



Establishing a business in Mexico

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A Q&A guide to establishing a business in Mexico.

This Q&A gives an overview of the key issues in establishing a business in Mexico, including an introduction to the legal system; the available business vehicles and their applicable formalities; corporate governance structures and requirements; foreign investment incentives and restrictions; currency regulations; and tax and employment issues.

This article is part of the global guide to establishing a business worldwide. For a full list of contents, please visit www.practicallaw.com/ebi-guide.

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LEGAL SYSTEM

1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)?

Mexico has a civil law system and follows the core principles of Roman law derived primarily from the Code of Justinian, which is part of the Corpus Iuris Civilis (that is, the codification of Roman Law). As in many civil law countries, private law rules follow the principles and structure of the Napoleonic Code (that is, the French Civil Code enacted in the early 19th century).

BUSINESS VEHICLES

2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?

A substantial majority of legal entities in Mexico are created for commercial purposes and constituted under the General Law of Commercial Companies (Ley General de Sociedades Mercantiles) (LGSM). Among the various types of commercial companies recognised by commercial laws, stock corporations (Sociedades Anónimas) and limited liability companies (Sociedades de Responsabilidad Limitada) are the most widely used business vehicles.

Stock corporations and limited liability companies are divided into certain sub-categories that are subject to different rules, for example, regarding whether all capital must be fixed or otherwise be comprised of a fixed and a variable portion. In the latter case, the entity will be classified

as a company or corporation with variable capital. A stock corporation can also be established as:

- A listed company (Sociedad Anónima Bursátil or Sociedad Promotora de Inversión Bursátil).
- An unlisted investment promotion company (Sociedad Anónima Promotora de Inversión).

Private legal entities can be formed for a wide variety of purposes other than commercial purposes. Accordingly, there are various types of entities under federal and state laws. For example, state laws regulate the operation of professional corporations (Sociedades Civiles) and non-profit entities (Asociación Civil). Commercial entities are subject to federal laws, as are all commercial activities under a Mexican constitutional principle. However, the LGSM does not regulate all types and sub-types of entities. Other regulations may also apply to specific types of businesses or activities (for example, securities, agrarian, co-operative and financial laws).

ESTABLISHING A PRESENCE FROM ABROAD

3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?

There is a wide array of options for an overseas company to engage in business in Mexico (ancillary business transactions may be exempted from any regulatory requirements). Ranging from the least involved to a fully committed and active business presence, foreign companies can conduct business through the mechanisms mentioned below.

► **Joint venture, trust, independent contractor, distributor, franchise or agent.**

The advantage of these types of mechanisms is that, subject to a few exceptions, the overseas company will not generally face legal implications in Mexico. However, in certain cases, domestically sourced income may be subject to withholding tax. Depending on the scope of activities conducted by the independent contractor or agent, the presence may qualify as a permanent establishment, resulting in the overseas company being deemed a Mexican tax resident. There may be other implications in certain cases, for example, for certain franchise structures (for example, the obligation to disclose specific information to franchisee and to record standard contracts). The main disadvantage is that the business depends on compliance with the contractual terms agreed between the overseas company and the agent, distributor or franchisee, and that tax and other regulatory requirements may still apply.

► **Branch**

Under the Mexican Foreign Investment Law, overseas companies can conduct regular business through a branch, if they comply with several requirements, including:

- Securing an authorisation from the Ministry of Economy.
- Registering the company with the Public Registry of Commerce (as required by the General Law of Commercial Companies).

The main downside of operating through a branch is that the overseas company will be:

- Fully liable for any responsibility incurred by the Mexican branch.
- Deemed to have a permanent establishment in Mexico for tax purposes.

In the case of entities originating in certain countries (including the US, Canada, Chile, Costa Rica, Colombia, Nicaragua, El Salvador, Guatemala, Honduras, Uruguay, Japan and Peru), the authorisation requirement can be waived if the foreign entity setting up the branch files a simplified writ containing certain information and undertakings (including the appointment of a representative domiciled in Mexico).

► **Mexican company**

The most common way for a foreign company to establish a business in Mexico is through the creation or acquisition of a commercial company. A Mexican company allows the foreign entity to establish a legal and physical presence in Mexico and to benefit from protections against direct liability and regulatory compliance in Mexico (except in its capacity as shareholder or partner). Stock corporations and limited

liability companies are the most common forms of commercial companies.

4. How can an overseas company trade directly in your jurisdiction?

Foreign entities engaging in ancillary business are not subject to specific regulations or requirements, except for sectoral restrictions (certain activities require specific licences or are reserved to Mexican nationals or licensed entities). However, foreign entities must comply with the applicable tax obligations (for example, withholding tax on Mexican source income). A foreign company must carefully analyse the activities to be conducted in Mexico to determine if a permanent establishment is created.

A foreign company wishing to conduct business on a regular basis must meet the requirements of Mexican law, which include:

- Obtaining authorisation from the Ministry of Economy.
- Registering a branch with the Public Registry of Commerce and the Foreign Investment Registry.
- Submitting to Mexican law and waiving the right to invoke foreign laws or governmental protection for all matters related to the conduct of a business in Mexico.
- Complying with all legal, licensing and tax requirements applicable to the activity conducted by the branch.

A branch is not a separate legal entity and only allows the foreign entity to conduct business transactions in Mexico.

A foreign company can also conduct business activities in Mexico through a joint venture (*asociación en participación*) or any other contractual agreement (including trust, distribution, independent contractor, agency or franchise agreements). A foreign company that does not directly conduct business in Mexico on a regular basis under any such agreement will only be subject to the specific tax and legal requirements that apply to their activity.

