

[Doing business in Mexico](#)

Jump to section

[Introduction](#) | [The Business environment](#) | [Forming a company](#) | [Financing a company](#) | [Opening a bank account](#) | [Utilising office space](#) | [Immigration controls](#) | [Key employment laws](#) | [Contracting with third parties](#) | [Taxation overview](#) | [Regulatory compliance](#) | [Protecting key assets](#) | [Useful links](#)

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Introduction

The growth Mexico offers from a business, cultural and social perspective is in constant evolution as well as the legal framework and opportunities for business consolidation and continued growth. Ingredients such as sustained economic growth, demographic mix, structural reforms in key industries and Mexico's long standing legal tradition give Mexico the opportunity to be a desired jurisdiction to do business. Mexico offers many grants and incentives to encourage business development. Foreign owned companies are eligible for the same incentives as Mexican owned companies. Incentives are focused on promoting employment, technological research and development, construction, and the growth of small and medium-sized enterprises (SMEs).

The Business environment

Nowadays Mexico has a broad free trade agreement network that includes North America, Europe, Japan, the Transpacific Partnership and throughout Latin America, allowing for an attractive international trade platform between countries with substantially reduced tariff and non-tariff requirements. There have been strong government efforts to reduce inflation in order to place Mexico on a level that is comparable to the top economies in the world.

Likewise, Mexico is party to more than 60 international treaties to avoid double taxation with countries all across the world.

Mexico's strategic geographic location and work force capabilities have, for the past decades, allowed Mexico to consolidate and to be placed as an ideal jurisdiction for near shoring operations to service the world's markets resulting in increased economic and industrial activity across the country.

Private investment is dominant in the banking, manufacturing, construction and hospitality industries as well as in wholesale and retail trade operations.

Forming a company

When thinking of doing business in Mexico, the first set of questions that come to mind is whether there is a need to form a Mexican company, and the requirements and implications of this. Foreign companies incorporated under laws of other jurisdictions may have legal status in Mexico. The formal registration of foreign companies in Mexico as opposed to the incorporation of a local company has certain advantages but also disadvantages that require detailed analysis. An alternative method to allow companies to undertake commercial activities in Mexico is for the company to establish an agency, branch, or representation in Mexico. Foreign companies may proceed to choose one or both of the following options in order to undertake commercial activities in Mexico:

Doing business in Mexico

- establish an agency, representation or branch in Mexico
- incorporate a new Mexican company

Establish an agency, representation or branch in Mexico

An agency, representation or branch is not a separate legal entity but an extension of a foreign company. Such foreign company will be responsible for its liabilities. Agencies, representations or branches are taxed as Mexican companies, and this requires for the tax implications to be carefully reviewed.

Pursuant to our Code of Commerce (*Código de Comercio*), General Company's Law (*Ley General de Sociedades Mercantiles*) and Foreign Investment Law (*Ley de Inversión Extranjera*), (all together the 'Legal Framework') to establish a presence through an agency, representation or branch in Mexico, the following requirements and procedure must be complied with:

- foreign companies must register in the Public Registry of Commerce ('Company Registry'). In order to do so, it is necessary to obtain an authorisation from the Ministry of Economy (Secretaría de Economía by its initials in Spanish 'SE'). The authorisation will be issued if the company complies with all of the following requirements:
 - an application must be submitted to the SE, whether it is online or in person. The application shall be filed in original and two copies, with the applicant's general information and the purpose of establishing such an agency, branch or representation in Mexico
 - the company must submit sufficient evidence of incorporation to prove it duly incorporated in accordance with the law of its country. Such proof must be notarised and legalised either by apostille or by the Mexican consular or diplomatic authority in such country
 - the foreign company must submit an authentic copy of its by-laws or articles of incorporation, and any amendments thereof, and the documents in which evidence of authority or power of attorney is provided to the legal representatives. If the documents are written in a foreign language, they must be exhibited with a certified translation to Spanish made by an official translator authorised in Mexico, such translation must be notarised
 - payment of the corresponding governmental fees
 - upon submission of all these requirements, the authorisation shall be granted within the following 15 business days. If the application has not been approved within this period, it will be deemed as approved
- once the authorisation is obtained from SE, it will be necessary to register the company with the Company's Registry. It is until that moment, that the agency, representation or branch will be able to commence its commercial activities in Mexico

However, if the foreign company is from one of the following countries, no authorisation from the SE is required:

- United States
- Canada
- Chile
- Costa Rica
- Colombia
- Nicaragua
- El Salvador

Doing business in Mexico

- Guatemala
- Honduras
- Uruguay
- Japón
- Perú
- Panama
- Australia
- New Zealand
- Singapore
- Vietnam
- companies incorporated under the laws of a country member of the World Trade Organisation

In such cases, the foreign company must evidence to SE that it has been incorporated under the laws of their country, and that their legal representatives have sufficient authority to establish a branch in Mexico, in order for the company to file and obtain a tax I.D. and designate a tax address for its branch.

Notwithstanding, it is always a good practice to seek legal advice as there can be adverse tax consequences for the foreign company opening a branch or a representative office in Mexico.

