# PRACTICAL HANDBOOK FOR INVESTING & DOING BUSINESS IN MEXICO.

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MONTERREY•HOUSTON

# Table of Contents

# I. INTRODUCTION.

## a. Mexico.

Mexico (officially named the "United Mexican States") is situated in North America and is bordered by the United States of America to the north and Belize and Guatemala to the southeast. Mexico is a signatory of NAFTA and several other international treaties and conventions.

### Federation System.

Mexico, is a federal, democratic and representative republic composed by thirty-one sovereign states and a federal district, all united in a federation established pursuant to the principles set forth by the Mexican Constitution.

Each state of the country has also a number of municipalities. The national sovereignty is exercised by all nationals through the Powers of the Union (Executive, Legislative and Judicial) and through those of each state and municipality in matters related to their local affairs.

### Legal System.

The legal system of the country is based in civil law and is the result of the revolution from the beginning of the twentieth century which led to the current Constitution of the country, promulgated in 1917. The Mexican legal system contains very unique components, although it is inspired specially by the French legal system, and has also adopted some influences from the legal system of the United States of America..

The Federation's supremacy is recognized by the three supreme branches which represent the entire population: the Executive, the Legislative and the Judicial. The Executive is headed by the President of the Republic, which is directly elected by all citizens of legal age every six years without the possibility of reelection. Citizens also elect from time to time the representatives for each state and municipality. The Legislative branch is represented by a General Congress divided into two chambers: the Deputies and the Senate, which are also elected by the people. In the case of the states, the local congress consists of Deputies only. The Judicial branch is the only one which is not comprised

by individuals publicly elected; the Supreme Court is the highest court in the country followed by Circuit Tribunals, District Courts and the local courts, which vary from jurisdiction to jurisdiction.

Mexico is undergoing a period of modernization of its legal system, mainly in key areas for economic growth such as those related to commercial transactions, international trade, transparency, anti-bribery, labor and employment, and corporations. Laws are also divided by their hierarchic grade and their applicability. The Constitution is the supreme law in Mexico, followed by the federal laws and the international treaties which have been approved by Mexico in accordance with Mexican law, and then followed by state codes and the municipal regulations.

It is important to point out that despite the federation system and the diversity of the laws and codes, attorneys who have been admitted to practice law in Mexico by the Mexican Ministry of Education are authorized to practice law throughout Mexico and in any of its states, regardless of their location or principal place of practice within Mexico.

## b. Monterrey: Mexico's Industrial and Financial Capital.

Situated in the northeast of Mexico, and only about 170 kilometers south of the border with the United States, Monterrey has become the industrial capital of Mexico due to its continuously growing industrial, financial and services' sectors, its modern facilities and living conditions, top-quality schools and universities, and the highest per capita income in the nation.

Decades back, Monterrey opened the gap in the country towards the international business practices and standards. The city has been referenced as an example for other cities in the implementation of the best international business practices, and has set a precedent that such kind of performance is directly related to the economic growth.

A good number of global companies have chosen Monterrey as the place to establish their Mexico and Latin America headquarters, mainly as a result of

the high range of education found in the city, including manpower, judges, and also influenced by the wide use of the English language in business. Monterrey broadly offers business and industrial facilities at par with international standards, making it easier to start-up and run an industrial plant, an office, and even a household. The availability of top-level space for conventions and shows is also a key element found in the city. Also importantly, the city's proximity to the United States, the continuous improved infrastructure of the city, and the ease of its air connections within Mexico and internationally, have played a key role in making Monterrey especially suitable for doing business, and also one of the preferred locations to establish headquarters for companies doing business throughout Latin America.

# II. REGULATIONS ON CORPORATIONS.

## a. Types of Corporations.

In accordance with Mexican corporations' regulations, there are six different types of companies in Mexico. Two of such corporate forms are more commonly used, due to their operating form and the legal relationship created among their shareholders or members. Those types are the **Sociedad Anonima**, or company limited by shares (hereinafter referred to as the "SA"), and the **Sociedad de Responsabilidad Limitada**, or limited liability company (hereinafter referred to as the "SRL").

All companies must be composed of at least two shareholders or members, which may be individuals or legal entities and both the SA and the SRL offer limited liability to its members. The companies must be incorporated with a minimum capital stock that shall be stipulated in the incorporation deed, and with the exception of a company that has adopted the modality of variable capital, the capital increases and/or reductions are accomplished through an amendment to the incorporation deed. The company must form a legal reserve by separating at least five percent of the yearly net profits of the company until such reserve reaches an amount equal to one fifth of the company's capital. If, for any reason, a reduction of the legal reserve occurred, it should be reincorporated in the same way.

The capital of the companies which adopt the variable capital regime have two separate capital accounts: (i) the fixed capital account and (ii) the variable capital account. A SA or SRL company with the variable capital modality will be able to reduce or increase its capital by additional contributions from the existing members or by accepting new shareholders or members and with lesser formalities; those shares or membership interests (as the case may be) representing the variable portion of the capital will be subject to a redemption right. If a company opts for such modality, either at the moment of its incorporation or later during its corporate existence, it is required that the company's corporate name appears followed by the words "**de Capital Variable**" or its abbreviation "**de C.V.**"

A reduction of the capital may be implemented by the repurchase of the company's shares or membership interests representing the variable capital, or through the exercise of the shareholders' or members' redemption rights. The variable portion of a company's capital may be an unlimited amount, unless it is otherwise limited in its by-laws.

## Sociedad Anonima or SA.

The name of every company incorporated under this legal form must be unique within Mexico and be followed by the words "**Sociedad Anonima**" or its abbreviation "**S.A.**", and the name could be somehow related to the company's general purpose.

The initial shareholders will formalize an incorporation meeting, at which the shareholders will elect the form of management for the company, will appoint the initial attorneys-in-fact which will represent the company, and will select one or more corporate examiners that will oversee the operations executed by the relevant management body.

The SA's share capital is formed by registered securities representing the shares. It shall have a minimum share capital stated in the incorporation deed and all shares must be at least partially paid in a minimum of 20% of their face value (if the payment is in cash), or fully paid in the event of shares paid in kind. All shares within the same series must have the same value and grant the same rights to all of its shareholders. Nevertheless, the incorporation deed may stipulate the division of the capital into different series of shares, and each one of them may grant special rights to the relevant shareholders. No shares may be issued under par value.

The SA must keep a share register, which will contain the name and address of the shareholders, the respective value of the shares each one holds and keep record of any transfers. The company will only recognize the person appearing in its share register as its shareholder. The share register is a very important document as it in itself guarantees title to the shares. Generally, share transfers may be formalized through the endorsement of the securities in which they are evidenced and such transfer being registered in the share register. Any transfers made differently must be duly evidenced to the

company's secretary in order for them to be recorded in the register.

The management of the SA must be conducted by one or more revocable and temporary individuals appointed by the general shareholders' meeting to act as directors and which can be related or unrelated to the company and also must have a surveillance body, formed of one or more corporate examiners.

## Sociedad de Responsabilidad Limitada or SRL.

Unlike the SA, the corporate name of the SRL may be formed by the names of its members or under a name that resembles the purpose of the company. It must be followed by the words "**Sociedad de Responsabilidad Limitada**" or by its abbreviation "**S. de R.L.**"

A SRL may not have more than 50 members, therefore inferring a more personal character to this type of company, and its capital shall be formed by membership interests or quotas. Each member will only have one membership interest, unless membership interests conferring different rights are issued under different series, in which case each member may hold one membership interest of each of the series.

The minimum capital of the SRL must be stated in the incorporation deed. In this case, all membership interests must be at least partially paid with a minimum of a 50% of the value of each membership interests in order for the company to be incorporated. The incorporation deed may stipulate the obligation of the members to make additional contributions to the capital of the company, in accordance with their holdings in the capital of the company.

