Mexican Corporation Laws

(In English)

...BY...
RICHARDSON & DOAN
MEXICAN MINING
...and...
CORPORATION LAWYERS
Douglas Arizona

MEXICO

We are interested in Mexican affairs, in one of the most critical turning points of its history, and when the press of the whole world devotes a great deal of attention to it.

Moreover, Mexico, its conditions and its future are of special concern for us and for our people, in virtue of its proximity to our country, its mercantile and financial relations, and of the American capital which has been invested there.

A comprehensive view of Mexican affairs should take into account what Mexico was, is, and hopes to be, for progress and justice is the heritage of no nation, while the prodigious strides along the highway of civilization during the past thirty years have shown hundreds of thousands of happy homes, prosperous and contented people, modern cities and flourishing industries, with schools conducted in every nook and corner of the Republic where the gentle thrumming of the guitar and the tinkling fountain in the patio proclaims that under the pale southern moonlight, the people of the Aztec race are as peaceful and happy as those who pass their days within the smoky confines of our own great hives of industry.

This and all of this has been made possible through the efforts of Mexico's "Grand Old Man." Porfirio Diaz.

Mexican Corporation Laws

(IN ENGLISH)

A Complete Translation of the Mexican Laws Affecting Business Corporations with Explanatory Notes and Annotations.

BY
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PREFACE

The mining regions of old Mexico have become a favorite field for English speaking investors until of late years the volume of mining business transacted has rendered necessary a clearer knowledge of the laws of that country on the part of lawyers as well as mining operators.

Mexican laws differ materially from those of the United States in many particulars, while the language and customs are so dissimilar as to render it well nigh impossible for the ordinary American lawyer or miner to properly conduct his business without the advice and guidance of those familiar with those laws and the Spanish language.

The unsatisfactory results of an English speaking client trying to conduct business with a Spanish speaking lawyer, or of a skilled American lawyer attempting to master the Spanish language and construe the Mexican law at the same time, have caused the authors to make a diligent search for a work on Mexican Corporation law that would be of real value. During many years of continuous practice before the Courts of Mexico this search has been in vain—the book has not been found.

The greater part of the foreign capital invested in Mexican mines is controlled by corporate interests, and

the mining titles are held by corporations organized under the laws of Mexico. For that reason the text of the corporation laws are presented in so far as they particularly apply to mining operations. The arrangement followed is that which seems the more likely to be serviceable to the American lawyer and mine manager, although it is not necessarily the same as that adopted by other writers on Mexican law.

Those portions of the Commercial Code relating to corporations and their management are quoted, and are carefully annotated and explained ... any question of construction or application appears.

Judicial opinion is not relied upon in Mexico as in England and the United States, and for that reason citations to specific cases do not appear. The notes are based on the professional experience of the authors, covering twelve years constant attendance on the Mexican courts, and are neither theoretical nor fanciful—they represent the law as it was found in actual application.

While it is not a treatise in any sense, the authors hope this little book may be of material help to the busy lawyer in his office, as well as to the miner and prospector in the camp.

RICHARDSON & DOAN.

Douglas, Arizona, February 20, 1910.

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INTRODUCTION

The Nature of a Mexican Corporation.

The Mexican law relating to corporations, or Anonymous Loneties as they are named, is found principally in the Commercial Code, which operates in all the States and Territories and largely eliminates the question of foreign corporations as between the several States. The law shows very clearly the result of judicial determination in the United States and England. The results reached by our courts, but found in our laws only as court decisions, have, in many instances, been enacted as statutory law by the Mexican Congress, with the result that the Corporation Law as laid down by the code is more complete and satisfactory than that of many of our own States.

A recent writer of no mean ability has given as the definition of a corporation, "An artificial person, created by law as an entity independent of the natural person or persons composing it, and endowed by the law that creates it with the power of acting as such independent person." While this is probably the ablest definition offered, for corporations in general, the Mexican law is such that the old defi-

nition in the Dartmouth College case is as nearly a correct statement as can be found in the books in describing the nature of a Mexican corporation:

> "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being a mere creature of the law, it possesses only those properties which the character of its creation confers upon it, either expressly, or as incidental to its very existence."

The Statutes of Mexico expressly recognize a corporation as an "artificial person." They set forth clearly the difference between corporations and other associations and partnerships as well as the fact that the powers possessed are only those conferred by the articles under which the company is formed.

The powers which may be obtained by such a corporation are as set forth in the general law, and there is no direct charter or patent as originally granted in England, but the certified copy or "testimonio" of the original article recorded represents the charter. The old theory that a corporation must produce its charter as proof of its right to act in all important matters is still followed to a considerable extent. The actual exhibition of, or reference to, the original articles, and powers of attorneys, authorizing individuals to act for the company in all transactions effecting corporate property, is still customary and in

many instances absolutely necessary.

While a corporation cannot act in excess of the rights granted by the power creating it, the fact that the Commercial Code of Mexico, under which corporations are organized, extends to all the states and territories renders unnecessary the consideration of many questions that are perplexing in connection with the rights of a corporation organized in one State to transact business in another.

SECTION I.

Where the Articles are Recorded.

All Articles of Incorporation are written in the public record in the office of the judge of First Instance, acting in his capacity of Notary public. The incorporators sign the original record and receive a certified copy for their use. If the notary before whom the articles are executed does not reside in the district where the domicile of the company is named, or which property conveyed to the company is situated, the certified copy must be then recorded with the judge of the First Instance of that district. The original articles as filed, and evidenced by the certified copy, corresponds to the "charter" as generally understood.

SECTION II.

What the Articles of Incorporation Must Contain.

The provisions of the Commercial Code require the articles to contain the following:

(1). The names and domiciles of the incorporators: This must appear in the articles; it is not sufficient if they appear only after the signature. The law does not require any of the incorporators to be either citizens or residents of Mexico, but simply that

they be legally able to contract and obligate themselves.

(2). The name of the company and its domicile: There must be a name given the company in its articles, and this name should be different from that of other companies theretofore organized. The incorporators should not have their names in the corporate name, for if they do they become personally liable for the debts of the company. The domicile can be fixed at any place within the republic, but if not within the district where the company is formed a certified copy of the charter must be recorded in the district where the domicile is fixed. If the domicile is in a State different from that where the company is formed, the certificate of the governor of the State, certifying the authority of the notary, must be affixed to the copy to entitle it to record.

(3). The object and duration of the company: The organization should be stated just as it is stated in corporations organized for profit under our laws. Any lawful object is allowed except those for which special charters are required as in the case of banking companies. The duration cannot exceed fifty years and the time is generally computed from the date the articles are signed.