Under Mexican foreign investment law, foreign companies cannot conduct certain activities, including:

- Freight and transportation services.
- Development banking.
- Certain professional and technical services.

There are also provisions that:

- Limit foreign investment in certain sectors.
- Require prior authorisation for foreign investments.
- Require foreign investors to operate through specific vehicles (for example, a Mexican company or trust).

5. What are the formalities for setting up a partnership?

The articles of incorporation and bye-laws of all partnerships must be formalised before a notary public and recorded in the Public Register of Commerce. Partnerships are regulated by the General Law of Commercial Companies (LGSM). Partnerships have a legal personality and a patrimony independent from that of their partners.

► General partnerships

The Sociedad en Nombre Colectivo is generally regarded as the equivalent of the common law general partnership. The legal name of the general partnership must include the name of at least one of its partners. General partnerships are regulated by the LGSM and are rarely used, as the liability of partners is joint and unlimited. General partnerships must have at least two partners.

► Limited partnerships

The Sociedad en Comandita Simple (non-stocked limited partnership) and the Sociedad en Comandita por Acciones (stock limited partnership) are the equivalent of limited partnerships. Limited partnerships must have at least two partners. At least one unlimited partner (socio comanditado) must be:

- Fully liable for the partnership's obligations.
- Engaged in the management of the partnership.

Limited partners (socios comanditarios) are only liable up to the amount of their contributions. In non-stock limited partnerships, partners cannot directly or indirectly participate in the management of the partnership. There are a few differences between non-stock and stock limited partnerships, including the applicable formalities for the transfer of equity. Generally, non-stock limited partnerships adopt many of the structural principles that are applicable to general partnerships, whereas stock limited partnerships are more similar to stock corporations. Limited partnerships must have at least two partners, and there are no limitations on the number of partners.

6. What are the formalities for setting up a joint venture?

Mexican law does not explicitly regulate joint ventures. A joint venture is broadly considered as a strategic business alliance between two parties, and several vehicles can be used to accomplish that purpose. The participants to a joint venture can use a corporate vehicle and create a new entity (for example, a commercial company). Otherwise, the joint venture will be governed by a contract between the participants. A joint venture agreement can take the form of, for example, a distribution, contractor, franchise, consortium or agency agreement.

In addition, the parties to a joint venture can enter into a profit-sharing contract (Asociación en Participación), which is regulated by the General Law of Commercial Companies (LGSM). A profit-sharing contract does not create an independent entity with an independent personality or patrimony. The two parties agree to share profits and losses in a certain business venture to which they can contribute capital or any other assets. Assets allocated to the business and contractual obligations are held by the operating party. The business is conducted in the name of the joint venture. Profit-sharing contracts are also subject to a special taxation regime that treats the business as an independent taxpayer.

Profit-sharing contracts are widely used in domestic and cross-border transactions. They do not require independent registration with the Public Registry of Commerce but must be made in writing. They do not require notarisation, except where they entail specific operations (for example, the conveyance of real estate from the passive to the operating partner).

7. Are trusts available in your jurisdiction?

Trusts are widely used in Mexico under several forms. The main legislation that regulates private trusts in Mexico is the General Law of Negotiable Instruments and Credit Transactions (Ley General de Títulos y Operaciones de Crédito). A trust does not have an independent legal personality under Mexican law.

Under a trust, the settlors contribute assets to a trustee institution (only certain authorised entities, such as commercial banks, can operate as trustees) for the benefit of trust beneficiaries. Trusts can be established for any legally permissible purpose, including to operate a business or to guarantee obligations. Because trusts are not independent entities, any business is conducted in the name of the trustee institution for the benefit of the trust estate. Trust assets that are owned by the trustee are generally isolated from the rest of the trustee's assets and liabilities. Trusts are taxed at the level of the trust beneficiaries. However, as for profit-sharing agreements (see Question 6), a trust can be treated as an independent taxpayer for tax purposes (despite not being an entity independent from the trustee) in certain cases.

The most common types of trusts are:

- Guarantee trusts (used to secure obligations).
- Administration trusts (used for a wide range of purposes, including the conduct of a partnership's business).
- Real estate trusts (used to hold real estate in certain cases, including when foreign nationals wish to hold an interest in real property but are not willing or allowed to do so in their own name).

Fibras are similar to US real estate investment trusts (REITs) and are created for the acquisition, exploitation and development of real property. Special trusts called Fibras E are very similar to REITs, but are used as investment vehicles for infrastructure and energy projects. Securities can be, and are in practice, issued by trustee institutions with respect to the underlying trust assets.

The answers to the following questions relate to private limited liability companies (or their equivalent).

FORMING A PRIVATE COMPANY

8. How is a private limited liability company or equivalent corporate vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?

▶ Regulatory framework

The main laws applicable to private companies are the Mexican Constitution and the General Law of Commercial Companies (LGSM). As commercial companies are considered as merchants, they are also subject to the provisions of the Mexican Commercial Code (Código de Comercio). Investment by foreign companies is primarily regulated by the Foreign Investment Law (Ley de Inversión Extranjera) and its regulations. Federal taxation is primarily governed by the Tax Code (Codigo Fiscal), the Income Tax Law (Ley del Impuesto Sobre la Renta) and the Value Added Tax Law (Ley del Impuesto al Valor Agregado).

