

# Newsletter



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### **1 Federal Maritime Zone**



### **1. Introduction**

The Federal Maritime Zone (hereinafter referred as "FMZ") is a strip of transitable land 20 meters wide that is adjacent to the sea, which is determined from the high tide.

The Federal Maritime Zone is regulated mainly by the Mexican Constitution, the General Law for National Assets, the Regulations for the Use and Exploitation of the Territorial Sea, Navigable Ways, Beaches, the Federal Maritime Zone and Land Gained from the Sea (hereinafter referred as "RFMZ"), and the General Law for Ecological Equilibrium and the Protection of the Environment.

In accordance with article 29 of the General Law for National Assets, this zone is an asset for common use and of the public domain of the Federation, and is therefore inalienable, imprescribable and unattachable and not subject to any action for its definitive or provisional possession. The Land Gained from the Sea (hereinafter referred to as "LGS") is also considered as property available for public use and therefore, subject to the same regulation.

Individuals and public institutions can only use and exploit this

public property by means of a concession or permit granted in accordance with the rules and conditions that the concession title and the related laws establish. Regardless of the aforementioned, any person can use property available for public use and only special exploitation will require a concession. Therefore, in order to use and exploit the FMZ or LGS it would be necessary to obtain a concession.

The importance of obtaining a concession for the use and exploitation of the FMZ or the LGS is to have legal certainty with respect to the special use and exploitation of the occasioned or authorized property. Therefore, if one would like to carry out a tourist development by the sea and avoid the installation of restaurants or other activities, which are not related to the project at hand, it would be necessary to obtain the concession for the use of the FMZ or the LGS so as to have the sole use and exploit such an area. Consequently, the obtaining of a concession in the FMZ or of the LGS is essential for those cases in which there is a need to construct, for example, piers or also for the introduction of pipes for the discharge of wastewater to the sea.

### **2. Application of the Concession Title**

Any person interested in using and exploiting the FMZ or LGS, has the right to request a concession for the use of such areas. However, article 24 of the RFMZ establishes an order of

preference for the granting of a concession, or in other words, it establishes the order in which several applications for the use of the same area filed at the same time will be attended.

In connection therewith, it is very important that when planning the development of a project that requires a concession title for the use of the FMZ or of LGS, the application is filed promptly, considering that surprisingly enough, the owner of any site adjacent to the FMZ, as set forth by article 29 of the RFMZ, only holds fifth place in the order of preference.

Moreover, to request the concession, it is necessary to present a duly completed format accompanied by the documentation required by the RFMZ.

The maximum term for which a concession is granted for the use of the FMZ or LGS is 20 years; in order to determine the term for which a concession will be granted, the authority will take into consideration the level of investment that is going to be made in the area.

Nevertheless, it is possible to request an extension of the term for which the concession title is valid prior to it expiring. However, it is important to note that the application to get such an extension must be filed 45 days before the expiration date of the concession.

Furthermore, once the concession title is granted, the following obligations are generated: (i) the payment of the governmental fees or duties; and (ii) the proper utilization of the FMZ, exclusively for the purpose that was authorized. In the event that a new use is required, this would

need to be requested of the authority.

The concessions may be revoked for reasons that include, amongst others: (i) the concessionary sublets, leases or puts any lien on the concession, (ii) the development of activities that were not authorized by concession or (iii) because they fail to pay the rights; and (iv) impeding access by any person to the beaches.

### **3. Other Rights that are granted by a Concession for the Use and Exploitation of the FMZ and Land Gained from the Sea.**

Parallel to the issuance of concessions for the use and exploitation of the FMZ and of the LGS, the law also regulates the granting of **“Temporary Permits for the Use and Exploitation of the Federal Maritime Zone”**. This permit regulates the development of temporary activities that involve structures, which can be easily removed from their locations in the FMZ, for example, works that are installed for commercial activities along the beaches during the holiday periods, such as palm shelters and stands.

The law also regulates the granting of **“The Construction Permit in the FMZ”**. This permit needs to be requested for the carrying out of works that require the laying of foundations, cement or otherwise. In general, this permit is usually granted for the development of preliminary works before the concession for the occupation of the area is granted. Prior to obtaining the permit, it is necessary to secure an environmental impact authorization for any work or activity that could cause an

ecological imbalance in the area, this being in accordance with article 5 of the Regulations of the General Law for Ecological Equilibrium and the Protection of the Environment on matters of Environmental Impact Evaluation.

It is important to establish that when there are modifications to the terms and conditions of the concession title, such as: (i) the company name, (ii) the amount of the investment, (iii) new works or; (iv) in case there is a change in the use that was authorized, it would be necessary to modify the terms of the concession with the authorization of the authority. This application is known as **“Modification of the Terms and Conditions of a Concession in the Federal Maritime Zone”**. Therefore, the transference or assignment of rights and obligations established in a concession title, either to an individual or entities, require prior authorization from the authority.

### **4. Competent Authorities**

The competent authority for the analysis and resolution of applications for concessions, temporary permits of use and the exploitation of the FMZ and the construction of works, amongst others, is the General Direction for the Federal Maritime Zone and Coastal Environments (GDFMZ) while their corresponding Administrative Units in each State are in charge of the administration, conservation and sustainable exploitation of the maritime beaches, the FMZ and the LGS, under the criteria of sustainable development.

In the case that the works or activities to be developed in the FMZ and the LGS require an environmental impact authorization, it will be necessary

to file an Environmental Impact Statement before the General Direction for Environmental Impact and Risk, in order to obtain the authorization for the works and activities that will be developed.

Another of the authorities involved with the FMZ and the LGS is the Attorney General's Office for the Protection of the Environment (PROFEPA), which supervises the FMZ and LGS by means of periodical inspection visits in order to verify compliance with the legal and administrative provisions related to the matter, producing to this effect minutes of their inspection visits.

**5. What can be done if the area of the Federal Maritime Zone for which a concession is requested is already occupied?**

Firstly, it would be necessary to find out whether the occupants hold a concession title that legitimizes their occupation of the area in question. For this it is recommended that this information be requested of the environmental authorities, through means of the legal mechanisms that are established to that effect.

**6. What can be done in the event that a social conflict arises in the FMZ or in the LGS?**

The same application for a concession in the FMZ or in the LGS, the execution of works and activities in such area, or the eviction of irregular settlements can trigger unrest in the sectors that could feel affected by such activities and thereby generate social conflicts.

Social conflicts that originate from the aforementioned reasons, such as for the development of new projects in non industrial zones or in zones where there is industry that has already been generating problems and conflicts within the population, must be resolved in an effective way so as to prevent the proliferation of difficulties and the potential cancellation of projects that depend on the use and exploitation of the FMZ and LGS. This Firm has a lot of experience in implementing mechanisms for resolving these social controversies while designing alternative strategies that bring satisfactory solutions that are both feasible and lasting to the parties involved in the conflict.

In conclusion, we always seek a dialogue as the first option and if this is not enough, we facilitate negotiations between the parties involved and only as a last resort do we come before the courts to resolve issues through arbitration so as to safeguard the rights of our clients. In the event that the conflict could not be solved by the abovementioned means, our law firm has a lengthy background in the area of litigation that could be of great value when a problem cannot be resolved by conciliatory means.

This Firm has great experience in the obtaining of concessions and permits for the use and exploitation of the FMZ and the LGS, as well as for their regularization.

The referred newsletter does not try to resolve a specific problem, it is just a personal consideration of the author with respect of the problematic mentioned on this document.

In case that you have any doubt or question with the above mentioned, please do not hesitate to contact us at the following direction:

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