DOING BUSINESS IN Mexico

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### Business Structures: What types of business structures are permitted?

The most common types of company in Mexico are the **stock corporation** ("SA") and the **limited liability company** ("SRL"). In both, the liability of the shareholders/partners is limited to their contributions to the capital stock and at least two shareholders/partners are required, which can be either individuals or companies, Mexican or foreign.

The main differences between these types of companies are:
- The capital stock of a SRL is divided into partnership interests, which are not represented by negotiable certificates while the capital stock of a SA is divided into shares which are negotiable instruments;
- The law establishes more restrictions for the transfer of partnership interests than for the transfer of shares;
- By law a SA must appoint at least one Examiner that supervises the company’s administration, reviews the economic and financial situation of the company and informs the shareholders; in a SRL the designation of an oversight body is optional.

A foreign company can also engage in business activities within Mexico by establishing a **branch** (permanent establishment). The legal and tax obligations of a branch are basically the same as those of a Mexican company, but it may take more time than the creation of a subsidiary since an authorization from the Ministry of Economy might be necessary and in addition, the branch cannot engage in business activities within Mexico until it is registered with the Public Registry of Commerce.

Foreign companies that only intend to have a representative in Mexico, who will not perform commercial activities but will only identify potential clients and act as a contact between the foreign company and the Mexican clients, can establish a **non-income earning representative office**.

### Taxation: Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

The following federal taxes are applicable to business structures, however other taxes such as State or Municipal, may also be taken into consideration:

A) **Income Tax (IT):** Companies with residence or with a permanent establishment in Mexico are obligated to calculate the IT applying a 30% rate on their taxable income. Regarding individuals, the tax rates may vary depending on the regime in which such taxpayers have been classified, according to their source of income, however, in no case would the IT exceed a 35% rate.

Moreover, companies and individuals residing abroad with no permanent establishment in Mexico are, as well, obligated to pay IT when their source of wealth is deemed to be located in Mexico. The tax rates to be applied depend on the source of income (i.e. dividends, royalties, etc.).

B) **Value Added Tax (VAT):** Individuals and companies, no matter their tax residency, that carry out any taxable acts or activities in Mexico (alienation of goods, provision of independent services, the temporary use or enjoyment of goods, and the import of goods or services) are subject to the payment of VAT.
Immigration: Summarize immigration laws, including visas available for foreign employees.

The main laws and regulations that govern Mexican immigration legislation are the Immigration Law of Mexico, published on May 25, 2011 and the Regulations to the Immigration Law, published on September 28, 2012.

The Regulations provide the criteria, requirements and procedures for the following types of visas:

I. Visitor;
II. Temporary Resident;
III. Permanent Resident.

It is important to mention that Mexican companies should obtain an Employers’ Inscription Record, issued by the National Immigration Institute, in order to be authorized to hire foreign personnel.

Foreign Investment Review and Issues: Does the government review and approve foreign investments? What factors are considered?

Generally, Mexico is a country open to foreign investment and a 100% of foreign investment participation is allowed in most companies, however some economic activities are classified as restricted, reserved or regulated.

The Foreign Investment Law (LIE) provides certain activities in which the participation of foreigners is not allowed and others in which foreign investment is limited.

The following activities, among others, are not entirely excluded from the participation of foreign investment, but are limited in some percentages, which cannot be surpassed: Cooperative companies for production (10%); Manufacture and commercialization of explosives, firearms, cartridges, ammunition and fireworks; Printing and publication of newspapers for circulation solely throughout Mexico; Broadcasting (49%), etc.

The following activities, among others, require an authorization from the National Foreign Investment Commission (“CNIE”) for foreign investment to participate in a percentage higher than 49%: Port services in order to allow ships to conduct inland navigation operations; Concessionaire or permission holding companies of air fields for public service; Private education services of pre-school, elementary, middle school, high school, college or any combination; Legal services, etc.

The CNIE is the authority that determines the terms and conditions for the participation of foreign investment in activities or acquisitions with specific regulation. The CNIE has 45 business days after submission of an investment request to issue a resolution, if the CNIE does not resolve within the indicated period, the request is considered approved in the terms submitted.

Criteria for approval include employment and training considerations, and contributions to technology, productivity, and competitiveness. The CNIE may prevent acquisitions by foreign investment for reasons of national security. Recent liberalization reforms in the energy, power generation, telecommunications, and retail fuel sales sectors have allowed private companies to participate.
Regarding the Mexican court system, it is important to distinguish between federal and local jurisdiction.

