

# Newsletter



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## Contents

### **1 Federal Maritime Zone, Impeachment Measurements and Payment of Rights.**

In connection with our last Newsletter Number 6 2006, regarding the Federal Maritime Zone (hereinafter referred as "FMZ"), in this issue we are going to explain the following subjects, which we consider that keeps an important relation with the FMZ:

- 1) Remedies.
- 2) Payment of Rights.

#### **1. Impeachment Measurements.**

In connection with the foregoing, our experience has shown us, which are the best legal actions to practice after the presentation of a request of a Concession Title of FMZ, specially when the resolution of the authority is against the interests of the petitioner, due to the following causes: i) the issuance of such resolution is against our favor, ii) the delay of issuance of the resolution iii) the resolution is issued in favor of a third party.

- i) When the issuance of such resolution is against the interests of the petitioner.

In these terms, we recommend in first place, analyze the scope of the Concession Title, and request to the Ministry of Environment and Natural Resources (herein after referred as "MENR"), the reconsideration of the non favorable terms, arguing the legal foundations, as well as the technique aspects which support the request of the petitioner.

- ii) The endless evaluation process.

It is usual, that the MENR does not fulfill the terms established in law, to resolve the processes turning the process endless, in this case, it is important to know the status that keeps the corresponding process, through interviews with the evaluators, in order to know why the evaluation process is

delayed. In many occasions the delay is due to the fact that some document is missing or the misplacement of papers from the file, therefore, it is very important to constantly follow up the status of each process.

- iii) The Concession Title is issued in favor of a third party.

This situation is unfortunately common, turning indispensable to know the process established by law, which the authority has to comply, in case that the FMZ, is requested by two different persons, in such regard, the applicable regulations establish in its Article 24, which is the priority procedure between different individuals regarding the same FMZ, as well as the factors which the MENR has to consider in order to establish which person has the best right to obtain the Concession Title.

Between the elements that the MENR has to evaluate there are the following:

- i) The priority established in the regulations.
- ii) The importance of the activity which is supposed to be carried out in the FMZ.
- iii) The investment amount, among others.

- ❖ Which legal actions does the petitioner of the FMZ, has to carry out, in case the MENR grants a Concession Title without obeying the priority process?

The law establishes the procedure named petition of review, as well as the pertaining to administrative or judicial litigation, or in specific cases the Indirect Amparo Trial. Every impeachment measurement is different and obeys to diverse suppositions. In first place, we recommend a specific analysis of the case, in order to identify the most useful elements to the interests of the petitioner.

<sup>1</sup> 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 "the rules")

We consider a legal consultancy indispensable in order to know if we are paying the rights correctly, or in its case establish the legal action most convenient to our interests.

**II. Payment of Rights**

A very controversial issue is the legal nature of the payment of rights, for the use, management and exploitation of the FMZ, its scopes, amounts, etc.

This Firm has broad experience obtaining Concessions Titles for use and exploitation of FMZ, its modification, legal updating; as well as administrative and judicial resources against resolutions which affects the interests of the petitioner, in procedures related with the subject of reference.

In this sense, it is convenient to mention even though FMZ is considered of federal jurisdiction, states and municipalities have the authority to collect the rights regarding the use, management or exploitation of the FMZ, makes indispensable to know the corresponding amounts to pay in every concession, in order to prevent contingences, regarding the payment of rights.

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

The Federal Law of Rights (hereinafter referred as "FLR"), establishes the obligation to pay the rights for the use, management and exploitation of the FMZ, by the different uses established in the FLR, which are the followings: i) Protection and ornamentation ii) general iii) agriculture, cattle farming, and fisheries.

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



It is important to establish the specific use which we are going to request, due to the fact that every right has a different amount, for example: the general use (which is the most expensive) establishes an amount 4 or 5 times higher than the established for protection or ornamentation, even though, there are exceptions to such payments.

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- ❖ ¿Which legal actions are to be taken in order to obtain a different use for a Concession Title?

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Every case is different; in first place we have to evaluate the convenience to change the use of the Concession Title, the reduction of the FMZ, or request an amendment of the concession, in order to adequate the request to our particular necessities.