The regulatory authorities involved in the establishment of companies are the:

- Ministry of Economy.
- Public Registry of Commerce.
- National Foreign Investment Registry.
- Tax Administration Service.

For information on these regulatory authorities see box: The regulatory authorities.

▶ Tailor-made or shelf companies

As Mexican law allows companies to adopt very broad corporate purposes (even if some of the activities listed in the corporate purposes are not actually undertaken by the entity), it is relatively easy to establish shelf companies. Shelf companies are sometimes made available to investors by professional consultants. However, it is preferable to tailor the structure of private companies to their specific needs and circumstances on a case-by-case basis. In certain cases, the company's corporate purpose or bye-laws may need to

comply with content requirements, which is not generally possible when using a shelf company. The company's bye-laws contain the main terms and conditions applicable to the relationship between shareholders, and they should ideally reflect, and be adapted to, the needs or concerns of those shareholders.

▶ Formation process

The following steps must be taken to incorporate a Mexican stock corporation or limited liability company:

- **Name permit.** A permit from the Ministry of Economy must be secured to incorporate a Mexican entity. The application for a name permit can be filed electronically.
- **Articles of incorporation.** The partners or shareholders must execute a public instrument formalising the company's articles of incorporation before a Mexican notary public or public broker. The founding partners or shareholders can grant powers of attorney to Mexico resident consultants for that purpose. The company exists from the date of execution of the public instrument.
- **Bye-laws.** The articles of incorporation and bye-laws can be included in the same set of documents or be drafted separately. The main difference between them is that articles of incorporation contain the essential clauses for the creation of the company (that is, name, duration, domicile and share capital) and the bye-laws contain additional specific provisions relating to the structure and organisation of the entity.
- **Initial resolutions.** On incorporation, the shareholders or partners must adopt resolutions approving the initial issuance of shares, appointing managers, officers and examiner (if applicable) and granting powers of attorney. These resolutions are normally included in the public instrument containing the articles of incorporation.
- **Registration with the Public Registry of Commerce.** Once executed and issued, the public instrument must be filed with the Public Registry of Commerce.
- **Other registrations.** The newly formed company must be registered as a federal taxpayer and with any relevant state tax offices. Additionally, a company that hires employees must register as an employer before the Mexican Social Security Institute. If foreign investors participate in the capital of the new company, the company must file for registration with the Foreign Investment Registry. Other registrations and authorisations may be required on a case-by-case basis (for example, registration for the IMMEX (maquila) programme, and importers or exporters registration).

► Company constitution

In both stock corporations and limited liability companies, the articles of incorporation contain the essential provisions for the operation of the company. The bye-laws contain additional provisions regarding the operation of the company. Additionally, the shareholders or partners can choose to sign a shareholders' agreement, which is not normally included in the public instrument that formalises the incorporation and is recorded in the Public Register of Commerce. The articles of incorporation and bye-laws usually cover the following matters:

- **Corporate purpose.** The bye-laws list all the activities that the company is authorised to engage in. Normally, they primarily describe the core business of the company and add broad descriptions, which will allow the company to engage in other activities.
- **Domicile.** A company must specify its corporate domicile. The corporate domicile may be different from the main place of business and determines the jurisdiction of registration in the Public Register of Commerce, as well as the place where shareholders' or partners' meetings must be held.
- **Duration.** A company can have a specified term or remain operative indefinitely. New companies generally opt for an indefinite term.
- **Capital.** There is no minimum capitalisation requirement, but the articles of incorporation must specify the amount of the company's capital. A company's capital is divided in quotas (in limited liability companies) or shares (in stock corporations).
- **Management.** The management of the company must be entrusted to:
 - a sole manager or a board of managers in the case of a limited liability company; or
 - a sole administrator or a board of directors in the case of a stock corporation.
 Managers can be either Mexican or foreign nationals.
- **Officers.** Mexican law does not require the appointment of officers, but it is customary for companies to appoint a president or chief executive officer, a secretary and an assistant secretary. Any other officers can be appointed as desired.
- **Powers of attorney.** Unless explicitly provided for in the company's bye-laws (which is very uncommon), the appointment of an officer does not, in itself, empower an individual officer to represent the company. Accordingly, express powers of attorney must normally be granted to each officer. There are different types of powers of

attorney under Mexican law, which correspond to the specific scope of authority granted.

- **Examiner.** Stock corporations must appoint an examiner. A limited liability companies does not require an examiner (although this is recommended). The role of the examiner is to oversee the performance of the company's management and to inform the partners or shareholders in this regard.

FINANCIAL REPORTING

9. What financial reports must the company submit each year?

Mexican law does not require private companies to file financial reports with the Public Registry of Commerce or any other regulatory body. Companies with foreign investors and branches of overseas companies established in Mexico must file certain financial information with the Foreign Investment Registry.

Additionally, companies must hold an annual shareholders' or partners' meeting to examine and approve financial statements. Private companies are not required to publicly file these statements. Publicly-held companies must however file those statements with the National Banking and Securities Commission and the stock exchange where their securities are traded for public disclosure. Private companies engaged in insolvency, merger, liquidation, dissolution and/or spin-off procedures may be required to publish their financial statements.