Incorporate a new Mexican company

The following steps must be complied with to incorporate or create a new Mexican company:

- it is necessary to choose the legal form the new company will have; the Mexican General Company's Law (the 'Company's Law') contemplates seven different forms of entities. The most common forms that are used in Mexico are: limited liability stock corporation (*Sociedad Anónima – S.A.*) that may have fixed or variable capital and the Limited Liability Company (*Sociedad de Responsabilidad Limitada – S.de. R.L.*). These entities are the most common vehicles for foreign investors, since they allow for limited liability of shareholders to the amount of the capital contributed to the vehicle so personal assets of the owner are not put in risk

Any company may adopt the variable capital form and increase or reduce its paid in capital after incorporation without the need to amend its by-laws

- submit a company name application to the SE, with three different options for the new company's name, in the order of preference desired by the applicant. Such entity will search in its data base if there is no other company with a similar name, and if the proposed name is available, the SE will grant the authorisation to use such name for the new company. This authorisation must be used by the new company within the following 180 days; otherwise, the name application and search process must be done again
- Prepare and adopt the company's by-laws, which must contain the following information:
 - the company's purpose
 - the duration of the company
 - the new company's corporate address
 - the amount of the capital stock and the number of shares/equity interest in which the company's capital will be divided

Doing business in Mexico

- the number of shareholders - partners that the company will have (at least two shareholders - partners are required to incorporate either an S.A. or an S. de R.L., except for the S.A.S. - *Sociedad de Acciones Simplificadas* which can be incorporated by a single person) shareholders/partners may be Mexican or foreign entities
- shareholders/partners' information:
 - ▶ personal data (name, nationality, parent's nationality, date and place of birth, marital status and address)
 - ▶ official ID (passport, citizenship or voting card, etc)
 - ▶ percentage of participation in the company
 - ▶ in the case of individuals immigration status in Mexico

Last October 2023 an amendment was enacted in the Company's Law in which it is established that the partners meetings may be held by electronic means.

- if one of the partners is an entity, the following information will be required:
 - ▶ the original by-laws—articles of incorporation, and any amendments thereof duly registered with the Public Registry of Commerce
 - ▶ if it has foreign investment, evidence to prove registration at the National Register of Foreign Investments (see comments below)
 - ▶ power of attorney of its legal representative
 - ▶ -personal data and official ID of the representatives
 - ▶ entity's Tax I.D.
 - ▶ percentage of its participation
- management designation for the new Mexican company, appointing either a sole manager/director or a board of managers/directors, the names and charges of such manager(s), and the authorities to be granted to each of them
- specify the circumstances under which the company may be dissolved prematurely
- specify the procedures for carrying out the company's liquidation and the method under which the liquidator will be elected in case he has not been designated in advance
- the incorporation of a Mexican company must be made before a notary public (except for the SAS) and it requires the presence of the new company's partners or of their designated representatives
- after the incorporation has been made, the following must be complied: (i) obtain a Federal Taxpayers Registry (RFC), (ii) register the new company at the Public Registry of Commerce and (iii) within the next 40 business days, a notification of the New Mexican Company has to be sent to the Foreign Investment Registry by the public notary. Such foreign investment registration must be renewed every year

If the new company will have employees, a registration at the Mexican Social Security Institute (IMSS) will have to be made. Depending on the business activity to be developed by the company, multiple registrations apply, for example Export-Import Registry in case the activities are import and export

Financing a company

Even when a company may be financed by its partners or shareholders through capital contributions or shareholder's loans, the Mexican financial market offers many alternatives for funding via financial institutions such as banks, savings and loan associations, FinTechs, specialised banks and credit unions. There are other specialised institutions, such as leasing, finance and factoring companies as well as bank-non-banks. As other jurisdictions, private funding is available in all its categories: venture capital, private equity, incubators, crowd funding and others. Government funds and financing are also available with financial aid, tax incentives and sponsorship programs for SMEs involved in certain industries and sectors.

In order to, emphasize more on the subject, the most common types of legal financing for companies in Mexico:

- *Banking:* Banks are the most important suppliers of funds to businesses. Banks offer short, medium or long term loans. The rate of interest may be fixed or variable. In some cases, short term financing can be arranged as a bridge line of credit. As a condition to these loans, the companies are asked to provide certain requirements, such as: the execution of notes and formal loan agreements, personal guarantees and audited financial statements, mortgage over real estate owned and business assets.

Apart from these services banks can offer foreign investors one of the following options (materialised in financial agreements): (a) credit instalment; (b) leasing; and (c) factoring and invoice discounting.

The entities called *Sociedad Financiera de Objeto Multiple* (SOFOM) so-called bank-non-bank entities are devoted to providing financing through direct loans, microfinance, payroll discounted loans, financial leasing and factoring, and do not need to obtain authorisation from the Ministry of Finance to carry out business operations, however, they are not allowed to receive savings funds from the public, as these entities are not a banking institutions per se

- *Government:* the government offers finance and funding programs through the small company investment scheme which supports SMEs (for its initials in Spanish '*PYMES*'), through low-rate financing. To be eligible for these programs, the company must be incorporated in Mexico, have its taxable income in Mexico and carry a qualifying trade and purpose

Opening a bank account

Although banks in Mexico offer many types of accounts, the most common type of account that companies open is a 'checking account'. In order to open a checking account the company needs to submit to the bank the following documents:

- certificate of incorporation and by-laws
- evidence of the company's address (utility bill)
- official identification and power of attorney of those persons who will have sufficient authority to represent the company and sign on its behalf in order to open bank accounts and sign checks
- official identification of the company's majority shareholders with control
- evidence of address of the company's majority shareholders with control
- Federal Taxpayers Registry
- in case of Mexican entity, evidence of Public Registry of Commerce registration of the company
- in the case of foreign companies doing business in Mexico, a copy of the Ministry of Economics (Secretaría de Economía in Spanish) authorisation, if applicable

Doing business in Mexico

In certain cases, banks require that the company has operated at least one year from its incorporation.