(4). The amount of capital stock, the value of the shares and whether paid for in cash or by transfer of property: The value of the capital stock should be stated in pesos. The number of shares and the value of

each share should be likewise stated. The Mexican law specifically provides that payments for stock may be made by transfer of property to the company or by services, and in such case the articles must show what property or service was accepted and must give its actual value. This express provision leaves no doubt on the question which often arises in the United States relating to the issuance of stock for a consideration other than money.

(5). The names of the directors and a statement of their powers: Not only the directors but the officers as well must be named. The ones named to serve until the first regular stockholders' meeting at which directors and officers are elected. The duties and powers should be closely defined and, in addition, by-laws provided to govern the company until the adoption of permanent by-laws by the stockholders.

(6). The amount of the reserve fund: Five per cent of the net profits must be set aside annually until there has been created a sinking fund equal to twenty per cent of the corporate capital.

(7). The manner of distributing the losses and gains among the shareholders: If the stock is issued and paid for losses are paid out of the reserve fund if any. If the stock is not fully paid for an assessment can be levied for that purpose. Net profits, after setting aside the five per cent for the reserve fund, are distributed as dividends to the stock-

holders in proportion to the shares held by them.

(8). The part of the profits which the incorporators shall receive, and the manner in which it is to be paid: The incorporators as such receive nothing, but as stockholders receive their proportion of the net profits as dividends in accordance with such provision as is made for their distribution.

(9). The cases in which the company can be dissolved before the time fixed by the general law.

(10). The basis upon which the liquidation of the company may be effected, and the manner of electing liquidators.

If any of the foregoing requisites are omitted the company can be dissolved at the instance of any stockholder.

SECTION III.

Corporate Meeting to Perfect Organization.

Immediately after the articles are recorded a meeting of the incorporators or stockholders named, should be held at which meeting the acts as set forth in the articles should be approved and the issuance of the stock ratified.

The law provides the stock certificates should contain:

(1). The name of the corporation and its domicile.

(2). The date of its organization.

(3). The value of the capital stock, the calls which the stockholders may have paid on such capital stock and

the total number of shares in which the latter are divided.

(4). The duration of the company.

(5). The rights granted to the shareholders by the charter or the by-laws.

There should also be prepared and approved, the stock register which the law provides must contain:

(1). The designation of each shareholder and a statement of the number of shares.

(2). A statement of the installments paid in.

(3). The transfers that have been made, with their respective dates.

(4). A statement of the shares deposited as security for the performance of the duties of the directors.

The ownership of the stock is proved by the register and transfers made by statements entered in it and signed by the person transferring the stock.

SECTION IV.

Stockholders' Meeting.

Stockholders' meetings are regular and special. The regular meeting must be held annually on the day fixed by the articles and in addition to the election of directors, attends to the regular routine corporate business and also such matters as are noted in the call. The notice for the meeting must be published in the official journal of the State in which the company has its domicile.

Special meetings are held in accordance with the provisions of the by-

laws. At all meetings stockholders may either vote in person or by proxy, but no proxy can be held and voted by a director. At stockholders' meetings, officers cannot vote on the approval of accounts and reports submitted by them, nor can any stockholder vote for his own election as a director or an officer.

SECTION V.

Directors—Their Duties and Powers.

The number of directors is fixed by the Articles of Incorporation, and the directors to serve until the first regular meeting are also named. The directors, whether thus named or regularly elected, must deposit with the treasurer certificates representing as many shares of stock of the company as is required by the by-laws. This is done as security for the faithful performance of their duties.

The board of directors act as trustees for the corporation and have the general management of the corporate business, with full power unless restricted by the articles or by-laws. They must act in person, not having any authority to delegate their powers, and while acting within the scope of their authority in good faith, cannot be held personally liable for the acts performed, but if acting beyond their authority they are liable, unless the acts are approved by the stockholders in actual meeting.

Directors cannot, as such, vote on questions presented to them in which they have a personal interest.

nor to approve their own accounts, yet if objection to any action be raised it must be by the stockholders as a body and not by individual stockholders. They must submit a balance sheet to the examiner (comissario) once a year and submit their books, accounts and records, at all reasonable times, at which they are desired. It is the duty of the directors to call a special stockholders' meeting when requested to do so by the holders of one-third of the issued stock.

SECTION VI.

Corporate Examiner.

The stockholders must elect one or more examiners, not from among the directors, whose duty it shall be to examine the corporate affairs, and the accounts and records of the directors, from time to time, for the protection of the stockholders, and to report fully upon such matters at the stockholders' meetings. This provision is for the protection of the stockholders and is usually not found in the corporate laws of the United States.

SECTION VII.

Transfer of Property.

While the directors have, under the general law, ample power to transact all corporate business, it is usual to state in the articles who shall have the power to buy and sell property on behalf of the corporation. In all transfers either to or by the company, the clause in the articles should be cited, and in addition the tranfser

should be approved by the stockholders at either a regular meeting or a special meeting called for the purpose.

SECTION VIII.

Corporate Bookkeeping.

Practically all corporations organized for the purpose of conducting a mining business find it necessary to transact a mercantile business to some extent, in connection therewith. In such case they must comply with the legal requirements which provide that the books must be kept in the Spanish language, in regularly stamped books and showing the purchases and sales, and accounts received, as well as a record of all transactions, so that a clear list of assets and liabilities will appear and and a general balance be prepared annually.

SECTION IX.

Corporate Correspondence.

All correspondence, including telegrams, relating to the mercantile business must be preserved in the Spanish language, and copies of letters and telegrams must be kept in a copy book in the order in which they are sent. This correspondence can be called for by the courts at any time the business is in question in litigated matters.

GENERAL CORPORATION STATUTES

PART I.

DOMESTIC CORPORATIONS.

Art. 95. Public writings for the formation of companies, in order to be valid, must contain:

I. The names, surnames, and domiciles of the persons executing same;

The names, surnames and domiciles should appear in the Articles of Incorporation. It is not sufficient to have the domicile appear after the signature of the incorporators.

The law does not require that any of the incorporators, officers or stockholders be Mexican citizens, or reside in Mexico, even after the organization of the corporation. Each incorporator must be of lawful age, and legally able to contract and obligate himself.

II. The name of the partnership or company, as well as its denomination in the proper case, stating the domicile of the company.

All corporations must have a name, under which it must transact all of its business, and sue and be sued, which name must be clearly stated in its Articles of Incorporation. The name should be different from that of all other corporations.

All corporations must have a domicile in the Republic of Mexico. The Articles of Incorporation should be re-

corded in the district where the corporation has its domicile, as well as in the district where it has its principal place of business. It may be organized in one state and have its domicile and principal place of business in another. In order to record the Articles in such case, it will be necessary to have the Governor of the State where the corporation is organized certify to the signature of the Notary Public before whom the Articles were signed.

