Mexico in the last twenty years. Many of these were unexpected, even by longtime observers. First, Mexico has turned its economy away from an import substitution model, lowering its tariffs significantly and reducing the coverage of its import licensing scheme from 100% to less than 10% of all imported products.⁴³ Second, the foreign investment law has been effectively amended to allow foreign interests to hold more than 49% of corporate equity in Mexico, in most areas.⁴⁴ Third, and most surprising, is the passage of the new *Ley Agraria*, accompanied by the removal of the expropriation plank in Article 27 of the Mexican Constitution. These changes are truly extraordinary.

The period of intense legal change has most likely come to an end, however, and this is relevant to joint venture planning. It is doubtful that a foreign company could convince an ejido to convey fee title to its land. The ejido remains a pillar of modern Mexican society. This is a fact which should resist radical change. Disposal by ejidatarios of their lands will be the exception rather than the rule. There is already some indication that the electorate is reacting to slow the pace of free market reforms, at least for the time being. This is particularly well illustrated by the recent election of Cuauhtémoc Cárdenas as governor of the Federal District (Mexico City).⁴⁵ Given this situation, it is apparent that those who hope to arrange deals involving ejido lands should expect to negotiate with ejidos as the present and future owners of the real property (and corresponding resources) in question.

VIII. DUE DILIGENCE CONSIDERATIONS

Due diligence can be quite difficult in a domestic transaction. This is equally true even for straightforward international transactions. When dealing with non-ejido real property issues in Mexico, many practitioners have found themselves in the

43. See PEDRO ASPE, *ECONOMIC TRANSFORMATION THE MEXICAN WAY* (1993) 156-59.

44. See *id.* at 167; REGLAMENTO DE LA LEY PARA PROMOVER LA INVERSIÓN MEXICANA Y REGULAR LA INVERSIÓN EXTRANJERA [REGULATIONS TO THE LAW TO PROMOTE MEXICAN INVESTMENT AND REGULATE FOREIGN INVESTMENT], D.O. 16 de mayo de 1989, arts. 5, 6, trans. art. 6. An entirely new Foreign Investment Law was promulgated in 1993, see *supra* note 42, but the 1989 regulations remain generally in effect.

45. See, e.g., Julia Preston, *In Mexico City, Elected Mayor Opens New Political Era*, N.Y. TIMES, Dec. 6, 1997, at A1.

uncomfortable situation of discovering just before closing that the other party did not actually have legal title. The same risk clearly exists for transactions which do involve ejidos.

How can a practitioner verify the status of an ejido's holdings? It would be patently foolish to rely only on the representations and warranties made in the joint venture agreement. It is essential to spend time with the ejidos and become personally familiar with their holdings. By investing this time, the practitioner will also become acquainted with the ejido's decision-making structure. This translates into greater certainty for the client. It is also important to keep in mind that ejidos will necessarily lack a meaningful credit or banking history. Although this varies somewhat from one place to another in the country, practitioners should generally expect to start with no reliable third-party evidence of creditworthiness.

It would be a mistake, despite these circumstances, to assume that ejidatarios will be uneducated or ignorant about the ways of the world. Ejidatarios as a class have historically been exploited, and have remained at the lower end of the socio-economic scale for a long time.⁴⁶ However, this does not mean that they are necessarily uneducated or unsophisticated people. Some, for example, have college degrees.⁴⁷ When the authors began the due diligence process with a group of timber-owning ejidos, they were surprised to discover that every one of the ejido leaders brought notebooks and took notes. These leaders were very interested in the terms of the proposal, and paid close attention to every detail. The ejidatarios had hired their own engineers and forest experts for years; they had a very sophisticated understanding of their own operations. What they did not have, prior to the establishment of the joint venture, was access to international markets and the high prices prevailing in those markets. For example, they told us that they had often sold clear lumber for concrete forms in Mexico City — clearly not an optimal use of such a high-grade product.

IX. THE AUTHORS' EXPERIENCE

A key to the success of the transaction just mentioned was that the North American client was willing to spend time with the ejidos, actually learning about the members, their work and their way of life before making any specific business proposal. The negotiating team endeavored to show respect to all of the ejidatarios and not just to the leadership. Their egalitarian tradition and history remains very important to them.

Most importantly, the negotiating team did not rely on in-country representatives to front for the client in its dealings with the ejidos. Sooner or later, the authority of those representatives is in some way undermined, or it comes to light that someone higher up is making the actual decisions. This tends to make the ejidatarios feel that they have not truly been dealing with the people in charge. It is important to them to feel that they have formed a genuine personal relationship with the people in charge, whoever they may be.

46. See generally MARILYN GATES, IN DEFAULT: PEASANTS, THE DEBT CRISIS, AND THE AGRICULTURAL CHALLENGE IN MEXICO (Latin American Perspectives Series No. 12, 1993).

47. "At the present rate, half the ejidatarios may be holders of university degrees by the end of the century." GLEDHILL, *supra* note 17, at 11.

Patience is an essential element of any negotiation with ejidos. The operating structure of the ejidos involved in this transaction requires consensus. Without a consensus, there is no deal. Because of this, suggestions for a proposed business plan need to be "planted" among the ejidatarios and their leaders a long time before any written commitments are requested. The leaders need the opportunity to engage in discussion and develop a consensus among the ejido's members. The ejidatarios who dealt with the U.S. negotiating team consistently addressed each other as *compañero*, or comrade. This illustrates their deep-seated sense of egalitarianism.