Once the documentation is delivered to the bank personnel, a customer review process will begin in order to determine if the account can be opened to the company.

In most checking accounts you have to maintain a minimum monthly capital so, there will be no monthly payments and commissions for issued checks, but if the minimum monthly capital is below, then (depending on the minimum capital) a monthly payment will be imposed, and the issue of checks will only be free up to a certain amount.

Banks in Mexico are similar to other jurisdictions, therefore, it is necessary to comply with know-your-customer requirements and other information.

Utilising office space

Access to office space is made in two ways, either by acquiring or leasing the space. It is more common that new companies prefer leasing commercial real estate since they are uncertain how the business, they are operating is going to respond in the Mexican market. If the company has profits and is certain to keep on doing business, then acquiring an office space becomes a possibility.


In order to lease an office, the customary leasing agreement must be executed between a landlord and the tenant (that in this case will be the company). The general terms and conditions for customary commercial real estate leasing in Mexico are:

- the area to be leased will need to be negotiated and reviewed by both the landlord and the tenant
- the tenant will be obliged to pay a rent. The price is given per square meters on a monthly basis without including VAT, which is 16%
- usually the lease term is negotiated in accordance to the following: if the space to be leased is below 500 square meters, a three-year lease would be accepted. If the space to be leased is bigger than 500 square meters or above this measurement, normally a five-year agreement is executed. Annual leases are very hard to close
- it is common to use a real estate company to close the lease deal. If this happens, a commission is paid to the real estate company by the landlord and normally it is between 4 and 5% of the total amount of the lease agreement
- the agreement may include free rent months that can go between two to six months depending on the size and term of the lease
- early termination may be an option in the agreement, however, a penalty of three to six months of rent could be applied to the tenant if they choose to end the agreement
- normally, the date in which the payment of the leasing will start is after the free month period
- with respect to the parking space the tenant will have right to the following: one parking space for every 30 rentable square meters in new buildings or one every 50 or 70 square meters in older buildings. Some 10 or 20 % are individual and assigned spaces, the rest would be first come first served service either individual or in tandem
- the access to the parking space is commonly seven days per week, 24 hours per day, 365 days per year. Landlord shall provide this logistics to the tenant, and it may be different from one building to another
- tenant obligations: on 95% of the leases the tenant is responsible for improvements, the project and fit-out of the premises inside the building, maintaining the standards of quality of the building. In very few occasions the landlord is willing to finish out of the space

Doing business in Mexico

- an annual adjustment is made on the agreements. The rent is normally adjusted annually according to the Consumer Price Index of USA (US CPI)
- usually, when signing the lease agreement, a security deposit must be made by the tenant. The amount of two months of rent (normally without VAT) is paid to the landlord as a security deposit. This shall be returned no later than 60 days after termination of the lease agreement
- operating expenses: the tenant pays its proportionate share of the operating expenses. Such expenses are around US \$3,50 per rentable square meter. Annual increases are determined according to US CPI or based on a pro rata cost analysis. This cost can go up to US \$5 per square meter. US CPI is preferable, since it is more accurate. Sometimes, the landlord accepts that during the months of free rent the tenant do not pay this amount, or it can be negotiated to a smaller amount
- if agreed, the tenant may have the right to sublease, assign or transfer the premises to a related entity, subsidiary, parent or affiliate company, in any moment of the lease agreement, without requiring the landlord's approval. For sublease or assignment to any other company, the landlord's consent will be required (not to be unreasonably withheld)
- warranties in the agreement: the landlord expects agreements to be secured either with a corporate letter from the company's (tenant's) headquarters, a bond or in very specific cases a letter of credit from a commercial bank. If the tenant cannot give the landlord one of the described warranties, extra months of deposit can be provided

Immigration controls

Generally foreigners are not required to obtain a visa to visit Mexican territory if their visit is shorter than 180 days; however, there is a [list of countries](#)  whose citizens require a visa for entering Mexico. When entering the country, foreign visitors will receive from the immigration authority an FMM form (Multiple Migratory Form) which will credit their legal visit in Mexico and that will grant them with some rights such as:

- acquire fixed or variable assets
- participate as stockholders in Mexican companies
- do business or develop economic activities
- appear before any authority to solicit any permit, right, service or product in compliance with any applicable dispositions and/or laws

If the foreign visitor pretends to do paid activities in Mexico, they will need a previous authorisation issued by the National Migration Institute (INM). In order to obtain such authorisation from the Institute a labour offer must be made to the foreign visitor and the contracting company must be registered at the INM. Without such registration the contracting company will not be able to apply for the working permit for the foreign visitor they wish to employ.

Once the authorisation has been granted by the INM it is sent to the Mexican consulates around the world, so they can stamp a provisional visa on the employee's passport as a temporary resident with paid activities. When the employee arrives in Mexico, they will obtain a FMM form that will need to be exchanged within the next 30 days at the INM for the official card of temporary residence valid for one year. This card can be renewed up to four years depending on the labour offers in Mexico.

