

# SETTING UP BUSINESS IN MEXICO



## General Aspect

In Mexico there are different legal forms to establish an office to do business in the country, some of these forms do not need to create a corporation or a partnership to operate, but in some cases is necessary to do it, the commercial corporation matters is regulated by the federal laws, in the case of the civil partnerships these are regulated by the civil code of each state of the country. The following is a general resume of all the possible legal entities to do business in Mexico with the requirements and formalities to fulfill.

## Legal Forms of Business Entities

Legal Form	Feature	Remarks
<b>Representative Office</b> (Oficina de Representación)	Has no legal identity, no income office, is not a permanent establishment; activities in general: exhibition of assets belonging to the foreign resident; age, to buy assets for the foreign resident, advertising, promotion of articles belonging to the foreign companies.	Apostille of the act of incorporation and by laws of the foreign company, shareholders resolution to open and registry in Mexico of the Representation Office, permit of the ministry of economy in Mexico with the mentioned documents.
<b>Branch Office</b> (Sucursal)	Has legal identity, income office, available to celebrate commercial agreements.	Apostille of the act of incorporation and by laws of the foreign company, shareholders resolution to open and registry in Mexico of the Branch Office, permit of the ministry of economy in Mexico with the mentioned documents.
<b>Civil Partnership</b> (Asociación Civil)	Has legal identity, its purpose is not primarily financial, no limit of partners, no minimum of capital required, some foundations and sports clubs adopt this entity.	Written agreement at Public deed is optional at least the capital of the A.C. has constituted by real estates, in that case is necessary have to be registered at the public registry.
<b>Civil Society</b> (Sociedad Civil)	Predominantly economic character, but that does not constitute a commercial speculation, different kind of partners, they can be industrial partners and founders partners.  The administrator partners (socios administradores) are liable without limitation, as well as with his private assets. The liability of the other partners is limited to their respective share of the partnership capital.	Suitable for professional service providers companies. Written agreement at Public deed is optional at least the capital of the S.C. has constituted by real estates, in that case is necessary.  The limitation of the limited partners' liability takes effect only when the registration of the S.C. and the subscribed partnership contribution has been entered in the commercial register.
<b>Corporation</b> (Sociedad Anónima)	Natural persons, Civil Society, and corporations can be shareholders. Minimum 2 shareholders. The highest authority of the corporation is the shareholders assembly. An Administrator or a board of directors is in charge to manage the corporation. Possibility to increase or decrease his Capital Stock; abbreviation S.A.	Suitable for all kind of business. Written agreement at Public deed is necessary. The personal liability of the shareholders it is limited to their respective share of the capital.  Have to be registered at the commerce Public Registry and at the National Register of Foreign Investment.

<b>Limited Liability Company</b> (Sociedad de Responsabilidad Limitada)	Natural persons, Civil Society, and corporations can be shareholders. Minimum 2 partners and maximum 50 partners, No Minimum or Maximum of Capital possibility of different amount of shares and different category; The highest authority of the corporation is the shareholders assembly. A Manager or a board of Managers is in charge of the administration. Possibility to increase or decrease his Capital Stock; abbreviation S de RL.	Written agreement at public deed is necessary the personal liability of the shareholders, it is limited to their respective share of the capital.  Have to be registered at the commerce public registry and at the national register of foreign investment.
<b>OTHER FORM OF LEGAL ENTITIES</b>		
<b>a) Sociedad en Nombre Colectivo</b> <b>b) Sociedad en Comandita</b> <b>c) Sociedades Cooperativas</b>	This kind of corporations and the above mentioned are regulated by the commerce corporations general law.  Usually used for tax planning, today are on vigilance of the Mexican Tax Authorities.  New kind of corporation, allows only one share holder, maximum incomes for \$5´000,000.00 Mexican Pesos	Written agreement at public deed is necessary.  Have to be registered at the commerce public registry.
<b>Foreign Corporations</b>	To operate in Mexico they need to accomplish some requirements.	Needs to apostille his incorporation deed and by laws, then need to have the permission of national register of foreign investment and the corporation have to be registered at commerce public registry.

