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INTERNATIONAL LAWYERS NETWORK

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ESTABLISHING A BUSINESS ENTITY IN MEXICO

ILN CORPORATE GROUP

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Preface

Martínez, Algaba, De Haro y Curiel, S.C. ("MAHC") and Martínez Berlanga Abogados, S.C. ("MBA") are law firms in Mexico with recognized trajectory, based in Mexico City and Monterrey, committed to provide the highest standard of professional legal counsel and representation.

MAHC was established in 1969 and is comprised of a highly experienced and qualified team of professionals in the diverse areas of law practiced by the firm. MAHC is reputed to be one of the few law firms in Mexico that offers first class litigation services, encompassing virtually every aspect of commercial, civil and administrative legal procedures, including domestic and international arbitration, as well as a consulting legal area to prevent risks in matters related to corporate, financial, banking, regulatory, restructurings, real estate, energy and communications, designing and implementing strategies to promptly and efficiently address, mitigate and neutralize risks and crisis.

MBA, established in 2006, is comprised by professionals with high experience and standards in providing quality and personal legal services in general corporate matters, restructurings, financial matters, corporate finance, mergers and acquisitions, joint-ventures, commercial matters, contractual relationships, cross border transactions, real estate, local and cross border trust structures and testamentary successions, as well as regulatory matters.

These combination of practice areas and fields of expertise allow our firms to render enhanced legal advice, a result of the synergy and collective experience of our trial and consultant lawyers that grants our clients a competitive advantage hard to match by any law firm in Mexico.

I. General Overview

As of April 2024, Mexico has a population of approximately 132.3 million people according to the Mexican National Population Counsil (*Consejo Nacional de Población*). Covers a land area of 1,964,375 square kilometers (1,220,606 square miles) and its official language is Spanish.

In matters of political division, Mexico is a Federal Republic formed by 32 states, including Mexico City. The government in Mexico is divided into three branches: (i) executive; (ii) legislative; and (iii) judicial. Each one of such branches has specific authorities granted by the Mexican Constitution. The President of Mexico leads the executive branch; the legislative branch is divided in federal and local legislative powers and their attributions are to promulgate, discuss and, in its case, issue laws and regulations; and the judicial branch is formed by federal and local courts who are in charge of enforcing the laws.

Currently, Mexico is considered the second largest economy in Latin America. According to the World Bank's Doing Business 2020 Report[1], Mexico stands in position 60 under the overall "ease of doing business"

[1] Last published report. The next World Bank's report will be released in October 2024, under the new name Business Ready (B-READY).

category, then surpassing countries like Brazil (124), Colombia (67), India (63) and Costa Rica (74).

II. Types of Business Entities

For foreign corporations or individuals who seek to do business in Mexico, there are several ways for them to invest their capital in this country. As in many other jurisdictions, a very common vehicle for doing business in Mexico is through the incorporation of a Mexican entity, where foreigners may own and participate in their capital stock.

Unlike several other countries including the United States of America ("US"), in Mexico, the legal provisions governing the incorporation of entities are of Federal nature, which means that regardless of the place of incorporation within the Mexican Republic, commercial entities are regulated by the Mexican General Law of Business Corporations (*Ley General de Sociedades Mercantiles*) ("LGSM"); provided that we will also refer to other type of entities regulated by the Mexican Securities Law (*Ley del Mercado de Valores*) ("LMV"), which is also Federal.

Please be noted that, with a sole exception[2], the concept of single-stockholder corporations is not allowed under Mexican law.

A. Mexican General Law of Business Corporations (*LGSM*)

The LGSM regulates seven different types of business entities, of which six of them can be incorporated with the modality of variable capital. Considering that the Mexican Income Tax Law (*Ley del Impuesto sobre la Renta*) ("LISR") grants the same tax treatment to such types of commercial entities, corporate practice has only left two of them as the most common choice used by domestic and foreign investors for doing business in Mexico:

(i) the variable capital limited liability stock corporation (*sociedad anónima de capital variable*) ("SA"); and

(ii) the non-stock variable capital limited liability corporation (*sociedad de responsabilidad limitada de capital variable*) ("SRL").

