Company Forms in Mexico

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For those considering investing in Mexico, there are a variety of possibilities. One of the most preferred is through the creation of a legal entity, which will promote innovation and encourage a broad flow in the exchange of goods and the provision of services. Mexican law contemplates in its commercial legislation seven types of companies that are relevant for foreign investors. In view of their functionality, this article points out at least four corporate forms in mercantile matters, which are preferred to those who wish to become partners, both nationals and foreigners.

Limited liability company (Sociedad de Responsabilidad Limitada – S. de R.L.)

This form of incorporation is one of the recommended forms for SMEs (small and medium-sized enterprises), while retaining some of the advantages offered by the SA and the Comandita Simple. It offers flexibility for import- and export-, holding- and joint venture companies and facilities for their transfer of partnership interests.

Incorporation

This company can be created by at least two and up to fifty partners. If this number is exceeded, they would have to find another type of company.
The minimum amount of capital is a multiple of one Mexican peso (Art. 62 LGSM, basically there is no minimum), although the law recognises the possibility that the company itself may raise it at the time of incorporation. There is no maximum amount of partnership interest capital, although it is required that at the time of incorporation, at least 50% of the partnership interest capital must be exhibited. This amount can adopt the modality of "variable", which means that in the event of a possible increase or decrease, it is not necessary to formalise it before a Notary Public, nor to hold an Extraordinary Meeting of Partners, but it is sufficient to make an entry in the book of registers of variations in the company's share capital. However, the current Mexican tax legislation states that if through the capital increase or decrease there are changes in the partnership/shareholding structure of the company in terms of partners or shareholders, a notice must be published before the Tax Administration Service (SAT) containing the notarization before Notary Public of the meeting that agreed to such movement, still in variable capital.

Company bodies

Shareholders' Meeting

This is the supreme body of a company, gathering at least once a year at the registered office of the company. The resolutions of such gatherings, which are called ordinary meetings, are passed by a majority vote of the partners representing at least half of the share capital, or in the case of an amendment of the articles of incorporation by those representing at least three quarters of the share capital, unless otherwise agreed, or unanimously for a change of the corporate purpose or rules resulting in an increase in the obligations of the partners.
The votes can be allocated by the articles in proportion to the portion of partners in the nominal capital, not to the number of partnership interests (no strict per capita principle).

Its rights and duties are regarding basic decisions, changes corporate bylaws, general structure of the company, annual profits and appointment and dismissal of members of the board, the right of first refusal in the event of the transfer of partnership interests to outsiders, voting rights, information, surveillance, participating in the administration and the right to receive interest on their contributions, which shall be no more than 9%, and only during the restricted period necessary for the execution of the works of the corporate purpose, etc.

The Partners Meeting may also be involved in the daily business and – when required– must be asked for its consent in important business matters.

As far as the admission of new partners is required, it is sufficient, unless otherwise agreed in the company's articles themselves establishing a higher proportion, for the consent of the partners representing a share capital majority to be granted. The partnership interests can be transmitted by inheritance, unless the company has made provision for the dissolution of the company due to the death of one of its members, among others. The partners may also agree to make additional contributions in proportion to their original contributions.
Important to notice: shareholders wishing to control the company should safeguard that they hold seats majority in the board or the office of the chairman with a double vote.

Manager(s)

The operating management of the *S. de R.L.* lies in the hands of the board of directors or a sole manager. He or they may be appointed and removed (the latter unless otherwise agreed) by the partners to carry out the administration of the company. They may be the partners themselves or persons from outside the company, on a temporary or unlimited basis. If none is appointed, all the partners will carry out this activity jointly. Once the managers have been appointed, they convene the Members' Meeting.

Supervisory Board

Their appointment by the company is at their own discretion. They may be partners or outsiders. Their primary activity is to supervise. As a secondary activity, they may, in the absence of a call by the managing director, convene the shareholders' meeting.

Responsibility & Liability

The liability among the partners is limited only to the payment of their contributions, although it could be subsidiary and unlimited by omitting the acronym S. de R.L. or for lack of registration in the local public registry of property and commerce. However, there is a liability claim against the managers for the reimbursement of the corporate assets, which can be exercised by the partners' meeting and by the partners individually, as well as by the trustee, in the case of corporate creditors (after the declaration of bankruptcy of the company, according to the Insolvency Law (Ley de Concurso Mercantil). There are at least two legal exceptions in favour of the manager: not having had actual knowledge of the act or voting against it, and the partners ' meeting exonerating them from liability by

a favourable vote of at least three quarters of those representing such partnership capital.