The SRL will also have a membership interest register, containing all the general information of the members. Membership interests may only be transferred or assigned with the prior approval of the majority of the company's members, unless the incorporation deed requires a higher majority and such consent is not applicable to transfers due to inheritance.

## Foreign Companies' Branches.

Instead of incorporating a Mexican company, a foreign company may engage in commerce through a branch of a foreign company. Such

authorization should be requested to the Mexican Ministry of Commerce, and is only available for activities with no foreign investment restrictions. Once the approval is obtained, the foreign company must register its bylaws and incorporation documents before the Public Registry of Commerce, before the tax authorities and the foreign investment registry, at which point it will be generally and for the most part doing business in Mexico very similarly to any other Mexican company.

## b. Incorporation and Functioning.

The incorporation of a company should be formalized before a Notary Public, and the incorporation deed will contain the type of company, the stock share distribution, the bylaws and the general information of the members who will initially participate as shareholders of the SA or as members of the SRL, as the case may be. The Notary Public must obtain the prior approval of the company's name and foreign shareholders' admission status from the Mexican Secretary of Commerce.

Once the incorporation deed is formalized and authorized by the Notary Public, the company must apply for and obtain a federal tax identification number, known as the **Registro Federal de Contribuyentes**. In order to complete the tax registration filing, the company must have a domicile in Mexico. As soon as this tax registration has been accomplished, the Notary Public will proceed to apply for the company's registration at the Public Register of Commerce of the company's corporate domicile. The company's corporate domicile refers only to its place of registration, but is not necessarily the domicile in which the company will operate or establish its main place of business. As a consequence of the company's registration at the Public Register, the incorporation deed is ultimately finalized and effective before third parties.

There may be additional filings or actions related with foreign investment matters which need to be analyzed when incorporating a Mexican company. Most business areas are open for foreign investment pursuant to Mexican law, although certain niches are restricted, others are subject to caps on foreign

investment, and others require additional permits. All Mexican companies with foreign investment require to be registered in the National Registry of Foreign Investment, and need to update such registration in accordance with applicable law. These issues should be analyzed and dealt with on a case-by-case basis.

Additionally, all Mexican companies must be registered before the **Sistema de Información Empresarial Mexicana**, or SIEM. Such registration shall be renewed on a yearly basis and in the event that the Mexican company is expected to be involved in import/export transactions, it will need to apply for registration in the Mexican importers' register. In certain cases, the Mexican Special Sector Importer's Register may be required as well.

Each calendar year, each Mexican company must take a series of legal maintenance actions, in order to keep the company in good standing and in compliance with the Mexican authorities.

## b. Corporate Governance.

### Shareholders or Members.

The shareholders or members can exercise their voting rights and participate in corporate decisions through the general shareholders' or members' meeting, which is the highest corporate authority. In the case of the SRL, each member will have the right to one vote per peso contributed to the capital of the company. Such general meeting is the supreme authority of the company, and it may ratify and resolve on each and every action performed by the company. Shareholders' or members' meetings must be held within Mexico and precisely at the corporate domicile of the company, which is the company's domicile of registration. Shareholders or members may be represented at the meetings by proxy.

In the case of the SA, the general shareholders' meeting may be ordinary or extraordinary, depending on the subject or matter to be discussed thereat according to Mexican law. Some of the matters to be exclusively discussed at an extraordinary shareholders' meeting are: (1) any amendment to the

corporate bylaws; (2) increase of the fixed portion of the capital, and (3) any resolution regarding the merger, dissolution and liquidation of the company. Extraordinary shareholders' meeting may be held at any time in compliance with law for the calling of the meeting and the necessary attendance and voting quorums, which are higher from those required for an ordinary shareholders' meeting.

At least one general ordinary shareholders' meeting must be held every calendar year, before April 30. The meeting must resolve on a number of matters (as long as they are not reserved to an extraordinary meeting). Mandatory matters to be dealt with at ordinary meetings are (1) resolving on the yearly financial statements of the company; (2) designating the sole director or the members of the board of directors and the corporate examiner, as well as their compensation; (3) resolving on the allocation of profits or losses, and (4) declaring dividends (as the case may be).

Mexican corporation law prohibits any agreement that would exclude any shareholders from participating in the profits or losses of the company, or limiting or restraining the shareholders' voting rights.

## Management.

The management of the company must be conducted by one or more revocable and temporary individuals appointed by the general shareholders' or members' meeting to act as directors in the case of the SA and managers in the SRL, and which can be related or unrelated to the company. When management is conferred to two or more directors/managers they will constitute a board of directors/managers. Legal entities are not allowed to act as directors or managers under Mexican law, and there is no Mexican citizenship or residence requirement for the individuals holding director or management positions in Mexican companies.

The directors or managers, as the case may be, will be the attorneys-in-fact of the company and will have the ability of delegating its duties and powers to third parties. The delegation of such duties and powers will not restrain the delegating party's ability to act on behalf of the company. Among their responsibilities is the company's compliance with any and all applicable

laws, company by-laws, management and accounting, and most importantly with those resolutions adopted by the shareholders' or members' meetings. In the case of the SA, directors are jointly liable with the company regarding actions related to shareholder contributions and dividends. The by-laws may require directors to make a deposit in escrow to guarantee their responsibilities in the performance of their duties. The shareholder or group of shareholders representing 33% of the capital stock of a privately held company, and in the case of public companies the shareholder or group of shareholders representing 5% (or in certain cases 15%) may pursue a civil responsibility claim against directors.

The company must have a surveillance body formed by one or more corporate examiners, which in the case of the SRL is optional. The corporate examiners are appointed by the general shareholders' or members' meeting on a temporary and revocable manner. Corporate examiners must comply with certain legal requirements intended to guarantee their independence from management. The principal duty of the surveillance body is to oversee, with unlimited examination powers, the company's operations performed by the relevant management body.

Directors are commonly appointed for one year and may be either removed or re-elected by the shareholders' or members' meeting. In the case of public companies, at least 25% of the board shall be 'independent directors', and the board of directors should consist of a minimum of five and a maximum of 20 members.

The Mexican securities market laws additionally pursues director compliance with fiduciary duties of diligence (which requires directors to act in good faith and in the best interests of the company and the legal entities controlled by the company) and loyalty (which requires director's confidentiality regarding non-public company information), and prevents such individuals from inappropriately obtaining any economic benefit deriving from his or her director position.

## d. Shareholders' Liability.

The principle adopted by Mexican law regarding the shareholders' liabilities under a commercial company incorporated as a Mexican **sociedad anonima**, or "S.A.", is that shareholders of such companies are solely responsible to the company or third parties up to the amount of their contributions or committed contributions to the capital of the company. Therefore, the principle is that shareholders' liability is limited.

A number of countries have developed their own exceptions to shareholders' limited liability under different scenarios, generally referred to as "piercing the corporate veil".

Although Mexican law has not formally adopted any such concepts or enacted legislation to such effect, there have been a few separate and independent resolutions of the Mexican Supreme Court and of a Federal Collegial Court which have dealt with this issue in a limited manner. Please note that under the Mexican legal system, only those resolutions of the Supreme Court which resolve similar disputes applying identical principles in five or more uninterrupted cases, constitute what is known in Mexico as "Jurisprudence" which is similar to the case law used in other countries. Likewise, a Federal Collegial Court may also constitute Jurisprudence following the previously mentioned process, although such Jurisprudence may be modified by the Supreme Court. Jurisprudence constitutes an obligatory precedent under Mexican law. Any other Supreme Court or Federal Collegiate Court resolution not meeting these criteria (such as the resolutions referred to above) are solely considered as references and are not obligatory precedents in the application of law by any court or governmental agency in Mexico.

Some of the non-obligatory precedents and Mexican legal doctrine coincide in the elements which would be necessary in order to attempt to impose individual liability over a company's acts or obligations to the company's shareholders. Those elements are:

(a) The company must be or have been engaged in illegal activities, and
(b) A cause-effect relationship must have been duly proven between the

shareholder's control of the company and the illegal activities of the company.