If the foreign person has lived in Mexico with the temporary resident card for five years, they will be able to apply for permanent residency which has an indefinite term. The change of such status takes approximately 35 to 40 business days, time in which the foreign visitor can apply for an 'in and out' permit, so they can travel if necessary.

Key employment laws

The Mexican Federal Labour Law (the 'Law') regulates employment relationships in Mexico. It applies to all employees within our country even if they are not Mexicans or if their employment agreement was executed abroad. This Law is considered to be a labour right's 'protector' in favour of employees.

The Law contemplates the possibility to establish 'collective relationships' between the employees and the employer.

Collective relationships

The Law does not establish as an obligation for employers to create a union within their facilities, however, Article 450 provide unions the power to summon by signature of collective contract those unions that correspond to the employer's corporate purpose.

Mexico is a member of the International Labour Organization, consequently it signed and ratified the Convention 87 and 98 regarding freedom of Association. As well in the USMCA chapter 23 annex 23-A it is established that Mexico shall adopt and maintain measures for the effective recognition of the rights of collective bargaining. Therefore, workers and unions have been provided with international measures that allows them to summon employers to the signature of a collective contracts.

In Mexico, the Law establishes that once the employer has been summoned by the union, before the conciliation board and *labour federal and local courts (the Board)* it must establish a date for the conciliation hearing for the prestrike period (before the date the union has established to go to strike). This hearing will allow the employer and the union to discuss and agree on the terms and conditions of the collective contracts that will be signed in order to avoid the strike.

In case the employer does not agree on the terms and conditions proposed by the union and is not willing to sign the collective contract, the union has the right to go to strike on the day and hour previously established. In Mexico, first, the strike begins, and the labour facilities are closed and secondly the employer will submit to the Board, in a term of 72 hours, a non-existent strike incident. The Board will then establish a date and hour for an hearing in order to determine if the strike is or not valid. The employees will have the option to determine if they are willing to go to strike, in case the majority are not in favour of a strike, the Board will order the suspension of the strike and the employees will be obliged to return to work.

As of May 2019, all employers had the obligation to enter into collective contracts, which need to be renewed every 4 years. Any employer who hires employees which are members of unions, shall be obliged to enter into collective contracts with the unions at their request. Unions must have previously obtained a Certificate issued by the Board to request the execution of the collective contract. Even if an employer does not sign a collective contract, there will always be a risk (right granted by the Law) that the employees summon for a strike, therefore, it is advisable that at least one collective contract is executed with the employees in order to protect a possible summon for a strike.

Also, as of May 2019, all unions had to legitimise any collective contract by filing them with the Board. Unions have to prove that a majority of employees are covered and have agreed to the collective contract. If a majority of employees does not agree with the contract and such contract is not legitimised, then the agreement will be terminated.

All collective contracts needed to be filed with the Board (as mentioned in the paragraph above) no later than July 31 2023, otherwise they will be terminated. For such purpose employers may expect for unions to initiate consultation process in order to make employees vote for collective contracts and legitimise such contracts. All consultation processes will have to comply with certain steps, and employers will have the following obligations: (i) facilitate the consultation process at all times, (ii) publish at the place of work the union's notice for the consultation process, and (iii) provide employees with copies of the collective contracts at least three business days before the voting date. If

Doing business in Mexico

employer does not cooperate with these obligations, employer will be subject to penalties, which will be determined depending on the violation.

It is important to clarify that the consultation processes are independent and different from the annual review of the collective contracts.

Hiring systems

The Law contemplates the following agreements for hiring employees: (i) determined term with training; (ii) determined term; (iii) undetermined term (which is the general rule as the Law has as a principle to protect the stability of employment for all employees), and (iv) temporary term.

The Law establishes that all employees (whatever kind of agreement is executed between them and the employer) must be warranted with certain benefits by the employer.

Benefits

The most important benefits provided by the Law the employer must grant each and every employee, are:

- profit sharing: as of the second year of operations, all employers are obliged to distribute among their employees an amount equal to 10% percent of the employer's pre-tax profit within 60 days after the employer is required to file its year-end income tax return. 50% of the amount is distributed in proportion to the number of days worked by each employee during each year and the rest is distributed according to the salaries of each employee. Some employees with managing jobs are not entitled to this sharing. The profit sharing is limited to whatever is higher: i) three months of the employee's salary; or ii) the average of the profit received during the last three years by employee.
- year-end bonus: all employers must pay employees a year-end bonus equal to at least 15 days of their salary. The bonus must be paid before 20 December of each year
- vacations: employees must have paid vacations. The days each employee can take as 'paid vacations' each year depends on the seniority of the employee. The vacation rate is at least 25% of the employee's salary. Employees with more than one year of service are entitled to 12 business days of paid vacation. This period is increased by two days of each subsequent year of service, up to 20 days. After the fifth year, minimum paid vacation is increased by two days every five years thereafter
- paid holidays: if an employee works on one of the following dates, the employer must pay the employee three times their regular daily salary: 1 January, 5 February, 21 March, 1 May, 16 September, 20 November 20, 25 December, and those days established by the Law
- training: all employers are obliged to provide adequate training to their employees. The employer's training program must be approved by labour authority
- housing contributions: different labour regulations and the Law require the employer to pay an amount equal to 5% of each employee's salary to the Federal Workers Housing Fund (INFONAVIT). Employers must deposit these contributions in a special account at a local bank. This way the INFONAVIT can distribute the contributions among each employee's housing account
- minimum salary: the Law establishes a minimum salary that must be paid to all employees in cash, without deductions or withholdings, on a weekly basis. The minimum salary is reviewed and set by the National Salary Commission
- overtime payment: an employee is required to work up to 48 hours a week without having to be paid for overtime. Regular hours of work may be distributed within the week as necessary as long as it is agreed in writing

