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# DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN





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IN LATIN AMERICA AND THE CARIBBEAN



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## DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

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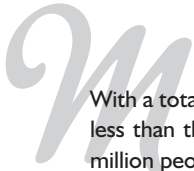
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ARS	Argentinean Peso	DOP	Dominican Republic Peso
BSD	Bahamian Dollar	GTQ	Guatemalan Quetzal
BRR	Brazilian Cruzeiro Real	HNL	Honduran Lempira
KYD	Cayman Dollar	MXN	Mexican New Peso
COP	Colombian Peso	NIO	Nicaraguan Córdoba
CRC	Costa Rican Colón	PYG	Paraguayan Guarani
USD	United States Dollar	UYU	Uruguayan Peso

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With a total landmass of almost two million square kilometers, Mexico is slightly less than three times the size of Texas and has a total population of over 106 million people. Its political organization is a federal republic with 31 states and a federal district. The president is elected by popular vote for a six-year term and cannot be reelected. The Mexican legal system is a mixture of U.S. constitutional theory and a civil law system with a judicial review of legislative acts.

Mexico has a free market economy that recently entered the trillion-dollar class. It contains a mixture of modern and outmoded industry and agriculture, increasingly dominated by the private sector. Recent administrations have expanded competition in seaports, railroads, telecommunications, electricity generation, natural gas distribution and airports.

## FOREIGN INVESTMENT

Over the past federal administrations, Mexico has continuously shown openness in areas in which foreign investment is allowed. In fact, current policies encourage and aim to increase direct or indirect foreign participation in the capital stock of Mexican business entities, unless specifically restricted in either the Constitution or the Foreign Investment Law. Consequently, only a few activities remain restricted exclusively to Mexican investors or the Mexican government.

Furthermore, it is important to point out that Mexico's Foreign Investment Law includes a classification called neutral investment. A neutral investment is that contributed into Mexican corporations through shares with limited corporate rights or without voting rights, as well as by means of trusts authorized under the Foreign Investment Law. This type of investment is considered for determining the percentage of foreign participation in the corporate capital of Mexican companies. The investments made by international financial development institutions into the capital stock of corporations may also be considered neutral investment, with the prior authorization of the National Foreign Investment Commission. The aforementioned makes even more flexible the schemes under which foreign investment is allowed.

## MAIN RIGHTS

Mexico promotes and protects foreign direct investment (FDI), granting to foreign investors national treatment, i.e., the same rights to which Mexican investors are entitled. Foreign investors are only required to register with the National Foreign Investment Registry, part of the Ministry of Economy, and comply with certain reporting requirements.

## RESTRICTIONS

The following economic areas are considered strategic by the Mexican Constitution and the Foreign Investment Law, and are therefore excluded from foreign investment:

- Activities reserved to the Mexican Government. These include petroleum and some basic petrochemicals, radioactive minerals, nuclear energy, electricity, telegraph and satellite communications, the postal system (but not courier services), among others.
- Activities reserved for Mexican Citizens and Corporations. In the following areas no FDI is allowed (except as neutral investment): land transportation of passengers and freight, distribution of gasoline and liquefied petroleum gas, radio and television services (excluding cable and direct satellite TV), credit unions, development banking institutions, and certain professional and technical services, among others.

There are other activities where FDI is restricted to the specific percentages provided by law for some companies, for example, air transport where the maximum limit is 25%. For others, such as insurance companies, certain financial services (except banking, financial multiple purpose companies and financial holding activities where 100% FDI is allowed subject to certain requirements in some cases), certain telecommunication operations (satellite pathways and their frequencies, band of frequencies, and public telecommunication nets), administration of ports, most fishing activities, guns and their supplies, as well as newspapers are subject to a maximum limit of 49% foreign ownership.

Furthermore, an investor must have a special permit issued by the National Foreign Investment Commission to hold more than 49% of the stock in certain enterprises, including, among others: schools, port services, cellular telephony, insurance brokerage, legal services, securities qualifiers, operation of railroads and trains, and drilling of gas and petroleum.

Other legal provisions, such as Free Trade Agreements entered into by Mexico with other countries and some other special laws, set forth specific regulations

that would have to be analyzed to determine if the specific business activity the foreign investor will perform is either prohibited, regulated or allowed under Mexican Law. For such reason, this area must be analyzed on a case-by-case basis.

## SPECIAL OBLIGATIONS AND REGISTRATIONS

Foreign investors such as Mexican corporations with foreign capital, Mexican entities with Mexican shareholders or partners which are individually held by foreign capital and foreign individuals doing business in Mexico, must register with the National Foreign Investment Registry (RNIE) and submit the requested economic and statistical information to the Foreign Investment Commission, which is also under the control and supervision of the Ministry of Economy. In addition, foreign investors must provide notice of any variation in corporate capital in order to maintain the validity of their registration and remain in good legal standing before the RNIE.