In the event that both elements were present, and only if the competent Federal Courts were to resolve in the lines of the resolutions referenced above, then (i) only the controlling shareholder(s) of the relevant company may result individually liable for the company's acts or obligations, and (ii) in any such case, the company will be primarily liable before third parties, and only to the extent that the company is insolvent, the controlling shareholder(s) may be deemed to be individually and unlimitedly liable.

There is also an obligatory precedent, issued by a Federal Colligate Court, which has authorized the piercing of the corporate veil; however, this precedent has a limited scope given that it solely applies to investigations on monopolistic practices. Such precedent is based in the same above mentioned elements.

There are a number of other considerations to be analyzed on a case by case basis in order to attempt to determine any additional shareholders' liability in Mexico. We have no knowledge of any initiative or intended initiative from the Mexican congress to enact legislation regarding this matter.

In conclusion, the general rule is that as long as the Mexican companies are involved in legal activities, their shareholders' liability will be limited to their contributions or committed contributions to the capital of the company.

## e. Minority Shareholder Rights.

In the case of the Mexican public companies which shares are publicly traded in Mexico, minority shareholders are entitled to the following protection rights in accordance with the Mexican securities regulations:

1. The holders of voting shares and limited-voting shares representing at least 10% of the company's capital have the right to designate and to remove through a general shareholders' meeting at least one member of the board of directors of the company. Such designation could

be revoked by the remaining shareholders solely if the totality of the members of the board of directors of the company is removed.

2. At least 25% of the members of the board of directors of the company shall be "independent directors", and the board of directors of the company should be formed by a minimum of five and a maximum of twenty-one members.
3. The holders of shares representing at least 10% of the company's capital have the right to request the company's officers (or failing such company officers, a judge) to call or convene a general shareholders' meeting.
4. Upon the call for a meeting has been made, every shareholder has the right to access to all documents and information reasonably related to the agenda of the meeting.
5. The holders of shares representing at least 5% of the company's capital have the right to initiate direct legal action against the members and the secretary of the board of directors of the company, subject to applicable law.
6. The holders of shares representing at least 10% of the company's capital have the right to request that the voting of any matter in which they are entitled to vote in a shareholders' meeting and of which they have not been duly informed, be postponed or delayed in the terms of applicable law.
7. Shareholders representing at least 20% of the capital stock of the company have the right to legally oppose to resolutions made in a shareholders' meeting in violation of the company's bylaws, provided that the relevant holders were entitled to vote in such matter.

In turn, minority shareholders of privately-held Mexican companies have the following main protection rights in accordance with the Mexican companies' regulations:

1. The holders of shares representing at least 25% of the company's capital have the right to designate at least one member of the board of directors of the company and one corporate examiner.
2. The holders of shares representing at least 33% of the company's capital have the right to request the company's officers (or failing such company officers, a judge) to call or convene a general shareholders'

meeting.

3. The holders of shares representing at least 33% of the company's capital have the right to initiate direct legal action against the directors and corporate examiners of the company, subject to applicable law.
4. The holders of shares representing at least 33% of the company's capital have the right to request that the voting of any matter in which they are entitled to vote in a shareholders' meeting and of which they have not been duly informed, be postponed or delayed in the terms of applicable law.
5. The holders of shares representing at least 33% of the company's capital have the right to initiate direct legal opposition action in the terms of applicable law against a resolutions adopted through a shareholders' meeting, provided that the relevant holders were entitled to vote in such matter.
6. The holder of one share may call a shareholders' meeting in the following cases: (a) when no annual shareholders' meeting has been held for two consecutive years, or (b) when the annual shareholders' meetings held in the preceding two-year period have not addressed the following issues: (i) the discussion and approval of the annual report of the company; (ii) the appointment or ratification of the company's directors and corporate examiners; (iii) the determination of the compensation of the directors and corporate examiners, if any, and (iv) the allocation of profits or losses.

## f. Powers of Attorney.

In order to legally represent a company in Mexico a power of attorney ("POA" or "POAS") must be granted in writing and may be conferred through several means, depending on the act or acts for which it is intended. Similarly to most legal systems based on civil law as opposed to common law, Mexican law does not accept the theory of apparent authority. Therefore, in the case of legal entities, a person may not perform acts or activities on behalf of such entity unless such person is expressly authorized in writing, regardless of such person's position or title within a legal entity.

Depending on their nature and value of the business for which they are

granted, POAS may be conferred through (i) a public deed granted before a notary public; (ii) a private document granted in the presence of two witnesses and ratified before a notary public, or under specific conditions, before judicial or administrative officials; or (iii) through a letter executed before two witnesses without ratification.

The following are the POAS generally set forth in Mexico: (a) Power of Attorney for Litigation and Collections; (b) Power of Attorney for Management Acts; (c) Power of Attorney for Ownership Acts; (d) Power of Attorney for the Delegation or Substitution of Powers of Attorney; (e) Power of Attorney for Labor Representation; and (f) Power of Attorney for the Execution of Negotiable Instruments.

The types of POAS set forth above may be general or special. A special POA shall be granted for the performance of a specific act or series of acts and will cease to be effective upon the completion of such act or acts. If granted without limitations and in accordance with applicable law and formalities, a POA will be deemed to be general. Any limitations to a POA must be specifically set forth in the POA itself, in which case the POA will be deemed to be limited. Both general and special POAS may be granted independently or granted in the same instrument jointly with other POAS.

## Types of Powers of Attorney.

a) The **POA for Litigation and Collection** is required in order to duly represent an individual or legal entity in any judicial, arbitral or collection process. This POA is typically granted to grantor's legal counsel for day-to-day representation, and to the operating managers of each client. It may be tailor-made to suit the specific needs of each client or business and may be as broad or as limited as desired.

b) The **POA for Management Acts** generally includes all authority required for the day-to-day operation of any business. Through a general POA of this type, most agreements and documents of any nature in the grantor's ordinary course of business may be executed, and additionally the grantor may be represented in certain government and administrative proceedings and filings. This type of POA is recommended for high-ranking officers, managers, and in

limited form for certain consultants and business advisors.

c) The **POA for Ownership Acts** entitles the attorney-in-fact to sell, transfer, encumber, pledge or mortgage real estate and personal property within or outside the ordinary course of grantor's business. Although it may be granted to any individual, due to the relevance of this POA and the consequences of any potential unlawful use thereof, it is usually recommended that it may only be exercised by the shareholders' meeting and/or the board of directors, who may delegate it when and as required, or granted to key officers or representatives, preferably and in the best interests of the grantor, acting jointly.

d) The **POA for Labor Representation** is a combination of the POA for Management Acts and the POA for Litigation and Collections. Due to the strict Mexican labor regulations, this POA is extremely important and a number of specific requirements and formalities must be met for its proper formalization. The holder of a POA for Labor Representation may be empowered to, among other things: hire and terminate personnel, to represent the grantor before any labor union, enter into individual or collective labor negotiations and agreements, and defend the grantor of any third party before the Mexican labor courts, which serve a jurisdictional function but are a part of the administrative branch of government. This type of POA is generally granted to specific managers of a company, such as the human resources manager, as well as to grantor's legal counsel and specifically, to grantor's labor legal counsel, when applicable.

e) The **POA for the Execution of Negotiable Instruments** is required for the opening and management of bank and investment accounts, as well as for the execution of any type of negotiable instruments (promissory notes, letters of exchange and certain types of guarantees, among others). This POA is commonly granted to high ranking officers, such as the CEO, and the treasurer, among others. We recommend that this type of POA be granted solely to specially loyal and trustworthy individuals, and limited in its validity only if exercised by any two of the attorneys-in-fact acting jointly. Any additional limitations may be tailor-made to each client's specific needs, such as limitations as to the value of the negotiable instruments in question. This POA

must be registered in the Public Registry of Commerce after being formalized by a Notary Public.

f) The **POA for Delegation or Substitution of POAS** should, when applicable, be granted jointly with or in connection with any other of the POAS described above. Through such POA, the attorney-in-fact can delegate, in whole or in part, the powers thereby vested to a third party, without losing its powers through the delegation act. This POA is commonly granted under general POAS intended for on-going business purposes.