Register

The founders need an authorization for the use of the name by the Ministry of Economy. Corporate bylaws require the approval of the board of directors or shareholders, being incorporated this procedure before Notary Public. The company shall obtain the Federal Taxpayer Registry directly from the Tax Administration Service and culminates with the register of the new corporation in the Public Registry of Commerce, which is mandatory. If there are foreign partners, there will be the obligation to register the company in the National Registry of Foreign Investments.

Public limited company (Sociedad Anónima – S.A.)

This company is considered by its popularity as the most common form of business incorporation in Mexico. Although its use covers a multitude of business services regardless of size and structure, one of its purposes is to provide flexibility to existing companies, facilitating the accumulation of capital, providing stability to the same through more rigorous regulations regarding its operation.

Incorporation

This company can be created with a minimum of two shareholders with no maximum number of members. If the number of shareholders later would be reduced to only one the company would have to be liquidated. Since 2011, it has been established that there is no minimum capital requirement for the creation of such a company, however by the constitution must be exhibited at least 20% of the value of each share payable in cash.
The shares shall be of equal value and confer equal rights, but it may be agreed in the articles of incorporation that a part of the shares shall have the right to vote only at extraordinary meetings.

For the registry of share ownership, the company must publish a notice in the electronic system established by the Ministry of Economy, at the request of any holder, of such transfers that are made, ensuring the confidentiality of the data provided.

Com
pany bodies

Shareholders Meeting

They are the supreme body of the company, which may approve and ratify all acts and operations of the company, and their resolutions shall be carried out by the person appointed by the company itself or, failing such appointment, by the administrator or by the board of administration.
They may convene ordinary or extraordinary assemblies, some of which must be held at the registered office of the company.
Ordinary meetings shall meet at least once a year, before April 30 of each year, and extraordinary meetings at any time.

Board of Administrators

They shall oversee one or more temporary and revocable agents, who may be shareholders or persons outside the company. If there are several of them, they shall constitute the so-called Board of Administration. The board of administration is responsible for the management and representation of the company.
They may appoint one or more general or special managers, whether they are shareholders, and may be revocable at any time. They may also be appointed by the shareholders' meeting. The Board of Administration may appoint a delegate from among its members for the execution of specific tasks.
Administrators shall continue to hold office, regardless of the expiry of the term of their appointment, until such time as new nominations are made, and they take up their duties.
Administrators maintain their obligations of confidentiality in respect of information and matters of which they become aware by reason of their position in the company, where such information is confidential,

exceptions being made. Said obligation shall be in force during their term of office and up to one year after the termination thereof (assuming de facto removal from office).

Managers

The managers shall have the powers expressly conferred on them for the execution of the activities instructed to them and shall enjoy, within the scope of the powers assigned to them, the broadest powers of representation and execution.
Within their respective faculties, they may confer powers of attorney on behalf of the company, which may be revoked at any time. The Board of Administrators can do it too.

Vigilance

This activity is carried out by one or more temporary and revocable Statutory Auditors (Commissaries), who may be shareholders or persons from outside the company, who have the right to be heard but not to vote at Shareholders' Meetings or at meetings of the Board of Directors.
They report irregularities to the General Meeting of Shareholders, demand monthly financial statements and results from the management, examine the company's operations and documents, submit an annual report to the General Meeting of Shareholders, and may convene ordinary and extraordinary meetings of shareholders in cases of omission.

Liability

The administrators and managers may be required to provide security for any liabilities they may incur in the conduct of their business.
The administrators are jointly and severally liable towards the company in general unless limits of liability are set in the statutes. An example is the failure to report irregularities in the company in writing to the relevant corporate body, but also the reality of the contributions made by the shareholders.
In principle, the administrators are liable if this is decided by a resolution of the general meeting of shareholders, which appoints the person who is to bring the corresponding action. Exceptionally, there is another option. Shareholders representing at least twenty-five per cent of the share capital may directly bring a civil liability action against the administrators, subject to the additional requirements of the law.
Auditors (Commissioners) are individually liable to the company for the fulfilment of the obligations imposed on them by law and the articles of incorporation. Their scope of liability does not lie jointly and severally like that of the directors in a broad range, but for acting with intent or fault, as established by law.