The following authorities belong to the Federal Judicial Jurisdiction:

1. **Mexican Supreme Court** (Suprema Corte de Justicia de la Nación –“SCJN”): Is the highest Mexican court in charge of law enforcement and the preservation of the Mexican Constitution.

2. **Electoral Court** (Tribunal Electoral):

3. **Unitary Circuit Courts** (Tribunales Unitarios): take up cases on appeal from District Courts.

4. **Collegiate Circuit Courts** (Tribunales de Circuito): take up amparo cases.

5. **District Courts** (Juzgados de Distrito): these have jurisdiction over amparo cases in the first instance and serve as courts of ordinary jurisdiction on matters of federal law, such as commercial law cases.

**The Council of the Federal Judiciary** (Consejo de Jurisdiccion Federal) is in charge of the administration, oversight and discipline of judicial personnel.

State law establishes the structure and function of the courts in each Mexican state and such laws should be consulted on a state-by-state basis. The highest state authority is the **Superior Court of Justice** (Tribunal Superior de Justicia) in charge of ruling on petitions for the review of the legality of resolutions issued by First-Level Courts; and the **First-Level Courts** (Tribunales de Primera Instancia) rule on cases involving violations of state law, brought between individuals.

Mexican laws establish several specialized courts to resolve labor, tax, agrarian, military, and other controversies. In Mexico, there are no jury trials. Mexico has recently increased reliance on specialized administrative procedures such as the creation of two Collegiate Courts specialized in Antitrust and in Telecommunications and Broadcasting matters.

The common business combinations in Mexico are sale of shares or equity, sale of assets and corporate reorganizations such as mergers and spin-offs. Mergers consist of the combination of two or more Mexican entities, where one entity (the merging entity) ceases to exist and the surviving entity acquires all of its assets and liabilities, or alternatively, in the combination of two or more entities, all of which cease to exist, and a new entity is created with all the assets and liabilities of the merging entity. Spin-offs are the creation of an independent company through the sale or distribution of new shares of an existing business or division of a parent company.

**Types of transaction:** How may businesses combine? The Mexican Constitution, the **Federal Law on Economic Competition** (Ley Federal de Competencia Económica “LFCE”) and its regulations comprise the main antitrust and competition legal framework in Mexico. The competent authorities are the **Mexican Antitrust Commission** (Comisión Federal de Competencia Económica, “COFECE” by its acronym in Spanish); and (ii) the **Federal Telecommunications Institute** (Instituto Federal de Telecommunicaciones “IFT”), authority in charge of antitrust matters related with the telecommunications and broadcasting industries.
When doing business in Mexico, it is important to bear in mind that transactions (mergers, shares or assets acquisitions, JVs, trusts, among others) that surpass any of the threshold stated in the LFCE must be pre-approved by the competent antitrust and competition authority. In summary, the LFCE requires compulsory notification: (i) if the consideration of the transaction in Mexico (i.e. only the entities or assets located in Mexico which are to be acquired) exceeds approximately US$63 million; (ii) if the purchaser will acquire at least 35% of the assets or shares in Mexico of an entity with assets located in Mexico or annual sales in Mexico exceeding approximately US$63 million; and/or (iii) if the transaction involves the acquisition of assets or capital in Mexico greater than US$ 30 million, provided that the assets located in Mexico or annual sales in Mexico of the merging entities, jointly or severally, exceed approximately US$168 million.

For 2017, the filing fees for notifying any transaction were up to approximately US$8,700.00.

Nevertheless, parties involved in a transaction are exempt from filing a merger clearance in several cases, including if (i) the parties are merging as part of a corporate restructure with no third parties involved; (ii) the acquirer increases its stock in an entity it already controls; (iii) the transaction involves companies listed on any stock exchange when the acquirer purchases less than 10% of the seller’s stock and cannot influence or impose decisions on the seller’s board of directors or shareholders; and (iv) the acquirer is a purely speculative investment fund which does not participate in the same relevant market as the seller.

It is important to note that if the involved parties do not notify the transaction and receive clearance before closing, when required to do, they may be subject to a penalty starting at approximately US$21,000 and up to 5% of the parties’ annual income.

In Mexico, employment relationships are regulated in Article 123 of the Mexican Constitution, for both private and government employees. The Federal Labor Law (“LFT”) is applicable to private employment relations and sets forth the rights and obligations of employers and employees, terms and conditions of employment, minimum benefits and several other guidelines regarding labor matters. The LFT also includes the regulations for collective labor matters, considering the right of employees and employers to form unions in order to protect and seek the improvement of their rights and labor conditions.

