



# DOING BUSINESS *IN MEXICO*

2020

**VTZ**

VAZQUEZ TERCERO & ZEPEDA  
ABOGADOS



# CREATING A COMPANY INTRODUCTION

As a result of Mexico's Trade and Investment Promotion Agency -PROMEXICO– extinguishment, **Vázquez Tercero & Zepeda (VTZ)** seeks to fill that void and promote Mexico as a business destination.

This is why **VTZ** has developed the guide **Doing Business in Mexico 2020**, which is divided into the following seven chapters:

1. *Why Invest in Mexico?*
2. *Foreign Investment.*
3. *International Trade Policy.*
4. *Trade Policy for the Manufacturing Industry.*
5. *Creating a Company in Mexico.*
6. *Taxation.*
7. *Labor & Migration.*

In line with our values, our chapters seek to provide relevant business and legal information in a practical and concise manner. This chapter, *Creating a Company in Mexico*, will provide a general overview on the process to incorporate a company as well as information on company types in Mexico, including some tax-related comments. Furthermore, other business legal structures are explained.

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# CREATING A COMPANY IN MEXICO

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## 5. Creating a Company in Mexico

In recent years, Mexico has changed its Company Law to facilitate the creation of a company. As a result, Mexico relaxed requirements, reduced the days as well as the number of procedures to start a business, and, thus, has improved its *Starting a Business* indicator of the World Bank's *Doing Business 2020*.<sup>1</sup> According to this study, 8 steps are necessary to create a company in Mexico, *but* under the assumption that only Mexicans are involved. A company with foreign capital is subject to additional steps as noted below.

Before reading this chapter, we strongly suggest reviewing our **Foreign Investment Chapter** because Mexico prohibits or restricts foreign capital in certain activities or economic sectors. Needless to say, most economic sectors are not subject to foreign investment controls and, thus, we will focus on the “all other” activities or economic sectors that do not have foreign investment restrictions.

We will first outline the steps that a foreign investor must take to incorporate a company or opening a business. Then, we will provide a general picture of the type of companies as well as other business structures suitable for foreign investors.

### 5.1 The Steps to Create A Company in Mexico

The steps to create a *traditional* company do not vary as to the type of company, such as a stock company or limited liability company. The intervention of a Notary Public or Public Broker is necessary to incorporate a company in Mexico. Due to some limited powers of a Public Broker, entrepreneurs normally prefer to retain the services of a Notary Public.

#### **Step 0: Will you need a Power-of-Attorney?**

Are you planning to “shake hands” with your business partners in Mexico or will you delegate the tasks to your *trusted advisor*?

If a foreign investor, as an individual, is not planning to sign the corporate deed personally, the foreign investor must sign a Power-of-Attorney (POA) in his country, naming his Mexican attorney or attorneys and listing their powers. Once signed the POA, the foreign investor must either apostille or legalize his POA and, of course, send by express packaging services the document.

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<sup>1</sup> Mexico Starting a Business rank in the Doing Business is 107<sup>th</sup> out of 190 economies.

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If the investor is a foreign legal entity, said entity may have to provide additional documentation depending on their residence to prove its legal existence as well as the powers of the legal representative signing the POA. The additional documentation has to be apostilled or legalized. This is normally the case with Asian legal entities.

The countries that are party to the Hague "Apostille" Convention are listed in the following link: [Hague Apostille Country List](#).

## ***Step 1: Selecting the Type of Company***

A foreign investor should request legal advice to decide what corporate structure is the most suitable based on his relationship with the business partners, managers, the business activities or corporate purpose, international taxation, among other matters. The attorney will advise on tailor-made company's bylaws per the business and interests of the foreign investor.

## ***Step 2: The Name of the Company***

Once having the proper legal insights and advice, the foreign investor should provide at least three options for the name of the company. After submitting the online application, the Ministry of Economy will issue a decision approving and reserving one of the proposed names. The decision will be valid for about 4 months, and this step should not take more than 2 working days as of the date of filing.