TRADING DISCLOSURE

10. What are the statutory trading disclosure and publication requirements for private companies?

A company's legal name must include words or abbreviations that indicate its legal form, such as:

- Sociedad Anónima (S.A.) (for a stock corporation).
- Sociedad Anónima de Capital Variable (S.A. de C.V.) (for a stock corporation with variable capital).
- Sociedad Simplificada por Acciones (S.A.S.) (for a simplified commercial company).
- Sociedad Anónima Promotora de Inversión (S.A.P.I.) (for an unlisted investment promotion company).
- Sociedad Anónima Bursátil (S.A.B.) (for a public listed company).
- Sociedad de Responsabilidad Limitada (S. de R.L.) (for a private limited liability company).
- Sociedad de Responsabilidad Limitada de Capital Variable (S. de R.L. de C.V.) (for a private limited liability company with variable capital).

Companies must establish and comply with data privacy policies and make a notice of privacy available to the public (Federal Law for the Protection of Personal Information in the Possession of Private Parties (Ley Federal para la Protección de Datos Personales en Posesión de los Particulares)).

Commercial companies must also be registered with the Public Registry of Commerce, which is an agency of the Ministry of Economy that operates in co-operation with the state public registry offices.

Entities that hold IP interests must register this IP with the Mexican Intellectual Property Institute.

Additionally, some entities may need to register with other agencies, depending on their specific characteristics and activities (for example, mining companies must register with the National Mining Registry).

Companies with foreign capital must also be registered with, and supply information to, the National Foreign Investment Registry operated by the Ministry of Economy.

As a matter of trade compliance, and depending on their scope of activities, companies may be required to meet disclosure obligations that are specific to the nature of their activities (for example, meeting Mexican Official Standards (Normas Oficiales Mexicanas) for matters such as labelling and consumer protection (for example, for timeshare and tourism services), and registration and approval of standardised boilerplate contracts (for example, for car dealers and financial institutions)).

11. How do companies execute contracts or deeds?

Commercial companies act through their agents, representatives and attorneys-in-fact. A commercial company can grant authority to a management body or an individual (for example, the board of directors or sole administrator for a stock corporation and the board of managers or the general manager for a limited liability company). Additionally, a company can grant broad or narrow powers of attorney in favour of any person (including a legal entity) to represent the company before third parties. In certain cases, officers and agents can have express (under the company's bye-laws or statutory provisions) or implied authority.

Contracts are subject to the formalities established in the applicable laws. The formalities vary depending on the nature of the contract and the relevant jurisdiction. Contracts can be oral agreements or may need to be in writing (the general rule). Additionally, certain contracts must comply with one or more of the following formalities:

- Execution before two or more witnesses.
- Ratification before a public attestor (that is, a notary public or a public broker).
- Execution as a public deed before a public attestor.

Ratification before a public attestor only authenticates the signature, authority and identity of the signatories. By contrast, in a public deed, the attestor must also confirm the validity and enforceability of the contract and ensure that it complies with all the perfection requirements.

MEMBERSHIP

12. Are there any restrictions on the minimum and maximum number of members?

Only a simplified commercial company (Sociedad por Acciones Simplificada) (SAS) can have a single shareholder. All other commercial companies must have at least two shareholders.

A limited liability company cannot have more than 50 partners.

MINIMUM CAPITAL REQUIREMENTS

13. Is there a minimum investment amount or minimum share capital requirement for company formation?

Following recent amendments to the General Law of Commercial Companies, minimum capital requirements are no longer in force.

14. Are there restrictions on the transfer of shares in private companies?

Subject to any contrary provision in the company's bye-laws or any legal provision specifically applicable to the selling entity, there are no restrictions on the transfer of shares in commercial companies. However, the transfer of shares in a limited liability company requires the approval of the company's members.

In certain cases, non-selling members or shareholders may enjoy a right of first refusal, or a right to acquire the shares by matching the terms of purchase of the potential transferee.

SHAREHOLDERS AND VOTING RIGHTS

15. What protections are there for minority shareholders under local law? Can additional protections be given?

Special protections for minority shareholders and partners can be included in the company's bye-laws or in a shareholders' or partners' agreement. The standard statutory protections for minority shareholders are described below.

► Stock corporations

Shareholders of a stock corporation enjoy the following minority protections:

- Shareholders holding at least 25% (or 10% in the case of an investment promotion company (SAPI) or a public listed company (SAB) of the share capital can appoint a member of the board of directors and an examiner, provided that the board is comprised of three persons or more.
- Shareholders holding at least 33% (or 10% in the case of a SAPI or SAB) of the share capital can instruct the management to call a shareholders' meeting to address certain issues.
- Shareholders holding at least 25% of the share capital can postpone the voting of resolutions for up to three days, so that they can obtain additional information to issue a vote.
- Shareholders holding at least 25% (or 20% in the case of a SAPI or SAB) of the share capital can bring judicial proceedings contesting the validity of resolutions adopted by the company's shareholders.
- Shareholders holding at least 25% (or 15% in the case of a SAPI and 5% in the case of a SAB) of the share capital can file liability claims against the company's management on behalf of the company.
- Shareholders holding at least 20% of the share capital can file a claim contesting the validity of a spin-off of the company.
- Any shareholder can, regardless of its percentage of participation in the share capital, leave the company if a change of corporate purpose, nationality or transformation is approved, and that shareholder voted against the resolution approving the change.
- Any shareholder, regardless of its percentage of participation in the share capital, has certain remedies and rights of action on dissolution or liquidation of the corporation.

► Limited liability companies

Partners holding at least one third of the company's capital can bring judicial proceedings contesting the validity of resolutions adopted by the company's partners.

The bye-laws of a limited liability company can provide that the partners can adopt resolution without a meeting being convened. However, the partners holding at least one third of the company's capital can override such a provision and

request a meeting for the adoption of the relevant resolutions.