III. The object and duration of the company and the manner of computing such duration.

Corporations may be organized for the conduct of any lawful business, except where a special concession is required, as in the case of a bank or moneyed corporation. A mining corporation should state fully in its objects, every business it expects to engage in, such as buying, selling locating, renting, leasing, acquiring, and disposing of mines, mining claims, denouncements and interests in mines and mining claims of every nature; to engage in the mercantile business, and to buy, sell and deal in all kinds of merchandise at wholesale or retail; to erect smelters, mills, concentrators, cyanide plants and mining machinery of every nature, and to buy, sell, manufacture and deal in the same.

Mining corporations are permitted, when stated in their articles as one of its objects, to build railroads and telegraph and telephone lines from its mines to the nearest railroad, telegraph or telephone line

Corporations may be organized with a duration not to exceed fifty years. Such duration is usually computed from the date the Articles are signed.

IV. The capital of the company

stating the nature, number and value of the shares in which it may be divided; value and amount subscribed; if referring to stock companies or societies with special partners by shares; or a statement of what each partner brings to the company, whether in industry, cash, credit, or goods, stating the value given to the one and to the other, in all kinds of companies;

The capital of all corporations should be stated as ——— pesos, divided into ——— shares of the par value of ——— pesos per share. The number of shares held by each shareholder, whether such shareholder be named as a director or not. It is customary when organizing a mining corporation to transfer to it the mining property if owned by one of the interested parties, or the option to purchase the mining property if not owned, in the Articles of Incorporation, and accept shares of the corporation as payment for the mines or options. This method saves the seventy cents per hundred pesos stamp tax on the value of the property or option which must be paid when property is deeded to the corporation in any other manner. This also renders the shares accepted as payment for the mines or options, fully paid and non-assessable; usually the entire capital, that is all the shares except one share each for the members of the Board of Directors and the Comisario, is transferred as payment for the property deeded to the company.

The Directors and Comisario pay cash for their one share each, making all of the stock of the company fully paid and non-assessable, in the absence of fraud. Shares may be issued for services rendered a corporation, and when no fraud is practiced they

will be fully paid and non-assessable, but this is seldom, if ever, done in mining corporations.

V. The names of the members or partners who are to have the management or direction of the company and use of the firm name, if referring to partnerships with a collective name or partnerships with special partners, or the manner in which the society is to be managed or directed, specifying the powers to be exercised by them in any other class of company.

The first Board of Directors, and each of the officers should be named in the Articles of Incorporation, and the duties and functions of each of the officers should be clearly stated, as well as the time they, and the Board of Directors, are to serve. It is customary and is advisable to have the Board of Directors and officers named in the Articles to serve until the first stockholders' meeting, the date of which is stated in the Articles, and is usually one year from date of organization, and the annual meeting of stockholders should be held on the same day on each year thereafter. The president of the corporation is the person who should have authority to sign the corporate name, and the secretary should have the authority to use the seal. The officers of a corporation have such authority as is given them directly in the Articles of Incorporation and By-laws. All other power or authority is controlled by the Board of Directors. All Articles of Incorporation should contain by-laws to govern the Directors and officers, which by-laws remain in force until the first stockholders' meeting, when by-laws are adopted by the stockholders.

It is not necessary that either of

the signers of the Articles of Incorporation be a Director or officer or a stockholder of the corporation.

VI. The amount of the reserve fund in companies divided into shares, co-operative societies being exempt from this obligation.

The Articles of Incorporation must provide for the creation and conservation of a reserve fund, by setting aside five per cent of the net profits of the corporation each year as such, until a sum equal in amount to twenty per cent of the capital of the corporation is created.

VII. The manner and form of making the distribution of the losses and gains which correspond to the members of the company.

Where the stock of a corporation, which is issued, is all fully paid for, and non-assessable, all losses should be paid out of the reserve fund, if there is sufficient, if not, after the fund is exhausted, the capital of the corporation must be resorted to directly or more stock might be sold if any remain unsold in the treasury, and if not the capital can be increased. Where the stock issued is not fully paid and non-assessable, the corporaton may levy an assessment on the stock equal to the amount which remains unpaid on it.

All gains or net profits may be declared as a dividend after the five per cent deduction for the reserve fund, and paid to the stockholders in proportion to the shares held by each, unless the Articles of Incorporation or by-laws provide otherwise.

VIII. The part that the founders or organizers in corporations, or of companies with special partners by

shares, may receive from the profits, and the manner in which they are to receive the same;

The founders or organizers of a corporation do not receive anything as such founders or organizers, but only participate in the profits as other stockholders. The Articles of Incorporation or By-laws should clearly state the above rule. The Articles of Incorporation or By-laws should also state fully under what conditions dividends may be declared. and when declared who should participate in them. Shareholders usually participate in dividends when paid in proportion to the number of shares held by them.

IX. The cases in which the company may be dissolved before the time fixed:

X. The basis upon which the liquidation of the company may be effected, and the manner in which the election of the liquidators may be proceeded with, whenever they have not been appointed beforehand.

Since the articles hereinafter contained cover the last two paragraphs fully they will not be commented on.

Art. 96. The omission of any of the requisites prescribed in the preceding articles is a cause for nullity of the company or partnership compact, which nullity shall be declared at the instance of any of the members.

No person except members (stockholders) of a corporation will be permitted to object to the legality of the organization of the corporation.

Art. 97. The want of a public writing, or of the requisites it ought to

contain in order to give it validity, cannot be alleged as a defense against a third party who may have entered into a contract with the company.

A member (stockholder) of a corporation will not be allowed to set up a defense of this kind in any suit, even though the third party be a stockholder himself, and have full knowledge of the defect.

Art. 98. Transitory Companies (the members whereof share in the profits) as well as the modification therein introduced, are not subject in their organization to any external formality. Consequently their existence may be proved by all the methods of proof which the ordinary common law prescribes.

Art. 99. Commercial associations are not subject to inscription in the Public Commercial Register.

Art. 163. An anonymous (stock) company or corporation has no firm name and is designated by the particular denomination of the object of its undertaking. In such company the shareholders are only responsible to the extent of their shares.

Art. 164. If any shareholder should cause his name to appear in the denomination of the company, he shall become personally and jointly liable for obligations.

The denomination must be different from that of any other company.

Art. 165. After the denomination of the company the words "anonymous company" must be added, when-

ever it is necessary to make use of said denomination.

Art. 166. Corporations may be constituted in two ways: By public subscription or by means of the appearance of two or more persons who may subscribe the instrument of incorporation which shall contain all the requisites necessary for its validity.

The Articles which refer to the organization of corporations by public subscription have been omitted since they are of no value to mining corporations.

Art. 170. If all or a portion of the capital stock consists of revenues, titles, goods, real or personal property, these must be represented in their entirety by fully paid up stock.