## ***Step 3: Signing the Corporate Deed and Bylaws***

Once the bylaws are agreed, the investors or business partners may sign the corporate deed and bylaws before the Notary Public.

## ***Step 4: "Foreign Capital Admission" Clause***

The attorney, through the Notary Public, should report to the Ministry of Foreign Affairs that the corporate bylaws include the "Foreign Capital Admission Clause", which basically means that foreign investors may invest in the company. The Ministry of Foreign Affairs should respond in no more than 5 working days. It is highlighted that additional steps or requirements may apply considering whether the corporate purpose or activity is subject to foreign investment restrictions.

Once the Ministry of Foreign Affairs has approved the foreign capital clause, the Notary Public will deliver a "provisional" corporate deed.

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## ***Step 5: Registering before the Mexican Tax Authority (SAT)***

With the “provisional” corporate deed in possession, the appointed “**tax representative**” can now request electronically a rendezvous with the Mexican Tax Authority (*Servicio de Administración Tributaria*, or **SAT**) to register the company in order to obtain the company’s *Tax Id Number*, known as **RFC** (*Registro Federal del Contribuyente*), and an electronic signature, known as **e-firma**, that are generated by SAT. The time to complete this step may vary from a couple of days to weeks due to available SAT’s time slots for appointments.

As a result of its registration, the company can issue “**Tax Electronic Invoices**”.<sup>1</sup> The company must issue or receive *Tax Electronic Invoices* when obtaining income from its commercial activities or making an expense. SAT developed the *Tax Electronic Invoice*, among other tools (e.g. electronic account platform), to improve surveillance on taxpayer’s compliance; notably, SAT’s electronic platform approves every single *Tax Electronic Invoice*, which will have a single automated code. Under some circumstances, the SAT may suspend a company to issue its *Tax Electronic Invoice*. For more information on this matter, see the Tax Chapter.

The tax representative of the company also has to have his or her **RFC** and **e-firma**, and the company needs a Tax Address.

*FAQ: Can a foreigner register a company before the Tax Authority (SAT)?*

Foreigners that **do not have** a temporal or permanent migratory status in Mexico, i.e. tourists, **and do not have** an RFC and **e-firma** will not be able to request an appointment and carry out the registration process of the company before SAT. The Individual’s RFC and **e-firma** are necessary to access and use the company’s RFC and **e-firma**, which in turn are necessary to file notices before SAT as well as to issue the *Tax Electronic Invoice*.

Needless to say, the **e-firma** of the company is a very *sensitive and important* file or document that must be placed in the hands of a trusted advisor or person.

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*FAQ: Does a foreign shareholder or partner needs to register before the Mexican Tax Authority?*

If the foreigner is not a resident in Mexico and his or her activity in Mexico is sole as a shareholder or partner of the company, he or she can use a generic RFC. Hence, the foreigner does “not” have to pay taxes or file tax declarations in Mexico. However, Mexico has a withholding tax on dividends as noted in our Tax Chapter.

*FAQ: Does the company need a Tax Address?*

Yes, and the SAT will deny registration of the company without proof of an address. Before requesting the rendezvous or appointment, the foreign investor and/or business partners must anticipate this issue in order to avoid setbacks.

For instance, the foreign investor and/or business partners may retain services of an accounting firm that may provide the “tax representative” as well as “tax address” service, as well as the traditional accounting services that the company will need once it is registered before the SAT.

If everything is in order at the date of the appointment with the SAT, the tax representative of the company will register the company and obtain the RFC as well as the *e-firma*.

## ***Step 6: Registering the Corporate Deed in the Local Registry of Commerce***

The legal representative of the company or the attorney should report back to the Notary Public. The Notary Public and/or the legal representative may proceed to register the company in the Local Registry of Commerce.

Upon conclusion of this step, the company “legally” exists. However, the company can execute agreements or transactions while the registration procedure is taking place. Needless to say, the company’s representative or attorney-in-fact is personally liable for any agreement executed prior to the company’s registration in the Public Registry of Commerce.

