



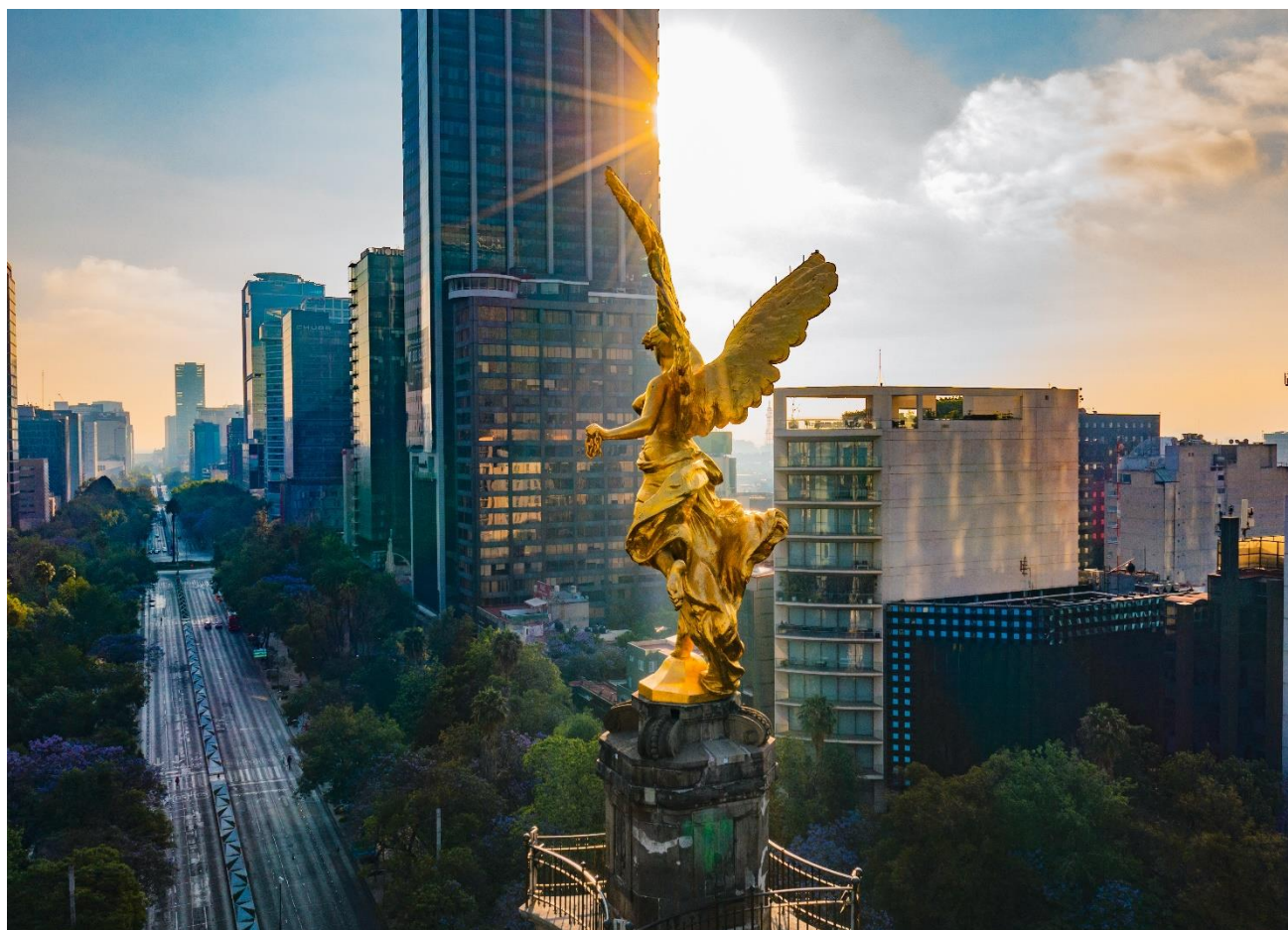
Doing business in Mexico

A comparative guide

July 2024

A guide to doing business in Mexico

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.



No. Question

A. Legal system and landscape

- 1 Is the system of law in your jurisdiction based on civil law, common law or something else?