Doing business in Mexico

- paid maternity leave: the employer must provide all its female employees with a full paid maternity leave of six weeks prior to the approximate due date and six weeks after the birth date. At the express request of the employee prior written authorization from the physician of the social security institution or, as the case may be, from the health service provided by the employer, taking into account the opinion of the employer and the nature of the work which the employee performs, up to four of the six weeks of rest prior to birth, can be transferred for after the same. In the event that the children were born with any type of disability or require hospital care, rest may be up to eight weeks after delivery, on presentation of a medical certificate. After this maternity leave period, employees may have their positions back, including any accrued rights
- social security: all employers must register their employees with the Mexican social Security Institute (IMSS). This registration relieves the employer from the following: work related risks, health and maternity insurance, disability pension and life insurance, retirement old age pension and age unemployment insurance, childcare and social benefits. These benefits are earned by contributions paid by both employers and employees. The IMSS takes full liability for providing these benefits and unless the employers have not complied with its registration and payment obligations, the employer is released for any liability for work-related accidents or illness. Any employer who fails to properly withhold and pay the corresponding social security contributions, who submits false information to the IMSS or who otherwise fails to fulfil its obligations under the Social Security Law, is subject to various penalties.

Mexican employers may not freely dismiss an employee without a cause. To dismiss an employee without any liability, the employer must be able to prove the cause of dismissal as a justified cause according to the fifteen provisions set forth in the Law. If the employer has not justified cause to dismiss the employee, then the employer must make the following payments to the dismissed employee: 3 months of salary; a seniority bonus equal to 12 days of salary per year of service; back salaries from the date of dismissal up to the date of payment, and accrued benefits.

If the employee ends the individual relationship with a justified cause, the employer is required to pay in addition, 20 days of salary for each year of services rendered. The payment of three months of salary and 20 days per each year must be calculated, considering an integrated salary.

Nevertheless, the Law provides the possibility that the labour relationship be terminated without liability to either party if: there is an agreement by both parties; there is death of the employee; or if there is a conclusion of a specific job.

On April 2021, a modification to the Federal Labour Law came into effect which prohibits outsourcing in Mexico. Now, a company cannot agree on subcontracting their own employees to work in the facilities of another company that has the same corporate purpose. This reform seeks to avoid bad outsourcing practices which directly affects employees' rights and benefits, forcing in certain cases companies to hire their own employees bounded by an employee agreement in compliance with the current legal framework to guarantee employees all rights and benefits established by law.

This reform specifies that when hiring services from a different company, such services shall not be related to the predominant economic activities of the person receiving the services, and the provider must be a registered contractor before a special registry known as "REPSE" for its initials in Spanish. Furthermore, the agreements for such services must be in writing with specific requirements.

On June 8, 2023, an official guideline was published which includes a new dynamic in the implementation of telework specifying that the workplace in telework must comply with safety and health regulations and requires employees to notify their employer before changing their workspace.

Additionally, on December 4, 2023, a decree was published amending and supplementing some provisions of the Federal Labour Law concerning occupational diseases in which 88 new diseases were added, recognizing for the first-time mental disorders such as stress, anxiety, depression, and insomnia as work-related illnesses. This amendment has introduced new obligations for employers, including updating the "Occupational Disease Registry", providing training and education, and applying precautionary measures among others.

Also on June 7, 2024, a decree was published amending and supplementing certain provisions of the General Law to Prevent, Punish, and Eradicate Crimes in the Area of Human Trafficking in which an addition to article 21 was made concerning work shifts that exceed the legally established limits as a form of labor exploitation.

Contracting with third parties

When contracting with third parties in Mexico, we need to distinguish between private parties and government entities. As it relates to private party contracting Mexican Civil and Commercial Law allow for freedom of will as contracting goes. In other words, the parties have the freedom to agree on the binding provisions deemed necessary with the exception of actions and/or conduct that are prohibited by law, go against general principles of law or acceptable customary conduct. Mexican law contains provisions regulating multiple agreements, including but not limited to promise to purchase and sale and purchase and sale agreements, lease, commercial barter, assignment of credits, insurance, loan and financing, transportation and pledge, trust, financial lease, factoring, credit instruments, deposit, donations, mandate and commission agreements services agreements, real estate guarantee, license and franchise agreement. Agreements that are not specifically regulated will be interpreted and enforced in accordance with the provisions of law that apply to such regulated agreement that are more similar to the non-regulated one. Most agreements have formalities attached to them from the simple formula or need for them to be in writing to some others that require them to be notarised and legalised by apostille, and some other filed before public registries to make them enforceable against third parties. Mexican law allows for the parties to select the applicable law that governs their contractual relationship and the choice of foreign law is not prohibited in private contracting.

As public and governmental entities are concerned, the principle that governs public contracting is that such entities cannot contract or perform any activities that are not specifically authorised for such entities. The rest is prohibited. Public contracting is regulated by the Public Acquisition Law and applicable rules, in which all public contracting and leasing of goods and services are subject to the following contracting alternatives, in each case with certain exceptions: public bid process; invitation to at least three vendors/suppliers and by direct award. As of 12 August 2020, the acquisition and contracting of goods and services associated with health are exempted of the enforceability of such Law, and in consequence, may be contracted or acquired by direct-acquisition with international entities, and not by public bid process.