## ***Step 7: Registering the Company Before the Ministry of Economy***

Given that there is foreign capital, the legal representative must register the company before the Ministry of Economy’s National Registry of Foreign Investments (RNIE, acronym in Spanish).

*Continuous Filing Obligations:* The company may have to file a quarterly reports and annual reports to the RNIE, under certain situations mostly related to movements in capital accounts, assets, and liabilities that exceed certain amounts, as well as changes in the corporate structure, corporate name, and tax address.

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## ***Step 8: Registering the Company Before the Mexican Social Security Institute (IMSS)***

Before hiring employees, the legal representative shall register the company before the Mexican Social Security Institution (**IMSS**, acronym in Spanish). This submission simultaneously triggers the company's application and registration before the National Worker's Housing Fund Institute (**INFONAVIT**) and automatically creates the individual retirement savings accounts for the employees (known as **Afore**).

## ***Step 9: Registering the Company Before the Tax Authority of the State***

The legal representative shall register the company before the Local Tax Authority (e.g. the Ministry of Administration and Finance of Mexico City). As noted in the **Labor and Tax Chapter**, the company must pay a payroll tax depending on where the employees are located.

## ***Step 10: Registering the Company Before the Local Authorities (Municipal)***

The company may not have to register before local authorities depending on its location and activities. Depending on whether the activities have an "impact" on the local community (e.g. noise, parties, restaurants, hotels, night clubs, etc.) a permit or license may be required. If located in Mexico City, for instance, the company must file an online notice of the establishment of the business.

## ***Step 11: Registering in the Mexican Commercial Information System***

The Legal Representative must register the company in the Mexican Commercial Information System (*Sistema de Información Empresarial Mexicano* or SIEM).

## ***Step 12 and Beyond: Complying with Corporate Obligations***

The directors and managers of the company must have in order all corporate books, such as shareholders or partners register, ordinary or extraordinary meetings register, meetings or decisions of the board of directors, changes in capital, among other, as well as records regarding compliance with other legal obligations, such as taxes, foreign investment, etc.

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## 5.2 Traditional Types of Companies

Mexico's Company Law establishes seven corporate legal structures or company types.<sup>2</sup> Despite the number of options, investors or entrepreneurs normally choose either a Mexican Stock Company<sup>3</sup> or a Limited Liability Company (LLC) because they limit the investors' responsibility before third parties, corporate governance features, as well as international taxation reasons.<sup>4</sup> We highlight that the LLC is a flow-through entity or a fiscally-transparent entity for international taxation purposes.<sup>5</sup> Needless to say, any company type may be transformed into another corporate structure, say LLC to a Stock Company or vice versa.

In this section, we will provide an executive summary of the "default" rules that apply to the Stock Company and LLC. This section is not exhaustive and, thus, legal and tax advice is, of course, still necessary to select the suitable corporate structure as well as to design the relevant corporate rules as convenient.

### 5.2.1 Mexican Stock Company ("S.A.")

The Mexican Stock Company ("S.A.") requires two or more persons, either natural or legal entities, that are known as shareholders. A shareholder's liability is limited to the value of their share(s), which is considered a security, before third parties and the company. In other words, the shareholders are not legally responsible for the company's actions, unless there are grounds to pierce the "corporate veil".

The Stock Company is considered an "impersonal" type of company because shareholders may easily break their legal ties with the company and other shareholders. According to the "default" rules, shareholders may freely transfer their shares to any person without legal restrictions. However, a stock company's bylaws may issue different types (e.g. series) of shares and include rules that, for instance, restrict or limit the transfer of shares and, thus, creating a "stronger" bond between the shareholder vis-a-vis the company and other shareholders.

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<sup>2</sup> *Ley General de Sociedades Mercantiles* is the name of Mexico's Company Law.

<sup>3</sup> Stock Company is the *Sociedad Anónima* or *S.A.*

<sup>4</sup> The LLC is the *Sociedad de Responsabilidad Limitada* or *S. de R.L.*

<sup>5</sup> Cross-border international Tax advice may be necessary to benefit from foreign or international tax rules.