1. The SA

(i) Structure

The SA has been widely used in Mexico as an investment vehicle. It has a capital stock divided into shares, where the shareholders' liability is generally limited to the full payment of their capital contributions. The capital stock must be incorporated with a

[2] Simplified stock corporation (*sociedad por acciones simplificada*) ("SAS"), which is the latest created type of entity regulated pursuant to the LGSM, that is allowed to be incorporated by an individual single-shareholder (no entities allowed as shareholders). Nevertheless, this type of entity is not recommended for foreign investment purposes, since its main purpose is to regulate small businesses, its shareholders may not have any equity participation in any other Mexican entity that allows them to control such entity, and the corporation's annual total income shall not exceed the equivalent to approximately $7 million Pesos (approximately $134,500.00 Dollars, as of August 2024).

minimum of two shareholders (either corporations or individuals) and a limited minimum aggregate capital contribution, which is always represented by shares. The SA may issue shares without par value. If it adopts the "variable capital" modality, which is almost always the recommendation, the variable part of the capital is unlimited.

(ii) Agreements among Shareholders

Pursuant to recent amendments made to the LGSM, the SA can be considered as a very flexible vehicle since now you can incorporate in its by-laws all the shareholders agreements that were not permitted or questionable before such amendments entered into effect.

Some examples of the provisions permitted to be incorporated in the by-laws of an SA are:

(a) Restriction with respect to the transfer of shares of a same series or class representing its capital stock;

(b) Exclusion causes for shareholders or the exercise of retirement or separation rights, or the right to redeem shares, as well as to establish the price of the shares or the method to determine such price;

(c) Issuance of shares that (i) do not confer voting rights or limit such voting rights, (ii) grant non-economic rights or specifically grant only voting rights; (iii) limit or broaden the economic rights, or (iv) grant veto rights;

(d) Implementation of mechanisms to be followed in the event of shareholders disagreements with respect to specific matters;

(e) Broadening, limiting or denying their preemptive rights in the event of capital stock increases, or even providing for publicity methods other than the ones provided in the LGSM;

(f) Liability limitations for damages and lost profits arising from directors´ or officers´ actions in connection with the breach of the "duty of care" of such directors;

(g) Stock options to buy or sell shares ("put" or "call" options including "tag along" or "drag along" rights) or agreements to restrict, transfer or regulate the preemptive rights for capital stock increases,

among the same shareholders or with third parties; and agreements to exercise voting rights in shareholders' meetings; and

(h) The possibility to hold shareholders meetings or board of directors' meetings either in person or virtually be means of any electronic or optical device or any other technology. If electing the electronic means, it would need to be contemplated in the by-laws and would need to comply with certain requirements regarding access, identification, confirmation of votes and interaction in the deliberation process. It can also contemplate the use of electronic signatures in formalizing the relevant minutes.

(iii) Minority Rights

Regarding minority rights, the SA shareholders representing twenty-five percent (25%) of the shares of the capital stock with voting rights will have the right to appoint a member to the board of directors and an examiner (*comisario*).

Similarly, the shareholders representing twenty-five percent (25%) of the shares representing the capital stock with voting rights of an SA may file a civil liability action in court against the directors in the benefit of the corporation pursuant to the terms of the LGSM.

Shareholders representing thirty-three percent (33%) of the shares representing the capital stock are entitled to request the board of directors, or the sole administrator, or the examiner, to summon a general shareholders' meeting to discuss the matters they request.

(iv) Liability

In addition to the full payment of their capital contributions, the shareholders, directors and even officers of an SA will be jointly and severally liable for tax purposes when the SA:

(a) Did not obtain from the Mexican Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) ("SHCP") through the Tax Administration Service (*Servicio de Administración Tributaria*) ("SAT") a tax identification number ("RFC" or "*Registro Federal de Contribuyentes*");

(b) Modifies its address for tax purposes while being

subject to a tax revision by the SAT;

(c) Did not record its earnings or if it destroys or modifies accounting documents of the SA; and

(d) Ends or interrupts its activities without prior notice to the SAT.

Furthermore, pursuant to the Mexican Bankruptcy Law (*Ley de Concursos Mercantiles*) shareholders, directors and subsidiaries of an SA may also be liable in frauds against third parties carried out by the SA.