Any partner can oppose the adoption of resolutions increasing the scope of the partners' obligations or the change in the corporate purpose of the company. For example, a resolution expanding the liability of the partners beyond the amount of their contribution will only be valid if it is adopted unanimously.

16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Must quorum or voting rights be proportionate to shareholdings?

► Stock corporations

In stock corporations, shareholders' rights, including quorum and voting rights, are proportional to shareholdings. Each shareholder has one vote for each voting share that it owns (although it is possible to issue limited voting shares).

There are three types of shareholders' meetings: extraordinary, ordinary and special. Ordinary shareholders' meetings resolve all matters of the company that are not reserved to extraordinary meetings, such as the:

- Annual approval of financial statements.
- Appointment of the board of directors.
- Appointment of examiners.

Extraordinary meetings resolve on substantive corporate matters, including the following:

- Change of term.
- Dissolution.
- Capital increases.
- Change of corporate purpose.
- Change of nationality.
- Transformation.
- Merger and spin-off.
- Issuance of preferred shares.
- Any amendment to the bye-laws.

A special meeting is called when a proposed resolution affects the rights of a special category of shares.

For ordinary shareholders' meetings, there is a quorum when at least 50% of the share capital is represented. For extraordinary shareholders' meetings, at least 75% of the share capital must be represented for a quorum to exist. If a quorum is not met at a first meeting, any percentage of the share capital represented at the second meeting will constitute a quorum.

See Question 17, Stock corporations for information on voting requirements.

► **Limited liability companies**

Each partner can only hold one quota. Quotas can have different values. This value determines the participation of each partner in the capital and their voting rights, which are proportionate to the value of the quotas.

Minimum statutory legal quorum requirements can be increased (but not reduced) by the company's bye-laws.

See Question 17, Limited liability companies for information on voting requirements.

17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company's constitution, appointing and removing directors, and so on)?

► **Stock corporations**

To be valid, resolutions adopted at an ordinary shareholders' meeting must be approved by a majority of the votes represented at the meeting. Resolutions adopted at extraordinary meetings must be approved by shareholders holding at least 50% of the share capital. Resolutions adopted at special meetings require the affirmative vote of shareholders representing at least 50% of the share capital corresponding to the special share category.

► **Limited liability companies**

Resolutions adopted in partners' meetings are valid when approved by the holders of:

- 100% of the capital, for resolutions that modify the partners' obligations.
- 75% of the capital, for resolutions that modify the company's bye-laws.
- 50% of the capital in all other cases (for resolutions adopted at a first meeting).

18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?

Voting majorities required by law cannot be disapplied. However, minority shareholders benefit from certain protections (see Question 15).

SECTORAL RESTRICTIONS

19. What are the conditions or restrictions on establishing a

business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?

As a general rule, there are no restrictions on foreign investment in Mexico, except in certain areas specified in statutes.

The following activities are reserved to the Mexican state (Foreign Investment Law (Ley de Inversión Extranjera)):

- Exploration and exploitation of petroleum and other hydrocarbon products (except through the mechanisms approved under the energy reform).
- Planning, control, distribution and transmission of electricity.
- Generation of nuclear energy.
- Extraction of radioactive minerals.
- Telegraph services.
- Radiotelegraphy activities.
- Postal services.
- Issuance of currency.
- Coin minting.
- Control, supervision and surveillance of ports, airports and heliports.
- Other activities specified by statute.

The following activities are reserved to Mexican individuals or Mexican entities with no foreign participation:

- Domestic land transport services for tourists, other passengers and freight, excluding parcel and courier services.
- Development banks.
- Professional and technical services.

Additionally, foreign investment may be restricted where the Foreign Investment Commission deems it necessary for national security reasons.

FOREIGN INVESTMENT RESTRICTIONS

20. Are there any restrictions on foreign shareholders?

Foreign investment is restricted as follows (Foreign Investment Law):

- Up to 10%: co-operative production companies.
- Up to 25%: domestic air, air taxi and specialised air transport companies.
- Up to 49%:
 - manufacturing and distribution of explosives, firearms, ammunition and fireworks, excluding the acquisition and use of explosives for industrial and mining activities and explosive mixtures for use in these activities;

- printing and publication of newspapers exclusively aimed at domestic distribution;
 - series T shares (that is, a percentage of the total share capital that represent the proportion of real agricultural property, cattle and timber real property held by the company, which is subject to a special stock regime under the Mexican Agrarian Law) issued by companies holding agricultural, cattle and timber real property;
 - fresh water fishing and sea water fishing in the exclusive economic zone, excluding aquaculture;
 - integral port administration;
 - boat piloting activities for internal navigation;
 - commercial sea transport for internal navigation and cabotage, excluding tourism cruises;
 - exploitation of dredging and other naval artefacts for construction, conservation and port operations;
 - supply of fuels and lubricants for sea vessels, aircraft and railroad equipment; and
 - radio and television broadcasting.
- Up to 49% subject to the prior approval of the Foreign Investment Commission:
 - port services to allow ships to conduct inland navigation operations, such as towing, mooring and barging;
 - shipping companies engaged in the exploitation of ships solely for high seas traffic;
 - port services for internal navigation vessels, such as tugboats, and small boat navigational services;
 - concessionaire or permissionaire companies of air fields for public service;
 - private educational services for kindergarten, primary, secondary, medium-superior and superior schools and combined schools;
 - legal services; and
 - construction, operation and exploitation of general railways, and public services of railway transportation.