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The Stock Company's most relevant legal features are the following:

- I. **Name:** The shareholders will choose an available name (see 5.1) that will always be followed by the words "*Sociedad Anónima*" or its abbreviation "S.A."
- II. **Number Shareholders:** The law requires at least two shareholders, while an *unlimited* number of shareholders is allowed.
- III. **Minimum Stock or Equity Capital:** The Mexican Company Law does not provide a minimum amount of stock capital. However, the incorporation deed must provide the company's minimum fixed stock capital, normally 50,000 Mexican Pesos since this amount was the mandatory minimum previously established in the Company Law.
- IV. **Variable Stock Capital:** The Articles of Incorporation or bylaws may establish that the company has a fixed corporate capital and a variable corporate capital (See below).
- V. **Shares:**
  - The shareholder must "pay" his or her shares.<sup>6</sup>
  - A share proves the "status" of the shareholder and his rights. However, any transfer of share must be registered in the share register (or book).
  - Generally, the shares have the same value and rights unless otherwise agreed; in other words, one share equals one vote. However, the articles of incorporation and/or bylaws may authorize to restrict economic or voting rights, or both, on series or classes of shares, for example:
    - The bylaws may restrict whether shares or certain classes or series of shares are freely transferable.
    - The bylaws may establish causes or grounds to exclude a shareholder from the company.
    - The bylaws may authorize to issue shares that do not confer voting rights or limits the voting rights to certain matters.
    - The bylaws may authorize to issue shares that confer non-economic rights other than voting rights or exclusively voting rights.
    - The bylaws may establish to issue shares that confer veto rights or that their favorable vote is necessary.
    - The bylaws may expand, limit, or deny the preferential or preemptive subscription right.
- VI. **Liability of Shareholders:** As noted above, the shareholders' liability before the company and/or third party is limited to their contributions or committed contributions as expressed in their shares.
- VII. **Tax Aspects:** A Stock Company is a Mexican company and, thus, it is subject to a 30% corporate income tax. For more information, see our **Tax Chapter**.

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<sup>6</sup> At least 20% of the value of each share, when paying in cash at the time of its incorporation.

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VIII. **Corporate Governance:** The Stock Company is made up of three “bodies” (or “organs”) that are (1) Shareholders, (2) the Directors, and (3) surveillance.

## A. Shareholders Meetings:

The Shareholders are the highest level of authority in the company. Shareholders normally have two types of meetings that are “Special or Extraordinary” and the “Ordinary”, and each meeting has its own rules, for instance, on the notice or call of the meetings, subject matter, voting, etc.

On the one hand, **Extraordinary Meetings** deal with matters that are highly relevant to the company’s corporate life, for instance, its liquidation, modifying the corporate purpose, transforming the company into another corporate structure, a merger, issuing preferred stock, increasing or decreasing the minimum capital, among other matters.

The **Ordinary Meetings** shall be carried out at least once a year and deal with the yearly financial statements (and, thus, deciding on profits and dividends or loses) appointing the director or members of the board of directors, as well as the Company’s corporate examiner(s) (i.e. the individuals in charge of surveilling the director(s) as noted below). Shareholders may hold an ordinary meeting at any time to discuss any topic, provided that a topic is not within the scope of the extraordinary meeting.<sup>7</sup>

The bylaws of a company may determine specific matters, such as management-related, that must be decided in a shareholders meeting; for instance, authorizing the sale or purchase of a real estate, approving contracts that exceed a certain value, appointing special managers, etc.

## B. Managerial Body:

The management of a company is normally carried out by one or more **directors**, whose position is temporal and revocable; a shareholder may be appointed as a director. If two or more directors are appointed, a **board of directors** is established. In case of a joint decision, the president of the board of directors will have a casting vote. When the board is made by three or more directors, minority shareholders that represent 25% of the company’s stock have the legal right to appoint a director on the board.

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<sup>7</sup> In other words, shareholders must not decide matters in an ordinary meeting that must be voted in an extraordinary meeting.

