



# COMPANY FORMATION IN MEXICO

## MAIN FORMS OF COMPANY/BUSINESS IN MEXICO

### INCORPORATION

A notary public or a public commercial attester or broker are the only ones authorized to perform the incorporation of business entities. However, only a notary public may incorporate civil entities such as an SC (Sociedad Civil) or AC (Asociación Civil), and they are the only ones with authority to legalize powers of attorney.

It is not difficult to incorporate an entity in Mexico. Sometimes, however, it is a lengthy process, which involves the following steps (in order):

- 1) Obtaining a permit from the Ministry of Economy, including a name permit.
- 2) Formalizing the incorporation in a public instrument (Articles of incorporation) with a notary public or public commercial attester, as well as registering the company with:
  - a. The Public Property and Commerce Registry
  - b. The National Foreign Investment Registry
- 3) Registering the company before the Tax Administration Service (hereinafter referred to as "SAT"), Ministry of Finance and Public Credit. From this point the company may register before the Mexican Social Security Institute. With this Tax Identification Number, the company may open bank accounts.
- 4) Obtaining the proper permits for the performance of operations with local and state authorities, including:
  - a. Local payroll registration
  - b. Operating, advertising and other permits
  - c. Authorization from the Civil Protection Unit and the Fire Department
  - d. Ecological permits (Ministry of the Environment and Natural Resources - Semarnat), Ecological Impact Study
  - e. If required, Health Department permit

Companies must abide by and be guided by the articles of incorporation throughout their duration, and will always have to be registered by a notary public or a public commercial attester with the Public Property and Commerce Registry even when modified. These articles may never oppose the law, or high standards of custom.

In brief, the most common companies are:

### **1) Stock Company (SA)**

- Characteristics: The capital is represented by registered stock; Partners have to pay for their shares both in cash or in kind.
- Regulated by: the General Business Corporation Law.
- Type of name: Denomination.
- Minimum Capital: There is no minimum amount for the incorporation of an entity.
- Reserves: 5% of annual profits up to 20% or a fifth of the fixed capital stock.
- Number of partners allowed: Minimum: 2 – Maximum: unlimited
- Liability: Stockholders, up to the amount of their shares (contribution); Managers, unlimited by their actions.
- Control and Supervision Bodies: General Stockholders' Meeting, Board of Directors (or Sole Manager) and Examiner.
- Remarks: The most common companies, based on protection and corporate veil prevailing.

### **2) Limited Liability Company (S de RL)**

- Characteristics: Investments are represented by negotiable social parts of the company.
- Regulated by: the General Business Corporation Law.
- Type of name: Firm name or denomination.
- Minimum Capital: There is no minimum amount for the incorporation of an entity.
- Number of partners allowed: Minimum 2, Maximum unlimited
- Liability: Partners, up to the amount of their shares; Managers, unlimited by their actions.
- Control and Supervision Bodies: General Partners' Meeting, Manager and Supervision Board.

### MANAGEMENT

The general stockholders' meeting or assembly (if any, the partners' or associates' meeting) is the supreme ruling body of any business entity. The meeting must be held at least once a year in the company's registered address before the end of April.

A board of directors or a sole manager must be in charge of the company. Both are appointed by the general stockholders' meeting. In the case of public companies, it is usually a board of directors instead of a sole manager.

The managers, directors, and legal representatives are jointly liable vis-à-vis the general stockholders' meeting and third parties for the company's damages resulting directly or indirectly from the violation of the law, its by-laws or regulations and from the abuse of authority, fraud or gross negligence. Managers, directors, and legal representatives may or may not be stockholders.

There is no need for a workers' or employees' representative in the board of directors.

#### FISCAL YEARS

All companies have to complete their operating or fiscal period on a yearly basis, from January 1st through December 31, except for the first year of operation or in case of merger, spin-off, bankruptcy, among others, when the fiscal year will start at the beginning of operations and will end on December 31. This is commonly called the fiscal year or calendar year. In other words, fiscal years must coincide with the calendar year.

#### STATUTORY EXAMINER (PLEASE SEE THE AUDIT SECTION)

The stockholders' meeting must appoint at least one examiner. This is optional in other mercantile companies. If a stockholder owns at least 25% of the shares, he or she may appoint an examiner. The examiner must never be a stockholder or a related party, a member of the board, a member of the corporate government or be related to a company's employee.

The examiner is usually an auditor (but it is not mandatory), due to the fact that supervision and implicit duties – such as reviewing the company's accounting books and submitting an annual assessment to the stockholders' meeting – are similar to auditors' review practices, except that they should report any undue or fraudulent situation detected, as well as situations requested by the company's stockholders or employees.

The examiner has the authority as well, to call a general stockholders' meeting if he or she deems it necessary.

#### REGISTERED ADDRESS AND FEDERAL TAXPAYER'S IDENTIFICATION NUMBER

Business entities must have a registered address in at least one state in Mexico. However, they must also have a fiscal domicile registered with the SAT, where accounting entries, supporting documents and the main business take place.

A federal taxpayer's registration number (commonly known as "RFC") has to be obtained as a means to identify the company with the SAT, which has become the official identification number with government agencies. It is issued by the Ministry of Finance and Public Credit through the SAT.

If required, the company will have to be registered with the Mexican Social Security Institute, not only at the registered address where it operates, but at any branch or business unit where it actually operates.

#### INTELLECTUAL PROPERTY

Mexico's current legislation has been developed in accordance with the international standards set up by the World Intellectual Property Organization and the GAAT. Mexican trademark and patent standards are similar to those in industrialized countries.

The intellectual property registration is performed by the Mexican Intellectual Property Institute, and the Ministry of Economy.

Intellectual property refers to creations of the human mind, including:

- Inventions
- Literary, artistic and image work
- Symbols
- Names
- Images and/or drawings
- Models used in trade