Mexican law is based on a civil law, which derives from Roman law.

The Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos* "*CPEUM*") has established a regime in which, in accordance with the principle of the distribution of powers, the power to regulate matters that are not expressly conferred to the federal level, will be understood to be reserved for the local/state level.

B. Entity establishment

- 2 What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

Mexican regulation allows you to carry out business in the national territory via:

Incorporation of a Mexican Commercial Company

These companies, and their corporate regimes, are regulated by the Mexican General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*, which is referred to as "*LGSM*").

- a) Company in collective name;
- b) Limited partnership;
- c) Limited liability company;
- d) Stock Corporation;
- e) Partnership limited by shares;
- f) Cooperative companies; and
- g) Simplified stock company.

Investors tend to choose to incorporate a Mexican Limited Liability Company or a Stock Corporation as these types of companies adjust better to their needs.

The LGSM, also regulates the modality of "*Variable Capital*". All corporate regimes can adopt this modality, and it allows an addition to the capital stock of a "*variable part*" which, according to the law and the bylaws of each entity, requires less formalities for its increase or decrease (as it only requires such change to be approved by ordinary meeting) compared to the formalities required for the change of the fixed part of the capital which requires an amendment to the bylaws and may therefore only be resolved and approved by an extraordinary meeting.

Other modalities of the corporate regimes are included into other Laws, for example, an Investment Promotion Stock Corporation or a Public Stock Corporation, which are regulated by the Mexican Securities Market Law (*Ley del Mercado de Valores* – also referred to as "*LMV*").

Opening of a branch

The opening of a branch does not require the incorporation of a new company ("*newCo*") in Mexico. Instead, a foreign entity will require authorization from the Foreign Investment authorities to carry out

Doing business in Mexico

business/commercial transactions in Mexico. This allows investors to have presence in the national territory without the need to open a newCo.

As branches are regulated by the Mexican Foreign Investment Law (*Ley de Inversión Extranjera*, – referred to as "*LIE*"), it is required that each new branch needs to obtain authorisation from the Ministry of Economy, which is obtained by submitting the applicable documentation to the Ministry. An alternative and simplified process may apply if there is an International or Bilateral Treaty between Mexico and the country of origin of the investment.

Mexican Joint Venture

A Mexican joint venture or association is regulated in Chapter XIII of the LGSM. It This involves an agreement between the parties who agree to provide goods or services and share in the profits and losses of the commercial business or several commercial operations.

As it is an agreement, a Mexican joint venture does not have legal personality, nor does it have a minimum of contributions. It is sufficient that the agreement is in writing and that it stipulates the terms, proportions of interest, and other applicable conditions.

In Mexican joint ventures, there is no legal relationship between the third parties, the partners (*who provide the goods and services*), and the partner acting on his or her own behalf.

Regarding the ownership of the assets, vis-à-vis third parties, they will be the property of the associate. This means that he/she/it will be able to dispose of or transfer the assets freely, except for those that require additional formalities or that are stipulated in the agreement within the association contract.

For the distribution of profits or losses, the generalities applicable to commercial companies apply, that is, it will be proportional to their contribution and, for the associated partners, the losses that correspond to them may not exceed the value of the goods or services they contributed.

Finally, in the event that the agreement does not stipulate it, the Mexican joint ventures will operate and be liquidated in accordance with the corporate regime of "*Company in Collective Name*" (*Sociedad en Nombre Colectivo*), which, broadly speaking, implies that, unless otherwise agreed, the association will automatically be dissolved due to the death, incapacity, exclusion, or retirement of any of the associates.

Individuals

Individuals may be considered as merchants and carry out commercial transactions, requiring their registration as such before the Mexican authorities.

3 Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

Yes, via opening a branch of a foreign company in the national territory which will be recognised as a legal entity once it complies with the formalities stipulated in the LIE.

It is not possible to proceed with the opening of a permanent establishment in Mexico of a company whose corporate purpose is regulated or restricted to Mexican individuals or companies fully owned by Mexican investors according to the LIE. Such corporate purposes include transportation, port services, fuel supply, broadcasting, regular and non-scheduled national air transport service, among others.