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The director or the board of directors will represent the company before third parties. Furthermore, the director or directors are responsible for their managerial duties before the shareholders, but a director may also be jointly responsible for the company's duties under certain circumstances, including tax-related matters. Hence, the position of a director entails sensitive and significant legal powers as well as duties. Needless to say, the bylaws may limit the damages of its managers, members, or officers.

In addition, the director or board of directors may appoint one or more general or special **managers**, who may represent the company in specific matters, e.g. labor, tax, negotiable instruments/banks, litigation, as provided in the decision of the board of directors and bylaws.

## C. Surveillance Body:

A stock company must have a surveillance body that is made up of one or more corporate examiners. In essence, the role of the examiners is to surveil how business is being managed, handled, and performed by the company, as well as to report to the shareholders, call for shareholder meetings, among other matters. As with the board of directors, minority shareholders that represent 25% of the company's stock have the legal right to appoint a corporate examiner when three or more examiners make up the board. The Company Law provides some restrictions on the eligibility of the corporate examiner.

### 5.2.2 *Limited Liability Company ("S. de R.L.")*

As noted above, the Limited Liability Company (LLC) is considered a flow-through entity or a fiscally-transparent entity, which may be a crucial aspect when selecting the corporate structure.<sup>8</sup> An LLC shares similar legal traits as a Mexican Stock Company, but also important differences as noted below. Notably, an LLC is made up of two or more **partners**, who will receive a "**corporate interest**". Like a shareholder of a Mexican stock company, a partner's liability before the company and third parties is limited to their contributions or committed contributions as expressed in their corporate interest.

Unlike a stock company, an LLC is a more "personal" company because the legal ties between the partners is stronger, partners are more "involved" in management decisions and may leave the company under specific circumstances entailing management disagreements, and a limit of 50 partners is established by law.

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<sup>8</sup> International Tax advice is necessary to benefit from foreign tax rules.

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**Corporate interest** is not a security as a share and, thus, an interest cannot be freely transferred. In fact, the partners, representing the majority of the capital, must agree on the transfer of an interest, and the existing partners have the right of "first refusal". Normally, a partner's interest is "indivisible" regardless of whether the partner committed more capital or acquired an interest unless the interest entails different rights.

In addition, the most relevant legal features of the LLC are the following:

- I. **Name:** The partners can choose the name of one of its members or a "corporate name" that will always be followed by the words "*Sociedad de Responsabilidad Limitada*" or "*S. de R.L.*"
- II. **Partners:** The law requires at least two partners and a maximum of 50 partners.
- III. **Minimum Corporate Capital or Equity:** The law established that a corporate interest must represent at least one (1) Mexican peso and, thus, in theory, the minimum capital of a company may be two (2) Mexican pesos. Regardless of the theory, the articles of incorporation will provide the minimum stock capital, which should be above the minimum required by Law.
- IV. **Variable Capital Regime:** The articles of incorporation or bylaws may establish that the company has a fixed corporate capital as well as variable corporate capital (See below).
- V. **Corporate Interests:**
  - The corporate interests may have different values and different categories; for instance, a corporate interest may have privileged economic rights on the allocation of profits or losses, but the exclusion of profits or losses is prohibited by law; interests may also include privileged voting rights.
  - The interests are non-negotiable instruments and are "indivisible" as noted above.
  - The interests are assignable or transferable as indicated by law (or as modified by the bylaws).
- VI. **Liability of Partners:** Partner's liability is limited within the limits of their contribution or capital commitments.
- VII. **Tax Aspects:** An LLC is a Mexican company and, thus, it is subject to a 30% corporate income tax. For more information, see our Tax Chapter.
- VIII. **Corporate Governance:** The LLC Company is made up of two "bodies" (or "organs") that are (1) Partners and (2) the Managers or Board of Managers. The bylaws may provide the creation of a (3) surveillance council.