We must also take into consideration the Social Security Law, related to the Mexican Social Security Institute (IMSS), which is in charge of health care, retirement benefits and insurance for employees registered before it. Employers must register all their employees in the social security system.

The Law for the National Institute of Workers Housing Fund (INFONACOT) regulates the housing rights of employees, providing them financing for the purchase of real estate.

The main laws and regulations that govern business combinations in Mexico are:

The **Commercial Code** and **Federal Civil Code**: Both regulate the general contractual provisions for transaction agreements.
| **Governing Law:** What law typically governs the transaction agreements? | The General Law of Corporations: Contains the legal framework for business organizations and the formalities regarding mergers and spin-offs.  

The Federal Antitrust Law (please see antitrust section).  

The Securities Market Law (LMV) and its secondary regulations: Provide the legal framework for the acquisition or merger of publicly traded companies. |
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<td><strong>Filings &amp; Fees:</strong> What government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?</td>
<td>Transaction agreements may be governed by the law chosen by the involved parties; however Mexican laws usually apply when the target company is a Mexican entity or the assets are located in Mexico in order to facilitate implementation and enforcement.</td>
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| **Information to be Disclosed:** What information must be made public in a business combination? Does this depend on the structure used? | Business combinations in Mexico generally require a simple procedure, especially when only private companies are involved. Nevertheless, the following filings are required:  

(i) The minutes of the business combination must be formalized before Notary Public; (ii) The merger and/or spin-offs shall be published in the electronic system of the Ministry of Economy and the public deeds containing the formalization of the merger/spin-offs shall be registered before the Public Registry of Commerce in each of the involved companies’ domicile. (iii) Registration of the transfer of certain types of assets (for example, real estate transfer requires registration with the Public Registry of Property); (iv) When required, the corporate reorganization must be communicated to tax authorities. (v) Particular cases could require specific filings before COFECE in accordance with the LFCE (see antitrust section).  

In case a public company is involved in a business combination, it would require an authorization from the CNBV (Comisión Nacional Bancaria y de Valores) and the BMV (Bolsa Mexicana de Valores). The bidder would be required to pay the corresponding duties and fees to the above mentioned authorities. Foreign investment in Mexican companies requires specific authorizations and notifications (see the foreign investment authorizations section). |
| **Regarding mergers and spin-offs,** the extraordinary shareholders’ meetings minutes approving the merger/spin-off, which must contain the balance sheet, the merger agreement and the capital structure after the merger, among other matters, must be registered before the Public Registry of Commerce and published in the electronic system of the Ministry of Economy (open to the general public).  

In regard to a public offer acquisition (OPA), the LMV provides that an acquisition by any individual or group of persons who acquires more than 10%, but less than 30% of the shares from the target company through an OPA, must be disclosed to the public via the corresponding stock exchange no later than the immediately following day.  

This applies regardless of whether the acquisition was direct or indirect. In this case, the bidder must provide an offering document, which shall contain the terms and conditions of the tender offer, if it intends to acquire a noteworthy influence over the target or not, the price of the acquisition, and any other information that may be considered significant for the purpose of the tender offer. The target company must also disclose information regarding related agreements with other purchasers, shareholders or directors. |
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<th><strong>Disclosure of substantial shareholdings:</strong> What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?</th>
<th>The LMV and its secondary regulations also contain disclosure obligations applicable to publicly traded companies with respect to anything that may have a material effect on the price of the shares. Additionally, depending on the business combination or activities there could be some disclosure requirements for antitrust purposes and/or regarding financial institutions and the Mexican Financial System. Nevertheless, these additional requirements are for specific cases and do not apply generally and would be disclosed solely to the corresponding authorities and not the general public.</th>
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<td><strong>Duties of directors and controlling shareholders:</strong> What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?</td>
<td>Directors or managers, as the case may be, of the target company are not legally required to comply with specific duties to the company’s shareholders, creditors and other stakeholders in connection with a business combination. In general, directors or managers must comply with their fiduciary duties and act in the best interest of the company and its shareholders, and must disclose any conflict of interest that may arise from a proposed transaction.</td>
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<td><strong>Approval and appraisal rights:</strong> What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?</td>
<td>Mergers and spin-offs shall be approved in an extraordinary shareholders meeting of the involved entities. The General Law of Corporations requires a minimum attendance quorum of 75% of the total shareholders and the resolutions will be validly adopted by the vote of at least 50% of the voting shares. However, the by-laws of the companies may require a higher attendance or approval quorum and such quorum must be complied with.</td>
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<td><strong>Hostile transactions:</strong> What are the special considerations for unsolicited transactions?</td>
<td>Hostile takeovers are not specifically regulated in Mexico regarding private companies; however, for publicly traded companies, the LMV allows these transactions to take place. Notwithstanding the foregoing, in Mexico it is a common practice to include special provisions or mechanisms in the company’s by-laws, to prevent the acquisition of shares and/or the control of the company. In such regard, the provisions and mechanisms must contemplate the limitations established in article 48 of the LMV.</td>
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### Break-up fees – frustration of additional bidders:
Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders?