Taxation overview

Resident taxpayers (companies or individuals) are subject to Mexican taxation on their corporate income. Federal Government provides equal treatment to domestic and foreign investors, refraining from imposing any specific discriminatory tax burdens. There are various tax incentives available, usually offered by the different states or local governments and tied to investment and direct job creation in specific jurisdictions.

Taxes are imposed on '*corporate income and gains*', as follows:

'*Corporate Income Tax*'. Corporations' resident in Mexico are taxable on their worldwide income from all sources, including profits from business and property. A non-resident corporation in Mexico is subject to profits tax on income earned from carrying on business in Mexico. Corporations are considered residents of Mexico if they are established under Mexican law or if their principal effective of management is located in Mexico.

Corporations are taxed in Mexico only by the Federal Government. Mexico has a general system for taxing corporate income, ensuring that all the corporation's earnings are taxed only once, in the fiscal year in which the profit is obtained.

The Income Tax Law recognises the effects of inflation on the following items and transactions:

- depreciation of fixed assets

Doing business in Mexico

- cost on sales of fixed assets
- alienation of shares
- Foreign exchange (FX) gains and losses
- tax losses carry forwards

Investment in capital stock may be indexed at the time of capital stock reductions or liquidation. Taxes are also indexed for inflation in certain circumstances.

Tax Rate: Corporations are subject to federal corporate income tax at a rate of 30%.

Capital Gains: Mexican tax law treats capital gains as normal income and taxes them at regular corporate tax rates. However, to determine the deductible basis for sales of real estate, fixed assets and shares, the law allows for indexation of the original cost for inflation.

Administration: The tax period always ends on 31 December and cannot exceed 12 months. The tax return must be filed by the end of the third month following the tax year-end. Nevertheless, the tax authorities tend to grant extensions. Monthly tax instalments must be paid during the corporation's tax year. Also, companies are required to do an annual income tax return for each calendar year no later than 31 March of the following year and to pay the determined balance right after the submission of the annual return before the tax authorities through their website. A new organised company must file its first return for the period ending on December 31 of the year of incorporation.

Dividends: Dividends received by resident and non-resident share-holders from a Mexican corporation are not subject to corporate income tax if the earnings were already subject to corporate income tax and if the distributing corporation has sufficient accumulation in its 'net tax profit account' (CUFIN) to cover the dividend. If the accumulated amount is not sufficient, the dividends are taxed at the corporate level at a rate of 30%. Notwithstanding a 10% rate applies to dividends in addition to the corporate income tax. The following is an illustration of how to compute the net tax profit for the CUFIN account.

	MXN
Corporate taxable income	1,000
Income tax (30%)	(300)
Non-deductible profit sharing to employees (estimated)	(150)
Non-deductible expenses	(50)_____
Net tax profit (not subject to corporate Income tax on distribution)	500=====

Income tax paid on distributed profits may be credited against corporate income tax in the following three years.

Similar rules apply to remittances abroad by branches of foreign corporations.

Determination of Trading Income:

General. Taxable profits are computed in accordance with generally accepted accounting principles, with the following exceptions:

- non-deductibility of penalties and unauthorised donations
- non-deductibility of increases to reserves for bad debts, obsolescence, contingencies, indemnities and similar concepts
- monetary gain on debts, and monetary loss on credits, to recognise the inflation effects

Doing business in Mexico

Employee profit-sharing (see Section D) is effectively deductible.

Inventories: Instead of deducting the normal cost of sales, inventory purchases, labour costs and overhead expenses are deductible each fiscal year. However, beginning in 2005, the cost of goods sold (COGS) are deductible instead of inventory purchases. Complex rules apply with respect to this measure.

Depreciation: The straight-line method is used to depreciate tangible fixed assets and to amortise intangible assets. Depreciation must be computed using the annual percentages set by law. The depreciation of new assets must be computed on a proportional basis relating to the months in which the assets are used. Depreciation is computed on original cost of fixed assets, with the amount of depreciation indexed for the inflation as measured by price indices.

The following are the maximum annual depreciation rates for certain types of assets.

Asset	Rate (%)
Buildings	5
Motor vehicles	25
Office equipment	10
Computers	
Mainframe equipment	30
Peripheral equipment	30
Plant machinery	10
Environmental machinery and equipment	100

Companies may elect to claim an immediate deduction equal to a percentage of their original investments in assets rather than calculate depreciation based on the useful lives of assets. However, this option is not available for certain assets and in certain geographical areas.

Relief for losses: Business losses may be carried forward for up to ten years.

Group of companies: A Mexican holding company has the option of filing a consolidated annual return including the tax results of its Mexican subsidiaries. This option is subject to several rules and limitations.

Other Significant Taxes: The following table summarises other significant taxes.