Another consideration is that practitioners should not expect to negotiate a written agreement with ejidos via FAX or electronic mail. By now some ejido offices will have FAX and e-mail capability, and this can facilitate communications and some of the preliminary work. Nonetheless, the ejidos will want their negotiating partners to be present in an open meeting, discussing the issues and signing the agreements directly in front of everyone. If private channels and communications predominate, this will foster the impression that secret deals are being made. Such an impression should be avoided, and is hard to overcome once formed.

In the transaction described here, the authors found the negotiation to be far more detailed than they expected. The ejidatarios devoted a long time to the discussion and examination of every single sentence of the joint venture agreement. Even a one-page purchase order form required five hours of negotiation, stretching from eight o'clock in the evening to one o'clock in the morning. Everybody received a chance to address the group, and everybody had the opportunity to suggest a change. The negotiation involved a union of ejidos, so representatives of at least seven or eight different ejidos participated.

Once an agreement is reached, it is very important to maintain an ongoing, "duration-of-the-agreement" relationship with the ejidatarios. The relationship is not limited to the written document, and it would be a terrible mistake to assume that it is. The ejido wants to be assured that it has a social as well as working relationship with the other party. A foreign party, in particular, needs to attend carefully to this kind of relationship. This is true generally between U.S. and Mexican parties to a contract, and is even more true between a U.S. party and an ejido. The written contents of the contract matter less than the relationship which has been cultivated between the parties.

The investment in forming a long-term relationship with the ejido pays off when the joint venture gets underway and the parties are trying to accomplish the objectives of the contract. Efforts to navigate roadblocks will be much more successful if the foreign party emphasizes needs of the relationship rather than the strict formal construction of written terms. It is counter-productive simply to point to the contract and say, "This is what it says and, by golly, you are going to agree." The ejidatarios you work with may hold the common opinion that they have been subjected for decades to written agreements which have not been honored by the other parties.

The joint venture discussed in this article is now about four years old. The interest of the original U.S. individual entrepreneur was purchased by a U.S. corporation. The ejidos involved believe that what started out as a joint venture with profit-sharing has turned into more of a buy-sell arrangement. The ejidos continue to be interested in profit-sharing.

This does not mean that the arrangement was not of great benefit to the ejidatarios. When this project started, no other foreign party had ever proposed this kind of business to them.⁴⁸ As result of the joint venture, a defunct sawmill was restored to operation. The price set for purchase of the ejidos' timber was far higher than anything they had received before. Four years later, other companies have now begun bidding for their timber, in some cases at prices higher than those provided for in the original project. The ejidos have achieved more open access to the international market, something which had previously been denied to them.

QUESTIONS AND COMMENTS

LUBRANO: The development banks are involved in a number of agricultural sector operations that include ejidos. One of the major issues in these operations is that since the ejidos are changing the style of their business, new employees need to be brought in for the joint venture or other project. Could you comment on the application of Mexican labor laws to those relations?

RIVADENEYRA: Mexican labor law will apply to foreign employees just as it does to anyone else. Ejidos certainly benefit by hiring foreigners who can help them to develop themselves. For example, I know of an ejido that hired a gentleman from Portugal to develop a sawmill. This ejido is one of the main producers of lumber in Mexico, and is now self-supporting.

It is important, however, to be aware that a priority for the ejidos will be to obtain work for their own members. They are likely to ask third parties for assurances that the ejidatarios themselves will be used as workers on a given project. This contributes greatly to its approval by the ejido assembly. A project which promises both jobs and an income looks much better than one which offers an income alone.

ZAGARIS: Were there any environmental issues, either with respect to the federal or state government, or any issues with respect to participation of environmental non-governmental organizations?

RIVADENEYRA: Mexico has an environmental law which applies in theory to everybody.⁴⁹ The ejidos are legally obligated to reforest their lands whenever possible, and to participate in programs administered by SEMARNAP (Secretaría de Medio Ambiente, Recursos Naturales y Pesca), the ministry of the environment in Mexico.⁵⁰ They are also subject to a degree of control and review by PROFEPA (Procuraduría Federal de Protección al Ambiente), the federal environmental agency.⁵¹ Past experience suggests, however, that the government may err on the side of leniency when applying these laws to the ejidos. They are still a political icon in Mexico.

48. At the time President Salinas proposed his agricultural sector reforms, only 55 ejidos in 13 states participated in the export of forest products. 1991 EJIDO CENSUS, *supra* note 3, at table 16.

49. LEY GENERAL DEL EQUILIBRIO ECOLÓGICO Y LA PROTECCIÓN AL AMBIENTE [ECOLOGICAL EQUILIBRIUM AND ENVIRONMENTAL PROTECTION LAW] [L.G.E.E.], D.O. 28 de enero de 1988, as amended.

50. See LEY FORESTAL [FORESTRY LAW], D.O. 22 de diciembre de 1992, arts. 31-36.

51. See *id.* at art. 44; L.G.E.E. arts. 161-169.

SPENCER: This does not mean that environmental issues can be disregarded. The environmental movement is growing in Mexico, especially in the timber area. In the joint venture negotiated by the authors, a number of meetings were held with environmental officials to discuss reforestation, appropriate roadbuilding and drainage. The latter are critical both to reforestation and to successful logging. There had previously been a lack of capital to address these issues, so the joint venture partner from abroad was promptly brought into the discussion with environmental officials.