21. Are there any exchange control or currency regulations?

There are currently no exchange controls in Mexico. The main law governing currency circulation is the Mexican Monetary Law (Ley Monetaria). The Mexican Monetary Law was adopted by the Federal Congress and has a federal nature. Some of its most relevant provisions set out the following principles:

- The Mexican peso is the only legal tender for all debts, whether public or private.
- Foreign currency cannot be used as legal tender for debts in Mexico, except when otherwise explicitly allowed by law (for example, for fund transfers and bank deposits) (Article 8, Mexican Monetary Law). Therefore, a debtor can only be released from its monetary obligations through payment in the Mexican currency.

- Payment obligations denominated in foreign currency can be performed in Mexico by tendering the equivalent in Mexican pesos at the exchange rate applicable at the date and place where payment is made. However, the parties can agree on payment of the debt in a foreign currency outside Mexico. In this case, the validity and effect of the payment will need to be analysed under the law of the country where the payment is made.
- The applicable exchange rate must be determined by reference to the regulations issued by the Central Bank in accordance with the terms of its Organic Law.
- The parties to a contract or private agreement cannot agree on any term that is contrary to the Mexican Monetary Law. Any provision to that effect must be deemed null and void.
- The Central Bank publishes in the Official Gazette of the Federation, on a daily basis, the applicable exchange rates at which foreign currency debts can be legally paid off in Mexico.

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

► Real estate located within the restricted zone

Foreign nationals cannot under any circumstances directly acquire real estate within a strip of land known as the "forbidden zone", which comprises land located within 100 kilometres of the borders or 50 kilometres of the coastline.

Mexican entities with foreign capital can acquire direct ownership over real property located within the restricted zone provided that the following conditions are met:

- The company's bye-laws include the Calvo clause (that is, waiving its right to be protected by the investors' national laws and accepting the jurisdiction of the Mexican courts).
- The property is not used for residential purposes.
- Notice of the acquisition is filed with the Ministry of Foreign Affairs within 60 days from the date of acquisition of the property.

Foreign individuals and entities (for all types of real estate) and Mexican entities with foreign capital (for real estate intended for residential uses) can acquire a trust interest over real estate property located within the restricted zone, provided that both:

- They obtain a permit from the Ministry of Foreign Affairs.
- Title to the property is conveyed to a Mexican trustee institution.

The trust beneficiaries' rights with respect to the property include the rights to use and enjoy (directly or indirectly) the real estate property. The trustee institution can dispose of the real estate.

► Real estate located outside the restricted zone

Mexican companies with foreign capital can acquire real estate located outside the restricted zone, provided that their bye-laws explicitly include the Calvo clause.

Foreign individuals and entities can acquire real property outside the restricted zone, provided that they explicitly submit to the Calvo clause and obtain a permit from the Ministry of Foreign Affairs.

DIRECTORS

23. Are there any general restrictions or requirements on the appointment of directors?

Restrictions or requirements on the appointment of directors are usually contained in the company's bye-laws. However, the following general requirements apply to managers in limited liability companies, and directors and sole administrators in stock corporations:

- The position must be exercised personally and not through representatives or attorneys-in-fact.
- Persons who are disqualified from exercising a commercial activity cannot have managerial positions, including:
 - bankrupt persons;
 - persons who have been convicted of patrimonial crimes; and
 - public brokers.
- The person must be a legally capable adult (over 18 years of age).

Certain special laws may impose additional qualification requirements (for example, an independence requirement for certain directors in public companies).

There are no gender or nationality restrictions.

BOARD COMPOSITION

24. What are the legal requirements for the composition of a company's board of directors?

► Structure

A stock corporation can have a sole administrator or a board of directors. A limited liability company can have a sole manager or a board of managers. Each type of company can freely determine whether it will be managed by a board or by a single administrator/manager. In addition to the management body, stock corporations must appoint an

examiner (which is optional for limited liability companies) to supervise the actions of management. Additionally, stock corporations usually appoint a non-member secretary.

► Number of directors or members

There is no minimum number of administrators/managers in ordinary stock corporations and limited liability companies. They can appoint single administrators or managers.

An investment promotion company (SAPI) must be managed by a board of directors (that is, the appointment of a sole administrator is not permitted). A publicly traded SAPI must include an independent director.

Public listed companies (SABs) must not have more than 21 directors, of which at least 25% must be independent directors. SABs must also appoint a chief executive officer.

► Employees' representation

Under Mexican law, employees do not have a statutory right to board representation.

When a company is administered by a sole director or manager, this individual has authority to represent the company. When management powers are vested in a collegiate body, the authority to represent the company is not automatically vested in each individual board member, but is held by the board jointly (although the president of the board has limited authority to implement the resolutions of the board). Normally, powers of attorney are granted in favour of the directors, officers and employees of the company who require representation powers to engage in business on behalf of the company.

REREGISTERING AS A PUBLIC COMPANY

25. What are the requirements for a business to reregister as a public company?

Public companies in Mexico can take the form of either a:

- Stock market investment promotion company (Sociedad Anónima Promotora de Inversión Bursátil) (SAPIB), which is suitable for small capitalisation companies and large companies transitioning from private to public.
- Listed company (Sociedad Anónima Bursátil) (SAB), which is the preferred form for larger companies.

A SAPIB must transition to a SAB within ten years, or on reaching certain capitalisation thresholds.