## IMMIGRATION

Any foreign individual who conducts business in Mexico must obtain an appropriate immigration visa from the National Immigration Institute (INAMI) that expressly authorizes the business activities that such foreigner is intending to perform.

### Immigration Alternatives

There is a general classification of immigrants under the Mexican Population Law:

- **Nonimmigrant.** Foreign individuals who will temporarily reside in Mexico (FM3 permit).
- **Immigrant.** Foreign individuals who have the intention to reside permanently in Mexico (FM2 permit).
- **Permanent Resident (*Inmigrado*).** Foreign individuals who have the right to permanently reside in Mexico after five years of holding an immigrant permit.

Foreign individuals conducting business in Mexico usually obtain a nonimmigrant type of immigration permit, under one of the following alternatives:

- **Nonimmigrant executive visitor.** This type of permit is granted to foreigners who will perform management or controlling activities.
- **Nonimmigrant business visitor.** In general terms this permit is granted to foreign individuals who represent foreign entities or who will invest or simply identify alternatives of investment in Mexico. Under NAFTA and trade cooperation treaties with other countries, this type of permit is also granted to citizens from countries such as the U.S., Canada, European Union, under the FMM (Multiple Immigration Form), which is easily granted at

the airport or at the entrance border by following a very simple process.

- **Nonimmigrant economic dependent.** Foreign individuals with an appropriate permit are allowed to apply for immigration permits for their spouses, parents and children.

Most of the Mexican immigration permits are granted with a validity of one year and may be renewed for four additional one-year periods (except for FMM which is issued for a term of 180 days upon arrival in Mexico). Nonetheless, the specific activities the foreign investor will perform must be analyzed to identify the appropriate immigration visa that must be obtained.

## Application Process

Immigration permits may be granted by:

- **Mexican consulates.** These are authorized to issue immigration visas only for citizens of certain nationalities aiming to enter the country and then obtain an FMM provided by immigration agents at entry ports. Depending on the type of visa for which the foreigner is applying, the Mexican consulate will require certain documents and information for the issuance of the corresponding visa. The period of time for the final issuance of the immigration visa varies depending on the consulate's workload. It is important to point out that as of year 2010, Mexican Consulates abroad are not entitled to issue stay visas (FM2 or FM3).
- **Immigration authorities located at Mexican airports or border entries.** These are authorized to immediately issue FMM permits. The key characteristic of immigration permits issued at the airport or the border entries is that they are granted for a brief period of time (generally up to 180 days).
- Officers of the National Immigration Institute as explained below.

## National Immigration Institute (INAMI)

Foreign individuals that enter the country under a temporary visa (FMM) may indicate their intention to stay in the country more than 180 days, in which case they shall apply within a term of 30 days at the INAMI offices in Mexico for the issuance of a FM3 or FM2 permit. In general terms, working permits are usually applied for directly before INAMI in Mexico by following an administrative procedure in which certain information and documents must be presented such as:

- Job offer letter issued by a Mexican company
- Official application forms
- Payment of applicable governmental fees
- Copy of passport, among other things

In accordance with the Manual of Immigration Procedures and Criteria (MCTM) of the National Institute of Immigration, which entered into force on 30 April 2010, FM3 or FM2 permits shall be issued by INAMI within a term of 30 days. Formerly, these procedures could take a month and a half or two months, but under the new MCTM, the intention is to resolve the issuance of these permits in a more expeditious manner.

### **Nationalities requiring a visa prior to traveling to Mexico**

In certain cases, Mexico requests from citizens of certain countries such as Arabia, Brazil, Colombia, China, Dominican Republic, Ecuador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Lebanon, Nicaragua, Pakistan, Peru and Taiwan, among several others, to first apply for a visa at the Mexican Consulate in their countries of residence prior to traveling to Mexico. However, foreigners with a current United States visa are exempted from this requirement, if, and only if, they bring said American visa and show it before the Mexican immigration authorities when entering the country. In order to obtain the referenced special visa, a Mexican company or individual must invite the foreigner to come to Mexico.

## **ENVIRONMENTAL**

The Mexican government has enacted several provisions aimed at regulating the business activities performed within Mexican territory that may cause harm to the environment. In addition, environmental government agencies in charge of inspecting the operating activities of individuals or entities have been increasing their efforts to control and penalize activities carried on in breach of the applicable Mexican environmental law.