Nature of tax	Rate (%)
Value-added tax, on any supply of goods or	
Services, excluding exports, and on imports	
General rate	16
Border regions	8
Certain foods and medicines	0
Real estate acquisition tax; local tax on market value of real estate transferred (approximate rates)	1 to 5
State tax on salaries	0.5 to 3

Doing business in Mexico

Residence tax, on each employee's salary (approximate rate)	5
Employee profit, sharing, on taxable profits excluding the effect of inflation (loss carry forwards may not be deducted)	10
Social security contributions, on salaries up to a specified amount: paid by	
Employer (approximate rate)	7.58
Employee (approximate rate)	1.654
Taxes on Dividends	10

Digital Platforms

Since 2020, Mexico, as signatory of the Inclusive Framework, had to incorporate in its local legislation the OECD guidelines to regulate digital platforms (for foreign residents with no permanent establishment), and it did so through Article 18-D, section III of the Mexican Value Added Tax Law, which consist of providing the Tax Administration Service (SAT) with the number of services or transactions executed in every calendar month with recipients located within the national territory, classified per type of service or transactions and their price, as well as the number of recipients, and to keep the records that are the basis of the information so presented. Such information shall be submitted by filing electronic returns no later than the 17th day of the next month.

For such purposes, the foreign company must designate a local address for VAT purposes and appoint a legal representative, grant a power of attorney overseas, have it apostilled or formalised at the corresponding embassy or consulate. Furthermore, once in Mexico, a local public notary must certify such power of attorney, then register it at the National Public Record, and translate all documents to Spanish language by a certified translator. Finally, after all the previous steps are completed, the company must schedule a physical appointment to obtain the Federal Taxpayers Registry and electronic keys (FIEL, CIECC and password).

Miscellaneous matters

Foreign-Exchange Controls: Mexico has no foreign-exchange controls.

Transfer Pricing: Mexico has transfer-pricing rules. Acceptable transfer-pricing methods include the comparable uncontrolled price method, the resale price method, the cost-plus method, the profit-split method, the residual profit-split method and the transactional net-margin method. In certain cases, specific appraisals are used. Transactions between related parties are subject to greater scrutiny. It may be possible to reach transfer-pricing agreements in advance with the tax authorities. These agreements may apply for a period of up to five years

Debt-to-equity Rules: Interest deductions may be disallowed if the debt-to-equity ratio exceeds three to one.

Tax authorities impose sanctions and fines if entities do not pay taxes on due time. In certain cases, if taxes are not paid, imprisonment can be imposed if evasion or fraud is proved.

Elimination of Universal Compensation:

Commencing in 2024 in accordance with the Transitional provisions of the Miscellaneous Fiscal Resolution (MFR) for 2024, the universal compensation for favorable tax balances which is generated before 2018 will be discontinued. This amendment, which removes rule 2.3.10 from the MFR 2023, directly impacts businesses that could have used these credits against future tax liabilities. Taxpayers had until January 17th, 2024, to apply the universal compensation under the previous conditions.

e-Signature Renewal:

Rule 2.2.20 of the MFR for 2024 continues to allow corporate entities to renew their e-signature certificates, thus facilitating the continuity of electronic processes. This is particularly relevant for entities whose legal representatives remain unchanged and possess an active e-signature certificate.

Carta Porte – Electronic payment receipts (REP):

A new obligation is introduced for businesses involved in the transportation of goods to issue an electronic invoice (CFDI) with a Carta Porte complement (Electronic Payment Receipt). Detailed in the Transitional provisions of the MFR 2024, this regulation mandates the use of version 3.0 of the complement which started on April 1st, 2024, marking a significant shift in the fiscal documentation for goods transportation.

Procedure to Refute Undue Transmission of Tax Losses:

The MFR 2024 outlines the procedure for refuting accusations of undue transmission of tax losses through procedural sheet 276/CFF. This procedure provides businesses with formal means to counter such assumptions, bringing transparency and fairness to the fiscal proceedings.

Tax Mailbox (Buzón Tributario):

To enhance tax communications and notifications, the MFR 2024 extends the use of the tax mailbox to various fiscal authorities and establishes substantial penalties for those failing to register or update their contact means by January 31st, 2024, as stipulated.

Modifications in Fines and Surcharges:

The rules on fine reductions and the application of surcharge rates for extensions have been adjusted to benefit businesses subjected to multiple fiscal verifications, as specified in Article 70-A of the Federal Fiscal Code (CFF).

Regulatory compliance

The regulation of the company depends on the type of business it is running. Such regulation is distributed among many authorities. The most important are mentioned below:

Economic competition commission

The antitrust law prohibits monopolies, monopolistic activities and unlawful business concentrations. This commission is in charge of preventing activities such as price-fixing, selective distribution, anticompetitive concerted practices and the elimination of competition. Severe penalties are imposed on violations by the Commission. Its mission is to protect the process of competition and market access by eliminating monopolies, monopolistic practices and other restrictions on the efficient functioning markets.

Ministry of Health

The Ministry of Health governs those businesses which operate pharmaceutical products, as well as the food industry. Depending on the product an authorisation must be obtained for its production and sale in our country. For pharmaceutical products an authorisation for production and sale must be obtained from the Ministry, and maximum selling prices must be approved by the Ministry of the Economy.

The life sciences and health sectors in Mexico lately have been very active and dynamic. The Ministry of Health is putting in place different practices and policies aimed to expedite the access to medicines. Moreover, public bidding mechanics and systems such as the United Nations Office for Project Services (UNOPS) are being used by with the

public health institutions to acquire the corresponding pharmaceutical products. A recent reform act resulted in an amendment last May 2021 of the Health Law Regulations. In summary, amendments include improving the analysis and resolution of various processes followed before the Mexican Health Protection Risk Agency, by its initials in Spanish COFEPRIS as part of the Health Ministry. Thus, the rules and practices implemented by this new administration are more and more clear and even attractive to new competitors, which can result in new business opportunities in Mexico.