To be listed, a company must file a statement with the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores) and its shares must be

registered in the National Securities Registry (Registro Nacional de Valores) and traded through an authorised stock exchange. Currently, the only authorised stock exchange is the Mexican Stock Exchange (Bolsa Mexicana de Valores). However, a new stock exchange called the Institutional Securities Exchange (Bolsa Institucional de Valores), which is aimed at mid-cap companies, is in the process of being authorised.

► Membership

SAPIBs must have a minimum of 20 shareholders (minimum established by the Mexican Stock Exchange). SABs must have a minimum of 200 shareholders to be traded (the regulations allow for a minimum of 100 shareholders but the Mexican Stock Exchange imposes a minimum of 200 shareholders).

► Share capital

The minimum share capital requirements are as follows:

- SAPIBs: UDI15 million (the Mexican Unidad de Inversion (UDI) is a unit of funds that reflects the value of Mexican pesos without considering the impact of inflation) (the regulations allow for a minimum of UDI12 million but the Mexican Stock Exchange imposes a minimum of UDI15 million). At least 15% of the capital must be held by the public.
- SABs: UDI20 million. At least 12% of the share capital must be held by the public.

The main instruments regulating the operation and trading of public listed companies are the Securities Market Law (Ley del Mercado de Valores) and the Sole Regulations for Issuers (Circular Única de Emisoras).

TAX

26. What main taxes are businesses subject to in your jurisdiction?

► Federal Taxes

Income tax. The federal income tax is levied on all types of gross income (with certain exceptions) and allows most business deductions (for example, for depreciation of assets). The current federal corporate income tax rate is 30%.

Additionally, dividends distributed by companies are subject to a 10% income tax rate

The income tax rates for individuals range from a minimum of 1.92% up to 35%.

Value added tax (VAT). The federal VAT is payable by ultimate consumers of all types of products and services.

All business individuals or entities involved in the production of goods and services must generally charge VAT to their customers (output VAT) and pay VAT to their suppliers (input VAT), crediting the amounts paid against the amount due on their own activities. A VAT taxpayer must submit any excess output VAT to the tax authorities on a monthly basis.

If the amount of input VAT exceeds the amount of output VAT, a refund can usually be requested or the difference can be credited against other tax obligations.

The VAT rate is 16%. However, certain products and services (including food, medicines and exports) are subject to a 0% rate, and other goods (such as land) are exempted from VAT.

Social security quotas. Employers and employees must contribute to the social security system by paying quotas that are based on the employee's income. Employee contributions are withheld by the employer from the employee's salary. These contributions cover, among others:

- Medical expenses.
- Pensions.
- Disability.
- Sickness.
- Maternity.
- Occupational risks.

Social security quotas represent a significant portion of labours costs (about a third of total costs).

In addition, employers must pay 5% of their employees' salaries as a contribution to the Institute of National Workers' Housing Fund (Instituto Nacional para el Fomento de la Vivienda de los Trabajadores).

Profit sharing. Employers must pay 10% of their adjusted taxable income to employees every year. The amount paid is deductible for tax purposes.

Anti-avoidance. The tax legislation contains specific anti-avoidance rules similar to those of other countries (including on fraud, abuse and transfer pricing).

► Local taxes

Property taxes. The municipalities can tax the ownership and possession of real estate. However, there are some exceptions for rural, agriculture and other categories of real estate. Each state law sets the applicable rates and taxable basis for all municipalities. Municipalities have the authority to conduct the property appraisal for the determination for the taxable basis.

27. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

► Tax resident

Resident taxpayers (both individuals and legal entities) are subject to tax in Mexico on their worldwide income.

An entity is considered a tax resident if its principal administration or its effective place of management is located in Mexico.

An individual is considered a Mexican tax resident if they have established their residence in Mexico or they have their centre of vital interests in Mexico. Mexican citizens are considered tax residents unless they demonstrate a different tax residence.

Mexican tax residents that pay foreign taxes may benefit from double taxation relief by way of tax credits.

► Non-tax resident

Non-tax residents are only subject to tax in Mexico for income that is either:

- Sourced in Mexico.
- Attributable to a permanent establishment in Mexico.

28. What is the tax position when profits are remitted abroad?

Corporate income is levied at the corporate level, and a 10% withholding tax applies on dividend distributions. Withholding tax may be reduced under the conventions for the avoidance of double taxation on income signed by Mexico with other countries.

29. What thin-capitalisation rules and transfer pricing rules apply?

► Thin-capitalisation rules

Interest on debts contracted by a Mexican resident entity with foreign related parties is not deductible when the Mexican resident has a debt level that exceeds a 3:1 debt-to-equity ratio (Corporate Income Tax Law).

► Transfer pricing rules

Companies that enter into transactions with local or foreign related parties must keep records of the documentation that proves that their income and deductions were calculated by

reference to the prices and payments made by independent parties in similar transactions (Corporate Income Tax Law). Mexican legislation recognises the following transfer pricing methods:

- Comparable uncontrolled price method (método de precio comparable no controlado).
- Resale price method (método de precio de reventa).
- Cost plus method (método de costo adicionado).
- Profit split method (método de partición de utilidades).
- Residual profit split method (método residual de partición de utilidades).
- Transactional operating margin method (método de márgenes transaccionales de utilidad de operación).

For more information on tax on corporate transactions see: Practical Law Tax on Corporate Transactions Global Guide.

GRANTS AND TAX INCENTIVES

30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?