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## A. Partners Meetings

Partners meetings are the highest level of authority in the company. Unlike the stock company, the partners only have one type of meeting, and most decisions must be adopted by a majority vote of partners that represent at least half of the corporate capital. If not possible, the partners may hold a second meeting where the decision is adopted by a majority of votes, regardless of the corporate capital. If the bylaws are sought to change, a qualified majority is necessary for its approval, while a change in the corporate purpose or the obligations of the partners requires unanimity.

The partners must carry out at least one annual meeting to vote on the yearly financial statements (and, thus, decide on profits and dividends or losses), appoint managers, and, if necessary, the company's corporate examiner(s) (i.e. the individuals in charge of surveilling the director(s) as noted below).

## B. Manager or Board of Managers

The management of an LLC is carried out by one or more **managers**, whose position is temporal and revocable; a partner may be appointed as a manager. If two or more managers are appointed, a **board of managers** is established. Unlike the stock company, the law does not grant a "default" right to "minority partners" to appoint a manager in the board; however, a minority partner has the "default" right to leave the LLC when he or she disagrees on specific issues per the Company Law.

The manager or board of managers will represent the company before third parties. If a board is established, the majority of the managers must approve the decisions, unless the bylaws provide, for instance, that managers may act independently or decisions must be approved unanimously. The manager or board of managers may issue a *special* power of attorney to an individual, either a partner or non-partner, but fully delegating his or their powers requires the approval of the majority of the partners.

Furthermore, the managers are responsible for their managerial duties before the partners. Nevertheless, a manager is jointly responsible for the company's duties under certain circumstances, including tax-related matters. Hence, the position of a manager entails sensitive and significant legal powers as well as duties.

## C. Surveillance

As noted above, the law does not mandate an LLC to establish a corporate examiner or a surveillance committee. However, the partners may appoint a corporate examiner or create a surveillance committee.

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## 5.2.3 The Variable Capital Regime

A stock company and an LLC may adopt the variable capital regime. The articles of incorporation can either select having the fixed capital regime or the fixed and variable capital regime. A company is normally incorporated with a fixed & variable capital regime because this feature allows the company to raise capital or equity (or withdrawing capital) with less legal formalities. A company that has a variable capital regime must also include in its corporate name the expression “*Capital Variable*” (i.e. Variable Capital) or the abbreviation “C.V.”

The decision to modify the variable capital must comply with the relevant “default” rules on meetings and votes, or as provided in the bylaws. A company may increase its variable capital account, either through capital contributions of existing investors or accepting new shareholders or members. A company can, of course, decrease its variable capital account through partial or total withdrawals. The directors or managers must register the capital movements in the company’s variable capital account book, including the information regarding the shareholder or partner.

In contrast, a change in the fixed capital, among other matters, amounts to an amendment of the articles of incorporation or bylaws. Thus, the directors or managers of the company must proceed to certify the meeting’s minutes with the decision to change the fixed capital before a notary public and register said decision in the Local Registry of Commerce.

## 5.2.5 Other Types of Companies

We highlight the existence of other company types or corporate structures, such as the simplified stock company (Simplified Company, **SAS** acronym in Spanish) and the Stock Investment Promotion Company (**SAPI**, acronym in Spanish).

### 5.2.5.1 Simplified Company

One or more individuals, i.e. natural persons, may incorporate the simplified company, which is a sort of “sole proprietorship” company. In other words, a legal person cannot be a shareholder of a simplified company. Among other restrictions, a simplified company’s annual income shall not exceed \$5 million Mexican pesos (about 230K USD). If such an event occurs, the shareholders must transform the company into another company type, such as the stock company or an LLC.

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## 5.2.5.2 Stock Investment Promotion Company (SAPI)

The Stock Investment Promotion Company ("SIPC / SAPI") was introduced in the Mexican Securities Market Law of 2006. The SIPC / SAPI was designed to facilitate access to (venture) capital for small and medium enterprises. Back then, the SIPC / SAPI was a modern Stock Company since the Law authorized, for instance, limiting economic and non-economic share rights, shareholder agreements, strong minority shareholder rights, as well as modern corporate governance provisions.