Unless expressly granted for the performance of a specific act or series of acts, a POA will be in full force and effect for an indefinite period, until the occurrence of any of the following: (i) its revocation; (ii) the resignation of the attorney-in-fact; (iii) the attorney-in-fact's or grantor's death (in the event the grantor is an individual); (iv) the completion of the activity for which the POA was originally granted; (v) the expiration of its effective term, if any; or (vi) by judicial decree against the attorney-in-fact, or the grantor, when grantor is an individual.

## g. Mergers and Acquisitions.

Mexican law allows for businesses to combine as a result of asset or share purchase transactions; company mergers through which one of the merging companies survives, or in which a new one is created as a result of the business combination; tender offers; public offers; and joint ventures.

Financial institutions, private lenders, funds, bank syndicates and the stock market greatly support fund access for these transactions. Transactions among private companies are commonly governed only by the interests of the parties; while on the other hand transactions involving public companies (companies with shares registered at the Mexican Stock Exchange) are subject to some restrictions overseen by the National Banking and Securities Commission.

Mergers and acquisitions are nowadays very common among Mexican businesses. There are two different scenarios for mergers under Mexican law, either (1) one company merges into another, and the first company

would cease to exist, or (2) two or more companies merge and cease their independent existence, creating a new entity as a result of the merger, with its own assets and resources.

The following general steps and actions need to be followed for the merger of two or more Mexican companies:

1. Each of the merging companies needs to formalize an extraordinary shareholders or members' meeting (hereinafter referred to as the "Merger Resolution"), which, among other actions, should resolve on the merger with the other company or companies, the approval of its last balance sheet and the basis and terms in which the merger will take place. The Merger Resolution must also include the financial terms of the merger and the capital structure of the resulting company, as a result of the capital and net worth of the merging companies.
   Each Merger Resolution needs to be protocolized before a Mexican Notary Public and duly registered before the relevant Public Register of Commerce where each of the companies is registered.
2. After the formalization of the Merger Resolution within the companies participating in the merger and the approval of the terms for the merger, the companies need to execute an agreement with the other company or companies, containing the basis and terms they previously approved in the Merger Resolution (hereinafter referred to as the "Merger Agreement"). The companies are required to register before the relevant Public Register of Commerce, and publish in the Official Gazette of their domicile, the Merger Agreement together with their last balance sheet (hereinafter referred to as the "Publication"). Additionally, the company or companies that will cease to exist after the merger must publish the procedure agreed for the extinction of its liabilities.
3. The Publication will mark the starting of a three-month period, during which any creditor of the merging companies (including without limitation the Mexican tax authorities) can file a judicial opposition to the merger, in which case the merger will be postponed until a judicial ruling declares the opposition is groundless. If no opposition is filed during such three-month period, the merger can take place and the procedures set forth in the Merger Agreement will be followed to complete the process of merging the companies. It is therefore critical,

in a pre-negotiated or intercompany merger, that all liabilities of the companies are previously analyzed and appropriately managed to avoid any delays as a result of any opposition. The companies' tax advisors' input regarding any tax liabilities is critical for the success of this stage of the process.

4. The merger can be effective on the date of the Publication (without needing to wait for the expiration of the three month's term) only if (1) the payment of all the merging companies' debts is previously agreed, (2) a payment deposit for the amount of its debts is formalized at a banking institution, or (3) the consent of all the companies' creditors is obtained. Once the merger has become effective, the company acquiring the other company or companies in the merger will acquire its rights and obligations.
5. Within one month after the merger, the company that survived needs to file several notices before different Mexican authorities, such as the Ministry of Economy, the Tax Administration Service, the National Foreign Investment Registry, in order to cancel the registrations the merged companies had, and inform about the merger and the companies acquired by the surviving entity for that reason.

## h. Dissolution and Liquidation.

Mexican law includes the following as the causes for dissolution: (1) the expiration of the company's effective term stipulated in the incorporation deed (which can be indefinite); (2) the fulfillment of the company's corporate purpose; (3) the company's impossibility to carry on its operations or to comply with its corporate purpose; (4) the shareholders' or members' consent, in the terms of the incorporation deed and applicable law; (5) if the company ceases to have at least two members, or (6) if the company loses two thirds of its capital.

If a company has fallen in one of the causes for dissolution, it will proceed to be liquidated. The liquidation of the company will be managed by one or more liquidators, who will act as attorneys-in-fact of the company during such period. The liquidators will be personally liable for any acts executed by them

in accordance with this capacity and which exceed their respective powers.

Under Mexican law, the dissolution of a Mexican company is accomplished through the completion of: (a) the dissolution of the company, which is mainly the dissolution resolution adopted by the company, and (b) the liquidation of the company, stage during which all accounts payables and receivables of the company are paid and collected, all assets owned by the company and which may not be easily distributed between the shareholders or members are sold or transferred, all other outstanding obligations of the company are fulfilled, performed or terminated and finally, provided that the company has no more creditors or accounts receivables, the remaining company assets are distributed between the company's shareholders or members.

The liquidators would have the following duties: (1) conclude all pending operations of the company; (2) collect all debts that are owed to the company; (3) sell all the company's assets and distribute any remaining assets among the shareholders or members of the company in proportion to their respective holdings in the company; (4) prepare the company's final balance sheet, which must be approved by the shareholders or members of the company, and (5) once all other steps have been finalized, apply for and obtain the deregistration of the company from the Public Registry of Commerce.

The dissolution and liquidation of a Mexican company would result in the company to be deregistered and cease to exist for all legal purposes and would involve the following general steps and actions:

1. Before formally starting the dissolution and liquidation process, the company would need to be in good standing in respect of all mandatory corporate proceedings and filings under Mexican law, including without limitation (a) annual shareholders' or members' meetings; (b) foreign investment matters; (c) import export matters, and (d) tax matters.
2. To formally commence the liquidation process, the company would require to formalize an extraordinary shareholders' meeting or a members' meeting as applicable or resolution specifically convened for such purposes (hereinafter referred to as the "Dissolution Resolution"), and among other actions, such Dissolution Resolution should approve

the company's dissolution, appoint one or more liquidators, and grant to such liquidator the relevant general powers required for the liquidation process. The Dissolution Resolution should also set forth the basis for the company's liquidation and the distribution of the company assets, taking into account the provisions of the company's bylaws and applicable law.

3. The Dissolution Resolution would need to be protocolized before a Mexican Notary Public and duly registered before the relevant Public Register of Commerce where the company is registered.
4. Immediately upon the Liquidator's appointment becoming effective, all corporate books, accounts and records of the company shall be handled over to the custody of the Liquidator, and an inventory thereof, and particularly regarding the company's assets and liabilities, shall be prepared.
5. The company would need to negotiate and reach agreements with the tax authorities and each of its creditors, suppliers and service providers, pursuant to which the company would terminate each such relationship and settle any pending amounts and obligations.
6. Based on the implementation of the termination and settlement arrangements briefly described above, and considering the Liquidator's proposal for the distribution to the company's shareholders or members of the remaining assets of the company (including the company's equity) in the lines of the Dissolution Resolution, applicable law and the company's bylaws, the Liquidator should prepare and execute a final balance sheet.
7. Next, the Liquidator should convene and formalize an additional shareholders' or members' meeting of the company, in which, among other related actions, the final balance sheet would be submitted for its approval by the shareholders or members.
8. The company will also require to coordinate, process and obtain evidence of its tax deregistration, effectively removing the company from the Mexican Federal Taxpayers' Records.
9. Lastly, and as soon as all other actions have been completed and within one month from the date in which the company's tax and Public Register's deregistration is obtained, submit a final liquidation notice before the Mexican Ministry of Economy.