2. The SRL

(i) Equity Structure

The capital of an SRL is divided into participation units. Evidence of participation as a partner reside in an equity participation registry, which shall be recorded in the company's equity participation ledger (no physical title exists) and may only be transferred with the approval of the other partners through an assignment of rights agreement.

In the SRL, each partner has the right to own only one equity participation, and each equity participation can have different values. Equity participations without par value are not allowed nor provided for in the LGSM.

Due to US tax legislation (known as "Check-the-box" Regulations), the SRL, has been used in Mexico for tax benefits of US parent companies, since it can be consolidated for accounting and tax purposes with US holding companies. This way, the organization has limited responsibility and pays taxes as a Mexican corporation, but it is considered, for tax purposes as a partnership in the US. We would strongly suggest that the above be confirmed by a US tax expert.

(ii) Partner status

In the SRL, capital increase requires the approval of the other partners, and the acceptance of a new partner requires a special quorum. As a general rule, such a special quorum requires the vote of the majority holders of the equity participations, unless a higher quorum is established in the by-laws of the SRL.

(iii) Number of partners – No Industrial Partners

The SRL may have a maximum of fifty partners and a minimum of two. Therefore, the SRL structure may not be used nor allowed for an initial public offering through the Mexican Stock Exchange. Unlike the SA, the SRL cannot

have industrial partners who contribute their personal work.[3]

B. Mexican Securities Law (*LMV*)

The LMV regulates three different types of stock exchange companies:

(i) the investment promotion corporation (*sociedad anónima promotora de inversión*) ("SAPI");

(ii) the stock market investment promotion corporation (*sociedad anónima promotora de inversión bursátil*) ("SAPIB"); and

(iii) the stock market corporation (*sociedad anónima bursátil*) ("SAB")[4].

Pursuant to the LMV, the SAPI is not subject to the supervision of the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) ("CNBV") (which is the commission in charge of supervising public offering of stock in the Mexican Stock Exchange (*Bolsa Mexicana de Valores*)), except when its capital stock or the securities that represent its capital stock are intended to be publicly traded and be registered in the National Securities and Intermediaries Registry (*Registro Nacional de Valores*) ("RNV"). According to the LMV, SAPIBs and SABs shall request the registry of the securities that represent their capital stock in the RNV. The LMV has a strict policy stating that, all securities placed in the Mexican Stock Exchange shall be first registered in the RNV and approved by the CNBV.

Mexican legislators created the abovementioned companies to encourage its participation in the Mexican Stock Exchange and created special regulations in order to maintain a controlled public offering of securities including stock or shares of a corporation. It is important to note that, according to the LMV, the abovementioned companies must follow the same incorporation process established in the LGSM for the SA.

3. The SAPI

The SAPI is a corporate regime that used to contain several exceptions to the applicable regime for corporations according to the LGSM (no longer due to the amendments made to the LGSM published in the Federal Official Gazette (*Diario Oficial de la Federación*) on June 13, 2014). This corporate regime can be used in Mexico for corporations who intend to modify its structure from private entities to Public Companies. A SAPI may be initially incorporated as such or, as an SA and may adopt such modality later on; in such case, it shall have the favorable vote of the majority of its shareholders through an extraordinary shareholders' meeting. The SAPI may provide in its by-laws the same agreements and provisions as provided in the SA.

Furthermore, the SAPI is a more flexible vehicle legally located "in-between" an ordinary corporation regulated pursuant to the LGSM and what the LMV calls a

[3] The SA may have the participation of industrial shareholders who contribute their personal work.

[4] The SAPIB and SAB are considered as "Public Companies" pursuant to the LMV.

Public Company, in other words, a company which stock is publicly traded. Pursuant to the LMV, the SAPI has the possibility to list its shares in the RNV within a 10 year transition period, or before such term, if the amount of its capital stock at the end of the fiscal year exceeds an amount equivalent in Pesos[5] to 250 million UDIS [6] (approximately $109,360,522.18[7] Dollars[8]), which allows the company to gradually adopt corporate governance practices, disclose policies and protect minority rights required for Public Companies to the LMV.