It is strongly advisable that foreign companies or investors consult with an environmental specialist to verify that the business activities that are to be performed in Mexico would be in compliance with Mexican law, and ensure that they obtain the corresponding environmental permits.

A general premise that must be considered when analyzing the environmental aspects or implications of a business activity is that under Mexican law the individual or entity that directly caused the contamination is liable for all implications and damages arising from such actions.

## **FEDERAL, STATE AND MUNICIPAL LAWS**

In general terms, we note that Mexican environmental legislation is divided in the following three sets of laws:

**Federal Laws.** These laws are issued by the Mexican Congress and generally regulate the activities, waste or releases deemed hazardous under Mexican law. These laws include the Mexican Official Standards (NOMs) issued by the



Federal Environmental Ministry (SEMARNAT), which contain the technical parameters to comply with the obligations of individuals or entities under the applicable environmental laws, such as the maximum allowable limits of particle emissions by companies whose processes cause air pollutant releases.

**State Laws.** These laws are issued by each local state congress and generally regulate those activities not included in the federal laws. In this regard, state laws regulate activities such as the generation of nonhazardous waste and air pollution emissions that were not caused by a company under federal jurisdiction, among others.

**Municipal Laws.** Each of the Mexican states grants specific authorities to the municipal governments to encourage compliance with state laws.

### **Competent Authorities**

In general, the existing Mexican environmental governmental agencies have jurisdiction depending on the particular issue and whether the issue is regulated under federal, state or municipal laws.

### **Main Federal Environmental Agencies**

**Environment and Natural Resources Ministry (SEMARNAT).** For the purposes of this overview, we may generally state that SEMARNAT is the Ministry in charge of issuing the environmental permits pursuant to federal laws required for a company's operation under Mexican environmental laws.

**Office of the Attorney General for Environmental Protection (PROFEPA).** PROFEPA is the authority generally responsible for inspecting and determining whether any business activity is in compliance with the environmental laws and NOMs and if the appropriate environmental permits were obtained.

### **State Environmental Agencies**

Each Mexican state has created its own governmental agencies in charge of encouraging compliance with state environmental laws. Such authorities are normally in charge of issuing the applicable state environmental permits and verifying whether the activities carried out by any individual or entity are in compliance with state laws.

### **Municipal Laws**

Municipal governments also create their own divisions to supervise the compliance of the environmental provisions, the inspection of which was passed on to them.

## Environmental Permits

Individuals or entities that conduct business activities in Mexico must apply for and obtain certain environmental permits that may vary depending on the specific type of activities to be undertaken. Most environmental permits must be obtained prior to initiating operations, although some state environmental authorities allow companies to initiate operations upon filing the application.

## ANTITRUST

The Mexican Antitrust Law (*Ley Federal de Competencia Económica*) sanctions activities that are deemed illegal when intended to prevent the free process of competition and the participation of companies or individuals in the Mexican market. Under such premise, the Mexican antitrust authorities seek to prevent, punish and eliminate the creation of monopolies, the performance of monopoly practices absolute or relative, and other restrictions to the efficient development of goods and services markets.

### Monopolies and Monopoly Practices

Monopolies are prohibited under Mexican law. Furthermore, the Mexican Antitrust Law specifies a list of activities that are considered as Absolute Monopoly Practices, defined as the agreements, settlements or combinations between competitors to:

- Fix, increase, concert or manipulate the purchase or sale price of goods or services offered or demanded in the market, as well as to exchange information for the same purpose or effect.
- Impose the obligation to produce, process, distribute or market a limited or restricted amount of goods or the rendering of a limited or restricted number or volume of services.
- Divide, distribute, assign or impose portions of an existing or potential market of goods and services through determined or determinable customers, suppliers, times or spaces.
- Establish, concert or coordinate positions or the abstention in public bids or auctions.

Individuals or entities that perform any of the above listed practices will be penalized and the monopoly practice will be deemed null and void.

In addition to the above Absolute Monopoly Practices, the Mexican Antitrust Law also sets forth certain Relative Monopoly Practices that are defined as the acts, contracts or combinations, which purpose or effect is (or could be) to unduly displace other economic agents, substantially impede their access or to

establish exclusive advantages in favor of one or various individuals or entities in the following main cases:

- Between economic agents that are not competitors among themselves, to fix, impose or establish the exclusive distribution of goods or services, with respect to the subject, geographical situation, periods of time, including the division, distribution or allocation of clients or suppliers; as well as to impose the obligation to not produce or distribute goods or render services for a fixed or determinable period of time.
- Imposition of prices or other conditions that a distributor or supplier must observe when selling or distributing goods or rendering services.
- Sale or transaction contingent on the purchase, acquisition, sale or transfer of another good or service, normally distinguished or distinguishable or on a reciprocal basis.
- Sale or transaction subjected to the condition of not using, acquiring, selling or providing goods or services produced, processed, distributed or marketed by a third party.
- Unilateral action consisting of refusing to sell or provide available goods or services to specific persons, which are normally offered to third parties.
- Any other action that unduly damages or prevents the competition process and free access to production, processing, distribution and marketing of goods and services.