Parties may freely agree and adopt break-up fees or other reverse break-up fees since these mechanisms are not specifically regulated in Mexico. In case of publicly traded companies, such fees must be approved by the Board of Directors of the target entity and disclosed to the public.

### Government influence:
Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

Aside from antitrust or regulatory authorizations, government agencies do not influence or restrict the completion of business combinations.

### Conditional offers:
What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

There are no restrictions in Mexico regarding conditional offers other than the prohibition on it being against the law, morals or public policy. In case of cash acquisition, the financing may be conditional.

### Financing:
If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?

In Mexico, the financing of the buyer usually involves an independent procedure from the acquisition itself, as Mexican law does not contemplate specific obligations of the seller to help the buyer. The financing would normally be requested by the buyer before a financial entity, in which case the buyer must provide specific information and documentation.

Nevertheless, when financing of the buyer is involved in a transaction, such financing documents are usually executed at the same time as the transactional documents. The seller would require the buyer and/or the financing entity to provide adequate assurance that the payments will be made on schedule, as the transaction would be subject to compliance with the agreed payments.

### Minority squeeze-out:
May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Mexican law does not allow minority squeeze-outs; however, shareholders may adopt call options or resolve other mechanisms in the corporate by-laws that may lead to a minority squeeze-out. Likewise, majority stockholders may dilute the participation of minority shareholders by approving capital increases in a shareholders’ meeting; however, all shareholders have a pre-emptive right to acquire the shares issued by the company from the capital increase in the same proportion to their participation in its capital stock. The shareholders must exercise this right 15 days following notification of the approval.

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of the capital increase, otherwise the other shareholders may exercise such right, diluting the participation of the non-exercising shareholders.

**Cross-border transactions:** How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Other than the foreign investment restrictions provided under the foreign investment section herein, Mexican laws and regulations do not restrict or limit in any manner whatsoever the acquisition by foreign shareholders of a participation in the capital stock of Mexican companies, nor require a specific structure to implement cross-border transactions.

Finally, Mexico is party to several free trade agreements that seek to provide advantages, benefits and special treatments, along with some limitations or requirements, for foreign investors in their participation in Mexican companies.

**Waiting or notification periods:** Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

If the business combination consists of a merger, the extraordinary shareholders meeting minutes and the balance sheet shall be registered before the Public Registry of Commerce and published in the electronic system of the Ministry of Economy. The merger will be effective three months following said publications, so that within this term any creditor of the merging companies may oppose the merger by filing a complaint with the competent court, in which case the legal merger will be suspended until the competent court issues its final resolution.

Mergers may be effective as of the date of completion of the above-mentioned registrations provided that the merging companies agree on paying all the debts with creditors; if the merging companies deposit the amount corresponding to such debt in a financial institution; or with the prior consent of their creditors.

Regarding spin-offs, the spin-off shall be effective 45 calendar days from the date of the publication and registration of the spin-off resolution regarding the spun-off company.

If the transaction requires the prior approval of the CNIE based on the target economic activity, an application must be filed before such authority and it shall issue its resolutions within 45 business days of the day of filing of the respective application.

**Sector-specific rules:** Are companies in specific industries subject to additional regulations and statutes?

An authorization from the corresponding authority may be required if the business combination involves a Mexican financial entity, such as banks or insurance companies. Such authorization is required before the completion of the business transaction. Likewise, regarding target entities’ operating under a concession title or special permit, such as transportation, etc., the business combination is also subject to the prior approval of the corresponding authority.