Register

A public limited company may be incorporated by the presence before a notary public of the persons who execute the relevant public deed or policy, or by public subscription, *the latter being excluded* from an S. de R.L.
The founders also need the authorization of the corporate name and registration through the Ministry for Economics. The draw up of the articles requires the approval of the board of directors or shareholders. The company shall obtain the Federal Taxpayer Registry directly from the Secretary of Tax Administration which must be registered in the Public Registry of Commerce.

Public limited company- investment promoter (Sociedad Anónima Promotora de Inversión – S.A.P.I.)

This corporation is a form of the Public limited company created in 2006, known because they can impose restrictions of any nature on the transfer of their ownership of rights, with respect to their shares. This company was designed to facilitate a transition to the stock market and to be listed on the stock exchange under a different name, which is not a prerequisite.
It is also used in practice to joint ventures and private equity investments, for example for all new entrepreneurs and start-ups. Its functionality lies in the fact that it offers an extremely simple implementation to differentiate the rights that partners have among themselves, as well as protection mechanisms for

investors and minority partners, which in certain instances, traditional systems such as the S.A. and the S. de R.L. do not offer. This type of company is regulated primarily by the Securities Market Law, and exceptionally by the General Law on Commercial Companies, the
LGSM.

Incorporation

At least two members are required for a company to be incorporated, with no maximum limit. There are also no minimum or maximum share capital limitations.
They can be constituted in this form from the beginning or adopt this modality at a later point in time. In the second case, due to the significance of the changes that such a denomination implies, the agreement of the extraordinary general meeting is required.
The name of the company must be supplemented by the words "Promotora de Inversión" or its abbreviation "P.I.".

Particularities of the shares

This type of public limited company, in addition to its normal attributions, may impose restrictions of any nature on the transfer of ownership or rights in respect of shares of the same series or class representing the share capital, excluding some of the ordinary functions of the board of directors.

They may also establish grounds for exclusion of shareholders or for exercising rights of separation, withdrawal, or amortisation of shares, as well as the price or the basis for its calculation.

Regarding the issuing of shares, there is a wide scope for the shares not to confer voting rights or to be restricted in certain matters (which in principle only happens in the extraordinary shareholders' meetings of the traditional S.A.), and even to grant non-financial corporate rights other than voting rights. There may also be the extension or limitation of the distribution of profits and other economic rights considered special (which is prohibited in the traditional S.A., at least in the matter of limitations).
Regarding the right of veto, they can be conferred through directly issued shares or by establishing as a requirement the favourable vote of one or more shareholders, with respect to the resolutions of the general meeting of shareholders.
The possibility is open for the implementation of mechanisms in case shareholders do not reach agreements on important issues for the company.
Finally, preferential subscription rights to which shareholders are entitled may be extended, limited, or denied, and instruments other than the publication in the electronic system of the Ministry of Economy may be used.

These companies are not obliged to publish their financial statements in the electronic system established by the Ministry of Economy, as is the case with the traditional form of the S.A.

A notable difference with respect to the traditional S.A. is that the S.A.P.I., with the prior agreement of the board of directors, *may acquire the shares representing its share capital* (which is permitted for the S.A. only in the case of a judicial adjudication for the payment of the company's own credits, which must be sold within three months from the legal disposition of the same, under penalty of extinction of the shares and consequent reduction of the capital).
The acquisition of its own shares may be carried out with a charge to its shareholders' equity, which means that it may hold them without a reduction of the share capital, or with a charge to the shareholders' equity, as long it is resolved to cancel or convert them into unsubscribed issued shares which will be held by the treasury, the latter being subject to subscription by the shareholders in the case of fixed capital companies.
If the shares belong to the company, they may not be represented or voted at shareholders' meetings of any kind, nor exercise any corporate or economic rights whatsoever, as in the traditional S.A.

Company bodies

Shareholders' Meeting

Shareholders may appoint and remove at a general shareholders' meeting one member of the board of directors for each ten percent they hold individually or in aggregate of the voting shares, including limited or restricted voting shares (the percentage for the traditional S.A. is 25%).
A mechanism is also established to ensure that persons who are replaced from the board of directors cannot sit on the board for at least 12 months following their removal. They may appoint a commissioner for the same percentage (if they do not constitute a public limited stock exchange company, where there is no such commissioner).
They may also request the chairman of the board of directors or any commissioner to hold such a meeting with at least the percentage of 10% (unlike the traditional S.A. which requires at least 33% of the shareholders representing such share capital).