# III. OPERATIONS.

## a. Import & Export Incentive Programs.

Being so close to the U.S. and Canada, Mexico is interested in designing vehicles to support the export of items produced by companies established in Mexico (the "Products"). The incentives may be on a tariff or tax basis, regarding the easiness in certain administrative proceedings and in connection with other business issues. For that reason the government created incentive programs for companies established in Mexico for the import and export of goods (the "I&E Programs") from which the most relevant are the following: (1) the Program for the Development of the Maquiladora Manufacturing and Services' Export Industry (commonly known as the "IMMEX Program"), and (2) the several Sector Foster Programs (commonly known as the "PROSEC Program").

Any Mexican or foreign legal person or company residing in Mexico, having a Mexican tax identification number and importers' registration may be the beneficiary or holder of an I&E Program, provided that it fulfills the requirements and conditions contained in the applicable decrees and rules. Through the I&E Programs, the company may temporarily import raw materials, containers, tools, machinery and equipment, among other items, subject to the benefits, incentives and obligations provided under each relevant I&E Program.

Under the terms and conditions of the I&E Programs, the beneficiary may change its I&E Program from time to time, according to its needs, or may have two or more I&E Programs authorized simultaneously in connection with the different sections of its operation, such as its plants, Products or specific projects. The Ministry of Economy which is the competent authority regarding the administration of the I&E Programs has a 20 business-day term to respond the company's application for an approval, except for the IMMEX program, in which the SE has a 15 business-day term to resolve. In the event that the applicable term has expired and the authorities have not issued a resolution authorizing or denying the application, the application will be deemed to have

been accepted and the I&E Program will be deemed to be authorized.

The Ministry of Economy has recently launched its services through a "digital desk", in an effort to ease the application procedures for the I&E Programs, and speed-up the processing and timing by the authorities. This new e-filing is optional, and reduces the waiting period for the approval to a ten-day term for both I&E Programs.

Additionally, the Ministry of Economy works in coordination with the Ministry of Treasury and Public Finance in order to authorize, manage, suspend and cancel (if necessary) any of the I&E Programs.

Please note that in order to maintain the effectiveness of an I&E Program, the company should comply with certain ongoing requirements and general provisions set forth in the applicable decrees and the specific terms and conditions of each authorization, as the case may be. Among others, the company shall submit an annual report informing on its import and export transactions on or before the applicable deadline established in the relevant I&E Program. Likewise, the company should submit the notices that from time to time become necessary to report any change to the information previously submitted before the SE in order to obtain the authorization of any I&E Program.

## IMMEX PROGRAM.

The purpose of this program is to promote manufacturing and exporting companies in order to facilitate their industrial process for the export of their products and the performance of their export services. A company must be exporting at least U.S.$500,000.00 per year (or its equivalent in other currencies) or 10% of its total production in order to be authorized under this program.

The principal benefit under the IMMEX Program is that the company may import temporarily, exempt from the payment of taxes, those goods that will be incorporated to the production process of the products to be exported by such company. The beneficiaries of this program are also authorized to perform services regarding such exported products, according to the specific provisions

issued by the Ministry of Economy.

The products are classified in (1) products which can be imported under this program for a maximum of 18 months, such as raw materials, components and parts, packaging and packing materials, fuels and lubricants, labels and leaflets used for the manufacturing process of the goods to be exported; (2) products which can be imported for a maximum of 2 years such as containers and dry-vans; and (3) products which can be imported under the program throughout its effectiveness such as machinery, tools, equipment, molds and spare parts destined to a production process; equipment and machinery for pollution control, training and research, industrial safety, computers and communication, quality and product testing, management development, among others.

## PROSEC PROGRAM.

In order to apply for a PROSEC Program, the company shall be in one of the industrial sectors included in the PROSEC Program's decree, and the assets temporarily imported by the company must be destined to manufacture the products contemplated under the specific industrial branch of the PROSEC Program's decree in which the company is registered.

The PROSEC Program allows the company to import specific goods subject to a preferential General Import Tax, which in most cases may be 0%. Under the PROSEC Program, the company would be permitted to sell a portion of its manufactured products within the Mexican market, provided that in such case, the company shall pay the permanent import duties of the raw materials and components originally introduced into Mexico on a temporary basis.

The specific goods and products provided under the PROSEC Program are classified on a wide range of industrial sectors which range from electronics, furniture, capital assets, mining, iron and steel, some food, fertilizers, wood and leather, automobiles and automobile parts, textile, rubber and plastic, chemical and pharmaceutical, among others.

In the past, a third program known as the ALTEX Program, was also available. The ALTEX Program was targeted to companies which basically

exported all of its production, and is not available for new companies since 2010. However, companies operating under an ALTEX Program before 2010 may continue to do so as long as they continue complying with the requirements set forth by the Ministry of Economy.

### b. Limitations on Foreign Investments.

Although Mexican law establishes as a general rule that foreign investors may invest in Mexico without the need of any prior approval, the law reserved certain activities to be conducted by the state, some others by Mexican nationals and also established certain limitations related to some activities in which foreign investors could only own a specific percentage of the totality of the business.

The investments that should be considered as foreign investments in Mexico are those made in activities with (1) participation by foreign investors, in the capital stock of Mexican companies; (2) investments by Mexican companies in which foreign investors have a majority interest; and (3) participation by foreign investors in other activities described and allowed for them by the foreign investment law.

Even if subject to some restrictions, foreign investors may participate without limitation in the capital stock of Mexican companies, acquire fixed assets, participate in new fields of economic activity or manufacture new product lines and open, operate, expand and relocate existing establishments.

In this regard, the mentioned restrictions consist first of the (1) activities exclusively reserved to the Mexican state, which among others are petroleum, basic petrochemicals, electricity, nuclear energy, radioactive minerals, postal service, bank note issuing, control of ports and airports; (2) the activities exclusively reserved to Mexican nationals and Mexican companies without foreign investment, such as the land domestic passenger, tourism and freight transport, gasoline retail, credit unions, and certain professional and technical services; (3) activities limited to foreign investors to up to the 49% of shareholding, which among others are (a) the cooperative companies for production (up to 10%), (b) certain types of air transportation (up to 25%), (c)

insurance and bonding companies, currency exchange houses, investments promoters and retirement fund management companies, newspapers for circulation only within Mexico, certain agricultural and forestry company ownership, certain port administration, supply fuel for ships, airplanes and railway equipment, telecommunications concessionaire companies (up to 49%); and (4) the activities which requires authorization for foreigners to own more than 49% of shareholding, such as legal services, the concessionaire companies of air fields for public service, shipping companies for the exploitation of ships for high-seas traffic, port services for inland navigation, private education services, securities rating institutions, insurance agents, oil and gas well drilling and construction of pipelines among others.

## c. Antitrust Issues – Merger & Acquisitions Notices.

Mexican law provides for three main tests in order to require that a merger, acquisition or other business combination transaction be notified to the competition authorities before its formalization. These three tests are:

I. That the Mexican portion of the transaction involves consideration in excess of 18 million times the general minimum wage applicable in Mexico's Federal District (the "GMW"), which as of 2013 would amount to approximately U.S.$86,000,000.00;

II. That the Mexican portion of the transaction results in the direct or indirect acquisition of 35% or more of the capital stock or assets of a Mexican entity whose assets or sales exceed 18 million times the GMW, which as of 2013 would amount to approximately U.S.$86,000,000.00, or

III. That the Mexican portion of the transaction involves the acquisition of assets or capital stock which value exceeds 8.4 million times the GMW, which as of 2013 would amount to approximately U.S.$40,000,000.00, and the transaction is entered into by two or more entities which jointly or individually have assets or sales exceeding 48 million times the GMW, which as of 2013 would amount to approximately U.S.$230,000,000.00.