4 Are there any capital requirements to consider when establishing different entity types?

For a branch, there is no minimum capital requirements. However, for Mexican companies, the minimum, at least from a practical stand, would be MXN\$1.00 per partner/shareholder.

Some specific permits or licenses may require specific capital requirements, however this would be determined on a case by case basis according to the business the investor intends to carry out.

5 How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilize?

- Incorporation of a newCo. When incorporating a newCo you will need to obtain authorisation for the corporate name, and the partners/shareholders of the newCo are required to appear before a Notary Public or Commercial Notary Public to grant the incorporation deed and the registration of such deed before the Public Registry of Commerce (prior to the payment of the applicable duties).
- Some additional steps may be required if the partners/shareholders are foreign nationals, such as the granting of a power of attorney for a legal representative to appear and execute the incorporation deed.
- It should be noted that the commercial companies which are most commonly chosen by investors (due to their similarities to regimes regulated in other countries) are the Mexican Limited Liability Company and Mexican Stock Corporation.
- Permanent establishment/branch. The establishment of a branch requires the submission of the relevant apostilled and translated application documentation before the Ministry of Economy, and if applicable, the payment of the governmental duties. Once the authorisation is issued, such document must be notarised and later registered before the Public Registry of Commerce.
- The authority, for these purposes, requires that the branch has a legal representative and a domicile in Mexico to hear and receive notifications, as well as to present the incorporation documentation of the foreign company in its country of origin, such as articles of incorporation, bylaws, amendment to the bylaws, certificate of good standing, document that proves its tax ID, among others. Such documents must be apostilled or legalised (as applicable) and translated into Spanish by an expert translator duly authorised by the Mexican courts.
- Joint venture. A joint ventures requires the execution of an agreement and is not subject to registration.

6 How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

For the case of newCo's, these are managed by a Sole Director or a Board of Directors. The only requirement is that the agenda of the applicable meeting (*for the case of a Board*) contains all the items to be discussed and the decisions to be made by the majority of the members of the Board.

Additional requirements and formalities can be stipulated into the bylaws and some modalities may require a specific number of members or qualifications, for example Investment Promotion Stock Companies or Public Stock Companies, require that there must be a Board (*that may or may not need the appointment of independent members*).

7 Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

For the partners/shareholders

All Mexican companies (except the Simplified stock company which allows one shareholder, but these companies are reserved to Mexican investment), require a minimum of two partners/shareholders.

For a Limited Liability Company, there is a maximum of 50 partners.

As mentioned before, some activities may have restrictions for the foreign investment percentage of participation. Other than that, they are open to any kind of investment.

Legal representatives/Directors

There is no minimum or maximum requirement of legal representatives or directors to be appointed except for Investment Promotion Stock Companies or Public Stock Companies which have specific Board requirements.

Although there are no requirements or limitations regarding the nationality of the officers or directors, it is advisable to appoint at least one representative or director who has a Mexican Tax ID, as it is necessary to carry out the procedures before the tax authorities (*this also applies to permanent establishments*).

8 Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

Yes, Mexican Joint Ventures (*or any other agreement*) may allow foreign investors to carry out business in Mexico but they may not carry out business directly (*the only way for the foreign investor to carry out commercial activities in Mexico is with the opening of the branch*), but instead by means of a broker or agents.

Starting from the principle of autonomy of will, most of the terms and conditions of agreements (*except those that specifically stipulate otherwise*) can be determined freely by agreement between the parties.

C. Entity operation - please answer the following questions only for the most common entity / ies within your jurisdiction

C1. Governance

9 Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

There are no mandatory codes, however, some associations (*such as the Business Coordinating Council also known as Consejo Coordinador Empresarial*) usually issue some codes of best business practices and corporate governance, advising on how to choose independent directors/managers, the minimum or maximum number of directors required, or the need for legal representatives, among others.

C2. Capital

10 What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

- Increase of stock capital (fixed or variable);
- Contributions for future capital increases;
- Intercompany or third-party loans;
- Establishment of reserve funds for these purposes, among others.

C3. Return of proceeds

- 11 What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

Dividend distribution

In the event that the company has profits (and provided that there are no losses pending compensation, the legal reserve fund is considered and the financial statements that reflect said profit have been approved), it can proceed with the decree and payment of dividends to the partners or shareholders in the proportion of their shareholding by means of an ordinary meeting, unless there is a specific agreement between shareholders in this regard or in the bylaws (only where the corporate regime allows it).