**Tax issues:** What basic tax issues are involved in business combinations?

The main tax issues commonly resulting from business combinations are the following:

**Asset transfer:** Tax issues may vary depending on the asset to be involved. Generally, the alienation of assets is subject to VAT at a 16% tax rate. Furthermore, additional taxes (Federal, State and Municipal) or duties may apply but it would depend on the type of asset (i.e. real estate acquisition tax).
### Mergers:

Mergers between corporations are deemed, for tax purposes, as an alienation. Nevertheless, the above can be avoided if some requirements are fulfilled by the surviving entity (i.e. filing certain tax returns and notices before the tax authorities, etc.)

### Spin-offs:

Spin-offs are deemed, for tax purposes, as an alienation, unless the requirements provided by the Mexican Tax regulations are fulfilled.

### Equity acquisition:

The capital gain obtained from the sale of equity interests of an entity is subject to IT. If the seller is a Mexican entity such gain will be levied at a rate of 30%, once the tax cost and other authorized deductions have been taken into consideration; and if the seller of the equity is a foreign entity resident abroad, the IT will be calculated applying a 25% rate on the gross amount of the transaction, without any deduction.

Nevertheless, a 35% tax rate on the gains could be applied if certain requirements are met (e.g., filing a tax report).

Please consider that Mexico has executed several tax treaties to avoid double taxation, so it is advisable to review if some benefits can be applied (e.g. exemption regarding reorganizations).

### Labor and employee benefits:

What is the basic regulatory framework governing labour and employee benefits in a business combination?

The LFT sets forth the minimum statutory benefits to which all employees are entitled and which cannot be waived.

In connection with business combinations there are no specific provisions or guidelines for employee benefits; however it is important to mention that depending on the transaction, and particularly if employees are going to be transferred from one company to another, their benefits, salary and all labor conditions must be maintained, at least in the same terms and their seniority must be recognized. If the work conditions are altered in prejudice of the employee, such worker is legally entitled to claim the reinstatement of the conditions or even terminate the employment relationship with liability for the employer.

Additional liabilities and obligations for employers that take part in business combinations are commonly established in the transaction agreements, in accordance with the provisions of the applicable labor regulations.

Since the labor regulations and the criteria of the authorities always have a “pro operario” interpretation and application, in any business combination the employees and their conditions must be protected.

### Restructuring, bankruptcy or receivership:

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

1) Take into consideration the labor, tax and social security creditors.

2) Confirm that the insolvent company is able and has the required votes to impose the merger agreement on all the relevant creditors.

3) Confirm that the insolvent company does not have material challenges to the recognition of credits that would materially change the required votes to approve the restructuring agreement.

4) Take into consideration that the merger agreement needs judicial approval to be effective.

At all times, any resolution regarding the target entity must aim to preserve creditors’ rights.
In 2015, the National Anti-Corruption System ("NAS") was created as a coordinating instance for preventing, detecting, and fighting corruption. The new anti-corruption framework includes amendments to three existing laws and the enactment of four new laws.

The new anti-corruption legislation incorporates administrative offenses such as bribery, collusion in public bid procedures, influence peddling, use of misleading information, and misuse of public funds. These offenses are also criminal offenses under the Federal Criminal Code.

Sanctions for administrative offenses include fines of up to twice the amount of the benefits acquired, or up to MXN$113,235,000 (approximately USD$5,661,750), debarment, payment of damages and lost profits to the public treasury, suspension of business activities, and corporate dissolution. Criminal sanctions range from 3 months to up to 14 years of jail time.

When determining the liability of companies, authorities have to take into consideration whether the organization has proper controls, including an "integrity policy" that should contain, at least:

- Organizational and proceedings manual;
- Code of conduct;
- Effective supervision, audit and control systems;
- Appropriate training systems and processes;
- Adequate reporting systems and disciplinary procedures;
- Human resources policies designed to prevent the hiring of persons that pose a risk to the company's integrity;
- Mechanisms to ensure transparency and disclosure of interests.

Finally, the anti-corruption legislation provides credit to legal entities that voluntarily disclose administrative offenses and cooperate with enforcement authorities. Companies pleading guilty to administrative offenses involving corruption can apply for a penalty reduction of between fifty and seventy percent of the sanctions imposed.

The Mexican Federal Criminal Code punishes the bribery of foreign public officials with the intent of obtaining or retaining any undue advantage in the development or conduct of international commercial transactions. Sanctions are up to 1,000 daily wages fine (MX$88,360 or approximately USD$4,530), suspension of business activities or corporate dissolution.