Needless to say, the Mexican Company Law was amended in 2014 to update the legal company framework. As a result, a Stock Company has now much more flexible rules in matters related to shares, shareholder agreements, as well as minority shareholder rights. The Stock Company is, however, less flexible than the SIPC / SAPI since the SIPC/SAPI can purchase its own shares or issue shares that limit or expand the allocation of profits, while Stock Company cannot do so.

Depending on whether it is venture capital or the possibility of raising capital and having new business partners, the SIPC / SAPI may be the ideal corporate structure. In some cases, a business must adopt a SIPC / SAPI when, for instance, engaging in intermediary financial activities, issuance of digital assets (cryptocurrency), crowdfunding, among others.

## 5.3 Other Business Structures

### 5.3.1 Branch in Mexico

A foreign legal entity may establish a branch in Mexico provided that the entity registers before the Ministry of Economy. Like a Mexican company, the branch will have to register before the Mexican Tax Authority (SAT) and obtain its RFC. Notwithstanding the foregoing, the branch may constitute a permanent establishment for the foreign legal entity depending on whether the branch carries out commercial activities or not in Mexico. If the branch, for instance, is a representative office that solely provides information and/or promotion on services or products, said branch does not constitute a permanent establishment because it does not have attributable income.

### 5.3.2 Joint Ventures

In general terms, joint ventures are atypical contracts in Mexico because Mexican Commercial Contract Law does not have specific provisions or chapters on joint ventures, except for one specific type of joint venture established in the Company Law.

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A Joint Venture implies two natural or legal persons that come together to work on a common project, basing their relationship on a contract. In essence, it creates a sort of partnership without necessarily creating a new, distinct legal person. Now, there are different types of joint ventures, such as Strategic Partnerships (or Strategic Alliances) and Co-investment.

On the one hand, **Strategic Partnerships** are agreements that entail a collaboration project between two persons or firms. The idea is to share resources (office buildings, researchers, clients, expertise, etc.) and risks (without the guarantee of obtaining any results). In other words, each firm provides qualities or features that the other firm requires for which the purpose or end may be common or different. In this type of joint venture, the parties may not have to invest in money, rather in their qualities or characteristics. An example is when an establishment allows another firm to use their facilities for other purposes other than those it ordinarily is involved in, so as to increase the flow of customers in its stores (e.g. express delivery services located in stationeries).

On the other hand, a Co-investment is an agreement between two persons or firms to invest money or goods in a common project. This type of joint venture involves joint management and parties and, therefore, making decisions together.

As for the clauses contained in joint venture contracts, these can vary significantly since they are not expressly regulated in Mexican Contract Law. Notwithstanding the foregoing, common clauses are the following:

- Exclusivity,
- Geographic Location,
- Patent and Trademark Licenses,
- Profit-Sharing,
- Arbitral Clauses, and
- Fines.

As for other legal considerations, Mexican Tax Law may consider joint ventures as a legal person –for tax purposes– and even give rise to the creation of permanent establishments for foreign investors in Mexico. When drafting a joint venture contract, it is therefore critical to take into account Mexican Tax Law and/or any relevant Tax Treaty.

# CREATING A COMPANY IN MEXICO

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## 5.2.3 Trusts

Trusts are not a very common business structure for “productive” activities, such as manufacturing. However, foreign investors may need to use a trust to comply with the Foreign Investment Law, such as increasing foreign investment equity in restricted activities or purchasing land for residency purposes near the coast or borders. For more information, see our [Foreign Investment Chapter](#).

In that sense, a trust allows, for instance, to compute foreign investment “equity” as neutral investment allowing foreign investors to have ownership on special interests or shares that grant economic rights (e.g. profit) but restricts non-economic corporate rights, such as the right to vote and/or the appointment of foreign managers in the board.

In essence, a trust is a contract between the “trustor(s)”, a natural or legal person(s), and the “trustee”, an authorized financial institution. The investor will transfer assets to the trustee, who will have to use the assets to comply with the instructions or purposes of the investor. The assets may be real estate, cash resources, securities, insurance policy rights, shares, among others.

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