## Organizational Questions

Topic	Feature	Remarks
<b>Commercial Register</b>	Companies of all legal forms must be entered in the commercial public register.	If a company is legally required to be registered, but takes up business operations before being entered in the commercial register, the partners are personally liable for any losses up to the point of registration.
<b>Chamber Register Notification</b>	Registration with the Mexican Business Information System (SIEM) Chamber of Commerce is necessary to obtain some permits and licenses.	Chamber membership is automatic and mandatory. Sometimes a municipal operation license is necessary.
<b>Bank Account</b>	To open an individual bank account, is necessary a valid passport, temporary resident visa with lucrative activities and a proof of address. Companies needs his incorporation deed and bylaws, registered at the taxes ministry, registered at the national register of foreign investment and registered at the commerce public registry.	

<p><b>Acquisition of Real Estates</b></p> <p>Restricted Zone: A tract of one hundred kilometers along the frontiers and fifty on the beaches</p>	<p>Il of the mentioned Mexican entities with foreign investment can obtain the domain and property of real estates out of the restricted zone without any restriction. Also in the restricted zone when the use of the property is not residential.</p> <p>Foreign companies also can obtain the property of real estates out of the restricted zone but never in any circumstance in the restricted zone.</p> <p>In Restricted Zone:</p> <p>The Mexican Entities with foreign investment can obtain rights of a trust to use real estates for residence (of his administration, partners, managers, etc).</p> <p>Foreign entities can obtain rights of use of real estates with a trust no matter what kind of use they give. But never can obtain the property of real estates.</p>	<p>Need to inform about the acquisition to the Foreign Affair Minister in the next 60 labor days.</p> <p>Need to inform about the acquisition to the Foreign Affair Minister in the next 60 labor days.</p> <p>They need a permit to the Foreign Affair Minister to set up the trust with a Bank.</p> <p>They need a permit to the Foreign Affair Minister to set up the trust with a Bank. And accomplish the mentioned requirements.</p>
<p><b>Transfer of Capital</b></p>	<p>Capital can be moved in and out of Mexico without any restrictions.</p>	
<p><b>Visa and Residence permit</b></p>	<p>There are two kind of Visa and a few migratory status for business persons; to be a member in the Administration Board of a company and to be an employee of the company is necessary to obtain a Temporary Resident Visa with working permit or an Authorization for 180 days to do lucrative activities. For the administrators who act on behalf of the company is necessary to obtain the Temporary Resident Visa or the Authorization to do lucrative activities; are not valid his acts in case of they don't have the visa or permit.</p>	<p>The Companies who hire foreigners need to obtain the authorization of the INM (National Immigration Institute) in order to hire foreigners; they need to initiate the paperworks when the foreigner is out of the country; and when the permit is done the foreigner can enter in the country and finish the paperworks at the INM</p>
<p><b>Regulated activities by the Foreign Investment Law</b></p>	<p>Some activities to develop in Mexico for foreign entities or Mexican entities with foreign investment are forbidden or regulated.</p>	<p>Some activities are: Public National Transportation, Gas Stations, Radio Stations, some Profession and services.</p>

## Employment

Topic	Feature	Remarks
<b>Work permit</b>	The entire Foreign Employees need a Temporary Resident Visa with working permit.	Normally the expiration time of any Visa is for one year renewable for the many times as needed.
<b>Labour law</b>	In Mexico there are detailed employment regulations. A minimum of 6 days of paid holidays a year is guaranteed, the maximum time allowed by the Federal Labor Law is six days a week and 8th hours per day. A special chapter in the law for protection against unfair dismissal offers great protection for employees.	
<b>Social system</b>	The social security system consists of health insurance, pension insurance, unemployment insurance and possibility to obtain cheaper credit by the government to acquire a house. The social security contributions and credit for a house has to be paid by the employer the amount is between a 25% and 30% of the salary of the employee.	The Mexican Government have two institutions to accomplish with the social system requirements: IMSS and INFONAVIT.