Art. 175. When the corporation is not to be established through public subscription, it shall be sufficient if the stockholders who organize it shall execute a public writing observing the prescriptions of articles 95 and 170. There shall be annexed to the writing a statement of the value that may have been set to the titles, goods, real and personal property which one or more shareholders may have contributed to the company. The By-laws shall be approved at the first general meeting, to be called in the manner prescribed in said public writing. (See Art. 95, Sec. 4, note.)

Art. 176. Every operation effected by the founders of a corporation, with the exception of those that are necessary for its organization, shall be null

and void with respect to such corporation unless approved at a general meeting.

In order to avoid the expense and delay of calling a stockholders' meeting to adopt by-laws, when a corporation is organized, the Articles should contain by-laws for temporary use, for the guidance of the Board of Directors and officers. Such temporary by-laws are usually continued in force until the first regular meeting of the stockholders, one year thereafter.

All stockholders' meetings should be held at the domicile of the corporation. One general stockholders' meeting must be held each year. The stockholders at their first general annual meeting after the corporation is organized, should discuss fully the organization of the corporation, as well as all business transacted by its organizers and Directors and officers, and adopt and approve or reject the same, as the interest of the corporation suggests.

Art. 177. The sale or transfer of shares made by the subscribers or founders of the corporation before it is legally constituted shall be null and void.

Art. 178. The capital stock of corporations shall be divided into shares of equal value, and such shares shall confer on their holders equal rights, unless otherwise stipulated upon the organization of the company. The shares may be in the name of the holders or to bearer.

The shares of the capital stock of a corporation should be equal in value, that is the shares should all be par value one peso, five pesos, ten pesos, one hundred pesos, etc. It is

not customary to provide for preferred stock in mining corporations. Hence all shares are the same in every respect.

Mining corporations in Mexico are nearly always used as holding companies, and all their shares, except one share each for the directors, officers and comisario, are transferred to an American corporation. It is advisable to issue the shares in the name of the owner. Where shares are issued to bearer it might be troublesome to prove who the real owners are, as no record of the ownership of such shares could be kept in the stock register.

Art. 179. Shares, whether in the name of the holders or to bearer, shall express:

I. The name of the corporation and its domicile;

II. The date of its organization;

III. The value of the capital stock, the calls which the shareholders may have paid on such capital stock and the total number of shares in which the latter is divided;

IV. The duration of the company;

V. The rights granted to the shares by the public writing or the By-laws. The shares must be signed by the number of directors to be designated in the By-laws.

The By-laws of the corporation should be endorsed on the certificates. The articles should state what officers are authorized to sign certificates. It is customary and advisable to have all certificates signed by the President and Secretary of the corporation.

Art. 180. Corporations must keep a register for the shares issued in the

names of the holders, which must contain:

I. The exact designation of each shareholder and a statement of his shares;

II. A statement of the installments paid in;

III. The transfers that may have been made, with their respective dates, or the changing of shares in the name of the holders into those to bearers, when this is permitted by the By-laws;

IV. A statement of the shares deposited as security for the faithful performance of the duties of the directors, manager and examiners.

Each director and officer and the Comisario must hold at least one share of stock in the corporation before he is qualified to hold office. He must deposit this share with the Treasurer of the corporation as security for the faithful performance of his duties as such officer. It is advisable to have each of the officers, directors and the Comisario endorse a blank transfer of such share on the certificate and sign it, and extend a power of attorney, together with a written resignation, to the President of the American corporation, giving him full power to transfer the shares on the stock register of the Mexican corporation. When this is done the American corporation can absolutely control all the officers of the Mexican corporation. The President of the American corporation can dismiss either or all of the Directors and officers of the Mexican corporation, as well as the Comisario, when it becomes advisable. The By-laws should provide that the remaining members of the Board of Directors have full power to fill all vacancies which

might occur in the Board and among officers by appointing any stockholder, who shall hold office until the next regular meeting, unless such director or officer so appointed shall become disqualified before the stockholders' meeting. Directors cannot appoint a Comisario. This office can only be filled by the vote of the stockholders at a regular meeting called for that purpose.

Art. 181. The owners of shares in the name of any person is proved by their inscription in the register referred to in the preceding article.

A transfer thereof takes place by means of a statement entered in the register, dated and signed by the grantor and transferee, or by their respective attorneys-in-fact. The corporation may give certificates of such entries to whoever may solicit them.

A transfer of shares to bearer is made by the mere delivery of the title (certificates, etc.)

It is necessary that all corporations keep a stock register, as the inscription in the stock register is the evidence of ownership of shares, provided in this code; and is of material value in case of litigation affecting the ownership of the stock or the standing of the Directors and officers.

Art. 182. Every share in corporations is indivisible, therefore, where there are several co-owners of a share, they must appoint a common representative, and if they do not agree on any one person, the judicial authority must make such appointment.

Art. 183. When the shareholders neglect to pay one or more installments

or assessments ordered by the corporation, the latter shall proceed to sell the shares at the risk and for the account of the shareholder, unless it is otherwise provided by the By-Laws, and in all such cases the corporation shall have the right to make the payment of such assessments out of the dividends accruing on the corresponding shares.

Art. 184. Corporations are prohibited from purchasing their own shares, except in the following cases:

I. When fully paid-up shares are purchased with the authorization of a general meeting and with the funds that may arise from profits not devoted to the reserve fund;

II. When the purchase is made by virtue of an authorization already provided in the By-laws;

III. When the purchase is made with the capital of the corporation, complying with all the formalities prescribed for the reduction of the capital stock.

All titles purchased in the first mentioned case cannot have any representation at general meetings, and cannot be computed in making up the majorities referred to in the By-laws.

The titles of shares purchased in the last two mentioned cases shall be rendered null and void.

Art. 185. Purchases made in contravention of the prescriptions of the last article shall not be void, unless the seller has acted in bad faith, but the directors and manager who may have given authority for the same

shall be personally responsible for the loss and damages which may have resulted thereby to the corporation, without prejudice to the penal proceedings which may be instituted against them.

Art. 186. In no case may corporations effect loans or advance on their own shares.

Art. 187. The management of corporations is temporary and may be revoked. The shareholder or shareholders holding that trust shall be considered as agents.

Boards of Directors are trustees for the stockholders. The By-laws should state fully the power and authority of the Board, and make provisons for the removal of a Director or officer when it may seem to the best interest of the corporation.

Art. 188. The management of all corporations shall be entrusted to a Board of Directors and one or more managers.

Corporations may appoint consulting committees outside of their domicile. These committees shall have the executive and administrative powers which may be conferred on them in the By-laws.

The By-laws may provide for an executive committee, and confer upon the committee such power as may seem advisable. Executive committees are seldom, if ever, appointed in holding corporations.