Tax incentives include the following:

- Trustees and beneficiaries of real estate investment trusts that have as their main activity the acquisition or construction of real estate for lease or sale, are entitled to tax deferral benefits.
- Most local governments offer incentives to attract new investments. These incentives usually consist of:
 - reductions of the amount of payroll taxes and property taxes; and
 - reduced prices for land and personnel training.
- Some tax incentives are designed to foster and attract foreign investment in manufacturing projects.
- Some decrees and other legal instruments grant various tax and non-tax incentives to promote the exportation of manufactured goods.
- Immediate tax deductions (for example, an immediate tax deduction is available to small and medium-sized businesses purchasing new fixed assets).

EMPLOYMENT

31. What are the main laws regulating employment relationships?

The main law governing employment relationships is the Federal Labour Law (Ley Federal del Trabajo). The Federal Labour Law is favourable to employees in many respects.

Foreign employees working in Mexico are protected by the Federal Labour Law. Employing permanent or temporary expatriates in Mexico can trigger additional employee protections, as compared to the protections available in their domestic jurisdiction. Expatriates from Mexican companies working abroad are generally protected by Mexican labour laws.

Additionally, employment relationships are governed by statutes relating to social security, housing funds, retirement and privacy.

32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?

The immigration of foreign nationals is primarily regulated by the Migration Law (Ley de Migración) and its regulations. The law recognises three categories of immigrants: visitors, temporary residents and permanent residents.

▶ Visitors

Visitor without authorisation to engage in remunerated activities. They can remain up to 180 days in Mexico but cannot engage in remunerated activities.

Visitor with authorisation to engage in remunerated activities. They can remain up to 180 days in Mexico and can engage in certain remunerated activities. This status is primarily used by seasonal workers, artists, athletes and academics with short work commitments or projects in Mexico.

Regional visitor. This status allows residents of neighbouring countries multiple entries and exits for up to three days at a time, but does not include an authorisation to engage in remunerated activities.

Regional working visitor. This status allows residents of neighbouring countries to remain up to one year in Mexico to engage in remunerated activities, provided that they prove that they have a job offer.

Humanitarian visitor. This status allows victims and witnesses of crimes committed in Mexico, unaccompanied minors and political refugees to remain in Mexico.

Visitor engaged in adoption procedures. This status allows a foreign national of a country that has executed an adoption treaty with Mexico, and who is involved in adoption procedures in Mexico, to remain in the country until these procedures are finalised.

▶ Temporary residents

Ordinary temporary resident. This status authorises a foreign national to remain in Mexico for up to four years. Temporary residents can apply for a work permit (subject to the existence of a job offer from a Mexican employer). Immediate family members of a temporary resident can also apply for an ordinary temporary residence visa and work permit.

Student. This status authorises foreign students to remain in Mexico as students of accredited Mexican academic institutions. University and graduate students and researchers can apply for a work permit in areas related to their field of studies.

▶ Permanent residents

Foreign nationals who have a permanent resident visa can remain and work in Mexico indefinitely.

PROPOSALS FOR REFORM

33. Are there any impending developments or proposals for reform?

The latest significant reform affecting commercial companies was enacted in March 2016. The reform created a special type of simplified commercial company (Sociedad por Acciones Simplificada) (SAS). The SAS is intended to provide small business owners a flexible and cost-effective mechanism to create a legal entity. The distinctive feature of the SAS is that it can be incorporated with a single shareholder and without the participation of a public attestor (it can even be incorporated electronically).

The scope of activities in which a SAS can engage and the restrictions applicable to shareholders suggest that they will be used mainly by individual small business owners. Any larger-scale business would require the set-up of a new entity or the transformation of the SAS into a standard stock corporation.

Additionally, changes to the trade regulations and policies between member countries of the North American Free Trade Agreement (for example, renegotiation of treaties, implementation of investment shifting mechanisms) may lead to regulatory changes in Mexico.

THE REGULATORY AUTHORITIES

▶ Ministry of Economy (Secretaría de Economía)

Main activities. The Ministry of Economy is responsible for authorising the use of a corporate name.

www.gob.mx/se

▶ Public Registry of Commerce (Registro Público de Comercio)

Main activities. The Public Registry of Commerce is responsible for the registration of companies in the Public Register of Commerce. The Public Registry of Commerce is an agency of the Ministry of Economy.

www.siger.gob.mx

▶ National Foreign Investment Registry (Registro Nacional de Inversiones Extranjeras)

Main activities. The National Foreign Investment Registry is responsible for the registration of foreign investment and the maintenance of statistical data on foreign investment in Mexico. The Foreign Investment Registry is an agency of the Ministry of Economy.

<https://rnie.economia.gob.mx/RNIE/faces/inicio.xhtml>

▶ Tax Administration Service (Sistema de Administración Tributaria)

Main activities. The Tax Administration Service is responsible for the supervision and enforcement of tax laws, the registration of taxpayer companies, the verification of tax compliance and the collection of taxes.

www.sat.gob.mx

▶ National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores)

Main activities. The National Banking and Securities Commission is responsible for the administration and enforcement of financial and securities laws.

www.cnbv.gob.mx

ONLINE RESOURCES

▶ Orden Jurídico

www.ordenjuridico.gob.mx

Description. This website is maintained by the Ministry of the Interior (Secretaría de Gobernación) and compiles federal, state and local laws and regulations. The website includes links to PDF versions of most statutes and regulations.

▶ Official Gazette

www.dof.gob.mx

Description. This is the website of the Official Gazette of the Federation, which is a daily publication of the Mexican Federal Government that serves as the official journal for the three branches of government. All federal statutes and regulations must be published in the Official Gazette to become effective.