In order for the above Relative Monopoly Practices to be considered a breach of the Mexican Antitrust Law:

- The person presumed liable must have substantial power in the relevant market (as such terms are defined in the Mexican Antitrust Law).
- They must involve goods or services corresponding to the relevant market identified.

## Concentrations

For purposes of the Mexican Antitrust Law, concentrations include the merger, acquisition of control or any action aimed to concentrate entities, associations, shares, partnership interests, trusts or assets carried out between competitors, suppliers, clients or any other economic agent.

The Mexican Antitrust Commission will penalize any concentration aimed at or resulting in diminishing or impeding competition or free participation with respect to equal, similar or substantially related goods or services.

The Mexican Antitrust Law provides the parameters to identify concentrations deemed prohibited and those that must be reported to and authorized by the Antitrust Commission before taking place.

## BUSINESS ENTITIES

There are various kinds of corporate vehicles regulated by the General Law of Commercial Entities; however, two types are the most commonly used. One is the *Sociedad Anónima*, or S.A., which operates very similarly to a C corporation in the U.S., and the other one is the *Sociedad de Responsabilidad Limitada*, or S. de R.L., which shares some similarities with an LLC or LLP in the U.S.

An entity in Mexico must be created by means of a public deed (either through a notary public or public broker). The entity must also be registered in the Public Registry of Commerce and the Federal Taxpayers Registry.

### SOCIEDAD ANÓNIMA

This type of entity offers liability to its shareholders limited to their capital contributions. The shares of an S.A. may be freely transferred provided that the rights of the other shareholder(s) are observed.

#### Minimum Capital Stock

Based on a recent amendment to the General Law of Commercial Entities, the minimum capital required for an S.A. shall be agreed upon incorporation of the company, and shall be duly subscribed, and consequently, waiving the requirement to have a minimum capital stock of MXN50,000 (approximately USD5,000). However, it is generally advisable that the value of the company's capital stock be consistent with the size of the entity's operation.

#### Number of Shareholders

The General Law of Commercial Entities requires that an S.A. have at least two shareholders, which may be individuals or business entities of any nationality. In general terms, one shareholder may hold the vast majority of the shares, subject to the limitations stated in the Foreign Investment Law and other laws regulating specific areas of the economy.

#### Administrative Body

The administrative body of this entity may be composed of either one person (sole administrator) or a board of directors composed of various members. Typically the board is granted the broadest authority. However, the supreme authority of the corporation is the general shareholders' meeting, whose authority supersedes that vested in the board. Board members have authority

only as an administrative body and not individually; however, members may be granted with individual authority by the general shareholders' meeting or by the board itself.

Decisions of the board are usually made by majority vote, with the chairman having a tie-breaking vote when the board is composed of an even number of members. In Mexico, the board is usually composed of a chairman, a vice-chairman and a secretary. Board members may or may not be required to guarantee their performance through a bond and they may or may not be compensated for their position on the board.

The officers of the company are the general manager and other managers of the company, which may be granted general or special powers-of-attorney to represent the company.

### **Examiners**

In the S.A., the examiner is usually a Mexican-licensed accountant whose task is to supervise and oversee the transactions and operations of the corporation on behalf of the shareholders. S.A. corporations with foreign capital often appoint their external auditor as the examiner.

### **SOCIEDAD DE RESPONSABILIDAD LIMITADA**

This entity (S.R.L.) also offers the limited liability of an S.A. Some of its unique characteristics are:

- Its partners' interests may be transferred with a series of restrictions and requirements and cannot be marketable securities, nor may the company increase its equity through a public offering (in contrast to the S.A. de C.V.).
- A U.S. partner's income from an S.R.L. may be considered partnership distributions under U.S. tax law, subject to certain rules and restrictions of such U.S. laws.

### **Minimum Capital Stock**

Based on a recent amendment to the General Law of Commercial Entities, the minimum capital required for an S. de R.L. shall be agreed upon incorporation of the company, and shall be divided into partnership interests than can be of different value and category, but shall not be at any time of a value less than MXN1 and consequently, waiving the requirement to have a minimum capital stock is MXN3,000 (around USD300).