Art. 189. Unless otherwise specified in the By-laws, the Board of Directors have the amplest powers to carry into effect all the operations which may be necessary in conform-

ity with the nature and object of the corporation.

Art. 190. All members of the Board of Directors shall be elected at a general meeting of stockholders; nevertheless, the first time they may be appointed in the public writing (instruments of incorporation) of the company, but they may always be re-elected, unless it is otherwise stipulated.

Articles of Incorporation should name the first Board of Directors, and the officers and comisario, and contain By-laws to govern the Board and officers until the first general stockholders' meeting when a new Board of Directors and comisario should be elected, and a permanent set of By-laws must be adopted.

Art. 191. Vacancies in the Board of Directors shall be filled in the manner that may be prescribed in the By-laws of the corporation.

The By-laws should provide a manner of filling all vacancies in the Board of Directors. It should be provided that the remaining members fill all such vacancies by majority vote of the Board. Directors so elected usually hold office until the next regular stockholders' meeting thereafter.

Art. 192. The trust of a member of the Board of Directors in a corporation is personal, and can never be performed by an attorney-in-fact.

Each member of the Board of Directors must attend all Board meetings in person. He cannot be represented at such meetings, either by a proxy or attorney in fact.

Art. 193. Every one of the mem-

bers of the Board of Directors must deposit within the control of the corporation, during the period that his trust may last, a certain number of shares as security for the performance of his duties. The By-laws shall designate in all cases the number of such shares.

The By-laws must provide the number of shares to be deposited by each Director. It is customary to provide that each Director deposit one share. This share should be endorsed in blank by the Director, and he should also resign from the Board, and present such resignation, together with a power of attorney authorizing the President of the American corporation to sign the stock register for the Director, and to transfer the share when the resignation is accepted, to the President of the American corporation.

Art. 194. The directors of a corporation do not contract any personal obligation in the operation in which they may take part in the name of such corporation.

Directors, when acting for a corporation do not become personally liable when they act within the scope of their authority as directors. They will be held personally liable for all unauthorized transactions, unless the stockholders ratify and adopt the unauthorized transaction as an act of the corporation. Directors will also be held personally liable for all transactions tainted with fraud.

Art. 195. The Directors are responsible to the corporation, in accordance with the ordinary principles of law, for the performance of the

trust in their charge and for derelic-tion in their duties.

Such responsibility may only be exacted by a general meeting of shareholders, or by the person authorized by such meeting.

Directors of a corporation being trustees for the stockholders, are held strictly responsible to them for their action. No individual stockholder will be permitted to question the action of the Board of Directors. This can only be done at a general stockholders' meeting. At such meetings the action of the board should be carefully examined, and either approved or rejected.

Art. 196. Any member of the Board having an interest opposed to the corporation, in any operation which may be submitted to him for approval, is obliged to declare that fact, and cause such declaration to be entered in the relative minutes.

Directors of a corporation occupy a fiduciary position. All contracts between them and the corporation should be carefully examined by the stockholders at their meeting before they are approved, and if it is found any Director had an adverse interest in the matter which was the subject of the Boards action, the action need not be accepted.

Art. 197. The management of the affairs of the corporation, as well as its representation in everything relative thereto, shall be entrusted as stated in article 188, to one or more general managers, whose appointment, dismissal and duties shall be prescribed in the By-laws.

The responsibility of said agents shall be regulated by the ordinary principles of law.

Art. 198. The vigilance over the affairs of corporations shall be entrusted to one or more shareholders, who shall be styled examiners, and who, before entering into the discharge of their duties, must deposit the number of shares prescribed by the By-laws.

The examiners shall be appointed by a general meeting; nevertheless, the first time they may be designated in the instrument of incorporation (public writing.)

Notwithstanding any stipulation to the contrary, the examiners shall always be eligible for re-election and their trust shall be revocable.

The vacancies in the offices of examiners shall be filled in the manner prescribed by the By-laws, but always by virtue of election at a general meeting.

Comisarios (Examiners) may be named in the Articles of Incorporation. When so named they hold office until the next general stockholders' meeting. Comisarios must be elected by the stockholders: the Board of Directors cannot appoint or elect them. They act as Auditors, and are direct representatives of the stockholders. It is their duty to carefully scrutinize the action of the Board of Directors and officers of the corporation, and report to the stockholders at their meetings separately from the report of the President and other officers. They are not members of the Board of Directors, but have a right to attend all their meetings, as well as to examine all the

papers and business transactions of the corporation.

Art. 199. The examiners have an unlimited right of vigilance over the operations of the corporation. Whenever they may desire, they shall be permitted to examine the books, correspondence, and, in general, all the notarial documents and papers of the corporation, in consequence, the shareholders cannot exercise these powers themselves.

The Directors shall deliver to them every year the general balance sheet, so that they may have its verification, and the examiners shall present to the meeting the result of their labors with any proposal that they may deem fit, accompanied with the necessary exclamation and demonstration.

Art. 200. The extent and effect of the responsibility of the examiners shall be regulated by the prescription establishing that of the Board of Directors.

Art. 201. A general meeting of shareholders has the most ample power to carry into effect and ratify all the acts of the corporation. Such meeting may, unless otherwise prescribed, have the right to amend the By-laws of the corporation.

Stockholders at their general (annual) meetings have ample power to amend the By-laws, adopt new By-laws, change the domicile of the corporation, change its name, increase or decrease its capital, mortgage, sell or hypothecate any or all of its property. In fact they have ample power to do anything whatever, not positively prohibited by law.

Art. 202. Meetings are ordinary and extraordinary. Ordinary meetings shall be held at least once a year, after the termination of the corporation year. The following matters shall be in order at general ordinary meetings:

I. To discuss, approve or modify the general balance sheet, after hearing the report of the examiner;

II. To elect the members of the Board of Directors that are to serve;

III. To elect examiners;

IV. To determine the remuneration to be paid to the members of the Board of Directors and Examiners, if it is not prescribed in the By-laws;

V. The other business indicated in the call for the meeting.

The extraordinary meetings shall be held whenever called in conformity with the By-laws.

Art. 203. The call to general meetings shall be made by the publication of a notice in the official journal of the State, District or Territory, wherein the corporation has its domicile. The notice must contain a statement of the proceedings of the day or for all the questions to be submitted for the deliberation of the meeting.

Every resolution adopted in controvention of this article shall be void.

The notice of the ordinary (annual) as well as the extraordinary (special) meeting shall be published in the official paper of the State in which the corporation has its domicile. Unless this is done, all actions and resolutions of the stockholders at such meeting will be void and of no legal effect. Ordinary (annual) meetings

of the stockholders must be held once a year.

Art. 204. The call of meetings shall be made by the Board of Directors or by the Examiners, and in order that they may be legally held there shall be there at least a representation of more than one-half of the capital stock.