There is a mandatory ten day waiting period after the transaction to

be notified to the authorities and during which they may order that the transaction must not close until it has been approved.

Independently from and in addition to the notification obligation set forth above, the competition authorities may request information or start an investigation over a transaction that could be deemed to imply or result in a monopolistic practice. The competition law contains a number of specific cases in which a monopolistic practice is presumed to exist; the evaluation of each of them in detail results only necessary if as a result of the acquisition transaction, the purchaser will result in having a "substantial power" over the relevant market.

The elements considered to determine the existence of "substantial power" are the:

(a) Market share;
(b) Ability to fix prices unilaterally;
(c) Ability to restrict the entry of similar or substitute products into the relevant market;
(d) The existence of entry barriers for the relevant products;
(e) The existence of competitors in the market, and their respective power;
(f) The relevant entity's access possibilities to raw materials or components, compared to that of its competitors, and
(g) Other recent actions of the relevant entity.

In connection therewith, the following information from the buyer should be preliminarily analyzed by the competition authorities in order to evaluate any potential Mexican competition effects:

1. Information on any other companies, facilities or entities owned, operated or controlled by the buyer and the targets in Mexico, including in each case the products they manufacture, sell or distribute, and their asset value, sales amount, and market;
2. For each entity and product answered in number 1 above, the current market share thereof (before giving effect to the transaction), and their estimated aggregate market share after giving effect to the transaction;
3. Information on the existence of any competitors operating in Mexico

and known to buyer, and

4. Any other information which in the reasonable judgment of the buyer may influence any of the elements set forth above for the purposes of determining the existence of a "substantial power" by buyer as a result of the transaction.

Mexican competition law is complex and a number of competition issues may arise in Mexico, just as in most any other jurisdiction. Specific legal advice is always required when a company anticipates, or becomes in any way involved, with competition and anti-trust issues.

## d. Industrial and Intellectual Property Protection.

Trademarks and patents, among other registrations, are part of what under Mexican law is known as industrial property, and represents one of the two parts in which intellectual property is classified. The term industrial property specifically refers to inventions, utility models, industrial designs, patents, industrial secrets, trademarks, trade names, licenses and denominations of origin (jointly referred to as "Industrial Property"). The other part of the intellectual property concept pursuant to Mexican law refers to copyrights.

### Trademarks.

According to the law, a trademark is any visible sign or name that distinguishes products or services from others of its kind or class in the market (a "Trademark") and through the registration of a Trademark before the **Instituto Mexicano de la Propiedad Industrial**, or Mexican Industrial Property Institute (the "IMPI") an individual or legal entity may obtain the exclusive right to use and exploit such Trademark within Mexico, protecting its title and rights in connection with such Trademark before third parties, and creating legal effects against them.

The four types of Trademarks in Mexico are (1) nominated, consisting on trade names or corporate names that may consist of one or more words; (2) figurative, consisting on figures, designs or logos without words; (3) three-dimensional forms, consisting on the form or forms of products or packages, wrapping or bottling, and (4) combined, consisting on any combination of the

previous types and should be registered considering the products and services listed in the International Classification of Products and Services for the Trademarks' Registration established in connection with the Nice Agreement and which is effective as of the date hereof.

The law also expressly provides the concepts, figures and designs not subject to Trademark registration which among others are the names, figures, three-dimensional forms, commonly used names, isolated letters, digits or colors, translation to other languages, official shield, flag, seal, award, among other symbols of any country, state or government, names, nicknames, signatures and pictures of individuals without their express consent.

The registration could be requested before the IMPI either by physical submission or online, following the payment of the applicable fees or specifying previous registrations in other countries in order to obtain recognition of any available priority rights. Mexican law does not provide for an opposition period, so that after the analysis of the IMPI and once they confirmed that the legal requirements are duly fulfilled, a certificate containing the relevant information of the Trademark will be issued in favor of the applicant and the registration will be published in the Industrial Property Gazette.

The effective term of the Trademark's registration in Mexico is of ten years, and this term may be renewed for successive equal periods of time.

## Patents.

A patent is the exclusive right that an individual or legal entity may have in order to exploit an invention, and such term is also used to identify the document in itself issued by the IMPI to protect such right (the "Patent"). The Patent will entitle the applicant to use and exploit the patented product or process as well as to its fabrication and distribution.

In accordance with the law, an invention is any human creation that allows the transformation of matter or energy existing in nature, for its use by humanity and for the satisfaction of specific human needs (hereinafter referred to as an "Invention").

The Inventions which are new, suitable for an industrial application, and were created as a result of an inventive activity may be duly registered through a Patent.

The law provides a list of the items that may not be patented, which among others are technical or scientific principles, discoveries revealing something that already exists in nature, diagrams, plans, rules and methods to perform mental activities, as well as mathematical methods, computer programs (even though applicable law expressly mentions that computer programs are not patentable, there are different interpretations which could permit its patentability), and esthetic creations and art or literature.

The process to obtain a Patent should be conducted before the IMPI through the submission of an application, enclosing the fee payment receipt and the description of the Invention and the information required thereof, and, if applicable, the date in which the Patent was registered in another country in order to obtain the recognition of any priority rights.

Upon the finalization of its analysis, the resolution of the Patent's registration will be published in the Industrial Property Gazette, and such publication will contain a descriptive summary of the Invention and an illustrative description, granting the Patent in favor of the applicant.

The effective term of the Patent in Mexico is of 20 years and is not subject to renewals.

Among other rights and obligations, the beneficiary holder of either a Trademark or a Patent:

1. Has the obligation to exploit it; such registrations may be canceled if they are not used during their effective term or in the event that they are never exploited during the terms established by the IP Law (three successive years for Trademarks and three to four years for Patents);
2. May confer exploitation licenses to third parties through license or franchise agreements, provided that such licenses are registered before the IMPI in order to have legal effects against third parties, and

3. Has the option to submit the registration of a Patent in other countries when applying in Mexico.

## e. Trusts and their Structuring.

Under Mexican law, by virtue of a trust, a person, named **fideicomitente** or settlor, transfers to a trustee, the entitlement to one or more assets or rights to be destined to a licit and determined purpose, the fulfillment of which is entrusted to the trustee. The formation of a trust must always be evidenced in writing. Once an asset is contributed to a trust, such asset ceases to be the property of the settlor and becomes the property of the trust, forming part of the trust's assets.

### Parties.

In order to incorporate a Mexican trust, a settlor and trustee are required. A Mexican trust may be valid even if no beneficiary is named in the act of its incorporation, as long as the trust's purpose is lawful and determined. The role of each of these parties may be described in further detail as follows:

a) The Settlor is the party, which can either be an individual or a legal entity, who incorporates the trust and contributes the assets which will become a part of the trust's assets. In certain cases the judicial or administrative authorities may act as settlors. Generally, the settlor designates the beneficiaries as well as the members of the technical committee of the trust (both figures will be described in further detail below).

b) The Trustee is the party responsible for receiving the trust assets, and has the obligation to maintain and use them for the sole purpose or purposes for which the trust was incorporated. As opposed to other trust systems in the world, Mexican law reserves this capacity exclusively to banking institutions, and in certain cases, to other financial institutions which are entitled to act as trustee under Mexican law.

c) The Beneficiary is the individual or legal entity having the right to receive the product of, and be benefited by, the trust. The settlor and beneficiary may be the same person; however,

and except for the guarantee trusts, the trustee may never act simultaneously as beneficiary and trustee.

In addition to the parties set forth above, there are two figures which play certain operating roles in a Mexican trust: the trustee delegates and the technical committee.