Consumers protection

All foreign and local businesses that manufacture, distribute or sell goods or render services—by any known media—within Mexico are subject to the Federal Consumer Protection Law. The law's objective is to provide consumers with adequate protection against merchants and service providers that do not comply with the minimum standards or specifications for products and /or services and their advertising to consumers. This authority is empowered to impose sanctions and use other injunctive reliefs to protect consumers.

Imports

The Ministry of the Economy requires import businesses re-label products with the relevant information (description of the product, importer's name and address, warnings, instructions for use and storage, and expiration date if applicable) in Spanish. Additionally, all imported merchandise must comply with sanitation and safety standards. Additionally, depending on the product, they must comply with the requirements contained in the Mexican Official Guidelines (NOMS). Also, some products are subject to regulations by the Environment and Natural Resources Ministry.

Foreign investment

Mexican companies are permitted to have foreign investment, which the Government has a favourable attitude towards. The Government's attitude is to encourage such investment, especially when new skills or manufacturing techniques are introduced to our country. Foreign investment is restricted in certain areas, particularly activities within the petroleum and electricity industries. Co-operative companies may be used for business and are subject to special regulations.

In prior years ago foreign investment law imposed performance commitments, including requirements to maintain a positive balance of payments, but these requirements no longer apply. The law in force specifies which activities are reserved or restricted and, the maximum percentage of foreign investment allowed. It also specifies those activities that require a prior authorisation from the foreign investment commission to increase foreign participation above the levels approved. Companies with foreign investment have the obligation to register with the National Investment Registry, regardless of the foreign percentage, and to submit Quarterly and Annual Reports, as the case may be.

Data protection

All individuals or entities in the private sector that are involved in the processing of personal data, are subject to and governed by the *Ley Federal de Protección de Datos Personales en Posesión de los Particulares* (the 'Data Protection Law'). The law applies to the processing of personal data collected on physical or electronic media which makes it possible to access such data, regardless of the form or method of its creation, type of media, or the method of processing, storage or organisation.

The individual or entity that collects personal data will be considered as the responsible party before the Data Protection Law, and will have to ensure that such data is duly protected by the following principles: legality, consent, notice, quality, purpose, fidelity, proportionality and accountability.

The individual or entity responsible for collecting personal data will be obliged to make available to the data's owner a privacy notice by which they obtain the consent for the treatment of their data. The type of consent to be required from the data's owner depends on the type of data to be collected (ie sensitive personal data necessarily requires an autograph signature from its owner). There are some exceptions contemplated by law for obtaining the owner's

Doing business in Mexico

consent, such as: (i) if data is required for essential medical attention, (ii) if data is contained in publicly available sources, and (iii) for fulfilling obligations under a legal relationship; among others.

The Data Protection Law enables data subjects to exercise their right to access, rectify, cancel and oppose (the so-called 'ARCO rights') at any time.

If the individuals or entities responsible for collecting and treating personal data violate their obligations imposed by the Data Protection Law, they may be subject to fines (that may go from US\$ 350 to US\$ 1.12m) or to criminal sanctions (such as three months to three years in prison to whomever causes a security breach to data bases under their care in order to seek profits). If sensitive personal data is involved, fines and criminal sanctions may be doubled.

Protecting key assets












A company has many assets that need to be protected. One of the most important assets is their intellectual property.

Intellectual property




Intellectual property is regulated by the Industrial Property Protection Law and Copyright Law which regulates among other things patents, trademarks, industrial designs, licenses slogans, franchises, etc. Companies must register with the Industrial Property Mexican Institute (IMPI) to enjoy Intellectual Property protection. This is necessary in order to ensure their enforceability against third parties. Intellectual property assets that can be protected in Mexico are:

- patents: In general patents are issued for a term of 20 years, considering that the legal date of the patent will be the date on which the application was filed
- trademarks: under the law, trademarks may be registered for a period of ten years, renewable every ten years. A proof of actual use of a trademark within at least three years after it was registered must be furnished to IMPI, or the registration will be considered to have elapsed
- copyright protection: to protects authors or owners of exclusive rights of software programs, videos, books or other intellectual or artistic properties, registration of such properties might be done in Mexico at the National Copyright Institute (INDA). The duration of the copyright lasts during the life of the author and one hundred years after their death. Unauthorised use of works can be prosecuted via criminal, civil and administrative legal procedures

Useful links

- [Mexican Department of Economy: Foreign Direct Investment](#) 
- [National Registry of Foreign Investments: Who are we?](#) 
- [Government of Mexico: Cycle of your company](#) 
- [National Institute of Migration](#) 
- [Dominio de las ciencias: Characterisation of SMEs](#) 
- [National Entrepreneur Fund](#) 
- [Government of Mexico: Press](#) 
- [Ministry of Finance and Public Credit](#) 
- [Tax Administration Service](#) 
- [Office of the Federal Prosecutor for the Consumer](#) 
- [Secretariat of Health](#) 

Doing business in Mexico

- [Mexican Institute of Industrial Property](#) 
 - [National Institute of Transparency, Access to Information and Protection of Personal Data \(INAI\)](#) 
 - [Federal Economic Competition Commission](#) 
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