In addition to the above, the CNBV, from time to time, will issue through official communications, general guidelines that will contain additional requirements and conditions that SAPIs will also need to comply with to become Public Companies.

4. Main differences between SAPI and SA

(i) Management

The management of a SAPI shall be entrusted to a board of directors, and they may adopt for their management and surveillance, the regime contemplated by the LMV for Public Companies, except for the independence requirement for certain board members, which will not be mandatory in this case. If the SAPI elects such regime, the general manager (CEO equivalent), as well as the board of directors will be subject to the provisions set forth under the LMV for such officers which are applicable to Public Companies regarding matters such as organization, tasks and responsibilities. If they do not elect such regime, then they will be subject to the general provisions of the LGSM.

The SAPI that elects the LMV regime will not be subject to appoint a statutory examiner; however, it will need to have an independent external auditor and an auditing committee that carries out the examiner´s functions.

It is important to mention that, pursuant to the LGSM, the management of an SA can be entrusted either to a sole manager or to a board of directors, as decided by its shareholders´ meeting. The SA will not be subject to the "independent" requirements as it could be in a SAPI and therefore it is common practice that the shareholders of an SA are the members of the board of directors. The SA must appoint a

[5] "Pesos" legal currency of Mexico.

[6] "UDIS" Mexican investment units, equivalent to $8.244821 Pesos, as of August 15, 2024.

[7] Exchange Rate of $18.8478 Pesos for $1.00 Dollar, as of August 14, 2024.

[8] "Dollars" legal currency of US.

statutory examiner pursuant to the LGSM.

(ii) Minority Rights

Regarding minority rights exceptions according to the LGSM, SAPI shareholders that hold ten percent (10%)[9] of the shares representing its capital stock with voting rights (including limited or restricted) will have the right to:

(1) appoint a member to the board of directors;

(2) appoint an examiner (unless they elected to adopt the applicable regime of Public Companies); and

(3) request the president of the board or an examiner to call a shareholders´ meeting or to adjourn any shareholders´ meeting in the event that they consider that they are not well informed with respect to a specific matter of the agenda.

Shareholders representing fifteen percent (15%) or more[10] of the shares representing the capital stock with voting rights (including limited or restricted) or without voting rights of a SAPI, may file a civil liability action in court against the directors or the examiners in the benefit of the corporation pursuant to the terms of the LGSM[11].

Shareholders representing ten percent (10%) of the shares representing the capital stock are entitled to request the board of directors, or the examiner, to summon a general shareholders' meeting to discuss about the matters on which they have voting right.

Shareholders may judicially oppose to the shareholders' meetings' resolutions when they have a voting right in the corresponding matter, provided that, they individually or jointly hold twenty percent (20%) or more of the capital stock of the SAPI[12].

(iii) Acquisition of its Own Shares

Another right (or exception) granted to SAPIs by the LMV is the possibility for these corporations to acquire its own

[9] In such cases, the 25% established by the LGSM, would not be applicable.

[10] In such case, the percentage established in the LGSM is 25%.

[11] The LGSM states that shareholders representing 25% of the capital stock, may file a civil liability action in court against the board members, only if the complaint comprises the total amount of liability against the company and not just those of the personal interest for the plaintiffs, as well as evidence that they did not vote in favour of not prosecute the board members, in the relevant shareholders' meeting.

[12] In such case, the 25% established by article 201 of the LGSM, will not be applicable.

shares [13], with the prior agreement of their board of directors, in which case, such shares may be acquired by the SAPI itself either through its (i) net worth (*capital contable*), in which case such repurchased shares shall be kept by the SAPI without the need to reduce its capital stock or (ii) capital stock (*capital social*), as long as it is resolved to cancel them, or to convert them into issued and unsubscribed shares (*acciones emitidas no suscritas*) kept as "treasury shares". The placement of a SAPI's own shares will not require a resolution from the shareholders' meeting; however, the board of directors shall adopt the relevant resolutions. The SAPI's issued and unsubscribed shares kept as "treasury shares" may be subscribed to by the same shareholders, in which case, the preemptive right established by the LGSM will not be applicable. Furthermore, SAPIs are not required to publish their financial statements pursuant to the LGSM[14].