The number of votes that are to be held by the shareholders at the meetings, as well as the manner of computing them, shall be determined in the By-laws.

If a meeting cannot be held on the date stated for such meeting, the call shall be repeated, and at the second meeting the points stated in the days proceedings shall be resolved, whatever may be the portion of capital stock represented by the shareholders present.

All notices of stockholders' meetings whether ordinary or extraordinary, should be signed either by the President or examiner (Comisario). A majority of the stock of the corporation, issued, must be represented at the meeting to constitute a quorum. Should a majority of the stock be not represented, the President or Comisario may repeat the call and publish the notice as provided in the By-laws, and at the second meeting the stockholders after showing by their minutes the first and second call, and publication of the same, may proceed to hold their meeting, whether a majority of the stock of the corporation, then issued, be present or not, and all resolutions adopted at such meeting will be legal and binding on all the stockholders and the corporation. The rights of the stockholders

are carefully guarded under this law, not only by the requirements as to notices of meetings and the power reserved to the members, but by the examiners elected for that purpose, it will be seen however that the rights of individual stockholders, when acting separately, are considerably restricted, and action must be had by them as a body in all matters relating to corporate affairs.

Art. 205. The resolutions adopted at general meetings must be passed by at least an absolute majority of the votes of the shares that can be computed.

Art. 206. Unless the Article of Incorporation or the By-laws provide otherwise, the representation of three-fourths parts of the capital stock and the unanimous vote of the numbers or shareholders representing half of said capital stock, shall be necessary to pass the following resolutions:

I. Dissolution of the corporation before the time prescribed, except in case it should be done owing to the loss of the capital stock;

II. To extend its duration;

III. To consolidate with other corporations;

IV. To reduce its capital stock;

V. To increase its capital stock;

VI. To change the object of the corporation;

VII. Any other modification of the Articles of Incorporation or the By-laws.

Art. 207. When, in conformity with the provisions of the preceding article, it is resolved that the capital stock shall be increased, such resolution shall be carried into effect in

entire compliance with the formalities and prescriptions specified for the organization of corporations.

Art. 208. The modifications referred to in subdivisions II, III, IV and VI of Article 206 shall be included in a public writing and shall be noted in the Register of Commerce.

Art. 209. The Board of Directors must call an extraordinary meeting, with at least one month's notice, when the petition for the call has been made by a number of stockholders, representing the third portion of the capital stock, and the points to be discussed at the meeting have been presented in writing.

Art. 210. Shareholders may cause themselves to be represented at general meetings by persons holding their proxies, who may or may not belong to the corporation, the proxies to be drawn in the form that may be prescribed by the By-laws. Members of the Board of Directors cannot hold proxies.

Proxies may be simple letters granting the power to vote the stock signed by the stockholders. Such letters should have a five cent revenue stamp affixed thereto and cancelled. Any person may hold and vote a proxy whether they be a stockholder of the corporation or not, except a Director. They cannot vote a proxy of any stockholder.

Art. 211. All the minutes of the meetings, whether ordinary or extraordinary, shall be made in duplicate, and to one of the copies of the min-

utes shall be annexed a list referred to in Article 173.

All minutes of the general (annual) stockholders' meetings should be protocolized and recorded in the office of the Judge of First Instance where the corporation has its domicile.

Art. 212. Members of the Board of Directors cannot vote

I. To approve their accounts;

II. On resolutions that effect their personal responsibility.

Nor vote for other stockholders by proxy.

Art. 213. Corporations cannot distribute to their shareholders more profits than those that appear in the general balance sheet as having been obtained for their benefit; nevertheless is may be stipulated in the By-laws or Articles of Incorporation that the shares, during a period not to exceed five years, shall draw a rate of interest not exceeding six percent per annum. In that case the amount of such interest shall be considered as forming part of the expenses of organization. Shareholders shall never be obliged to return any dividends that they may have received.

Art. 214. From the net profits of the corporation there must be set aside yearly a portion, which shall not be less than five per cent thereof, to constitute the reserve fund, until it may aggregate at least one-fifth part of the capital stock.

The reserve fund must be formed again in the same manner, whenever it shall be diminished through any circumstances whatever.

Art. 215. Corporations must publish yearly in the official journal in the State, District or Territory where they may have their domicile, a balance sheet, wherein must be stated the amount of their capital stock, specifying what portion thereof has been paid in, and what is still to be received, the amount of cash in hand, and the different items that constitute assets or liabilities of the corporation.

Mining corporations seldom, if ever, comply with Article 215 above. This article is peremptory and should be complied with.

Art. 216. Corporations may be dissolved:

I. By the consent of the shareholders in the manner prescribed in Article 206;

II. By the expiration of the period for which they were established;

III. By the loss of one-half of their capital stock, whenever the dissolution is approved at a general meeting, by a vote of at least a majority of the stockholders representing one-half of said capital stock;

IV. By the bankruptcy of the corporation, legally declared.

Art. 217. When the dissolution of a corporation is determined upon at a meeting, the appointment of liquidators shall be made, and if that is not done the judicial authority shall appoint them when requested to do so.

Art. 218. The appointment of liquidators terminates the trusts and duties of the Directors of the corpora-

tion. The latter shall, nevertheless, lend their aid to the liquidators whenever they are requested to do so.

Art. 219. The accounts of the Directors, during the period comprised in the last balance sheet, approved by a meeting, and the opening of the liquidation, shall be presented to the liquidators for their approval.

Art. 220. When one or more Directors are appointed liquidators, the accounts referred to in the foregoing Article shall be published in two or more newspapers, published in the domicile of the corporation, with a final balance sheet of the liquidation; but if the latter comprises a period beyond the corporation year, the accounts mentioned must be annexed to the first balance sheets that the liquidators shall present to a general meeting of shareholders.

Art. 221. If the liquidation last one year, the liquidators shall make up the annual balance sheet in conformity with the prescriptions of the law and of the By-laws.

Art. 222. When the liquidation shall be completed the liquidators shall make out the first balance sheet, stating the portions which correspond to each share in the distribution of the capital stock, and such balance sheet shall be published for thirty consecutive days in one or more newspapers issued at the domicile of the corporation. The shareholders within fifteen days after the last publication thereof, must present their claim to the liquidators, which shall be passed upon at a meeting to be

called for that purpose, by a majority of votes, each share to have one vote.

Art. 223. After the expiration of the time mentioned in the foregoing article, whether there have been no claims presented or whether they have been acted on by the meeting, the final balance sheet shall be considered as approved, the responsibility of the liquidators to remain in force, as far as everything that pertains to the distribution of the capital stock is concerned.

