

SETTING UP A COMPANY IN MEXICO

The following paragraphs contain a general overview of the most common types of companies in Mexico, as well as the process necessary for their incorporation.

1. TYPES OF CORPORATION

There are many types of corporations in Mexico. However, the most common types are the Sociedad Anónima de Capital Variable or S.A. de C.V. (Joint Stock Company), the Sociedad Anónima Promotora de Inversión de Capital Variable or S.A.P.I. de C.V. (Investment Promotion Joint Stock Company), the Sociedad de Responsabilidad Limitada de Capital Variable or S.R.L. de C.V. (Limited Liability Company), and more recently, the Sociedad por Acciones Simplificada, or S.A.S. (Simplified Joint Stock Company).

The S.A. de C.V., is a negotiable stock corporation of two or more partners, whose liability is limited to the capital that is contributed. The S.A.P.I. de C.V. is also a negotiable stock corporation which allows for a more flexible shareholding organization (usually, but not exclusively, used for listed companies at the stock market). The S.R.L. de C.V. is a non-negotiable stock limited liability corporation of two or more partners, whose liability is also limited to the capital that is contributed to the company. The S.A.S. is a negotiable stock corporation composed of at least one partner, whose liability is also limited to the contributed capital. This corporate form, however, is only available to companies which annual income does not surpass a \$5,000,000 pesos threshold.

The most common corporate form used in Mexico, by far, is the S.A. de C.V. This is so due to the flexibility allowed by the possibility of negotiating and transferring its stock, and to the absence of any limit to the income that it might generate.

2. BRANCH VS. SUBSIDIARY

The practical advantages of operating in Mexico with a branch, and not with a Mexican subsidiary, would derive from the possibility to save the costs associated with setting up a Mexican legal entity. This might be convenient, when the presence in Mexico will not be long, and when the business model allows to operate the activities in Mexico as part of a single unit integrated with the one already existing in a different country, for accounting purposes.

However, if that is not the case, a subsidiary would render greater advantages when operating in Mexico. Among the greater advantages derived from setting up a subsidiary, we can mention the following:

- a. Greater ease to comply with Mexican tax obligations. Importantly, setting up a subsidiary greatly diminishes the burdens associated with the attribution of profits to a Mexican permanent establishment;
- b. Greater ease when contracting with Mexican private counterparties. Even though it is possible to deduct payments made to foreign counterparties, most private contractors will require Mexican-issued invoices, which are more easily deductible;
- c. Greater ease when contracting with the government, which most of the time requires contractors to establish a legal presence in Mexico;
- d. Greater ease when complying with federal and local regulations;
- e. Greater ease when opening bank accounts; and
- f. More control over the attribution of profits and expenses to the Mexican operations, for financial purposes.

3. TIMES AND PROCEDURES

An S.A. de C.V., S.A.P.I. de C.V. or S. de R.L. de C.V., needs to be established before a notary public. The company can be setup with two weeks, from the time in which we provide the notary with all necessary documents. The documents needed are those related to the legal existence of the shareholders and their legal representatives. We can provide a list of the documents upon request.

After setting up the company, we need to register it before the Sistema de Administración Tributaria or SAT (the Tax Administration System). This process can take a couple of days or as much as three weeks, depending on the SAT's availability of appointments.

After having obtained the tax registration number, we can open the company's bank accounts. This process takes around one week, which is the time needed by the banks to analyze the company's by-laws.

It is important to notice that a Mexican subsidiary needs to start complying with Mexican tax laws since the moment it is established. However, before the company starts have income and expenses, the economic burden of complying with tax laws is not significant.

The firm looks forward to discussing further the details of the above-mentioned.

Sincerely,

RUSCONI & SAUZA, S.C.