Board of Directors and Supervisory Board (Commissioners)

As regards its organisational regime, functions, and responsibilities, it shall be governed by the provisions established for the traditional S.A., with the only requirement being the independence of the directors that comprise it, as well as the appointment of commissioners in relation to the percentages.

Liability

The issuance of shares may limit liability for damages caused by acts or decisions taken by "relevant" directors and officers. However, the shareholders may bring a civil liability action against the directors and the statutory commissioners (the latter having a more limited liability parameter) for the benefit of the company, even without the need for a resolution of the general meeting of shareholders, when they individually or jointly hold fifteen percent or more of the voting shares, even if limited or restricted or without voting rights (25% is required in the traditional S.A.).

Simplified join-stock company (Sociedad por Acciones Simplificada -SAS)

This type of corporation was created in 2016, promoting a quick way to avoid bureaucracy, in which the partners are only obligated to pay their contributions represented by their shares. This society is gaining more and more presence in Latin America, although it exists mainly in European countries. They are subject to the provisions applicable to the S.A., except for the following points:

Incorporation

It is created by one or more individuals who are obliged to pay their contributions and who each have an advanced electronic signature. A public deed or policy is not necessary for its constitution. There is no minimum amount for its constitution, but it must not exceed 5 million Mexican pesos per year (approx. 206,617.50 Euros), and therefore the transformation into another social regime, having as a sanction for its omission that the shareholders will be jointly and severally liable, and unlimitedly before third parties.
Likewise, it is the only corporation that only requires one shareholder to be incorporated, under the Mexican law. The corporate name must be accompanied by the words "Sociedad por Acciones Simplificada" or its abbreviation "S.A.S.". Any shares subscribed for must be paid up within one year of their registration.
In relation to the net profits of the S.A.S., unlike other companies, a minimum of five percent must not be set aside annually to form the reserve fund.

Company bodies

Shareholders Meeting

Also considered as the supreme body of the company, it carries out its resolutions by majority vote, including amendments to its statutes. Each shareholder has a voice and votes, of equal value and equal rights. There is a concrete indication to privilege alternative dispute resolution mechanisms in the Mexican Commercial Code.

Board of Administrators

The administrator (also in plural) must be exclusively a shareholder, who represents the company. They have the capacity to conclude acts and contracts in accordance with the objects of the corporation or in connection with the operation of the partnership, publishing annual reports on the financial situation. Failure of the administrator to submit a financial statement for two consecutive years may result in the dissolution of the company.

Liability

Shareholders shall be subsidiarily or jointly and severally liable for the commission of conduct punishable as a criminal offence.

Register

This is conducted digitally before the Ministry of Economy, through the generation of the social contract and the electronic signature of the shareholder or each of the shareholders, among other requirements similar to the S.A.

Prohibitions

Shareholders who are administrators or who have control of the company in accordance with the regulations governing S.A.P.I. cannot simultaneously be participants in this corporation.

Conclusion

Mexican legislation tries to be at the vanguard of the needs of foreign and national entrepreneurs, establishing clear rules and adapting to the needs of both large corporations and small and medium-sized enterprises.
The S. de R.L. offers an encouraging prospect for entrepreneurs who prioritise limiting the responsibility of the participants, offering flexibility so that vigilance is not an inconvenience or a barrier to the activities of the company, facilitating the importation or exportation of products.

The S.A. has the same purpose but a different focus, as it encourages investment in the company, thus implying certain risks that can be assumed by the members of the corporation and at the same time requires greater control and vigilance.

Its variant, the S.A.P.I. is one of the most modern forms focused on certain types of companies that need immediate liquidity and a wide margin of manoeuvre through the subscription of their shares, with the focus being on better business operations, providing the opportunity for them to move to the stock market without major inconveniences.

Finally, the novelty in Latin American countries is the S.A.S., which focuses on integrating businesses into formality, eliminating bureaucratic barriers to its creation, accelerating its formation, emphasising the digitalisation of certain processes so that the same companies can eventually move, when they have reached the maximum amount allowed in the share capital, to other corporate models that allow their growth in competitiveness, operability, and functionality. Simplified join-stock companies, although they seem to be attractive, are not used for business in Mexico because the legal framework has not been adjusted to them and therefore, the recommendation will always be an SA or S. de R.L.

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