Art. 224. The amounts belonging to the shareholders and that shall not be demanded within two months after the day when the balance sheet is considered to be approved, shall be deposited in any banking establishment to the credit and in the name of the shareholder, if the share was in his name, or to the number of the share, if made out to bearer. Said amounts shall be paid by the banking establishment wherein the deposit may have been made to the person named or to the bearer of the share.

Art. 225. The books of the dissolved corporation shall be kept at the office of the Public Register of Commerce, where the liquidators shall deposit them.

PART II.

FOREIGN CORPORATIONS.

Art. 265. Companies legally constituted in a foreign country that may be established in the Republic, or have within it some agency or branch, must, in order to enjoy the right granted them under Article 15, subject themselves to the following prescription:

Article 15 is as follows: Companies legally constituted in foreign countries, which establish themselves in the Republic, or have in it any agency or branch, may engage in commerce, subjecting themselves to the special provisions of the Commercial Code of Mexico in everything concerning the formation of their establishment within the national territory, their mercantile operations and the jurisdiction of the tribunal of the nation.

In everything relating to their capacity to contract, they shall be subject to the provisions of the corresponding article under the title of "Foreign Countries."

I. To the inscription and registration referred to in Article 24;

Article 24 is as follows: Foreign companies, which desire to establish themselves or create branches in the Republic, shall present and enter in the register, in addition to the proof of the protocolization of their statutes, contracts and other documents referring to their constitution, the inventory or last balance sheet, if they have one, and a certificate of their having been constituted and autho-

rized in accordance with the laws of their respective countries, given by the minister which the Republic may have accredited there, or in his absence by the Mexican Consul.

II. When they are formed by shares, to publish annually a balance sheet which must clearly state their assets and liabilities, as well as the names of the persons who have their management and control.

Art. 266. A failure to comply with the provisions of the foregoing article renders those who contract in the name of such company personally and jointly liable for all the obligations incurred within the Republic. The provisions of this article are not renounceable.

Art. 267. Foreign companies at present existing within the Republic hereby become subject to the provisions of this chapter, in so far as the validity of their future acts are concerned.

In order to record articles of a foreign corporation, a certified copy must be obtained from the Secretary of State where the company was organized. The certificate of a Mexican Consul must then be obtained to the effect that the secretary's signature is correct. The Consul's authority is then certified by the Minister of Foreign Relations at the City of Mexico. The articles may then be presented to the Notary Public, where it is desired to record them, and after an official translation is made and the proper fees tendered they will be duly recorded.

PART III.

CORPORATE BOOKKEEPING.

Art. 33. A merchant is obliged to keep account and entries of all his transactions in three books, at least, which are: The book of inventories and balances, the general day book, and the ledger, or book of current accounts.

Partnerships, and companies with shares, must also keep a minute book or books, in which shall be recorded all resolutions which refer to the progress and operations of the company, passed by the general meetings and boards of directors.

Mining companies find it necessary to conduct a mercantile business in connection with their mines and these provisions are directly applicable.

In so far as a mining corporation conducts a mercantile business it must comply with the foregoing provisions.

Art. 34. The books prescribed as being absolutely necessary in the course of mercantile bookkeeping, shall be bound, lined, paged and stamped with the proper stamps in the manner provided by law.

Art. 35. Merchants may keep their books themselves or by persons authorized by them for that purpose.

If the merchant does not himself keep the books, it will be presumed that he has authorized those who keep them, unless the contrary be proved.

Art. 36. The books of merchants shall be kept in the Spanish language, with clearness; and in the progressive order of dates and transactions, without leaving blanks, or anything which may be altered. The errors which may be committed in them shall be corrected by new entries corresponding with the incorrect ones.

Art. 37. The merchant, even though he be a foreigner, who does not keep his books in Spanish will be liable to a penalty which shall not be less than fifty dollars, nor exceed three hundred; he shall, at his own expense, cause the translation to be made into the Spanish language, of the entries of the book, which may be ordered to be examined and transcribed, and he will be compelled, by law, within a fixed period, to transcribe to said language the books which he may have kept in the other.

Art. 38. The book of inventories and balances shall be commenced with the inventory, which the merchant must make out at the beginning of his operations, and shall contain:

I. An exact account of the cash, values, credits, collections to be made, real and personal properties, merchandise and goods of all kinds, estimated at their real value, which constitute his assets.

II. An exact account of the debts and every class of pending obligations, if he has any, which form his liabilities.

III. It will show, as the case may be, the exact difference between the

assets and the liabilities, which will be the capital with which he commences his operations.

The merchant shall also prepare annually, and extend in the same book, the general balance of his business with the particulars expressed in this article, and in agreement with the entries in the day book, without any reserve or omission, under his signature and responsibility.

Art. 39. In the day book shall be entered as the first entry the result of the inventory referred to in the preceding article, divided in one or more consecutive accounts, according to the system of bookkeeping which may be adopted.

Afterwards, shall follow, day by day, and according to the order in which they may be effected, all the operations which the merchant may make in his business, on his own account or that of another, specifying the circumstances and character of each operation, and the result which it produces to his credit or debit in such a way that each item shall indicate who may be the creditor and who the debtor in the transaction to which it refers.

When the operations are numerous, whatever be their importance, or when they are effected outside the domicile it is sufficient to enter in one item all which refer to each account and which have taken place in one day; but maintaining in their entries, when details are given, the

same order in which they were effected.

In the same manner , on the date on which he withdraws them from the cash box, the amounts which the merchant takes on his private account shall be entered and shall be carried to a special account which for the purpose shall be opened in the ledger.

Art. 40. The accounts current for any particular object, or with any particular person, shall be opened by debit and credit in the ledger; and to each account shall be transferred, in exact order of dates, the entries of the day book.

Art. 41. In the minute book, which each company shall keep, treating of general meetings, shall be expressed: The respective date, those present at them, the number of shares which each one represents, the number of votes which he may make use of, the resolutions which may be passed, which must be recorded to the letter; and when the voting is not by ayes and nays, the votes cast, care being taken to record everything which may conduce to a complete knowledge of what was resolved. When the minutes refer to the board of directors, these particulars only shall be entered: The date, the names of those present and an account of the resolutions passed. These shall be evidenced by the signatures of the persons to whom the By-laws give this power.

Art. 42. No official inquiry can be made, either by a tribunal or any au-

thority, to ascertain if merchants do or do not keep regular books. They must, nevertheless, produce them, when called upon, for the simple purpose of ascertaining if they have the proper stamps.

Art. 43. Neither, at the instance of any party, may access, delivery or general examination of the books, letters, accounts and documents of merchants be ordered, save only in case of general administration, liquidation of the company, commercial direction or management on account of another, or of failure.

Art. 44. Except in the cases mentioned in the preceding article, the production of the books and documents of merchants can only be decreed, at the instance of a party or officially, when the person to whom they belong has an interest or liability in the matter involving the production.