All decrees must be approved directly at a meeting of partners/shareholders.

Capital decrease

In the event of a capital decrease, the shareholders/partners may decree any applicable amount of their shareholding decreased or such decrease can be actioned in proportion to their participation in the capital stock.

This process requires approval via an ordinary or extraordinary meeting, according to the part of the capital to be decreased (*fixed or variable*), but the company must have, at all times, at least two partners/shareholders.

C4. Shareholder rights

- 12 Are specific voting requirements/percentages required for specific decisions?

In general terms, shares/partnership interest have full voting rights, unless there is a specific series issued with limited or non voting rights (*provided the corporate regime allows it*).

Under this, any amendment to the bylaws will require approval by means of an extraordinary meeting, which requires a higher calling and voting quorum, but any other decision (*unless otherwise stated into the bylaws*) can be resolved via ordinary meeting.

- 13 Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

Yes, the meeting is the supreme organ of a Mexican entity, and therefore all of the instructions that it issues to the Directors are mandatory to them. In case the Directors/officers decide to not comply, civil, administrative or even criminal actions may apply to them.

C5. Employment

- 14 What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

Minimum wage

- General minimum wage MXN\$248.93 daily.
- Free North Border Zone minimum wage MXN\$374.89 daily.

The minimum wage can vary according to the specific profession/job/occupation.

Holidays

Workers with more than one year of service are entitled to a minimum period of 12 working days of paid annual leave per year, which will be increased by two working days, up to 20 working days, for each subsequent year of service. Subsequently, the vacation period will be increased by two working days for every six years of service.

Workers who provide discontinuous and seasonal services have the right to an annual vacation period in proportion to the number of work days in the year.

Of the total period that corresponds to the worker, at least 12 days of vacation must be continuous (*distributable according to the worker's decision*).

Vacations cannot be compensated with remuneration.

Working hours

The maximum duration of the working day will be: eight hours during the daytime, seven hours during the night-time and 7.5 hours during the mixed workday.

The worker shall be granted at least a half hour break outside of the workplace (*at the discretion of the worker*).

For every six days of work, the worker shall enjoy at least one day of rest with full salary paid.

In jobs that requires continuous work, the workers and the employer shall establish by mutual agreement the days on which the workers shall enjoy the weekly rest days.

Maternity/paternity leave

During the period of pregnancy, pregnant woman will not carry out work that requires considerable effort and poses a danger to their health in relation to the pregnancy, such as lifting, pulling or pushing heavy weights, that causes trepidation, standing for a long time or other work that may alter their mental and nervous state. Pregnant women will enjoy a rest period of six weeks before and six weeks after childbirth.

In the case of adoption of an infant, they will enjoy a six-week break with pay after the day they receive the child.

During the breastfeeding period, for up to a maximum of six months, they will have two extraordinary breaks per day (half an hour each) to feed their children.

For paternity leave, Mexican Labor Law establishes a leave entitlement of five working days with pay for working men for the birth of their children and likewise in the case of the adoption of an infant.

Discrimination

No worker in Mexico may be the object of discrimination in the workplace, based on ethnic or national origin, gender, age, disability, social status, health conditions, religion, immigration status, opinions, sexual preferences, marital status or any other cause that violates human dignity.

Unfair dismissal

Unjustified dismissal is the termination of the labor relationship by the unilateral will of the employer, without verifying any of the causes for termination provided for in the Federal Labor Law. The employee who has been unjustifiably dismissed will be entitled to:

Indemnification/severance consisting of the amount of three months' salary, plus

- 20-days salary per year worked;
- 12-days salary per year worked limited to two times the minimum wage;
- The proportional part of the annual statutory bonus;
- The proportional part of vacation;
- The proportional part of the vacation bonus; and
- Other benefits included in the employment agreement or in the conditions that regulate the relationship with the company or employer, such as bonuses, commissions, savings fund, and utilities, among others.