We can conclude that SAPI's may be an adequate vehicle when there is a joint venture investment with another investor (either foreigner or national). When foreign investors need a "wholly own subsidiary" we would definitely recommend the incorporation of an SA.

III. Incorporation Process

The incorporation process of a Mexican commercial entity is quite unique and may not be compared with the incorporation process followed in common law countries. We can say that the incorporation process, once all of the required documents are properly prepared and delivered, may take from five business days up to fifteen business days in order to have the business entity ready to start doing business in Mexico.

Due to our civil legal system, the participation of state appointed officers is required (with the same name but different functions as notary publics in common law countries), either *Notarios Públicos* (authorized by local governments) or *Corredores Públicos* (authorized by federal authorities) to carry out public certification of legal acts ("Public Faith Officers"). The participation of such Public Faith Officers in the incorporation process plays a very important role. They are professionals (in both cases, must be lawyers) that are granted "public faith authority" (*fe pública*) by the government with the function to certify legal acts. Generally, the participation of such Public Faith Officers is to formalize the consent of the shareholders or partners of the company and therefore,

[13] Again, this is an exception to the provisions of the LGSM, which states an express prohibition for an SA to acquire its own shares.

[14] The LGSM states that the SA shall publish their annual financial statements in the electronic system set forth by the SE per request of the shareholders.

such shareholders or partners (or their representatives) must appear before them to execute the relevant incorporation documents.

The process for incorporating a company in Mexico would need to follow the following steps:

1. To obtain from the Mexican Ministry of Economy (*Secretaría de Economía*) ("SE") a permit to use the corporate name of the company (usually 3 – 5 business days), provided that there are words/names that require authorization from the competent authorities that regulate the activity related to the requested word/name (e.g. the use of the word "Investment" requires the authorization of the SHCP);
2. To draft the by-laws of the company (based on the provisions of the LGSM or LMV and/or any shareholders agreement or other kind of agreement when different groups of shareholders or partners participate in the equity or stock structure of the company) (from 2 – 10 business days);
3. To execute the incorporation deed containing the company's by-laws before a Public Faith Officer (including powers-of-attorney granted to officers of the relevant company) (usually 2 business days);
4. To file and record the public deed containing the articles of incorporation (and powers-of-attorney) of the company before the office of the Mexican Public Commercial Registry (*Registro Público de Comercio*) ("RPC") located in the company's domicile (usually from 5 – 10 business days);
5. To file and obtain before the Mexican Tax authorities the tax identification number (RFC) and obtain the Digital Signature (*Firma Electrónica Avanzada*) ("FIEL") which will allow the company to pay taxes, open bank accounts and electronically comply with its tax obligations. For such purposes, a domicile within Mexico is required in order to obtain the relevant RFC of the Mexican company (approximately 7 to 15 business days); and
6. Filing and registration before other applicable Mexican authorities (such as the Foreign Investment Registry (*Registro Nacional de Inversión Extranjera*) ("RNIE"). Thereafter and during the participation of foreign investment in the company, it will have to provide to such authorities periodical information and/or renewal filings (from 5 – 7 business days).

The information required to incorporate either an SA or an SRL or a SAPI is practically the same. Please note as follows the information and/or documentation that would be required in order to incorporate either an SA, an SRL or a SAPI:

(a) As mentioned above, before the incorporation of the company, it is required to obtain a permit from the SE for the use of the corporate name. The SE requires the petitioner to provide up to five (5) possible different corporate names for the new company, in case some of them are already used. It is utilized to secure the name and to avoid that two companies not related to each other share the same or similar corporate names;

(b) The name of the persons who will be shareholders or partners of the company (at least two (2)[15], which may be either individuals or entities). The shareholders or partners may grant a special power-of-attorney to the persons that will appear before the Public Faith Officer (*Notario* or *Corredor*) to incorporate the company on their behalf. Such power-of-attorney would also need to be valid and enforceable pursuant to Mexican law and therefore, if granted abroad, it shall be granted before a notary and comply with International Treaties signed by Mexico, such as the Inter-American Convention on the Legal Regime of Powers of Attorney to be used Abroad, the Washington Protocol on the Uniformity of Powers of Attorney and the Convention de La Haye. In order for such power-of-attorney to be effective in Mexico, it must also be translated into the Spanish language by an expert translator authorized by the relevant court;