The inspection shall be made in the office of the merchant, in his presence or that of a person commissioned by him, and shall be exclusively confined to the points which have a direct relation with the case entered; including therein points which may even be foreign to the special account of which an examination has been solicited.

Art. 45. If the books are found to be outside the place where the tribunal which orders their examination is located, same shall be made in the place where said books are, without

compelling their transference to the place of trial.

Art. 46. Every merchant is obliged to preserve his books of business until his accounts are settled and ten years afterwards. The heirs of a merchant are under the same obligation.

PART IV.

CORPORATE CORRESPONDENCE AND RECORDS.

Art. 47. Merchants are bound to preserve, in good condition, all the letters and telegrams which they may receive in connection with their transactions and business, noting on the back the date on which they receive and reply to them, or the fact of no reply being made.

Art. 48. All the letters which a merchant writes concerning his business, and the telegraphic dispatches which he sends, shall be copied into a copying book, either by hand or by using any mechanical means whatsoever, entirely and consecutively in order of date, including the signature.

Art. 49. The rules prescribed in article 36 are applicable to the letter copy book, excepting those referring to the exclusive use of the Spanish language.

Art. 50. The courts may order on their own motion, or at the instance of any legitimate party, that the letters which have reference to any matter in litigation be presented in the litigation, and also may order that those of the same class written by the litigants be copied, clearly specifying before hand the letters which are to be copied by the party requesting it.

In so far as a mining corporation conducts a mercantile business it must comply with the foregoing provisions.

NOTICE

1. We will furnish estimates of cost for the organization and registration in Mexico of American, English or French corporations. and for the organization of Mexican corporations.

2. We supply charter forms, to conform with the Mexican law and practice for foreign corporations that are subsequently to be registered in Mexico.

3. We draft forms of charters, deeds, or instruments serving to convey real property, in accordance with the laws of Mexico.

4. We act as attorneys for incorporators.

5. We furnish incorporators, directors and officers when these are required.

6. We attend directors' meetings.

7. We prepare minutes in Spanish, keep the minute books and stock registers of corporations, draft declarations of transfer of stock, and attend to the holding of stockholders' meetings.

8. We act as local agent for foreign corporations.

9. We represent corporations before the federal and state governments, and in the courts.

10. We do everything necessary for the complete registration and organization of corporations, foreign and domestic.

11. We search land and mine titles

and furnish complete abstracts in English.

12. We issue certificates of land and mine titles.

13. We apply for and secure confirmation by the federal government of old titles.

14. We draft deeds, mortgages, leases, options and contracts of all kinds, in Spanish under the Mexican laws.

15. We attend to the proper recording of instruments; and do everything requisite to the perfecting of titles.

16. We procure surface rights either by contract or condemnation proceedings for mining companies.

We have resident correspondents in all the principal cities of Mexico and are prepared to dispatch promptly any business pertaining to legal matters, entrusted to us.

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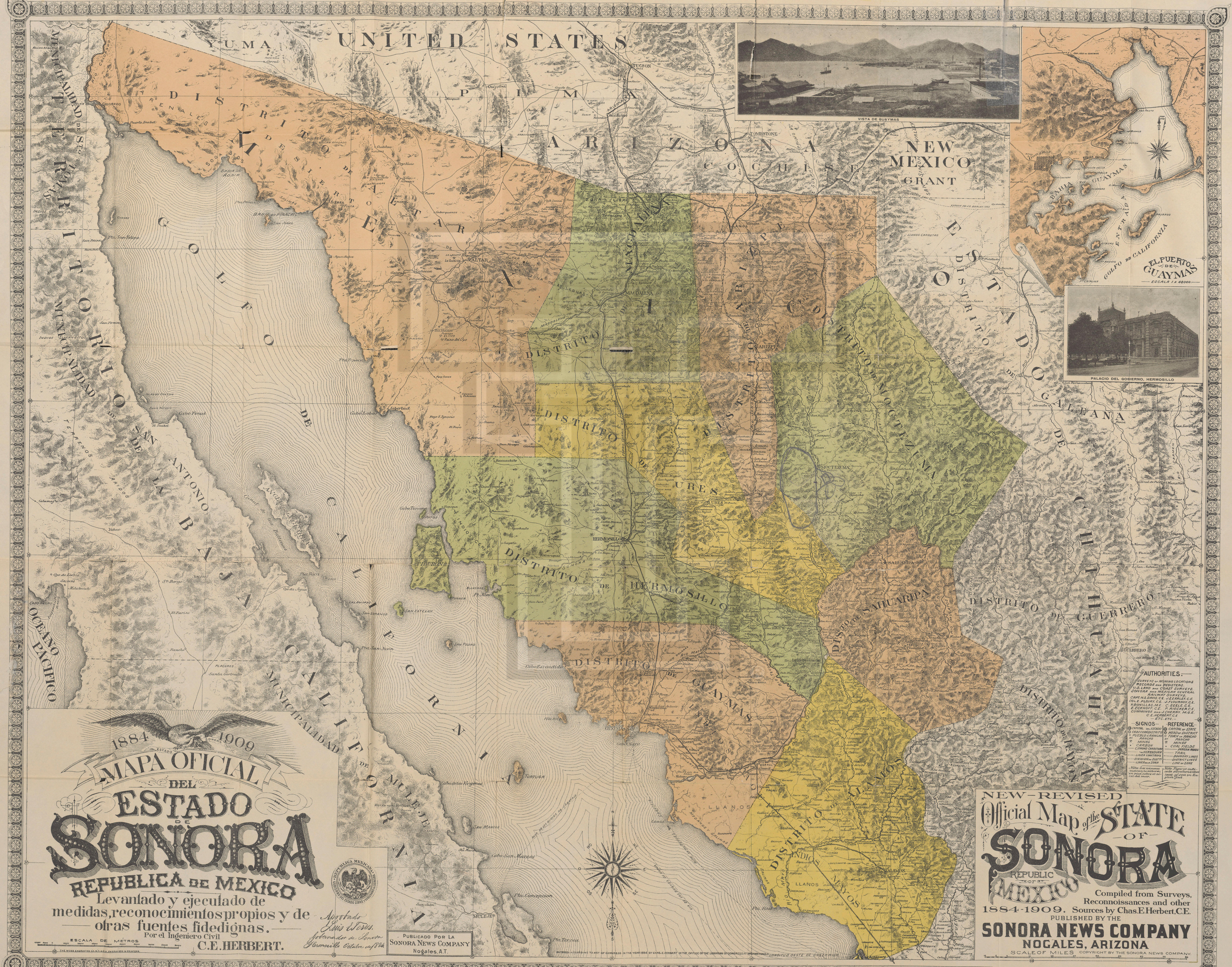

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