### **Number of Shareholders**

For this type of entity, the same rule applies as in the S.A., as there must be at least two shareholders. However, in this case there is a maximum limit of 50 shareholders.

## Administrative Body

A similar structure applies as in the S.A. However, the administrative body of an S.R.L. is called the sole manager, or if collective, the board of managers.

## Examiners

An examiner is not required in an S.R.L., although its appointment may represent an effective surveillance mechanism by a third party that is impartial in nature.

## OTHER INVESTMENT VEHICLES

In addition to incorporating a Mexican entity, the most commonly used vehicles to distribute and sell in Mexico are the following:

**Distribution Agreement.** The distributor is an independent contractor who purchases products in order to resell them in a specified territory. There is no employment relationship between the manufacturer and the distributor or the distributor's employees. Generally speaking, the distributor will not represent the manufacturer legally, unless specifically granted a power of attorney, and therefore it cannot assume any obligations on behalf of the manufacturer. A written agreement outlining the above is strongly advisable.

**Representation Agreement.** This is very similar to a commission agreement. It is not as broad as the distribution and agency agreements, and its purpose is limited to the specific instructions provided by the principal for certain acts. The compensation of the representative is to be negotiated between the parties, and usually consists of a commission based on sales.

**Agency Agreement.** The agent is a commercial intermediary (broker) between the manufacturer and the final consumer. Its main purpose is to promote and close deals. The income of an agent is normally based on the results or the deals closed. The agent must generally cooperate with the principal for the conclusion of the transaction, and he/she is usually responsible for delivering the goods, collecting the price on behalf of the principal and providing any post-sale service required.

**Joint Venture Agreement.** The purpose of a JV is generally the creation of a new entity, or to participate in an already existing company. According to Mexican law, this kind of agreement is considered mainly as a preliminary agreement or an agreement between the signing partners, unless it is incorporated into the bylaws of the company where it becomes binding for any existing or future partner.

**Branch or Subsidiary.** Mexican law recognizes in favor of foreign entities the same legal capacity they have in their countries of origin, as they have an independent existence apart from their shareholders. In order to conduct business activities in Mexico, these foreign entities must either incorporate a

subsidiary or operate directly by registering at the Public Registry of Commerce and comply with certain foreign investment requirements.

## **TAXATION**

The main taxes payable by individuals and corporations operating in Mexico and, in certain cases, by foreign companies, are those levied by the federal government. State and municipal governments have more limited taxing authority and up to now have never had corporate income taxes to comply with locally. However some states do tax employers, such as in the case of salaries and professional fees paid by them. Below is a brief summary of Mexico's tax system.

### **FEDERAL TAXPAYERS REGISTRY AND FIEL (ELECTRONIC SIGNATURE)**

This Registry belongs to the Tax Administration Service (the Mexican equivalent of the U.S. Internal Revenue Service). Every taxpayer (corporation or individual) must register in order to obtain a Taxpayer Identification Number (RFC). This number is necessary for all tax records, tax returns and other payments.

In addition to the aforementioned, it is required to process and obtain an Electronic Signature known as FIEL, which purpose is to serve as an electronic identification to deem the taxpayer as the legitimate person to do so.

The Electronic Signature FIEL is mandatory to be able to issue electronic invoices, being this modality is the proper manner to issue any invoice starting from 2013.

### **INCOME TAX (ISR)**

The Income Tax Law imposes taxes mainly in connection with the income of companies or individuals when:

- These companies or individuals are Mexican residents with respect to all of this income, regardless of the source of wealth this income originates from.
- Foreign residents that have a permanent establishment in Mexico generate income attributable in a direct manner to such permanent establishment.
- Foreign residents have income connected to sources of wealth located in Mexico, even though they don't have a permanent establishment in Mexico, or in the event of having it, such income is not attributable to such permanent establishment.

**Taxable income.** Taxable income is considered according to the Income Tax Law as any other income that is not expressly excluded in such law. Such income minus allowable deductions and unexpired net operating losses carried forward from prior years shall generate the taxable base over which the income tax rate shall be applied.

**Entities Tax.** Entities residing in Mexico are taxed on their worldwide income from all sources, including profits earned in cash or credit. Mexican-resident entities are those incorporated under Mexican law or those with a principal place of business or management located in Mexico. Nonresident entities will be taxed in Mexico on their profits earned from its Permanent Establishment in Mexico, or when they don't have one, on the earnings from sources of wealth located in Mexico.

**Tax Rate.** For the 2012 fiscal year (FY), entities residing in Mexico are subject to federal capital gains tax at a rate of 30%; this rate is scheduled to be reduced to 29% in 2013 until year 2014 in which it will be reduced again to 28%.