(c) The corporate purpose of the company, considering the foreign investment restrictions mentioned in the following Section VI;

(d) The amount of the capital stock of the Mexican company and the participation of each shareholder or partner in such capital stock, as well as the par value of the shares or the indication that the shares shall not have a par value amount;

(e) The name of each member of the board of directors or in the event that it is so decided, the name of the sole manager of the company, as well as the names of the examiner and main officers thereof;

(f) The names of the persons that will receive powers-of-attorneys from the company, and the limitations to such powers-of-attorney (generally such persons would be carrying out the day-to-day management of such company), if any; and

(g) The rules regarding the dissolution and liquidation of the company.[16]

Notwithstanding the foregoing, due to the issuance of a relatively new law called the Mexican Federal Law for the Prevention and Identification of Transactions with Illegal Resources (*Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita*) ("Anti Money Laundry Law" or "AML Law") the Public Faith Officers are required to obtain additional information for the incorporation process such as:

1. Copies of the identifications documents of the individuals that will become partners or shareholders of the company or in the event of an entity it will be

[15] Except for the SAS.

[16] Such dissolution and liquidation rules shall be consistent with the LGSM. Per amendments to the LGSM on 2018, it was created a simplified dissolution and liquidation procedure that reduces considerably the period and costs of liquidation, and companies may apply them as long as they comply with certain requirements.

required a copy of the articles of incorporation and by-laws translated into Spanish (please note that this specific requirement may be time consuming);

2. Evidence or proof of the domicile mentioned for each shareholder, such as a copy of a utility bill (phone, electricity, etc.);
3. Tax identification numbers assigned by the relevant tax authorities of the country of origin of the individuals or entities that will become partners or shareholders of the company; and
4. General information of individuals or entities that will become partners or shareholders of the company, such as their telephone number and email address.

The AML Law has as main purpose to protect the financial system and the national economy from transactions carried out in Mexico with illegal resources. Therefore, it creates a set of obligations for entities and/or individuals that carry out what the AML Law defines as "Vulnerable Activities"[17]. Such "Vulnerable Activities" must be filed before the SAT through the elaboration of a report and that generally contains the description, among others, of (i) the transaction considered as "Vulnerable Activity"; (ii) the information of the parties involved in the "Vulnerable Activity" such as full name, address, incorporation information (in case of entities); and (iii) the amount of the transaction. Some of the "Vulnerable Activities" would be, among others and pursuant to the provisions set therein: *(x)* the lease of a real estate property; *(y)* the development of real estate; and *(z)* the incorporation process of a company, mergers, acquisitions and capital increases.

IV. Ongoing Maintenance

The companies regulated under the LGSM and the SAPI pursuant to the LMV are required, among other matters, as its ongoing maintenance, to:

(a) Execute a shareholders/partners meeting at the corporate domicile of the company (or virtually if specifically contemplated in its by-laws) at least once a year. In such meeting, the shareholders/partners shall approve the annual financial statement of the company, profits, ratify the way the entity is managed either through a board of directors or through a sole manager and, in the case of the SA and the SAPI, ratify the report presented by the examiner.

(b) Keep corporate ledgers whereby the names, nationalities, capital stock variations, shareholders' or partners' meetings, board of directors' meetings and transfers of capital stock or equity be recorded. It is important to note that, according to the LGSM, the names of the shareholders/partners that appear in such records are, with respect to third parties, the legal holders of the shares/equity participation that integrates the capital stock of the company. Per recent amendments to the

[17] As listed in Article 17 of the AML Law.

LGSM and the Mexican Federal Fiscal Code, the SA and the SRL will be bound to (i) publish a notice of any transfer of their capital stock or equity in the electronic system set forth by the SE, and (ii) file notice to SAT regarding any transfer of their capital stock or equity.

(c) Appoint a sole manager or, in this case, the members of the board of directors to fulfill the instructions provided by the shareholders/partners meetings and to direct the activities performed by the company.

(d) In addition, pursuant to the AML Law, further requirements and reports will be necessary to be filed on a periodic basis to comply with such law.