15 On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Any employee can be dismissed for good reason in the following cases:

- Use of false documentation to obtain employment;
- Dishonest or violent behavior at work or against co-workers;
- Threatening or abusing the employer or his/her family, except in self-defense; Intentionally damaging property;
- Causing serious damage to the employer's property through negligence;
- Threatening safety in the workplace;
- Failure to comply with safety instructions in the workplace;
- Behaving immorally in the workplace or harassing any person in the workplace; and
- More than three unexcused absences in a 30-day period.

In this case, the employer must provide a letter of termination indicating the applicable cause and the applicable settlement, with the amounts owed to the employee for outstanding salaries, pending holidays, amongst others.

Such documentation must be signed by the worker in the presence of a legal representative.

If the employer is not able to provide the causes of dismissal, he/she/they must pay the worker full severance plus back pay. For indefinite term agreements, the severance payment is three full months' salary plus 20 days of integrated salary for each year of service.

A different process applies to collective dismissals. The company must initiate a consultation period with the workers' representatives with a term not exceeding 30 calendar days (or in the event that the company has less than 50 employees, the period will be 15 days) the parties must negotiate in good faith and bring it to the attention of the Labor Authority. The Labor Authority is in charge of transferring the matter to the entity managing the unemployment benefits and will request, as mandatory, a report from the Labor and Social Security Inspectorate on the development of the consultation period and the ends of the communication.

16 Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Yes. Labor Law establishes that all workplaces must have mixed commissions, being mandatory to have the following:

- Joint Productivity, Training and Training Commission.
- Joint Committee of safety and hygiene.
- Joint Commission for Workers' Profit Sharing.
- Joint Commission for the preparation of the General Table of Antiquities.
- Joint Commission for the preparation of the Internal Labor Regulations.

These commissions must be integrated by an equal number of employee's representatives and employer's representatives and each one, within the scope of their powers, will resolve various issues in relation to the workplace and working conditions.

C6. Anti-corruption / bribery / money laundering[/ supply chain]

17 Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

1. General Law on the National Anticorruption System

Defines how the institutions in charge of fighting corruption will coordinate and collaborate and how they will function as a system. Establishes a Coordinating Committee that determines and evaluates anti-corruption policies as well as the mechanisms for citizen participation.

2. General Law of Administrative Responsibilities ("Ley 3 de 3")

The above law establishes obligations that all public servants must comply with. It establishes the types of corruption, as well as the procedures for detection, investigation and sanction. It must be clear to avoid interpretations and facilitate the work of judges. Since it is a "General Law", all states of Mexico must base their laws on it.

3. Organic Law of the Federal Court of Administrative Justice

The above law determines the integration, organisation, attributions and operation of the Tribunal in charge of judging possible acts of corruption investigated by the authorities. This law guarantees that an autonomous body will oversee the judging of serious administrative misconduct.

4. Amendments to the Organic Law of the Federal Public Administration.

The above law reverses the disbanding of the Ministry of Public Administration ("SFP") and maintains it as the governing body in charge of the internal control of the Federal Public Administration. It will also be one of the bodies in charge of the investigation of serious administrative liabilities. It will be responsible for resolving non-serious administrative misconduct (serious misconduct will be judged by the Federal Court of Administrative Justice). In this way, it is guaranteed that those who decide on acts of corruption will not be subordinates of the accused.

5. Amendments to the Federal Auditing and Accountability Law.

The above law provides the Federal Superior Audit Office ("ASF") with greater powers and investigation tools that allow for a real time audit of federal resources and allows for state participations to be audited.

6. Law of the Attorney General's Office of the Republic

In order to criminally prosecute acts of corruption, the above law makes it necessary to create a Specialized Prosecutor's Office for Corruption Crimes with technical and budgetary autonomy, and with all the necessary investigative powers and tools. This guarantees an autonomous investigation of corruption crimes.

7. Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin

This Law regulates some activities considered as "vulnerable" for money laundering purposes in Mexico, such as: fintech companies, financial system, donations, some provision of services, loans (*even intercompany loans*), among others.

This law, per se, doesn't have extraterritorial reach, however depending on the specific matter a joint investigation/sanction with other jurisdictions may apply.