**Tax Returns.** The tax year in general terms must match the calendar year, always ending on December 31 of each year and not exceeding 12 months. An annual tax return for companies must be filed by the end of the third month following the end of the FY. In addition, the law requires that business entities file monthly estimated tax returns.

**Dividends.** Dividends received from a Mexican entity are not subject to Capital Gains Tax if the earnings were already subject to such tax at the corporate level and the entity distributing the profits pays them from its Net Tax Profit Account (*Cuenta de Utilidad Fiscal Neta* – CUFIN). This is an account of a Mexican company's net after-tax income that can be distributed to shareholders without any further taxation pursuant to income tax provisions.

**Individuals' Tax.** Individuals residing in Mexico are subject to Mexican capital gains tax on their worldwide income, regardless of their nationality. Non-residents, including Mexican citizens who can demonstrate residence for tax purposes in a foreign country, are taxed only on their Mexican source of wealth income or the income from its permanent establishment in Mexico. Individual income is taxed in accordance with a progressive table of rates from 3% to a maximum marginal rate of 30% for the 2012 fiscal year (FY). Resident individuals receiving taxable income are required to file an annual tax return no later than April 30 of the following year. In the case of salaries, the employer is required to compute the annual tax on behalf of the employee unless the latter notifies the employer of his/her intention to file an annual return.

The Federal Fiscal Code provides that foreign individuals are deemed to have a residence in Mexico for tax purposes when they establish a home in Mexico or,



if they also have a home in another country, when they have in Mexico their “center of vital interests.” Under the Code, a center of vital interests is deemed to exist in any of the following cases:

- When more than 50% of the total income of the individual during the year is derived from a Mexican source of income.
- When individuals have their main place of professional activities in Mexico.

## **SINGLE RATE BUSINESS TAX**

The single rate business tax (IETU) is of a direct type and taxes at company level, with a uniform rate, the remaining flow of the company that is used to compensate the factors of the production, deducting the expenditures for the gross formation of the capital, which includes machinery, equipment, land and constructions, and also inventory.

The purpose of the IETU is the effective receipt of the total income by natural persons and companies, residing in Mexico, for the transfer of assets, the rendering of independent services and the granting of the use or temporary enjoyment of assets, with the independence that such activities are performed or not in the national territory.

The current applicable rate for year 2012 and forward is 17.5%.

The IETU will tax the income obtained for the transfer of assets, rendering of services and for granting the temporary use of assets, over a cash basis; that is, IETU will be triggered by accumulating the income upon collection and taking deductions upon payment.

## **VALUE ADDED TAX**

A Value Added Tax (VAT) at the general rate of 16% (11% in the border region) is payable on the sale of goods, rendering of services, rents and importation of goods and services (except temporary imports under Maquila or PITEX programs).

A 0% VAT rate is applicable to some transactions involving certain products such as food (non-processed) and medicines, which in general terms means that no VAT is payable in those cases.

VAT collected by taxpayers from their suppliers must be remitted to the tax authority, and may usually be credited or reduced against the VAT paid by the taxpayers (for instance, in their purchases or importation of goods), thereby reducing the net liability owed to the tax authorities. Excess credits may be reimbursed.

As of fiscal year 2003 the VAT is computed for each calendar month, except where the tax is incurred by reason of occasional activities. The monthly returns must be filed no later than the 17th day of the following month.

## EXCISE TAX

In Mexico, there is an excise tax called the Special Production and Services Tax, which is applicable to entities and individuals that sell and import certain goods in a definitive manner or render certain services. The law sets different rates for each product or service. Among the products included in the law are: alcoholic beverages, alcohol and denatured alcohol; tobacco and cigarettes; gasoline and diesel; mineral water, hydrating or re-hydrating beverages; and certain services such as telecommunications.

## IMPORT DUTIES OR TARIFFS

The Mexican federal government charges duties on items that are imported into Mexico. To determine the applicable import tariffs one must first look at the General Import Tariff Law. However, depending on the country of origin of the goods, preferential tariffs may be applied as established in some Free Trade Agreements, provided that the origin of the goods is evidenced with a proper certificate. In recent years, Mexico has been negotiating and has signed Free Trade Agreements (FTAs) with a number of countries. Accordingly, numerous import-export duties have been reduced or even eliminated. In order to determine the import duties and taxes, a case-by-case system must be used, depending upon the specific goods to be imported or exported and the applicable FTA.