Since the trustees are legal entities, they may not personally carry out their responsibilities, and such responsibilities necessarily have to be performed through a representative. Such representative of the trustee is known as trustee delegate. The trustee delegates are responsible for performing the actions necessary to fulfill the purpose of the trust in the name and on behalf of the trustee. Trustee delegates must additionally comply with certain requirements set forth by law for their appointment.

The technical committee is the management body of the trust. Generally the technical committee is appointed by the settlor for the purpose of following-up and instructing the trustee in connection with the purposes of the trust. However, occasionally such committee is appointed by the beneficiary, depending on the nature of the trust.

## Generalities.

There are certain types of trusts expressly forbidden by law, such as: (a) secret trusts; (b) trusts which benefit different persons successively by substitution upon the death of the previous beneficiary, except when such trust is made in favor of people living or conceived at the time of death of the settlor; and (c) except in certain cases, the trusts with a duration of more than fifty years.

A trust is extinguished upon the occurrence of any of the following events: (a) the fulfillment of its purpose; (b) when it has become impossible for the trust to achieve its purpose; (c) when it has become impossible for the trust to fulfill the condition precedent to which its effective term is subject; (d) upon the fulfillment of the condition subsequent to which it was subject to; (e) upon the express agreement among the settlor, the trustee and the beneficiary; (f) upon its revocation by the settlor, as long as it reserves itself such right at

the time of formation of the trust; and (g) when it has been determined that it was formed fraudulently against the interests of third parties. Additionally, if the trustee concludes the exercise of its duties due to its resignation or dismissal, and its substitution is not possible, the trust will be considered to be extinguished.

Upon extinction of a trust, all the assets contributed to it and that continue to be part of the trust assets will be distributed in accordance with the terms agreed by the parties in the trust agreement. If no express provision exists, they will be distributed in accordance with the legal provisions in effect.

## Nature of the Trust Estate.

At the time a trust is incorporated, the trustee becomes legally entitled to the trust assets, which ceases to be property of the settlor. This transfer takes place even in such cases in which the settlor and beneficiary is the same person, given the fact that the trustee is considered the entitled party to such assets during the term of the trust.

Mexican law grants the trust assets an autonomous nature; such trust assets are considered different and segregated from the assets of the trust parties, and even if in accordance with the trust, the trust assets are under the control of the trustee, they are not deemed to be part of its assets because they are destined to a determined purpose pursuant to the trust.

Neither the trustee nor the settlor may individually perform acts of ownership with respect to the trust assets, being able to act only within the limits which have been set forth in the corresponding trust agreement. Contrary to the civil property concept in which a party has the right to freely enjoy and dispose of its assets, under the trust entitlement such right does not exist since the parties may not dispose of the possession and the assets to their benefit.

## Types of Trusts.

Mexican law does not limit the types of trusts which may exist, given that each of them may have distinct and specific characteristics. For purposes of this memorandum, we describe below the four most commonly used types of

trusts:

a) A Guarantee Trust is formed for purposes of guaranteeing the fulfillment of a payment obligation in favor of the beneficiary or beneficiaries. The same guarantee trust may be used to simultaneously or successively guarantee obligations of the settlor with different creditors. Only in this type of trust may the trustee simultaneously act as trustee and beneficiary, as long as the purpose of such trust is to guarantee obligations in its favor. The contribution of real estate to a guarantee trust must be evidenced in a public deed. When referring to personal property, the trust agreement may set forth certain rights for the settlor with respect to its use and the use of its products. In any event, the person having the physical possession of the assets will be responsible for the loss, damage or detriment of the trust assets.

b) In a Management Trust, certain goods are contributed to the trust with the purpose of being managed by the trustee. Among this type of trusts are the trusts for resource management, for representation, for social assistance or welfare, or the most common of them, the trust for testamentary purposes.

c) In an Investment Trust certain assets are contributed to the trust for their investment. In this type of trusts generally the settlor and beneficiary is the same person, although in some cases (for example, the trust of retirement plans or savings) in which the settlor and beneficiary are different persons.

d) A Public Trust is a trust formed by a branch of government or one of its entities for purposes of promoting areas for development, and it has an organizational structure similar to that of other government entities. This type of trust generally is formed for specific developments and projects, or for the development of certain activities. These trusts are not subject to the maximum duration of fifty years set forth by law.

## Practical Applications.

Some examples of practical applications of trusts are set forth below for reference purposes:

a) **Guarantee Trust.**

Generally, this type of trust provides that if the debtor-settlor, or a third party, does not comply with certain obligations, the trustee will use the assets contributed to the trust to satisfy the agreed payment obligations in favor of the beneficiary. The trust agreement may set forth the form in which the trustee will make a non-judicial disposal of the assets or rights forming the trust estate. In a trust of this nature, the settlor may not take any action or exercise any disposal right with respect to the assets contributed to the trust once the trust has been formalized.

b) **Trust for Testamentary Purposes**.

This trust operates similarly to a will. In this type of trusts, the settlor will determine which assets will be transferred to the trust at the time of his or her death, the trust's purposes and the beneficiary or beneficiaries. Upon giving effect to the transfer of the assets, the trust will carry-out the instructions of the settlor with respect to such assets and in the benefit of third parties.

c) **Trust for Real Estate in the Restricted Zone.**

Mexican law prohibits foreigners to purchase real estate located in the restricted zone. The restricted zone is defined as the territory comprising 50 kilometers from the Mexican coasts and 100 kilometers from the Mexican borders. Due to such restriction, and as a method to promote the development, particularly of tourist zones, the formation of trusts whereby the trustee acquires property rights with respect to real estate located within the restricted zone was implemented, with the prior authorization from the Ministry of Foreign Affairs. Consequently, the trust permits foreigners to be holders of the rights to use and to benefit directly from the product of the sale of any such assets, without legally holding title to such restricted real estate. The beneficiaries may be foreign individuals or entities, or Mexican entities with foreign shareholders.

d) **Other Practical Examples**.

In addition to the specific examples that have been provided in the foregoing paragraphs, there are many other applications to the trust, such as stock listing, investment, retirement and pension

funds, among others.

## f. Labor Implications.

Mexican labor law has been always an important factor to consider when doing business in Mexico, mainly due to its historic tendency to favoring the employees sector in an employment relationship, and imposing employers with strict principles and formalities in order to be appropriately protected in the event of a conflict.

When starting a business from scratch it's very important for foreigners to receive assessment on the labor relationships since the moment they start hiring workers. Also in acquisition transactions in Mexico, a very specific labor analysis is mandatory to ensure that no undisclosed or material labor liabilities would result to be assumed as a result of such transaction.

In an acquisition by shares, the most important aspect from a labor standpoint would be that the acquiring company will be assuming all the labor liabilities of the acquired company, including the seniority bonus, which is an on-going bonus based on the seniority of each employee, and which is paid through a bullet payment upon retirement or employment termination. In certain cases, these amounts add up to considerable and material liabilities, so calculating the employees' severance and seniority payments as part of the labor due diligence for the acquisition is critical.

When an asset acquisition takes place, and if the acquirer company is interested in continuing to use the same workforce used by the seller, it may act as the substitute employer in the employment relationship, assuming the employees of the seller and becoming their new employer. There are normally certain payments to be made to employees in a termination and it will be necessary to review all collective bargaining agreements, the fulfillment of the reporting and payment obligations at the Mexican Social Security Institute, and any special salary policies that the employees have enjoyed during the employment relationship.

If a new company is incorporated derived from a merger, the combined

parties would decide to opt for the employer substitution or for the termination of employment. On the other hand, when the merger does not imply the creation of a new legal entity and rather one of the companies absorbs the other, the employees will be absorbed just as any other liability.

The labor union relationships and collective bargaining agreements are material matters that should be addressed in most cases, with due anticipation, when coming to Mexico to do business. Labor liabilities may result to be material even in a company with a small number of workers.