18 What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

The Federal Criminal Code establishes the different crimes that may be committed by legal entities, i.e. influence peddling, obstruction of justice, fraud, tax fraud, money laundering, securities violations and bribery.

The penalties which may be imposed consider the daily earnings of the company as a proportional measure to the prison sentence that a natural person would have been sentenced to for the same offense.

19 How is money laundering and terrorist financing regulated in your jurisdiction?

At the Constitutional level, it is a power of the Congress of the Union to issue laws on the matter through section XXI of article 73, which provides for the regulation of organised crime and such law provides the basis through which the Public Prosecutor's Office will coordinate with the Mexican Treasury «*Secretaría de Hacienda y Crédito Público*, known as "SHCP") to carry out investigations.

The crimes of operations with resources of illicit origin and terrorism and its financing are typified in the Federal Criminal Code in the following articles:

- Operations with resources of illicit origin - Money laundering - Articles 400 Bis and 400 Bis 1.
- Terrorism - Articles 139, 139 Bis and 139 Ter.
- Financing of Terrorism - Articles 139 Quater and 139 Quinqu.
- International Terrorism - Articles 148 Bis, 148 Ter and 148 Quater.

However, there is also the "Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin" ("*Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita*").

The purpose of this Law is to protect the financial system and the national economy, establishing measures and procedures to prevent and detect acts or operations involving resources of illicit origin through inter-institutional coordination with the purpose of gathering useful elements to investigate and prosecute the crimes of operations with resources of illicit origin, those related to the latter, the financial structures of criminal organisations and to avoid the use of resources for their financing. There are also different secondary provisions relating to those acts and operations.

20 Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderearbeid, the French loi de vigilance)?

No, Mexico does not have a specific local regulation for these matters however it has signed international treaties such as the C029 - Forced Labor Convention, 1930 (No. 29), and it has different provisions signed with the United Nations such as ILO C. 138, Minimum Age, ILO C. 182, Worst Forms of Child Labor, UN

CRC, UN CRC Optional Protocol on Armed Conflict, UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the Palermo Protocol on Trafficking in Persons.

C7. Compliance

21 Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

In accordance with the LGSM corporations are obliged to prepare financial statements on an annual basis and they must be approved no later than the first quarter of the following year.

The Mexican Federal Tax Code establishes the obligation to submit audited financial statements prepared by an authorised public accountant (as long as the taxpayers have an accumulated tax revenue according to the threshold published by the authorities). If the company is a public company listed in the Mexican exchange market, the financial statements must be audited and submitted no later than the 30th of May of the following year.

Otherwise, the audit of the financial statements is optional.

22 Please detail any corporate / company secretarial annual compliance requirements?

Annual General shareholders/partners Meeting

Within the first four months of each year a company must hold an annual shareholders'/partners' meeting to approve the financial statements and the reports of the directors, and to ratify, revoke or appoint its directors and statutory auditor.

Foreign Investment

Mexican legal entities with foreign investment and foreign entities with permanent establishments in Mexico are required to comply within certain reporting obligations to the Foreign Investment National Registry, this includes: (i) registration; (ii) annual economic report; (iii) quarterly notices and/or (iv) cancellation of registration.

23 Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

There must be a prior call of the shareholders by the sole Administrator/Sole Manager or Board of Directors/Managers, or the Statutory Auditors, which must be published by means of a notice in the electronic system of the Ministry of Economy with the anticipation established in the bylaws, or otherwise, 15 days prior to the date of such Meeting (in accordance with Article 186 of the LGSM).

Notwithstanding the fact that the LGSM provides that the notice must be made in the electronic system of the Ministry of Economy, it is important to review the bylaws of the company in order to verify if there is any additional obligation that must be respected, since some bylaws regulate the means in which the notices to the partners or shareholders must be made. In such case, it is advisable to comply with both the bylaws and the provisions of Article 186.

If the notice does not comply with the requirements, the meeting will be null and void.

It is important to mention that prior notice will not be necessary if the meeting is attended and resolved by the vote of those present whom represent all of the shares or equity interest.

Matters to be considered

To discuss, approve or modify the report of the administrators, consider the report of the Statutory Auditors, and take such measures as it deems appropriate. Where appropriate, to appoint the Manager or Board of Directors and the Statutory Auditors.