In addition to the preferential tariffs established in the FTAs, there is a series of reduced tariffs contained in the Decree Establishing the Sector Promotion Programs, through which companies incorporated in Mexico (exporters as well as producers for the domestic market) may enjoy lower tariffs for certain imports (0% or 5% rates), which are below those established in the General Import and Export Tariff Law.

## INTELLECTUAL (INDUSTRIAL) PROPERTY

Intellectual property laws in Mexico provide strict protection to intangible assets similar to laws of most developed nations.

The main laws protecting intellectual property in Mexico are:

- The Industrial Property Law, which regulates patents, utility models, industrial designs (patents of design), trademarks, integrated circuit designs, industrial secrets and protected appellations of origin (*denominación de origen*);

- The Federal Copyright Law, which protects the rights of creators of artistic and literary works and software, as well as characters, artistic names plus radio and TV programs; and
- The Federal Law of Vegetable Varieties, which protects the innovators of vegetable variations.

Also, Mexico has executed a number of treaties and conventions regarding intellectual property, including the Paris Convention (involving the essential aspects of intellectual property) and the Patent Cooperation Treaty (PCT).

## **APPLICATION REQUIREMENTS**

A trademark application must:

- Be filed in the format approved by the trademark office
- Include the name, nationality and domicile of the applicant
- Indicate the distinctive sign, and the product and service classes in which protection is sought
- Provide the date of first use (it is recommended to have documents that evidence such use; however, such evidence must not be filed with the application)
- Include documentary proof of the applicant's legal capacity (in case of an entity)
- For logos or combined marks (word + logo), 10 labels must be attached to the application, as required by the Mexican Institute of Industrial Property (IMPI)

In order to obtain the exclusive use of a trademark in Mexico, the mark must be registered before the IMPI. The holder of a trademark may be entitled to civil damages as a remedy to infringement and the intellectual property authorities may seize the infringing products. Trademark infringement is also in some cases punishable criminally through fines and imprisonment.

The fees charged by the government for a trademark application currently run approximately USD250, subject to modifications according to the authority's discretion.

## **PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS**

In order to protect patents, utility models and industrial designs, they must generally be new creations, resulting from an inventive activity (except for the case of utility models, which are improvements to existing inventions) and suitable for an industrial application.

The application must:

- Be filed in the application format approved by the authority
- Identify the inventor and the person(s) to whom it has been assigned, if applicable
- Identify the domicile and nationality of the inventor and any assignee
- Provide the name of the creation
- Provide a complete description of the creation
- Include a chapter of the innovations which are being claimed and another chapter of drawings
- Include a summary of the invention (this requirement does not apply to industrial designs)

By means of a patent, the Mexican government grants the exclusive rights to exploit an invention that, due to its novelty, creativity and industrial application, implies the creation of a new product, a new process or both.

If a patent or utility model application is filed under the Patent Cooperation Treaty (PCT), the priority date will be taken into account from the date in which the PCT application is filed, even if filed for the purpose of searching for prior technology.

Industrial designs (patents of design) are also recognized, which protect ornamental changes to products, and are divided among industrial drawings and industrial models.

Government fees of approximately USD750 for patents, and approximately USD220 for utility models and industrial designs, apply. In either case, the fees are subject to modifications at the authority's discretion, and in some cases it is possible to obtain a 50% discount.

## **COPYRIGHT**

Applications must:

- Include the author's name, nationality and domicile (and if applicable, the date of death of the deceased author); this information should be enclosed in a sealed envelope if the work is registered under a pseudonym
- Identify the date the work was released to the public
- Indicate the holder of the patrimonial rights (these rights involve the economic benefits obtained for the use of the work)
- Include a duplicate of the work being registered

Official fees will vary under the Federal Fees Law, according to the type of work to be registered, and may vary within a range of USD20 to USD100.

The Federal Copyright Law protects the patrimonial right of a creation until 75 years after the death of the author. Although copyright registration is not required, it is recommended in order to expedite legal actions and to obtain proof of authorship. A copyright holder may file a civil action for damages to remedy infringement, which is also criminally punishable.

Reservations of rights are protected for renewable periods of one year in the case of periodicals, and five years for all other protected items (artistic and program names).

## VEGETABLE VARIATION

Applications must:

- Provide a name of the variation
- Fulfill the requirements established by the authority once the application is filed
- Be in reference to a plant variation that is new, different, steady and homogeneous

The Federal Law of Vegetable Varieties protects plant varieties and has a term of effectiveness of 15 to 18 years, depending on the nature of the variety.

## TERMS OF EFFECTIVENESS

The Industrial Property Law protects rights for the following terms:

- **Trademarks.** For renewable periods of 10 years.
- **Patents.** For a nonrenewable period of 20 years.
- **Utility Models.** For a nonrenewable period of 10 years.
- **Industrial Designs.** For a nonrenewable period of 15 years.
- **Design of Integrated Circuits.** For a nonrenewable period of 10 years.