V. Taxation

The SA, the SRL and the SAPI, once incorporated, shall obtain from the SAT a tax identification number (*RFC*) and will be considered as full Mexican entities for tax purposes, since such entity will be a Mexican resident with permanent establishment in the country. When the tax identification number (*RFC*) and the electronic signature or FIEL are obtained, the company may start issuing invoices for its business.

Residents of Mexico (individuals and corporations) are subject to taxation on their worldwide income, irrespective of the source of income or their nationality. Business entities having the principal administration of their business in Mexico are considered Mexican residents for tax purposes. We would recommend consulting a Mexican accountant or tax expert if specific and further information is required regarding tax matters.

VI. Foreign Investment

The Mexican Foreign Investment Law (*Ley de Inversión Extranjera*) ("LIE") and its regulations regulate precisely foreign investments activities in Mexico. Such "foreign investment" could be done through:

(a) the participation of foreigner investors, in any proportion, in the capital stock or equity of Mexican entities;

(b) the activities performed by Mexican companies with majority of foreign capital stock or equity; and

(c) the participation of foreign investors in the activities and actions contemplated by the LIE and its regulations.

There are a set of rules to be observed in connection with: (i) foreign ownership of real estate properties located in Mexico; and (ii) economic activities restricted to Mexican companies incorporated with the participation of foreign investment in Mexico.

(1) Real Estate. A Mexican entity with foreign investment (foreign shareholders or partners) may acquire a real estate property in Mexico; however, it should be noted that, if such property is located within what is known as the "restricted zone" (*zona restringida*) which comprises an area of 100 kilometers (62.13 miles) across the Mexican border and 50 kilometers (31.06 miles) across the Mexican beaches and is acquired for residential purposes, then, such Mexican entity (as well as foreign individuals or foreign corporations) may not directly acquire such property. Residential purposes shall be considered as those destined exclusively for living purposes of the owner or third parties. In such

cases, a Mexican trust must be created whereto the property is settled in trust and whereby such Mexican entity, foreign individual or foreign entity is appointed as beneficiary thereof (no real estate rights can be owned by such Mexican entity, foreign individual or foreign entity, only trust rights and the maximum duration of such trust is 50 years, subject to renewal); provided further that, in such cases it is required to obtain a permit from the Mexican Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*) ("SRE") in order for such trust to own the relevant real estate property in the "restricted zone". As of today, there have been no amendments to the relevant laws in order to delete this Foreign Investment restriction on real estate.

On the other hand, a Mexican entity with foreign investment but which agrees to a statement called the "Calvo Clause" (which basically states that any foreign shareholder or partner shall be considered to be Mexican with respect to such participation or interest and shall agree not to invoke the protection of their Government, under the penalty, in case of failure to honor such commitment, to forfeit such interest or equity participation to the benefit of the Mexican Nation), may acquire property located in the restricted zone for non-residential purposes, in which case, they would require to give a notice to the SRE of such acquisition within the next sixty (60) days following the date of the acquisition.

Non-residential purposes pursuant to the regulations of the LIE are considered as those destined to time sharing, industrial, commercial or tourism related activities and generally those used by entities pursuant to their corporate purpose, such as sales or transfers, urbanization, construction or development of real estate projects.

Foreigners may acquire real estate properties outside of the "restricted zone" provided that they must obtain a permit from the SRE for such purposes.

(2) Permitted Activities. According to the LIE there are three different types of reserved activities regulated by such law: (a) activities reserved to be performed exclusively by the Mexican State, which include, among others, petroleum, hydrocarbons and electricity (provided that private investment is allowed in such activities in accordance with the Energy Reform passed on 2013); (b) activities reserved to the Mexican State and to Mexican companies with "Foreigners Exclusion Clause" [18] provided in their by-laws, which include, among others, national transportation of passengers in Mexican territory; and (c) activities with specific regulation were foreign investment can participate only in the percentages establish by the LIE, such as national air transportation in

[18] An express agreement or covenant forming part of the company's corporate by-laws and setting forth that such corporation shall not admit, directly or indirectly, foreign investors or corporations with foreigners' admission clause, as partners or stockholders.

which case a maximum forty-nine percent (49%) of foreign investment in the capital stock of the company is allowed or broadcasting companies in which case up to forty-nine percent (49%) of foreign investment in the capital stock of the company is also allowed.