To determine the compensation corresponding to the Administrators and Statutory Auditors when they have not been fixed in the bylaws.

Regarding the report of the administrators (sole administrator or board of directors, as the case may be), it must correspond at least to the following points:

- A report by the administrators on the company's progress during the fiscal year, as well as on the policies followed by the administrators and, if applicable, on the main existing projects.
- A report stating and explaining the main accounting and reporting policies and criteria followed in the preparation of the financial information.
- A statement showing the financial position of the entity as of the closing date of the fiscal year.
- A statement showing, duly explained and classified, the results of the entity during the fiscal year.
- A statement showing the changes in the financial position during the fiscal year.
- A statement showing the changes in the items comprising the company's equity during the fiscal year.
- Such notes as may be necessary to complete or clarify the information provided in the preceding statements.
- The report of the Statutory Auditors referred to in Section IV of Article 166 of the LGSM shall be added to the foregoing information.

Regarding the report of the Statutory Auditor of the Company, it needs to consist at least of the Statutory Auditor's opinion on (i) whether the accounting and information policies and criteria followed by the company are adequate and sufficient taking into consideration the particular circumstances of the company; (ii) whether such policies and criteria have been consistently applied in the information presented by the administrators; and (iii) whether the information presented by the administrators truthfully and sufficiently reflects the financial situation and results of the company.

24 Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

Legal entities, and fiduciaries (among others) must, as part of their accounting, keep the reliable, complete and updated information of their controlling beneficiaries up to the level of individuals (*if this is not feasible, the information of the Directors of the last UBO company must be provided*).

This information may be required by the authority at any given moment, without prior notification.

The UBO file may also be mandatory for AML purposes.

C8. Tax

25 What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

When a business distributes profits, there are two options: a) if the company has enough CUFIN¹ balance, there is no need to pay any additional tax, or b) if the company does not have enough CUFIN balance 30% tax must be paid, applying a gross-up ratio of 1.4286 prior to the 30% tax.

On the other hand, for the receiver of the profits, we have the following scenarios: a) if the receiver is a corporation which is Mexican resident, there is no withholding tax b) if the receiver of the profit is an individual residing for tax purposes in Mexico, a 10% of WHT must be applied, and c) if the receiver is a foreign resident for tax purposes, a 10% WHT must be applied or it must be analyzed to determine whether it is possible to claim the benefits of a Double Tax Treaty to avoid double taxation in order to decrease the WHT to 5% or whether the participation exemption regime applies.

26 Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

We have several incentives, the most common are the following:

- Maquiladora regime. This regime grants the possibility to compute the income tax taking into account assets and inventory. Furthermore, this regime allows taxpayers to make deductible 100% of the payroll exempt expense, different to the general regime, which only allows a 47%/53% deduction.
- IMMEX certification entitles taxpayers to delay the payment of VAT for imports.
- Businesses performing renewable energy activities can deduct assets in one shot, instead of applying deductibility percentages on a yearly basis. As a result of such complete deduction, most of the time these types of enterprises generate tax losses, and they would not be in a position to distribute dividends. However, another benefit for CUFIN purposes is that they are allowed to apply the deduction of assets in a normal way, which means using the percentages in order to generate profits. The consolidation regime grants the possibility to delay the payment of CIT up to three years, paying the inflation jointly.

27 Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

When a company undertakes/distributes a capital redemption it must perform two computations. Firstly, it needs to make a comparison between the contributions made and the amount of the capital redemption, if the contribution is higher, there is not additional implications but if the capital redemption is greater than the contributions, a tax profit must be raised and a corporate tax must be computed provided the company does not have a CUFIN balance. In terms of withholding taxes the same comments as noted at question 25 are applicable. Secondly, it is necessary to make a comparison between the equity and contributions, if the first one is higher, a tax profit must be raised and the same comments above are applicable as well as the responses to question 25.

¹ CUFIN is the Net Tax Profit Account, it means, profits that have paid the tax before.

28 Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

We have a state tax that is triggered by means of the transfer of immovable property. The acquirer is the liable subject and the tax rate depends on the State/place in which the property is located, but generally speaking, the tax rate ranges between 4% and 6%.

