4th Edition

GOODRICH'S BLUEBOOK

MEXICO

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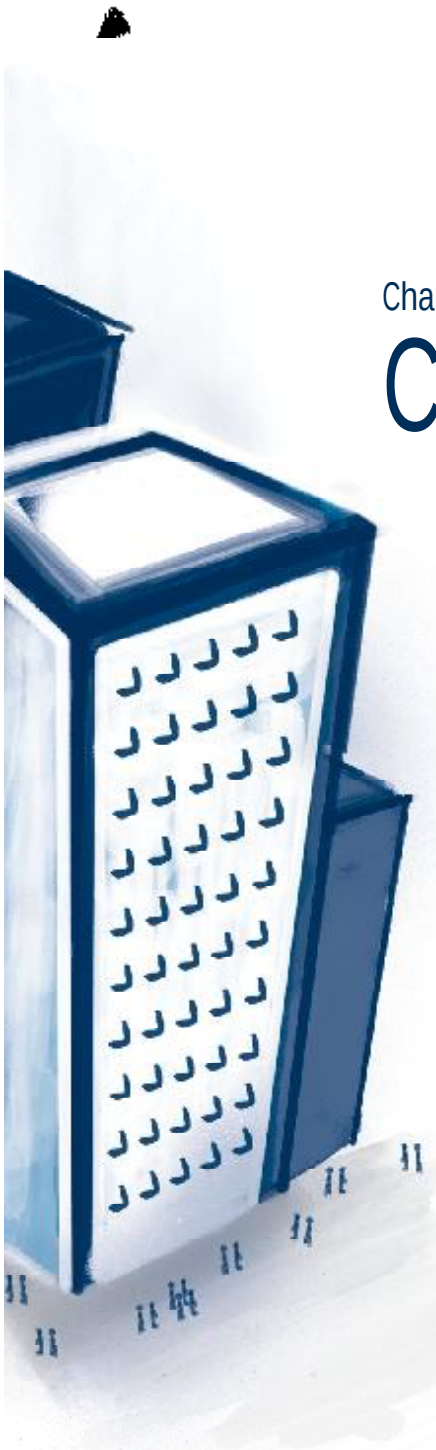


Chapter 4

Corporate Matters

Introduction

Foreign investors can establish a presence in Mexico in order to engage in business activities. This can be done directly, through the establishment of a company formed under the laws of Mexico or by acquiring all or part of an existing Mexican company, or indirectly, through a commission agreement or distribution contract.

Investors may also enter into a joint venture agreement, which will give them a share in the losses and profits of a business, in one or more commercial ventures.

There is also the possibility of opening a local office in Mexico or establishing a branch of the foreign company.

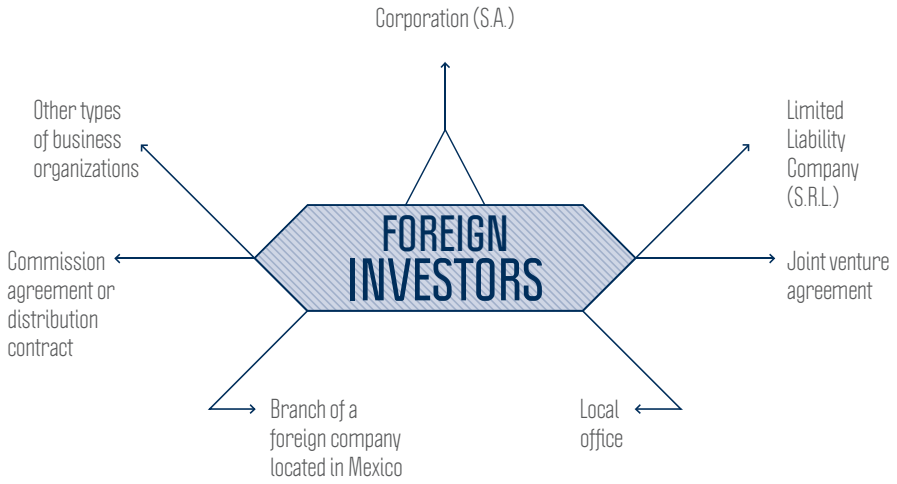
If an investor intends to engage in business activities which are non-commercial in nature, investors can form non-profit organizations and associations, including organizations engaged in welfare services.

Only in rare cases can foreign investors have a majority stake in a Mexican corporation or partnership (see Chapter 2).

KEY POINTS

There are several types of business organizations, and from a practical standpoint the preferred options are:

a) The formation of a corporation (S.A.) (whose capital is represented by shares); or
b) the formation of a Limited Liability Company (S.R.L.) (which blends elements of a corporation and a partnership).
- Both business organizations can adopt a variable capital company model, which allows them to increase and decrease capital without the need for a notary public or to register the change with the Public Registry of Commerce.
- The S.A. is the most flexible option.
- The S.R.L. can provide certain tax advantages for U.S. investors, as a "flow-through entity."



QUESTIONS AND ANSWERS

1. What is the procedure for forming a company or corporation?
   The requirements are: (i) to obtain a government permit which includes the approval to use a particular name; (ii) that the founding partners grant certain powers to attorneys at our firm; and (iii) to identify the principal activity in which the entity intends to engage, the primary place of business, the names of directors and senior officers, and the responsibilities of those officers in order to grant them sufficient authority.

2. How long does it take to form a Mexican company or corporation?
   About three weeks, once all relevant information has been submitted and the government permit has been issued.

3. What is the initial amount of capital needed to start a company or corporation?
   The initial amount needed to start an S.A. is MN$50,000, and to start an S.R.L. is MN$3,000, even if the respective company is formed as a variable capital company.
   Mexican law does not specify a fixed amount of initial capital needed to start other types of corporations or partnerships.

4. Is it necessary for the members of the Board of Directors and officers of a Mexican corporation or company to have Mexican citizenship or reside in Mexico?
   No. It is not necessary for the members of the Board of Directors and officers to have Mexican citizenship. Nor is it necessary for members of the board and officers to reside in Mexico. However, board members and officers who will be carrying out obligations and exercising authority in Mexico will need a permit from Mexican immigration authorities.

5. What is the minimum number of partners that a Mexican company or corporation must have?
   The minimum number of partners is two.

CASE STUDY

"Shareholder A" seeks to become a minority investor in a corporation by acquiring 20% of its shares. The other shareholders, "Shareholders B and C", have majority ownership, and own 80% of the shares.

How can "Shareholder A" be protected so that the value of his shares is not diluted without his consent, or to prevent "Shareholders B and C" from adopting resolutions contrary to the purpose for which "Shareholders A, B, and C" originally associated?

Since it would be contrary to the basis of the corporate system to establish in the corporate bylaws that any agreement made at a shareholders' meeting must be approved by an affirmative vote of 81% of shareholders, the following could be established in the bylaws:

a) Increases and decreases to corporate capital must be approved by 81% of shareholders.

b) The following issues require the approval of 81% of shareholders: (i) changes to the primary objective of the corporation; (ii) an amendment to the articles of incorporation or the bylaws; (iii) early dissolution of the corporation; (iv) merger; and (v) decisions not to distribute dividends.

The bylaws should also state that the Board of Directors is in charge of administering the corporation, and that any minority shareholder holding at least 20% of shares has the right to name a director.