Also, the LIE states activities that require the authorization of the National Foreign Investment Commission (*Comisión Nacional de Inversión Extranjera*) in order for Mexican companies with foreign investment to participate, directly or indirectly, in a proportion higher than forty-nine percent (49%) of its capital stock, as such as the private education, public railway transportation, airports and ports services.

Furthermore, and in order to control and regulate the provision set forth in the LIE and its regulations, the Mexican government through the SE created the RNIE in which, according to the LIE, the following entities are obliged to be registered:

i. Mexican companies in which foreign investment participates;

ii. Foreign individuals or entities that normally perform commercial activities in Mexico; and

iii. Stock or equity participation trusts of real estate or neutral investment, by virtue of which, rights in favor of foreigners are granted.

Mexican companies in which foreign investment participate in its capital stock are required to submit before the RNIE, quarterly and annually, reports which reflect the increase or decrease of participation of foreign investment in the capital stock of the companies and the fulfillment of the percentages established by the LIE, in the event that the company performs restricted economic activities.[19]

VII. Residency and Material Visa Restrictions

The Mexican government issued a series of amendments to the Mexican Immigration Law and its Regulations (the "MIL"), that caused great changes in the criteria applied by the Mexican National Immigration Institute (*Instituto Nacional de Migración*) which is the government entity in charge of issuing visas and observing the compliance of the MIL. The Mexican government issued such amendments with the main purpose of creating a more efficient system for foreigners visiting Mexico.

The MIL establishes, among others, the following visas that foreigners can request from the Mexican National Immigration Institute in order to travel to Mexico:

i. Tourist Visa: applicable for foreigners that travel to Mexico with the purpose of performing recreational, cultural or sporting activities.

[19] Such quarterly and annually reports shall be filed before the RNIE only when the company exceeds the thresholds of operations with its foreign related parties stated in the dispositions issued by the National Foreign Investment Commission.

Tourists are allowed by law to stay up to a term of 180 days in Mexico with the possibility of extending such term.

ii. Permanent Resident or Temporary Resident Visa for Family Purposes: applicable for (i) Mexicans or foreigners that hold the condition of temporary students; or (ii) for permanent foreigner resident that requests a visa for a foreigner which he/she may prove a family bond.

iii. Working Visa: applicable for foreigners, to whom an individual or an entity legally incorporated under Mexican law extends a job offer.

All of the abovementioned visas are issued for a limited period, but they are subject to renewal.

In general, the Mexican government carries out actions to promote tourism in the country, therefore, different from other countries, in Mexico there are no severe restrictions for foreigners to enter the country.

VIII. Real Estate Trusts

In recent years, real estate trusts have also become important investment vehicles for foreigners who seek to invest their capital in Mexico. Trusts are regulated by, among others: (i) the Mexican General Law for Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito*); (ii) the LMV; and (iii) the LISR.

The Mexican Congress, in order to make more attractive the investment of capital in the real estate market in Mexico, included in the LISR special tax benefits for Real Estate Investment Trusts (*Fideicomiso de Inversión en Bienes Raíces*) ("FIBRA").

According to the LISR, in order for a trust to be considered a FIBRA and to have the tax benefits provided by the LISR, it needs to comply, among others, with the following requirements:

i. to be executed pursuant to Mexican laws and with a Mexican trustee;

ii. to have as its main purpose the acquisition or construction of real estate in Mexico that may be destined for lease, or the right to obtain income from the real estate;

iii. that the real estate contracted or acquired by the FIBRA be destined to lease (or equivalent) and not be sold within a period of four (4) years following the date the construction of the real estate was completed or as of the date of the acquisition of the real estate, as applicable;

iv. that the trustee of the FIBRA issues trust certificates to represent the assets allocated in the FIBRA so that such certificates may be placed through a public offering in the Mexican Stock Exchange and registered before the RNV; and

v. that the trustee of the FIBRA distributes to the holders of the relevant trust certificates issued through the public offer, at least once a year and no later than March 15th of each year, at least ninety-five percent (95%) of the total taxable income accrued during the immediately preceding fiscal year.

Disclaimer

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