This tax must be withheld by the Public Notary and he will be in charge of remittance to the Mexican tax authorities, such tax is deductible for CIT purposes.

C9. M&A

29 Are there any public takeover rules?

The Securities Market Law and the Securities and Banking National Commission circular contain a series of rules and principles which must be observed when anticipating the takeover of a publicly traded company.

30 Is there a merger control regime and is it mandatory / how does it broadly work?

Depending on the size of the transaction (monetary value as regards either equity value, sales or asset value), clearance from the Federal Competition Commission may be required. To this end, the Commission needs to evaluate the potential adverse effects to market competition as a result of the merger.

31 Is there an obligation to negotiate in good faith?

In all legal acts performed in Mexico, the good faith of the parties is presumed, and whoever considers that someone is not acting in good faith must prove it.

32 What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

There are no such rules applicable as of yet in Mexico. However, under certain circumstances, prior negotiations would be advisable with the union representative, if in place.

C10. Foreign direct investment

33 Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

As previously indicated above, the LIE provides for various limits on participation in the following activities:

Activity	Foreign Participation Limit
Cooperative Production Companies	10%

Doing business in Mexico

Manufacture and marketing of explosives, firearms, cartridges, ammunition and fireworks, not including the acquisition and use of explosives for industrial and extractive activities, or the manufacture of explosive mixtures for consumption in such activities	Up to 49%
Printing and publication of newspapers for exclusive circulation in the national territory	Up to 49%
Series "T" shares of companies owning agricultural, livestock and forestry land	Up to 49%
Freshwater, coastal and exclusive economic zone fisheries, excluding aquaculture	Up to 49%
Comprehensive port management	Up to 49%
Port pilotage services for vessels to carry out inland navigation operations under the terms of the Law on the subject	Up to 49%
Shipping companies engaged in the commercial operation of vessels for inland navigation and cabotage, with the exception of tourist cruises and the operation of dredgers and naval devices for the construction, maintenance and operation of ports	Up to 49%
Supply of fuels and lubricants for ships and aircraft and railway equipment	Up to 49%
Broadcasting. Within this maximum of foreign investment, the reciprocity that exists in the country in which the investor or the economic agent that ultimately controls it, directly or indirectly, is incorporated	Up to 49%
Scheduled and non-scheduled domestic air transport service; non-scheduled international air transport service in the form of air taxis; and, specialized air transport service	Up to 49%
Domestic land transport of passengers, tourism and cargo, not including courier and parcel services	Reserved for Mexicans or Mexican companies with a foreigner's exclusion clause
Development banking institutions, under the terms of the relevant law	Reserved for Mexicans or Mexican companies with a foreigner's exclusion clause
The provision of professional and technical services expressly indicated in the applicable legal provisions	Reserved for Mexicans or Mexican companies with a foreigner's exclusion clause

34 Does your jurisdiction have any exchange control requirements?

No

D. Entity closure

35 What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

Liquidation

This requires the following:

- The approval of the dissolution process and appointment of the liquidator/liquidators via extraordinary meeting;
- The closure of the operations of the business carried out by the liquidator/liquidators (including the draft of the final liquidation financial statements, payment of debts, collection of credits, among others);
- Approval of the final balance and the report of the liquidator/liquidators and distribution of the remaining amounts (if any) via extraordinary meeting; and
- Cancellation of the Public Registry of Commerce, Tax ID and Foreign Investment (if applicable).

Contacts



Mauricio Oropeza
Partner

moropeza@deloittemx.com
+52 5550807399, Ext=7399



Melissa Franco
Senior Associate

melfranco@deloittemx.com
+ 52 5550806125, Ext=6125

Deloitte. Legal

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Legal means the legal practices of DTTL member firms, their affiliates or their related entities that provide legal services. The exact nature of these relationships and provision of legal services differs by jurisdiction, to allow compliance with local laws and professional regulations. Each Deloitte Legal practice is legally separate and independent, and cannot obligate any other Deloitte Legal practice. Each Deloitte Legal practice is liable only for its own acts and omissions, and not those of other Deloitte Legal practices. For legal, regulatory and other reasons, not all member firms, their affiliates or their related entities provide legal services or are associated with Deloitte Legal practices.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.