## Taxation

In Mexico the most relevant taxes are imposed by federal government. Nevertheless, Income Tax Law (ITL) recently, allowed states to levy an additional 5% percent income tax on gains on sale of real property, however, such IT is creditable against the federal tax so there is not an additional tax burden. Transfer Pricing regulations are strong and many BEPS recommendations have been introduced.

Tax	Feature	Remarks
<b>Corporate Income Tax</b> (Legal Entities)	The standard corporate income tax rate is 30% on all taxable earnings of the corporation, whether retained or distributed profits.  However, profit distributions are only taxed once at the corporate level. Individuals shall not accrue income from profits distributions.	In order to achieve the one level tax on corporate profits "Net After Tax Profit Account" (CUFIN) shall be determined. Profits distributions out of CUFIN shall pay 42.86% at corporate level only. As from 2014 dividends paid to Foreigners and Mexican Individuals will be subject to a 10% withholding tax
<b>Personal Income Tax</b>	It rises progressively to a maximum personal income tax rate of 35%, which is applicable to earnings above of EUR 140,000 or more (round numbers).	Personal deductions apply, However total amount per year is limited to the lesser of; 5 annual legal minimum wages or 15% of total income. This limitation shall not apply to donations and interests paid on mortgage.

<b>Personal Income Tax in case of partnerships</b>	By general rule partnerships are within scope of legal entities so they are separate legal entities. However, ITL provides for some “transparent regulations” and yields and advance payments received by members of civil law partnerships are considered as a deduction on a corporate level and shall pay tax on individual level according with the progressive rate.	
<b>Other Main Tax Topics</b>	<p><b>Permanent Establishment.</b> It is levied as a local corporation but it is useful for allocation cost contracts.</p> <p><b>Mandatory Employees ´ Profit Sharing.</b> 10% of the annual pre-tax profits.</p> <p><b>Thin Capitalization Rule.</b> Amount of debt shall no exceed three times the equity capital.</p>	<p><b>Tax Incentives:</b></p> <p>FIBRAS (REITS) are available and similar structures were introduce for investments on Energy sector.</p> <p>Real Estate Developers may deduct land cost investment in the acquisition year</p>
<b>Value Added Tax (VAT)</b>	<p>Apply on a) Transfer of goods, b) Rendering of independent services c) Temporary use or enjoyment of goods d) Importation of goods or services.</p> <p>16% General rate</p> <p>0% Some transactions (basic products) and Export of goods</p>	<p>Refunds are available when 0% transactions are mainly made. Compensation against federal taxes provides effective cash management.</p> <p>Runs on a cash flow basis and “effectively collected” rules must be considered.</p>
<b>State and Municipal Taxes</b>	<p>Rely mainly on payroll (imposed by states) and property. Average rate 2% percent.</p> <p>Real property acquisition tax (for the benefit of municipalities) is imposed on entities and individuals acquiring real property. Rates vary among the different legislations with 2% as a predominant rate.</p>	
<b>Non-resident Taxation</b>	<p>Non-resident individuals and companies receiving income sourced in Mexico are subject to Mexican taxation. Double taxation of this income is avoided by double tax agreements between Mexico and other countries. Mexico has the biggest network of Tax Treaties among all the countries in Latin America.</p> <p>In case of a non-resident company tax treatment depends on its kind of income.</p> <p>Currently, a general withholding rate of 25% is provided by law to be applied over total revenue; however, there are some options to tax 25% rate over net basis (income less specific deductions): tourism time sharing contracts, sale of real estate and sale of shares. Exercising the option is subject to complying with some requirements.</p> <p>Special regulations applied for “tax haven transactions” when no-residents earns income from Mexico with low or any tax in its residency country (22% or less). 40% withholding tax may apply.</p>	



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