Mexican labor law went through substantial amendments at the end of 2012, with the new amended law becoming effective on December 1, 2012. The general spirit of the amendments to the Mexican labor law is to improve the labor relationships atmosphere in the country in order to become much more competitive and attractive for foreign investment. The amendments includes and recognizes some employment practices which are common on other countries (i.e., outsourcing), but which were only limitedly permitted and used in Mexico prior to the amendment. At the same time, the amendments did not substantially change the strict requirements and formalities which employers need to comply with in order to properly maintain an employment relationship in Mexico, so special care is always recommended for any company having employment issued in the country. We believe that these amendments are and will be a very good step towards a better labor practice in the country, more in the context of current internationally accepted practices.

## g. Foreign Investors' Legal Status and Immigration Issues.

Mexican law provides for six different types of visas, classified according to the activity intended to be performed in Mexico by the foreigner applying for each such visa, or the time such foreigner is planning to stay in the country. Such visas will be the only valid document to be issued for foreigners to enter into the country, and are classified as follows:

| | Description | Requirements |
|---|---|---|
| **VISITOR'S VISA NOT ALLOWING THE PERFORMANCE OF ECONOMIC ACTIVITIES** | For foreigners entering Mexico for a maximum period of 180 days. | At least one of the following:<br>- The existence of reasons to return to the foreigner's country;<br>- Evidence of enough solvency to cover the expenses of the stay; or<br>- Invitation letter from a chamber of commerce, association, company or financial institution. |
| **VISITOR'S VISA ALLOWING THE PERFORMANCE OF ECONOMIC ACTIVITIES** | For foreigners entering the country for a maximum period of 180 days and who will be performing economic activities. | - Application filed by the public or private institution in Mexico employing the foreigner.<br>- The employer will be required to file the necessary documents in order to prove the labor relationship. |
| **VISITOR'S VISA FOR ADOPTION PROCEDURES** | For foreigners who will enter the country to perform adoption-related procedures. | - Evidence of the existence of an international adoption procedure. |
| **TEMPORARY RESIDENT VISA** | For foreigners who are planning to stay in the country for a maximum period of 4 years. | At least one of the following:<br>- Evidence of enough solvency to cover the expenses of the stay;<br>- Kinship with a national citizen, temporary or permanent resident;<br>- Invitation from an organization or public or private institution in the country, to participate in non-compensated activities; or<br>- Owning real estate in the country with a value that exceeds forty thousand days of the minimum wage in force in the Federal District (as of late 2012, this would amount to approximately US$200,000); or<br>- Having investments in Mexican companies that exceed twenty thousand days of the minimum wage in force in the Federal District (as of late 2012, this would amount to approximately US$100,000), or employing Mexican individuals. |
| **TEMPORARY STUDENT VISA** | For foreign students planning to stay in the country for the duration of their academic studies or investigation projects, lasting at least 180 days. | At least one of the following:<br>- Letter of acceptance to a Mexican academic institution; or<br>- Evidence of sufficient solvency to cover the expenses of the stay. |
| **PERMANENT RESIDENT VISA** | For foreigners who are planning to stay in the country for an indefinite period of time. | At least one of the following:<br>- Kinship with a national citizen or permanent resident;<br>- Evidence of being retired and having enough monthly income to cover its expenses;<br>- Being granted with political asylum by the Mexican government. |

In order to apply for any of the above mentioned visas, in addition to the payment of the applicable fee, foreigners require visiting a Mexican Consulate for an interview and completing and submitting their application for the visa they are requesting, together with their passport and the appropriate supporting documentation. In case the Mexican Consulate considers it appropriate based on the interview and the documentation received, it will issue the corresponding visa within the 10 (ten) business days following the date of the interview.

The process to obtain a "visitor's visa not allowing the performance of economic activities" may be narrowed down to showing the passport and completing a short form stating the purpose of the visit at the port of entry to the country. This will only be applicable for citizens from certain countries as indicated by the National Migration Institute: http://www.inm.gob.mx/index.php/page/Paises_No_Visa/en.html.

# IV. CONCLUSIONS AND OPPORTUNITIES.

Mexico is in a privileged position as an international destination for business. Even though there are always uncertainties when doing business abroad, the experience developed through years of welcoming foreign investment, and the availability of top-level service providers and overall advisors are always a key element to the success of any project.

This handbook intends to provide only a brief overlook of the most common questions and topics which need to be considered when doing business, or planning to start a business, in Mexico. There are a number of other options and business forms available, and our team of expert attorneys would be glad to work with you and provide you personalized attention and legal advice for your business needs.

# V. WHO IS JATA?

With offices in Monterrey and Houston, JATA is the best-positioned corporate law firm in Mexico devoted to advise foreign companies in their legal needs. Our firm is integrated by attorneys licensed to practice in Mexico who also have a valuable bi-cultural background. Our clients are foreign investors & companies doing business in Mexico, and Mexican companies with cross-border operations. Our practice areas include Corporate and Contracts, Financing, Mergers & Acquisitions, Business Start-up and International Trade, Real Estate, Labor Law, Intellectual Property, and Civil and Commercial Litigation.

Some of the most prestigious global law firms also trust our legal team for their clients' transactions in Mexico.

We have been internationally recognized for our work and the top quality of our services:

- 2013 Financing, Mergers & Acquisitions, International Business and Corporate Law Firm of the Year - Mexico, by M&A International Global (www.manda-intl.com).
- 2013 Mexican Contracts Law Firm of the Year, by Acquisition International (www.acquisition-intl.com).
- 2013 Cross Border Law Firm of the Year in Mexico, by Global Law Experts (www.globallawexperts.com).
- 2013 Debt Restructuring Law Firm of the Year in Mexico, by Global Law Experts (www.globallawexperts.com).
- 2012 Business Start-up Law Firm of the Year in Mexico, by Finance Monthly (www.finance-monthly.com) in association with Standard Chartered Bank.
- Mexican Cross-Border Law Firm of the Year, 2012, by CorporateINTL (www.corp-intl.com).
- 2011 Mexican International Business Law Firm of the Year, by CorporateINTL (www.corp-intl.com).
- Mexico's Debt Restructuring Law Firm of the Year for 2010, by CorporateINTL (www.corp-intl.com).

# OFFICES

## MONTERREY

Designated in multiple occasions as one of the top Latin American destinations for business, Monterrey is also considered the financial and business capital of Mexico. Our main office is located in Monterrey, and since 1997 we are assisting our clients in their business needs throughout Mexico.

Our Monterrey office is located at:

**J.A. Treviño Abogados S.A. de C.V.**

**Ave. Gomez Morín 955.**

**Suite 500.**

**San Pedro Garza García, N.L. 66279.**

**Tel +52 (81) 8335-4200.**

**Email: jata.mty@jatabogados.com**

## HOUSTON

Houston is a major business and financial center in the U.S. It houses multiple global business headquarters, and is a natural base for companies doing business in Mexico and worldwide. Our office focuses in assisting our clients in their Mexican legal needs, in day-to-day coordination with our Monterrey office. Attorneys in our Houston office are authorized to practice law in Mexico only.

Our Houston office is located at:

**JAT Abogados, L.L.C.**

**1330 Post Oak Blvd.**

**Suite 1600.**

**Houston, Texas 77056.**

**Tel +1 (713) 963-3677.**

**Email: jata.houston@jatabogados.com**

# CONTACT INFORMATION

## MONTERREY


JATA

J.A. TREVIÑO ABOGADOS

AVE. GÓMEZ MORÍN 955 + DESPACHO 500

SAN PEDRO GARZA GARCÍA, N.L. 66279 MÉXICO

TEL +52 (81) 8335 4200 / FAX +52 (81) 8335 4204


## HOUSTON


JATA

JAT ABOGADOS, LLC.

1330 POST OAK BLVD + SUITE 1600

HOUSTON, TEXAS 77056

TEL +1 713-963-3677

WWW.JATABOGADOS.COM

INFO@JATABOGADOS.COM


J.A. TREVIÑO ABOGADOS