## INTELLECTUAL PROPERTY REGISTRATIONS

The procedure for registering trademarks, patents, utility models, industrial designs and designs of integrated circuits is done before the Mexican Institute of Industrial Property (IMPI), which has its main office in Mexico City with regional offices in Guadalajara, Monterrey, Merida and Leon. This institution also prosecutes infringements regarding author's rights.

The procedure of registering copyrights and reservation of rights is done before the National Institute of Author's Rights, which has a head office in Mexico

City, and one representation in each of the Mexican states. Only the Mexico City office is authorized to resolve and make decisions on copyrights and reservations of rights.

Registration of a plant variety must be filed before the registry administered by the Ministry of Agriculture, Fisheries and Stockbreeding.

## LABOR LAW

Human resources management is a sensitive area that requires expert legal advice. Mexican laws provide for a series of protective provisions in favor of employees that must be considered by employers in order to avoid unnecessary risks. It is highly advisable to maintain a file of all labor documents that includes labor agreements, receipts and evidence of payments, attendance control documents, working regulations, and important communications with employees. Keeping these documents would be very helpful in preventing and dealing with labor conflicts where the burden of proof is on the employer.

Among the particulars of Mexican labor law that should not be overlooked is the fact that a labor relationship may arise even without the consent of the entity receiving the service, considering that in our system, the existence of a working relationship is presumed whenever a personal service is rendered, subordinately, and triggering the payment of a salary in favor of an entity or individual. There is no employment at-will where only in very limited circumstances an employee may be hired on a provisional basis. In order to dismiss employees, there must be a just cause and certain formalities must be complied with to avoid triggering a severance payment (approximately three months of integrated salary and proportional shares of vacation premium, vacations, Christmas bonus and seniority premium).

## HIRING EMPLOYEES AND LABOR CONTRACTS

Employees in Mexico are commonly hired through an individual employment agreement. Although it is not mandatory to sign an agreement to retain an employee, it is highly advisable to do so in order to establish the terms and conditions of the relationship.

In addition to individual agreements it is highly advisable that a company operating in Mexico execute a Collective Bargaining Agreement and record it before the corresponding Labor Board and Union, and issue a set of Internal Regulations in order to establish the working conditions and general duties of the employees and employers for work development within the company. These are preventive measures that provide security and aid in preventing potential labor conflicts for the company.

## BENEFITS AND LABOR RIGHTS

The main rights of employees include:

- Salary equal to or above minimum wage
- Compensation for working overtime and holidays
- At least six days of vacation per year (which shall be increased according to seniority)
- Holidays. In Mexico, the following days are considered to be mandatory holidays: January 1; the first Monday of February as a celebration of February 5; the third Monday of March as a celebration of March 21; May 1; September 16; the third Monday of November as a celebration for November 20; December 1, of every six years, whenever there are Presidential changes; December 25; and any day that is determined by the electoral local and federal authorities, for the performance of ordinary elections.
- Year-end bonus (*aguinaldo*)
- Profit sharing, payable in May

## MINIMUM WAGE

A federal commission comprised of representatives of the government, major unions and employers' associations determines the minimum wage standard annually. The country is divided into three zones for which there are different minimum wages. The minimum daily wage is the minimum amount that must be paid to a worker for a full eight-hour day of work.

## FOREIGN EMPLOYEES

Hiring foreign employees is a fairly common practice in Mexico, especially for high-level positions. One of the first steps that must be taken in order to hire foreigners is to obtain the applicable immigration permit from the National Immigration Institute. This will usually be an FM3 for Executive Employees.

Mexico's Federal Labor Law governs the relationship of a company operating in Mexico with foreign employees and foreign employees are entitled to the protection provided by the same. Therefore, an Individual Employment Agreement that complies with Mexican labor law should be executed.

## PAYROLL TAXES

Salaries are subject to the following taxes:

**Income Tax.** According to a percentage established by law which is based on the level of income.

**Social Security Tax.** This is a two-part payroll tax, paid partly by the worker, and partly by the employer. This contribution includes access to benefits such as a retirement pension, insurance against occupational accidents and illnesses, as well as health services provided by the federal government.

**Housing Fund.** This is a tax that is contributed to a fund operated by the federal government (INFONAVIT) intended to provide workers with special benefits for obtaining loans in order to build, purchase or repair their homes.

**State Payroll Tax.** This tax is based on the amount received by the worker. It is a source of revenue for state governments.



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